

CALIFORNIA MONITORING CONFERENCE CALL

NRC Attendees	California Attendees
Randy Erickson, RSAO	Frieda Taylor, Acting Branch Chief
Duncan White, FSME	Phillip Scott, Health Physicist
Lisa Dimmick, FSME	Gonzalo Perez, Health Physicist
Janine Katanic, FSME	John Fassell, Health Physicist
James Lynch, RSAO	

Summary

On August 29, 2011, NRC hosted the ninth Monitoring call with the California Program (the Program). The purpose of the call was to review the Program's progress in regard to completion of the one remaining recommendation initially identified during the April 2004 IMPEP review and again noted during follow-up reviews conducted in March 2006 and April 2008. That recommendation involved the Program's failure to adopt required regulations within 3 years following adoption by NRC.

Discussion

During the initial Monitoring call on October 21, 2008, the Program reported their progress in regard to the adoption of the outstanding regulation packages. They identified the status of the regulations and where they were in the process. The Program also reported that the Department was considering changes to the way the proposed regulation review process is handled within the Department, in an effort to better streamline it.

During the February 17, 2009 call, the Program reported that changes had been made to the regulation development process. The Department hired a consultant who reviewed the long-standing regulatory development process and made recommendations to the Department on how to make improvements, one of which involved the formation of teams to improve the development and review process. The Department adopted the consultant's recommendations and, in January 2009, the first team was formed to work on the Program's backlogged regulations. The Department requested a team leader from the Office of Regulations be assigned; however, as of the February 17th call, no team leader had been named by the Department and movement on the regulations was currently on hold.

On April 29, 2009, a Periodic Meeting was held with the Program where, in part, the status of regulation development was discussed. At the time of the meeting, the Program had little to report because the process was still too new to have made any appreciable process.

During the August 25, 2009, call, the Program reported that, while the new collaborative regulation review process remains slow, there have been areas where the process has shown marked improvement. Review of rule packages are now able to run in parallel instead of one package following the previous package. The Program reported that two regulation packages became final on May 24, 2009.

During the January 21, 2010, call, the Program reported that no new regulation packages had been adopted; however, several had moved forward and were much closer to becoming final.

During the June 9, 2010, call, the Program reported that no new regulation packages had been adopted; however, those that are close to adoption are expected to be adopted soon.

The next contact with the Program was during the regularly scheduled Periodic Meeting on October 13, 2010 (ML103140660). During the meeting the Program reported they had completed and filed Part 35 regulations (including some subsequent amendments) with the California Secretary of State on the date of the meeting and would be implemented on January 1, 2011. It should be noted that California processes rule packages by "Parts", such as Part 20 or Part 35, instead of by amendments containing several smaller parts similar to the manner in which NRC promulgates rules. This method of rule promulgation gives the impression that the California program remains seriously behind on regulation development, when in fact they continue to steadily implement regulations.

During the January 18, 2011, call, the Program reported that no new regulation packages had been adopted; however, the remaining regulations continue to work their way through the system.

The next contact with the Program occurred on April 18, 2011, in Sacramento in conjunction with NMED training. During that meeting, the Program reported they had adopted three regulations packages, leaving them with only five overdue regulation packages outstanding from those identified during the 2008 IMPEP review. Of the five remaining regulation packages, two had been through the public comment period and were being prepared for their Director's review.

During the August 29, 2011, call, the Program reported that they had adopted one regulation package in entirety and one regulation package with the exception of the Part 32 portions of the rule. They continue to work on that section of the regulations.

Also discussed with the Program during the October 13, 2010 Periodic Meeting was the incompatibility of legislation found in Section 115261 of California's "Health and Safety Code – Radiation Control Law" to NRC's 10 CFR Part 61 with regards to low-level radioactive waste disposal. This incompatibility was initially noted in an amendment submission to NRC on June 25, 2007. At that time, NRC notified the Program that their statute was more restrictive than 10 CFR 61.41, and therefore did not meet the Compatibility "A" designation assigned to the rule. To date this compatibility issue has not been resolved. Subsequent to the Periodic Meeting, on November 3, 2010, the Branch notified NRC by telephone and email that they will be requesting additional time to resolve the issue due to the upcoming change in administration following the 2010 elections (ML103140535).

On January 18, 2011, the Program reported there has been no change on this issue. They had hoped to get it moving forward now that the new administration has taken office, but to date there has been no change in status.

On April 18, 2011, the Program again reported that there has been no change on this issue. The Program Director does not believe any action will be taken prior to the new fiscal year beginning on July 1, 2011. The Program Director also noted that on May 5, 2011, there will be a meeting of the Southwest Low Level Waste Commission. This meeting will be in part, to discuss the possibility of the Southwest Compact possibly using the Texas waste site for a fee.

