



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
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July 26, 2012

Thomas A. Conley, RRPT, CHP
Section Chief Radiation and Asbestos Control
Kansas Dept of Health & Environment
1000 SW Jackson, Suite 330
Topeka, KS 66612-1366

SUBJECT: SUMMARY OF PERIODIC MEETING WITH KANSAS DEPARTMENT OF
HEALTH & ENVIRONMENT HELD ON JUNE 27, 2012

Dear Mr. Conley:

A periodic meeting was held with you and your staff on June 27, 2012, at your office at the Department of Health & Environment, Radiation and Asbestos Control in Topeka, Kansas. The purpose of this meeting was to review and discuss the status of the Kansas Agreement State Program. The NRC was represented by Ms. Lisa Dimmick, Project Manager IMPEP Program, and Ms. Joan Olmstead from the Office of Federal and State Materials and Environmental Management Programs (FSME), Mr. Art Howell, Deputy Regional Administrator, Region IV, and me from the Region IV office.

We have completed and enclosed a general meeting summary. If you or your staff determines that our conclusions do not accurately summarize the meeting discussion, or if there are any additional remarks or questions regarding the meeting, please contact me at 817-200-1116 or by e-mail at Rachel.Browder@nrc.gov to discuss your concerns. There will be a Special MRB for this Periodic Meeting, which will be coordinated with you.

Sincerely,

/RA/

Rachel S. Browder
Regional State Agreements Officer

Enclosure:
Kansas Periodic Meeting Summary

Internal distribution via e-mail w/enclosure:

- Art Howell, DRA
- Tony Vogel, D:DNMS
- Vivian Campbell, DD:DNMS
- Brian McDermott, D:FSME/MSSA
- Chris Einberg, ADD:FSME/MSSA
- Duncan White, BC:FSME/MSSA
- Rachel Browder, RSAO
- Randy Erickson, RSAO
- Lisa Dimmick, FSME
- Kathy Schneider, FSME
- Michelle Beardsley, FSME
- Karen Meyer, FSME
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RIV:RSAO				
RSBrowder;dlf				
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7/26/12				

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KANSAS PERIODIC MEETING SUMMARY

Date of Meeting: June 27, 2012

Attendees

NRC	KANSAS
Rachel Browder, RSAO	Tom Conley, <i>Section Chief</i> Radiation and Asbestos Control
Lisa Dimmick, FSME	David Whitfill, <i>Supervisor</i> Radiation Material Licensing and Inspection
Joan Olmstead, FSME	Isabelle Busenitz, <i>Regulatory Affairs & Training Coordinator</i> Radiation and Training Programs
Art Howell, DRA, Region IV	James Harris, <i>Environmental Scientist</i> Radiation Control Program
	Judee Walden, <i>Environmental Scientist</i> Radiation Control Program
	David Lawrenz, <i>Environmental Scientist</i> Radiation Control Program

DISCUSSION:

The Kansas Agreement State Program is administered by the Radiation and Asbestos Control Section (the Section) within the Department of Health and Environment's Bureau of Environmental Health. The Section oversees six programs, in which two of the programs directly support the Agreement. These are the Radioactive Materials Licensing and Inspection program and the Regulations and Training program. The Section regulates approximately 300 specific licenses authorizing byproduct, source, and certain special nuclear materials (radioactive materials), 470 general licenses, and 60 to 70 reciprocal licenses.

The last Integrated Materials Performance Evaluation Program (IMPEP) review was conducted on June 14-18, 2010. Based on the IMPEP review and the presentations made during the Management Review Board (MRB) meeting on September 23, 2010, the MRB found the Section satisfactory in all six performance indicators. The MRB found the Kansas Agreement State Program adequate to protect public health and safety and compatible with the U.S. Nuclear Regulatory Commission's (NRC) program. The review team recommended, and the MRB agreed, that two recommendations be made for evaluation and implementation, as appropriate, by the State. Based on the results of the 2010 IMPEP review, the review team recommended, and the MRB agreed, that the next full IMPEP review take place in approximately 4 years with a periodic meeting tentatively scheduled for June 2012. The purpose of this periodic meeting is to fulfill the requirement in order to evaluate the overall implementation of the Agreement State Program.

Enclosure

Following is a status of the actions taken by the Section to address each recommendation. These actions should be reviewed during the next IMPEP in order to close the respective recommendation.

