

**QUARTERLY MONITORING CALL SUMMARY FOR THE  
CALIFORNIA RADIOLOGIC HEALTH BRANCH  
NOVEMBER 8, 2012**

<b>NRC Attendees</b>	<b>California Attendees</b>
Randy Erickson, RSAO	Gonzalo Perez, Chief, RHB
Lisa Dimmick, FSME	Phillip Scott, Health Physicist
Michelle Beardsley, FSME	John Fassell, Health Physicist
	Steve Hsu, Health Physicist

**Background:**

On May 3, 2012, NRC hosted the first in a continuing series of Monitoring calls with the California Program (the Program) following the October 2011 IMPEP review (ML120120373). 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, April 2008 and again in October 2011. That recommendation (modified during the October 2011 review) recommended that the Program develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

**May 3, 2012 status:**

During the May 3, 2012 Monitoring call, the Program reported their progress in regards 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 they were making changes to the manner in which they process regulations. They are moving from their long standing practice of processing 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. They now plan to process amendments parallel to NRC's process.

The Program also reported they have hired a second individual to assist in the processing of regulations and will soon reclassify a vacant position and then have a third individual assisting with regulation development.

Also discussed with the Program was the incompatibility of legislation found in Section 115261 of California's "Health and Safety Code – Radiation Control Law" with 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.

**August 8, 2012 status:**

The Program reported that they did not meet their August 1, 2012 goal for sending Department Regulation Package DPH11-024 out of the Program and into the regulation process. They noted that this was due in part, to the retirement of a key individual in the rule development staff and the hiring of a replacement. Additionally, the Program reported that newly issued

amendment (2012-4) involves changes that would negate some of the changes in the overdue rule package. These changes must be resolved before the rule package can be placed into the system. The Program expects these can be resolved and the regulation package can be placed into the system by mid September.

The first individual the Program planned to hire to assist in the processing of regulations has been hired and is working on regulations. They have also completed reclassification of a vacant position and are in the process of hiring that individual.

Also discussed with the Program was the incompatibility of legislation found in Section 115261 of California's "Health and Safety Code – Radiation Control Law" with 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. Again, there has been no change in the status of this compatibility issue.

**November 8, 2012 status:**

The Program reported that Department Regulation Package DPH11-024 left the Program offices on October 24, 2012 and entered into the Department's regulation adoption process.

The Program also reported that they have completed hiring and now have two additional staff individuals assisting their primary regulation staff member full time in the development of California regulations. They reported they also have an Attorney assigned to also assist with regulation development.

Also discussed with the Program was the incompatibility of legislation found in Section 115261 of California's "Health and Safety Code – Radiation Control Law" with 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. Again, there has been no change in the status of this compatibility issue.

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 October 2011 IMPEP review, a total of 12 amendments were found to be overdue. Since that time, the Program has continued to finalize regulation packages and adopt rules. One amendment was adopted on January 30, 2012 and 11 amendments remain open. 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. (RATS ID 1994-3)

May 3, 2012, Status: This rule is tied to the amendment "Radiological Criteria for License Termination." See below. This amendment remains open.

August 8, 2012, Status: No change in status. This amendment remains open.

November 8, 2012, Status: No change in status. This amendment remains open.

- "Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations," 10 CFR Parts 30, 34, 71 and 150 amendments (62 FR 28947) that was due for Agreement State implementation on June 27, 2000. (RATS ID 1997-5)  
May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

- "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. (RATS ID 1997-6)

May 3, 2012, 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 Program is currently terminating licenses on a case-by-case basis. This amendment remains open.

August 8, 2012, Status: No change in status. This amendment remains open.

November 8, 2012, Status: No change in status. This amendment remains open.

