

# POLICY ISSUE NOTATION VOTE

May 9, 2013

SECY-13-0051

FOR: The Commissioners

FROM: R. W. Borchardt  
Executive Director for Operations

SUBJECT: MANAGEMENT REVIEW BOARD RECOMMENDATION FOR  
PROBATION OF THE GEORGIA AGREEMENT STATE PROGRAM

PURPOSE:

The purpose of this paper is to request Commission approval to place the Georgia Agreement State Program (the Georgia Program) on Probation, as described in the U.S. Nuclear Regulatory Commission (NRC) Management Directive 5.6 (MD), "Integrated Materials Performance Evaluation Program (IMPEP)," dated February 26, 2004.

SUMMARY:

On January 17, 2013, a Management Review Board (MRB) met to consider the findings of the Georgia Program IMPEP review. Overall, the Georgia Program was found adequate, but needs improvement, and compatible with the NRC's program. During the IMPEP review, the review team identified programmatic weaknesses in all the common performance indicators, communication challenges between the Georgia staff and the Program Director, and limited understanding of safety and security responsibilities related to addressing events and radioactive materials in the public domain. Consequently, the team recommended, and the MRB agreed, that the identified weaknesses were of such significance that assurance of the Georgia Program's ability to protect public health and safety was degraded and increased oversight by the NRC was required to ensure timely and effective program improvements. The MRB is recommending to the Commission that the Georgia Program be placed on Probation which requires Commission approval. The Georgia Program is currently on Heightened

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Oversight, with increased staff engagement and an approved program improvement plan. A Commission decision in favor of Probation would result in a *Federal Register* notice, a press release, and notifications to the Governor, the Georgia Congressional delegation, and the NRC's oversight committees.

#### BACKGROUND:

Section 274b. of the Atomic Energy Act of 1954, as amended, provides the statutory basis by which the NRC relinquishes, by agreement with a State, portions of its regulatory authority to license and regulate byproduct materials, source materials, and certain quantities of special nuclear materials when it is determined that the State has an adequate program to protect public health and safety and is compatible with the NRC's program. Through the Agreement State program, 37 States have signed formal agreements with the NRC. The NRC retains an oversight role and periodically reviews Agreement State programs for continued adequacy to protect public health and safety, and ensure compatibility with the NRC's regulatory program.

In 1994, the NRC designed and piloted a periodic review process for Agreement State and NRC regional radioactive materials programs called the IMPEP. This oversight program established common and non-common performance indicators to obtain comparable information on the performance of each program. Over the years the IMPEP program has evolved in response to experience and is used today for the review of Agreement State and the NRC regional materials programs.

All IMPEP reviews use common performance indicators in the assessment, and place primary emphasis on performance. The common indicators, which are program activities common to both Agreement State and the NRC regional materials programs, include (1) Technical Staffing and Training, (2) Status of Materials Inspection Program, (3) Technical Quality of Inspections, (4) Technical Quality of Licensing Actions, and (5) Technical Quality of Incident and Allegation Activities. Additional program areas, identified as non-common performance indicators, are also assessed depending on the scope of a States' Agreement or Regions' responsibilities and included (1) Compatibility Requirements, (2) Sealed Source and Device Evaluation Program, (3) Low Level Radioactive Waste Disposal Program, and (4) Uranium Recovery Program.

The NRC regions and Agreement States are typically reviewed every 4 years; however, the timeline may be adjusted based on performance. Depending on program performance, at least one periodic meeting is conducted between IMPEP reviews. Periodic meetings include exchange of status information and may identify potential areas of improvement for the NRC region and Agreement State programs. Periodic meetings are not formal reviews, but are open, interactive discussions of program status and performance in preparation for the next IMPEP review.

Recently, staff conducted an integrated assessment of Agreement State performance (ML12345A063) and identified that an early indication of developing problems and/or declining program performance was missed by the periodic meeting process in some cases. Staff developed a recommendation, which was supported by an MRB on April 8, 2013, to evaluate the periodic meeting process. Staff was directed to make enhancements to improve the effectiveness of the periodic meeting process under IMPEP.