On August 29, 2011, the Program reported there has been no change on this issue. They are evaluating this section to discuss options, but to date there has been no change in status.

NRC policy requires that Agreement States adopt certain equivalent regulations or legally binding requirements no later than 3 years after they become effective. During the April 2008 IMPEP review, a total of 13 amendments were found to be overdue. Since that time, the Program has continued to finalize regulation packages and adopt rules. The current status of each are noted below.

- “Timeliness in Decommissioning of Materials Facilities,” 10 CFR Parts 30, 40, and 70 amendments (59 FR 36026), that was due for Agreement State implementation on August 15, 1997.

2008 IMPEP Status: This rule is tied to the amendment “Radiological Criteria for License Termination.” See below.

October 21, 2008 Status: No change in status.

February 17, 2009, Status: No change in status.

August 25, 2009, Status: No change in status.

January 21, 2010, Status: No change in status.

June 9, 2010, Status: No change in status.

October 13, 2010, Status: No change in status.

January 18, 2011, Status: No change in status.

April 18, 2011, Status: No change in status. This amendment remains open.

August 29, 2011, Status: No change in status. This amendment remains open.

- “Recognition of Agreement State Licenses in Areas under Exclusive Federal Jurisdiction within an Agreement State,” 10 CFR Part 150 amendment (62 FR 1662), that was due for Agreement State implementation on February 27, 2000.

2008 IMPEP Status: Package with California Office of Legal Services.

October 21, 2008 Status: Submitted to the Office of Regulations on June 27, 2008.

February 17, 2009, Status: No change in status.

August 25, 2009, Status: This package is still in the Department undergoing final edits. When that is completed, the package will be sent to the Branch Manager for approval, then on to the Department Director for approval. Because this rule includes fees for General Licenses, it must also go before the Department of Finance for review before becoming effective.

January 21, 2010, Status: This package is currently included with the General License regulation package and is with the Health and Human Services Agency.

June 9, 2010, Status: This package is currently included with the General License regulation package and is with the Department of Finance (DOF). DOF approved this package on June 10, 2010.

October 13, 2010, Status: This amendment remains open. The Branch has completed the 45-day public comment period. Based on comments received, they are about to place the amendment out for an additional 15-day comment period.

January 18, 2011, Status: This amendment remains open. Based on the comments received during the additional 15-day comment period, additional changes were made and the regulation it will be placed out for a second 15-day comment period.

April 18, 2011, Status: No public comments were received during the second 15-day comment period. The rule package is being prepared for final director review. This amendment remains open.

August 29, 2011, Status: This regulation became effective on July 8, 2011. This amendment is closed.

- "Radiological Criteria for License Termination," 10 CFR Parts 20, 30, 40, and 70 amendments (62 FR 39057), that was due for Agreement State implementation on August 20, 2000.

2008 IMPEP Status: The 10 CFR Part 20 portion of the regulation was adopted and then challenged in State court by "The Committee to Bridge the Gap, et al." The challenge was successful, and the "Radiological Criteria for License Termination" portion of the regulation was repealed on August 8, 2002. The Branch is currently terminating licenses on a case-by-case basis. The Department is considering its options for addressing this regulatory issue.

October 21, 2008 Status: No change in status.

February 17, 2009, Status: No change in status. Awaiting a decision by Governor's office.

August 25, 2009, Status: No change in status.

January 21, 2010, Status: No change in status. The Branch continues to terminate licenses on a case-by-case basis.

June 9, 2010, Status: No change in status. This is governed by an Executive Order which is not currently going to be reopened. The Branch continues to terminate licenses on a case-by-case basis. The Executive Order does not hamper the Branch's ability to decommission sites.

October 13, 2010, Status: This amendment remains open. The 10 CFR Part 20 portion of the regulation was adopted and then challenged in State court by "The Committee to Bridge the Gap, et al." The challenge was successful, and the "Radiological Criteria for License Termination" portion of the regulation was repealed on August 8, 2002. The Branch is currently terminating licenses on a case-by-case basis.

January 18, 2011, Status: No change in status.

April 18, 2011, Status: No change in status. This amendment remains open.

August 29, 2011, Status: No change in status.

- Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material," 10 CFR Part 30, 31, and 32 amendments (65 FR 79162), that was due for Agreement State implementation on February 16, 2004.

2008 IMPEP Status: Package with California Office of Legal Services.

October 21, 2008 Status: Submitted to the Office of Regulations on June 27, 2008.

February 17, 2009, Status: No change in status.

August 25, 2009, Status: This package is still in the Office of Regulations and under the new process is being finalized by the Program. It is being prepared for the Director's Office approval and still needs to be sent to the Budget Office for approval.