1. The review team recommends that the State ensure that inspectors gain increased familiarity with the regulations in 10 CFR Part 35, as well as be provided appropriate formal training in addition to mentoring and/or on-the-job training to ensure familiarity with various therapeutic modalities involving byproduct materials such that these areas will be appropriately reviewed during inspections. (Section 3.1, *Technical Staffing and Training*)

Status: Since the 2010 IMPEP Review, one inspector attended the H-313, "Brachytherapy, Gamma Knife, and Emerging Technologies," training course in August 2010. Four other staff members requested the training in 2011, and three staff members requested the training in 2012. All of the requests were denied through the NRC scheduling process. There were several reasons that contributed to the denial of these training requests. The NRC training coordinator was not made aware of the specific recommendations to the program. This notification should have been made; otherwise, there is no indication of a specific need by the program since it was found adequate to protect public health and safety and compatible with NRC's program. In addition, there are a significant number of requests for this particular training course since it is a required course for qualification in the medical area. Due to the number of denials for this particular training course, the frequency of providing the course has increased to three times a year and possibly four times a year. The NRC training coordinator for the Agreement State programs has indicated that the Kansas requests will be approved for the next calendar year.

As a result of these denials, the Section contacted the University of Kansas (UK) Hospital Authority and is in the process of coordinating a course equivalent to H-313. The Section indicated that they will proceed on this dual pathway, submitting additional requests for the H-313 course and will continue its discussions with the UK Hospital Authority.

As a means to further enhance the inspections performed at therapeutic hospital facilities, the Section typically uses a team of at least two inspectors for more complex licensees.

2. The review team recommends that the State further develop the policy that was instituted during the onsite review and provide additional guidance for identifying, marking, handling, transmitting, and storing documents containing sensitive information. (Section 3.3, *Technical Quality of Inspections*)

Status: The Section developed its policy for controlling potentially sensitive license files into program Procedure RCP-22, "Control of Potentially Sensitive License Files." The procedure was reviewed and it appears that the Section adequately controls and maintains license files which may contain sensitive information. In addition, the procedure addresses the Agency's policy on Kansas Open Records Act (KORA) requirements for release of information.

Program Strengths

A strength of the Kansas Agreement State program is its staff members. The staff includes two Certified Health Physicists, three staff members who are registered technologists under the National Registry of Radiation Protection Technologists (NRRPT), and one individual with a Master's in Nuclear Engineering. Combined, the staff members have over 100 years of experience in the health physics field, including the nuclear reactor program. The Section indicated that its ability to retain staff can be attributed to the program's willingness to provide enrichment opportunities and cross-training of staff to broaden and expand their expertise.

The Section has consistently improved over the past 10 years. The tools developed by the Section and staff include in-depth procedures, computer tracking, a risk analysis database, and a continuing questioning attitude to improve processes and mechanisms in the program. One such tool is a risk-based algorithm. The Section demonstrated the algorithm during the periodic meeting and explained how it is used to classify the severity level of violations. The tool takes into account the root causes and potential health effects of the violation. In this manner, the Section can consistently apply enforcement actions and civil penalties. The tool has also been integrated into the database for inspections to perform a risk-analysis of potential violations.

The Section provides a 2-day outreach conference to the regulated community, which provides licensees with an opportunity to meet the staff, obtain the latest information on regulatory changes, earn continuing education credits, and hear from experts in their fields. Conferences have been held for 2006, 2008, and 2011. The next conference is scheduled for 2013. The Section has also performed safety culture outreach to its licensees and developed a safety culture policy statement for the program.

Program Weaknesses

The Section expressed that, as with other states, it also struggles with the realities of the current economy and staffing issues, including attracting and retaining qualified staff. The program lost one inspector in September 2011. However, they were able to post the position and fill the vacancy by March 2012 from within the Section. The new staff member has experience in emergency preparedness and radon monitoring and is currently obtaining the necessary qualifications for the radiation control program.

Feedback on NRC's Program

The Section expressed that it is difficult to obtain the necessary training courses for staff qualification. In particular, the medical courses, H-304, "Nuclear Medicine" and H-313

"Brachytherapy, Gamma Knife, and Emerging Technologies." As already discussed, the NRC Technical Training Center (TTC) has increased the offerings of these two courses which should provide sufficient course offerings to accommodate all requests.

The Section suggested that alternatives for training courses should be considered by the NRC, including VTC, webinars, and hosting training courses in multiple locations. For example, the licensing procedures course could be provided by webinar at multiple locations with a host/instructor at each location to conduct the exercises and scenarios.

The Section has historically hosted training courses in Kansas, and would like to continue to host training courses in the future. However, the NRC has started moving away from having States host training courses because of the logistical coordination and lack of adequate facilities for the training course. The Section requested that the NRC reconsider this decision because of the benefits to the State, including a number of seats reserved for the host state in the course.

The Section expressed that it is disappointed in the recent legal interpretation of the Federal Advisory Committee Act (FACA) in that the NRC will no longer continue its practice of having Conference of Radiation Control Program Directors (CRCPD) representation on NRC working groups. The Section indicated that this decision does not allow non-Agreement States to participate on working groups or have a venue to express themselves, except as a member of the public. As a result, the Section suggested that this decision impacts the good relationship between non-Agreement states and the NRC. The Section suggested that the NRC provide information and specific mechanisms that the non-Agreement States may utilize in order to participate in the process.