The final determination of adequacy for the NRC regional programs, and both adequacy and compatibility of each Agreement State program, is made by an MRB. The MRB is composed of senior NRC managers and an Agreement State liaison to the MRB.

If an Agreement State program is found adequate, but needs improvement, or not compatible, the MRB may direct an additional action (e.g., Monitoring or Heightened Oversight) to increase the level of communication between the NRC and the Agreement State as a means to support Agreement State program performance improvements. Additional information on the IMPEP program can be found in MD 5.6.

#### DISCUSSION:

Section 274j. of the Atomic Energy Act of 1954, as amended, requires that the NRC periodically review each Agreement State to ensure Agreement States are adequate and compatible. It is the policy of the NRC to evaluate the NRC regional materials programs and Agreement State radiation control programs in an integrated manner, using common and non-common performance indicators, to ensure that public health and safety is being adequately protected.

The MRB, in a public meeting, makes the overall assessment of each NRC regional materials and Agreement State program. Information considered by the MRB includes the proposed final IMPEP report which presents suggested performance indicator ratings and recommendations prepared by the IMPEP team, and information provided by the region or State at the MRB meeting. For most IMPEP reviews, no action other than issuance of the final IMPEP report is needed. For those infrequent reviews where additional action is needed, the MRB may consider Monitoring, Heightened Oversight, and recommendations for Probation, Suspension, or Termination. The most significant actions, Probation, Suspension, or Termination, require Commission approval.

Monitoring is directed by the MRB when weaknesses in a program result in a performance rating of satisfactory, but needs improvement in more than one performance indicator. Monitoring is an informal process that allows the NRC to maintain an increased level of communication with an Agreement State. When one or more performance indicators are found to be unsatisfactory, Heightened Oversight is considered. Heightened Oversight is a formal process and requires the State to develop a program improvement plan, provide periodic progress reports, and participate in bimonthly NRC/Agreement State conference calls. In addition, a follow-up IMPEP review on an expedited basis is conducted at the direction of the MRB.

Probation includes all aspects of Heightened Oversight and requires notifications to the Governor and Congressional delegation, a press release, and a *Federal Register* notice. Probation is appropriate when one or more performance indicators are unsatisfactory and are of such safety significance that assurance of the program's ability to protect public health may be degraded. In the case of the Georgia Program, the review team concluded, and the MRB concurred, that Heightened Oversight by the NRC without the formal declaration of Probation may not result in the necessary program improvements needed to assure protection of public health and safety.

Suspension and Termination are considered by the MRB when a program is inadequate to protect public health and safety. Suspension, rather than Termination, is preferred when the MRB concludes the State has provided evidence that the program's deficiencies are temporary and the State is committed to implementing program improvements. The IMPEP team did not recommend to the MRB Suspension or Termination of the Georgia Agreement because the Georgia Program managers committed support to implementing program improvements and the IMPEP team did not identify any actual safety consequences to members of the public as a result of the programmatic weaknesses.

### Recent History for the Georgia Program Performance

In 2008, the Georgia Program was found to be adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program (ML083400190). A period of Monitoring was initiated to monitor the effects of a State-wide hiring freeze, staff attrition, and weaknesses in the Georgia Program's training and qualification programs. The MRB requested that calls between the Georgia Program and the NRC be conducted quarterly, and that a Periodic Meeting take place in September 2009. The Georgia Program provided its response to the IMPEP findings and recommendations in a letter dated December 4, 2008 (ML083640090). The NRC acknowledged Georgia's response in a letter dated January 2, 2009 (ML083640280) concluding that Georgia's responses addressed the recommendations in the IMPEP report. The NRC staff review noted that action was being taken on three of the four recommendations and the tasks, milestones, and assignments for completing the recommendations appeared reasonable and achievable. Action on the fourth recommendation was limited by State budget constraints.