- "Minor Corrections, Clarifying Changes, and a Minor Policy Change," 10 CFR Parts 20, 32, 35, 36, and 39 amendments (63 FR 39477 and 63 FR 45393), that was due for Agreement State implementation on October 26, 2001. (RATS ID 1998-5)

May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

- 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. (RATS ID 2001-1)

May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

- "Medical Use of Byproduct Material," 10 CFR Parts 20, 32, and 35 amendments (67 FR 20249), that was due for Agreement State implementation on October 24, 2005. (RATS ID 2002-2)

May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

- "Medical Use of Byproduct Material - Recognition of Specialty Boards," 10 CFR Part 35 amendment (70 FR 16336 and 71 FR 1926), that was due for Agreement State implementation on April 29, 2008. (RATS ID 2005-2)

May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

- "Minor Amendments," 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendments (71 FR 15005), that was due for Agreement State implementation by March 27, 2009. (RATS ID 2006-1)

May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

- "Medical Use of Byproduct Material – Minor Corrections and Clarifications," 10 CFR Parts 32 and 35 amendments (72 FR 45147, 72 FR 54207), that was due for Agreement State implementation by October 29, 2010. (RATS ID 2007-1)

May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

- "Exemptions from Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements," 10 CFR Parts 30, 31, 32, 150 amendments (72 FR 58473), that was due for Agreement States implementation by December 17, 2010. (RATS ID 2007-2)

May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

- "Requirements for Expanded Definition of Byproduct Material," 10 CFR Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendments (72 FR 55864), that was due for Agreement State implementation by November 30, 2010. (RATS ID 2007-3)

May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

**The following are regulation changes and adoptions that will be needed in the future and their present status:**

- "Medical Use of Byproduct Material – Authorized User Clarification," 10 CFR Part 35 amendment (74 FR 33901), that is due for Agreement State implementation by September 28, 2012. (RATS ID 2009-1)

May 3, 2012, Status: This amendment is contained in Department Regulation Package DPH11-024 and is scheduled to leave the Program on August 1, 2012. This amendment remains open.

August 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has been delayed and is expected to leave the Program mid September. This amendment remains open.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department's internal regulation approval process. This amendment remains open.

- "Decommissioning Planning," 10 CFR Parts 20, 30, 40, and 70 amendments (76 FR 35512), that is due for Agreement State implementation by December 17, 2015. (RATS ID 2011-1)

May 3, 2012, Status: This amendment remains open.

August 8, 2012, Status: No change in status. This amendment remains open.

November 8, 2012, Status: No change in status. This amendment remains open.

- "Licenses, Certifications, and Approvals for Materials Licensees," 10 CFR Parts 30, 36, 39, 40, 70, and 150 amendments (76 FR 56591), that is due for Agreement State implementation by November 14, 2014. (RATS ID 2011-2)

May 3, 2012, Status: This amendment remains open.

August 8, 2012, Status: No change in status. This amendment remains open.

November 8, 2012, Status: No change in status. This amendment remains open.

- "Change of Compatibility of 10 CFR 31.5 and 31.6 (See RATS ID: 2001-1 for Rule Text)," 10 CFR Part 31 amendment (77 FR 3640), that is due for Agreement State implementation by January 25, 2015. (RATS ID 2012-1)

November 8, 2012, Status: This amendment remains open.

- “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste,” 10 CFR Part 71 amendment (77 FR 34194), that is due for Agreement State implementation by August 10, 2015.

November 8, 2012, Status: This amendment remains open.

- “Technical Corrections,” 10 CFR Parts 30, 34, 40, and 70 amendments (77 FR 39899), that is due for Agreement State implementation by August 6, 2015.

November 8, 2012, Status: This amendment remains open.

- “Requirements for Distribution of Byproduct Material,” 10 CFR Parts 30, 31, 32, 40, and 70 amendments (77 FR 43666), that is due for Agreement State implementation by October 23, 2015.

November 8, 2012, Status: Department Regulation Package DPH11-024, containing this amendment, has left the Program and has entered the Department’s internal regulation approval process. This amendment remains open.

## **Conclusion**

During the October 2011 IMPEP review, the review team stressed the importance of compatibility and questioned the Program’s resolve in solving this long standing problem. The California Program responded by stepping outside of Department requirements for rule development and coming into line with NRC’s method of rule development. They also committed significant resources into the acquisition of two additional staff members so they can ultimately resolve the backlog of overdue regulations.

The next contact with the Program will be on January 24<sup>th</sup> during the California Periodic Meeting. The status of regulations will be addressed during that meeting.