Kansas suggested that the NRC consider adding more specific information to the e-mail subject line to describe what is in the attachment when they send notices or FSME/RCPD letters to the Agreement States. In addition, if the NRC is requesting a response due date, then this should be clearly identified in the subject line and at the beginning of the respective document instead of at the end of the document.

The Section is also concerned with NRC's apparent path toward lowering the occupational dose limits. The Section believes that lowering the dose limits without a thorough consideration of the impacts on areas not regulated by NRC is detrimental to the regulatory process and will result in dual standards in order to maintain the current level of patient care. For example, there is a shortage of interventional radiologists who, due to the number and type of procedures they perform, would not be able to meet the lower dose limit even with utilizing weighting factors. This will, by necessity, result in a dual standard in order to avoid requiring these radiologists to cease treating patients when they reach the dose limit.

Staffing and Training

The Section is fully staffed with five staff members, one supervisor, and one manager. The Section indicated that they have adequate FTE to support the program. However, the Section's

productivity is negatively impacted when there is turnover or other activities that take staff time away from the agreement program. The years of each staff member's experience in the program ranges from 1 to 12 years. In addition, the majority of staff have significant experience in health physics beyond the time spent in the program.

The Section cross-trains other staff members to support the Radiation Control Program, by sending them to the NRC-sponsored core training courses as appropriate. This effort should lessen any future impacts as a result of turnovers or retirements.

Program Reorganizations

There has not been a program reorganization since the IMPEP review.

Changes in Program Budget/Funding

The administration changed during the last election and the Section indicated that they continue to have good support from the Department. The Section has a solid source of funding through a dedicated fee fund. In addition, they are proposing an increase in fees to ensure they continue to operate solidly. The Section has not been affected by any furloughs or layoffs, although other programs have been impacted by layoffs.

Materials Inspection Program

Kansas' inspection frequencies are at least as frequent as found in NRC's Inspection Manual Chapter (IMC) 2800 or more frequent based on the risk analysis tool implemented by the Section. The Section stated it had performed 247 inspections since July 1, 2010, and 25 inspections were performed overdue, or 10 percent overdue. However, the Section indicated that the overdue calculation was based on Kansas' inspection frequency; under the NRC inspection frequency, it would be significantly less. There was only one inspection overdue with respect to NRC priorities at the time of the periodic meeting. However, the Section had changed the particular license to possession-only, until the licensee took certain remedial actions to address the identified violations. At the time of the periodic meeting, the licensee was not authorized to fully operate under its license.

The Section performs accompaniments throughout the year for all the inspectors. There are a number of team inspections performed for higher-risk authorizations, which are accompanied by the Supervisor and/or Section Chief. The Section performs inspections of new licensees within 12 months of license issuance. Pre-licensing visits are performed for those new licensees that are unknown to the program in accordance with the Risk-Significant Radioactive Material (RSRM) checklist. The Section has continued to devote a significant amount of resources to perform inspections of licensees working under reciprocity during the review period. A recommendation from the 2006 IMPEP report, regarding the performance of reciprocity inspections, was closed during the 2010 IMPEP review. The Section has continued to perform reciprocity inspections in accordance with the frequencies identified in IMC 1220.

The Section posts information notices (IN) on its Radiation Control Program website. Examples of some of the notices include: NRC IN 2009-18, "Performance of Required Shutter Checks and Reporting of Gauge Shutter Failures," and IN 2009-30, "Findings from the NRC Initiative to Assess Materials Licensees' Compliance with the NRC Decommissioning Requirements."

Materials Licensing Program

Licensing actions are kept current with no license backlog. During the periodic review period, the Section completed 418 licensing actions. The licensing actions are generally completed within 45 days. All licensing actions are reviewed by the Program Supervisor and reviewed and signed by the Section Chief.

Regulations and Legislative Changes

The State is current on the submittal of regulatory amendments currently required for compatibility, and they have a process in place to address the comments which were identified in the final rule packages for (RATS ID 2007-2) and (RATS ID 2007-3). The state did have comments for (RATS ID 2001-1), which concerns generally licensed devices (GLDs). This regulation review has been held in abeyance as a result of the proposed rule on GLDs. However, as discussed during the periodic meeting and as documented in FSME letter 12-016, there was a change in compatibility of 10 CFR 31.5 and 31.6, as well as the withdrawal of the proposed rule and closure of Petition For Rulemaking: Organization of Agreement States and Florida Department of Health, Bureau of Radiation Control. The NRC will review (RATS ID 2001-1) and (RATS ID 2012-1) and self-initiate changes to Kansas' State Regulation Status (SRS) Data Sheet and close the review by letter. Therefore, the State will not be required to submit a package for (RATS ID 2012-1). The State indicated that they did not have any plans to modify this section of the regulations.