Quarterly conference calls began in March 2009 and a Periodic Meeting was held in October 2009. From the Periodic meeting, staff reported that the Georgia Program continued to improve. Georgia had addressed the four recommendations that were made during the 2008 IMPEP review. The program was adequately staffed and the effort to reduce the inspection backlog continued. The MRB met on January 7, 2010, to consider the findings of the Periodic Meeting. The MRB directed that the Georgia Program remain on Monitoring and that calls between Georgia and the NRC continue to be conducted quarterly. Another Periodic Meeting was held with the Georgia Program on April 26, 2011, with a similar outcome to the 2009 Periodic meeting. The MRB met on August 16, 2011, to consider the findings of the Periodic Meeting. The MRB again directed that the Georgia Program remain on Monitoring and that calls between Georgia and the NRC continue to be conducted quarterly.

### Results of the 2012 IMPEP Review

The 2012 IMPEP review team identified an overall decline in performance of the Georgia Program since the last IMPEP review. Although the Georgia Program had been placed on Monitoring, and actions were taken to address specific observations from the 2008 IMPEP review, overall performance continued to degrade and a number of significant performance deficiencies were identified during the 2012 IMPEP review. The team identified performance deficiencies involving the technical quality of observed inspections, a backlog of overdue high priority inspections, a failure to respond to a materials event where a radiation device was allowed to remain in the public domain for an extended period of time, and the failure to properly adopt pre-licensing verification guidance such that a new license was approved for a high risk source without ensuring that the source would be used for its intended purpose.

The review team also observed significant communication issues between the Georgia staff and management which affected the safety culture and performance of the program.

In the 274b. Agreement, the Governor certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety. The NRC, through the IMPEP process, provides oversight to ensure that the State is maintaining an adequate program and is performing those tasks necessary to protect public health and safety. Prominent among these tasks is the response to incidents involving radioactive materials. When a program becomes aware of a potentially significant incident, the program is obligated to promptly respond to ensure that public health and safety is protected. Additionally, performing inspections of high priority licensees on a more frequent basis, such as industrial radiographers, is important because of the significant potential for harm if the radioactive material is not controlled properly. The review team's evaluation of the Georgia Program identified examples where tasks were performed for licensees' programs of lower safety significance in lieu of programs with a higher safety significance which hindered the Georgia Program's ability to provide independent oversight over licensed activities.

For the 2012 IMPEP review, the review team recommended to the MRB that the Georgia Program be found adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program. As noted in the summary of the final IMPEP report, the review team recommended that Georgia's performance be found unsatisfactory for two performance indicators: Technical Quality of Inspections and Technical Quality of Incident and Allegation Activities. The review team recommended that Georgia's performance be found satisfactory, but needs improvement, for three of the performance indicators: Technical Staffing and Training, Status of Materials Inspection Program and Technical Quality of Licensing Actions. The review team found Georgia's performance to be satisfactory for the Compatibility Requirements and Sealed Source and Device Evaluation indicators. Due to the significant programmatic weaknesses identified, the review team made 12 recommendations regarding the need for performance improvements by the Georgia Program. The recommendations are intended to be constructive and promote improvement for the identified programmatic weaknesses.

On January 17, 2013, the MRB met to discuss the Georgia Program IMPEP. The MRB found the Georgia Program adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program. The MRB directed that the period of Monitoring be discontinued and recommended that the Georgia Agreement State Program be placed on Probation. The final report (ML13023A380) for the Georgia Program IMPEP review is provided as Enclosure 1. Until a determination of Probation is reviewed by the Commission, the Georgia Agreement State Program remains on Heightened Oversight.

The MRB's decision to recommend the Georgia Program be placed on Probation was not unanimous. The majority view cited the significant communication issues, the lack of understanding and practice of some key regulatory program elements, and the lack of responsiveness by the Georgia Program to potentially significant incidents brought to the attention of the program during the review period. A member of the MRB noted that the performance of the Georgia Program was a significant outlier unlike performance concerns observed in other programs. For the Georgia program, significant performance concerns were observed in all the common performance indicators impacting the overall effective implementation of the Georgia Program.