January 21, 2010, Status: This package has been approved by both the Director's Office and the Budget Office. It is currently in the Health and Human Services Agency and, once approved by them, it will be sent to the Department of Finance for approval. The Branch hopes to see this package back within 2 months.

June 9, 2010, Status: The package is currently with the Department of Finance (DOF) waiting for approval. Note: DOF approved this package on June 10, 2010.

October 13, 2010, Status: This amendment remains open. The Branch has completed the 45-day public comment period. Based on comments received, they are about to place the amendment out for an additional 15-day comment period.

January 18, 2011, Status: This amendment remains open. Based on the comments received during the additional 15-day comment period, additional changes were made and the regulation it will be placed out for a second 15-day comment period.

April 18, 2011, Status: No public comments were received during the second 15-day comment period. The rule package is being prepared for final director review. This amendment remains open.

August 29, 2011, Status: This regulation package (Part 31 only) was adopted on July 8, 2011. The Program still needs to address Parts 30 and 32. This amendment remains open.

- “Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 amendments (67 FR 20250), that was due for Agreement State implementation on October 24, 2005.

2008 IMPEP Status: Draft package in Branch.

October 21, 2008 Status: Submitted to the Office of Regulations on July 10, 2008.

February 17, 2009, Status: No change in status.

August 25, 2009, Status: This package is still in the Office of Regulations and under the new process is being finalized. It is being prepared for the Director’s Office approval and needs Budget Office approval. Note: Budget Office approved 8-28-09.

January 21, 2010, Status: The Program is preparing the Public Notice document and expects to start the public process in the mid-March timeframe for the Part 20 and Part 35 portions of the regulation. Part 32 has been previously adopted by license condition.

June 9, 2010, Status: The Program has completed the 45-day public comment period for both Parts 20 and 35. Based on comments received, they will not have to put Part 35 documents out for an additional 15-day comment period and are preparing the Part 35 portion for final adoption. However, the Branch made revisions to the Part 20 portion of the package and will be sending it back out for an additional 15-day comment period.

October 13, 2010, Status: This amendment remains open. The Part 35 portion of this amendment was adopted on October 13, 2010 and became operational on January 1, 2011. The Part 20 portion of this amendment has been filed with the Office of Administrative Law for review. The review has a deadline of November 23, 2010.

January 18, 2011, Status: The Part 20 portion of this amendment has been approved by the Office of Administrative Law and is being reviewed by NRC for final compatibility.

April 18, 2011, Status: This regulation package was adopted on November 24, 2010. The Program received no specific NRC comments on this regulation package so no changes were required. However, NRC did have one comment on 10 CFR Part 35.57 which will need to be addressed in a future rule change. This amendment remains open.

August 29, 2011, Status: This regulation package was adopted on November 24, 2010 with the exception of Part 32 requirements. The Program still needs to resolve the comment on 10 CFR Part 35.75. This amendment remains open.

- “Minor Amendments,” 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendments (71 FR 15005), that is due for Agreement State implementation by March 27, 2009.

January 21, 2010, Status: Parts 20 and 35 are addressed in our packages already discussed. Changes in Parts 30, 40 and 70 are compatibility Category D so they are not being addressed. Change to Part 32 is already addressed through the licensing review process.

June 9, 2010, Status: The Program has completed the 45-day public comment period for Part 35. Based on comments received, they will not have to put Part 35 documents out for an additional 15-day comment period and are preparing the Part 35 portion for final adoption.

October 13, 2010, Status: This amendment remains open. The Part 35 portion of this amendment was adopted on October 13, 2010. The Part 20 portion of this amendment has been filed with the Office of Administrative Law for review. The review has a deadline of November 23, 2010. Changes for Parts 30, 40 and 70 are compatibility Category D so they are not being addressed. Change to Part 32 is already addressed through the licensing review process.

January 18, 2011, Status: The Part 20 portion of this amendment has been approved by the Office of Administrative Law and is being reviewed by NRC for final compatibility.

April 18, 2011, Status: This regulation package was adopted on December 10, 2010 with the exception of Part 32 requirements. This amendment remains open.

August 29, 2011, Status: This regulation package was adopted on December 10, 2010 with the exception of Part 32 requirements. This amendment remains open.

Conclusion

The California Program continues to place significant resources into the adoption of regulations and is committed to achieving full compatibility in this program area. The Program has dedicated the resources necessary to continue forward and achieve full compatibility, and NRC staff believes that with a continued level of commitment they will be successful in their efforts.

The next contact with the Program will be during the IMPEP review on October 17-21, 2011. Regulations will be reviewed in entirety at that time.

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