The following amendments will need to be addressed by the Radiation Control Program in future rulemakings or by adopting alternate generic legally binding requirements:

- "Decommissioning Planning," 10 CFR Parts 20, 30, 40, and 70 amendment (76 FR 35512) that is due for Agreement State adoption by December 17, 2015
- "Licenses, Certifications, and Approvals for Materials Licensees," 10 CFR Parts 30, 36, 40, 70, and 150 (76 FR 56951) that is due for Agreement State adoption by November 14, 2014
- "Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste," 10 CFR Part 71 that is due for Agreement State adoption by August 10, 2015

Event Reporting, Including Follow-up and Closure Information in NMED

At the time of the periodic meeting, the Radiation Control Program had 26 events reported in the Nuclear Material Events Database (NMED), of which 13 were reported in accordance with SA-300. The events were appropriately reported to the NRC and were properly entered into, and updated, within NMED.

Response to Incidents and Allegations

The Radiation Control Program continues to be responsive to notifications of incidents and allegations. Incidents are quickly reviewed for any affect on public health and safety. Staff is dispatched to perform onsite investigations when necessary. The Section Chief and Program Supervisor have placed a high emphasis on maintaining an effective response to incidents and allegations.

Status of Allegations and Concerns Referred by the NRC for Action

The NRC did not refer any allegations to Kansas since the last IMPEP review.

Emerging Technologies

The Radiation Control Program has authorized some broadscope licenses to use intravascular brachytherapy (IVB) and Y-90 microsphere modalities; however, there have not been any significant emerging technologies during this review period.

Large, Complicated, or Unusual Authorizations for use of Radioactive Materials

The Radiation Control Program initiated and approved an exemption for landfill waste material that was destined to an RCRA facility in Idaho. Kansas initiated this process based on an NRC letter dated December 16, 2004, which stated in part that Agreement States may conduct similar reviews [e.g., NRC exemption] and approvals following their compatible regulations. However, the RCRA facility in Idaho notified Kansas that they would be required to obtain an exemption from the NRC. This event and other similar events prompted FSME to issue FSME letter 12-025, dated March 13, 2012, "Clarification of the Authorization for Alternate Disposal of Material issued under 10 CFR 20.2002 and exemption provisions in 10 CFR." Due to the length of time NRC estimated to review the exemption for the RCRA facility, the Kansas licensee who had a large decommissioning project ongoing was forced to break its contract with the RCRA facility and dispose of its waste at a Utah facility whose original bid was significantly higher. Kansas has expressed that the exemption process should be reevaluated so that, under the circumstances where the material meets the RCRA definition, the material should be authorized for the RCRA facility, without any further review. Otherwise, the regulations become burdensome and contribute to the waste disposal problems in the United States.

Current State Initiatives

The Section hosts a Radiation Control Program Conference every couple of years. There are approximately 150 to 200 attendees and licensees from across the state who attend the 2-day conference. The next conference is scheduled for 2013, and the Section is planning a presentation on Safety Culture during the conference.

Kansas has several staff members who participate on working groups, including the NUREG-1556 revisions and the Part 37 working group. The Section also supports the IMPEP program through participation on review teams and as the Organization of Agreement States (OAS) liaison to the MRB meetings.

Kansas participates in national meetings, including OAS and CRCPD. The Section expressed that participation on working groups attending meetings and conferences provides information and ideas for improving the processes in the program.

State's Mechanisms to Evaluate Performance

The Section uses management review of inspection reports and licensing actions to ensure the quality of regulatory products. Self-audits are performed and computer tracking mechanisms are utilized to ensure elements of the program are completed as required. In addition, the Section performs accompaniments to assess the quality of the inspections to ensure that licensed activities protect public health and safety and are performed in accordance with the regulations and license conditions.

Current NRC Initiatives

NRC staff discussed ongoing Office of Federal and State Materials and Environmental Management Programs (FSME) initiatives with the Kansas representatives. This included an update on the current FSME organization, review of the Safety Culture policy initiative, and status of the web-based licensing (WBL) program, as well as the NUREG-1556 revision status, policy statements, and a discussion of the recent FACA interpretation.

CONCLUSION

The Kansas Agreement State Program remains an active, strong, stable program with excellent management support. The Section has implemented processes, mechanisms, and tracking tools to successfully operate their program. The Section has management support and is positioned for a continued successful operating program.

Schedule for the Next IMPEP Review

NRC staff recommends that the next IMPEP review be held, as currently scheduled, in June 2014.