The minority view cited the strong response and commitment by Georgia Program management to address the issues once identified. The MRB minutes (ML13084A299) are provided as Enclosure 2.

### Georgia Program Response

Georgia Program managers responded to the draft IMPEP report on December 27, 2012 (ML13070A161). In the response, the Georgia Program described the actions taken prior to the MRB to address the recommendations and performance issues identified by the IMPEP team. In the response and during the MRB, the Georgia Program managers expressed their firm commitment to making improvements. Prior to the MRB, the Georgia Program made organizational changes to improve its management oversight of the program. The radioactive materials program manager was replaced, and two new technical staff were hired. The radioactive materials program manager position is being backfilled by another division manager until a permanent replacement is hired. The Georgia Program management indicated they are committed to making additional staffing changes as necessary to ensure effective programmatic change. The Georgia Program management also provided a preliminary response to each of the 12 recommendations offered by the IMPEP team. The Georgia Program agreed with each recommendation and provided estimated completion dates for implementation of the proposed actions.

The Georgia Program managers continue to address the performance concerns raised during the IMPEP review. Georgia Program management responded to the final IMPEP report with the State's Program Improvement Plan (Plan) on March 7, 2013 (ML13070A161). The NRC staff approved the Plan and responded to the Georgia Agreement State Program on April 4, 2013 (ML13084A029). The Georgia Program Plan is provided as Enclosure 3.

Since the MRB, Georgia Program management has communicated to the NRC their requests for additional training they believe would be helpful in making improvements to the program. The NRC staff has provided training in the area of incident reporting and plans to conduct refresher training on Increased Controls for source security and the pre-licensing guidance. In addition, the Organization of Agreement States offered Georgia Program management assistance to address their performance issues.

In addition to the Plan, progress updates, and bimonthly NRC/ State conference calls, the Probation process requires formal notifications: *Federal Register* notice, press release, and letters to the Governor, the Georgia Congressional delegation, and the NRC's oversight committees. These notifications are intended to ensure the Georgia Program performance receives the level of attention necessary to address program deficiencies and to improve and sustain its performance. The draft *Federal Register* notice (ML13084A271) and Governor notification (ML13084A264) are provided as Enclosures 4 and 5.

### COMMITMENTS:

The NRC staff commits to (1) hold bimonthly calls with the Georgia Program to discuss its Plan including the progress made in addressing recommendations from the 2012 IMPEP report; (2) conduct a full IMPEP review in one year from the date of the Georgia Agreement State Program MRB (January 2014); and (3) evaluate the periodic meeting process and make enhancements to improve the effectiveness of the periodic meeting under IMPEP.

RECOMMENDATION:

The NRC staff recommends that the Commission:

Approve: Probation for the Georgia Program. If Probation is not approved, the program will remain on Heightened Oversight.

Note:

- a) The Notice of Probation will be published in the *Federal Register* (Enclosure 4).
- b) The Governor of Georgia will be informed of this action (Enclosure 5).
- c) The NRC's Congressional oversight committees and members of Georgia's Congressional delegation will be informed of this action by the Office of Congressional Affairs upon approval of the action.
- d) A press release will be issued by the Office of Public Affairs upon approval of the action.

RESOURCES:

Resources budgeted for Agreement State activities in the FY 2013 Current Estimate and FY 2014 Congressional Budget Justification are sufficient to cover this action. No contract dollars are needed for this action and any travel expense will be funded by the NRC staff travel budgets. The resources for future needs would be addressed through the Planning, Budgeting, and Performance Management process.

COORDINATION:

The Office of the General Counsel has no legal objection to the approval of probation for the Georgia Agreement State Program.

*/RA/*

R. W. Borchardt  
Executive Director for Operations

Enclosures:

- 1. Georgia Final IMPEP Report
- 2. Minutes of Georgia MRB meeting
- 3. Georgia Program Improvement Plan
- 4. *Federal Register* notice
- 5. Governor Letter

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***/RA by Michael F. Weber for/***

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**ML13084A342**

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