

KENTUCKY DEPARTMENT FOR PUBLIC HEALTH
QUARTERLY MONITORING CONFERENCE CALL
February 26, 2014

Nuclear Regulatory Commission Attendees	Kentucky Department for Public Health Attendees
Monica Ford, Region I	Matthew McKinley, Radiation Control Program Administrator
Duncan White, FSME	Curt Pendergrass, Radiation Health Supervisor
Lisa Dimmick, FSME	
Michelle Beardsley, FSME	

BACKGROUND

During the 2012 Integrated Materials Performance Evaluation Program (IMPEP) review of the Kentucky Agreement State Program (the Program), the review team found the Commonwealth's performance satisfactory for five performance indicators, satisfactory but needs improvement for the performance indicator Compatibility Requirements, and unsatisfactory for the performance indicator Status of Materials Inspection Program. On September 6, 2012, the Management Review Board (MRB) met to consider the proposed final IMPEP report. The MRB found the Program adequate to protect public health and safety, but needs improvement, and compatible with the U.S. Nuclear Regulatory Commission's (NRC) program. The MRB added one recommendation to the final IMPEP report. The MRB directed that Kentucky continue to remain in monitoring status, that calls between the Kentucky Department for Public Health (DPH) and NRC staffs continue to be conducted quarterly, and that a Periodic Meeting take place approximately two years from the June 2012 IMPEP review. DPH provided their response to the final IMPEP report in a letter dated October 18, 2012.

This is the sixth quarterly conference call with DPH since the September 6, 2012 MRB.

DISCUSSION OF PROGRAM STATUS

Mr. McKinley and Mr. Pendergrass led the discussion of the Commonwealth's status for each of the IMPEP performance indicators.

Technical Staffing and Training (2012 IMPEP finding: Satisfactory)

At the time of the June 2012 IMPEP review, the Program was composed of one program administrator, one supervisor, and five technical staff (one of which was, and still, is on military deployment and not scheduled to return until December 2013). The Program also had two vacant staff positions. Since the IMPEP review the Program has hired two new technical staff members to fill the vacant positions and the individual out on military deployment has returned.. The two new staff members are currently working on their qualifications to become license reviewers and inspectors. Since joining the Program, both new staff members have been qualified to inspect fixed and portable gauges and one has also been qualified to perform industrial radiography and unsealed RAM inspections. Both are expected to be fully qualified on industrial type inspections by the spring of 2014. After they complete the industrial qualification track both new employees will begin to work on the qualifications for medical inspections. In July 2013 another technical staff member left the Program. The Program was able to post for that position and hire an individual. The new staff member started with the Program in

December 2013.

The Program continues to support staff training and utilizes the NRC training courses when available. Specifically the Program is particularly interested in the licensing and inspection courses. Kentucky has requested to host a Sealed Source and Device Training workshop. NRC has scheduled the SS&D workshop for March 2014.

Status of the Materials Inspection Program (2012 IMPEP finding: Unsatisfactory)

The 2012 IMPEP review found that the Program completed 41 percent of its priority 1, 2, and 3 and initial inspections overdue during the review period. Since the IMPEP review the Program has conducted one inspection overdue by more than 25 percent of its assigned inspection frequency. This inspection was overdue at the time of the last IMPEP review. Based on the number of inspections completed since the 2012 IMPEP, the Program is calculating that they have completed 2.04 percent of Priority 1, 2, and 3 and initial inspections overdue. The Program's inspection frequencies are the same as NRC's inspection frequencies as listed in Inspection Manual Chapter 2800. No initial inspections have been completed greater than 1 year from license issuance since the IMPEP review. Program management stated that the Program has inspected greater than the required 20 percent of candidate licensees for reciprocity to date in calendar year 2013. The Program's policy is to issue inspection findings to their licensee's within 30 days from the date of the inspection.

The 2012 IMPEP review generated one recommendation for this performance indicator. The recommendation is listed below along with the status.

Recommendation 1: The MRB recommends that the Branch perform a self-assessment to determine the effectiveness of its oversight of the inspection program and that the results of this self-assessment be reviewed as part of the periodic meeting.

Status: Mr. McKinley did state that the Program is performing an ongoing self-assessment of the materials inspection program and will have a final written document summarizing the two years after the IMPEP available for review at the periodic meeting. (no change since August 2013 call)

Technical Quality of Inspections (2012 IMPEP finding: Satisfactory)

The 2012 IMPEP found that the Program's inspection reports were thorough, complete, consistent, and of high quality, with sufficient documentation to ensure that a licensee's performance with respect to health and safety was acceptable. Documentation supported violations, recommendations made to licensees, unresolved safety issues, and discussions held with licensees during exit interviews.

The inspection procedures utilized by the Branch are consistent with the inspection guidance outlined in IMC 2800. Supervisory accompaniments of Program inspectors are being tracked and all accompaniments were completed for calendar year 2012 and 2013. The Program is aware of the need to complete these inspector accompaniments and has them scheduled to be completed before the end of the calendar year. Appropriate, calibrated survey instrumentation is available. Instruments are calibrated at least annually.

Technical Quality of Licensing (2012 IMPEP finding: Satisfactory)

The 2012 IMPEP found that the licensing actions were thorough, complete, consistent, and of high quality with health, safety, and security issues properly addressed. License tie-down conditions were stated clearly and were supported by information contained in the file. Deficiency letters clearly stated regulatory position, were used at the proper time, and identified substantive deficiencies in the licensees' documents. Terminated licensing actions were well documented and showed appropriate transfer and survey records. License reviewers use the Program's licensing guides and/or NUREG-1556 series guidance documents, policies, checklists, and standard license conditions specific to the type of licensing actions to ensure consistency in licenses. The Program has recently updated its industrial radiography guidance documents.

All licensing actions undergo a peer review and management review. The program administrator subsequently signs the license. The license reviewers and section supervisor do not have signatory authority for licensing actions. The Commonwealth's regulations require, and the Program's licensing guidance documents note, that an amendment in entirety must be performed every five to seven years.

The Program has approximately 423 licensees. The Program has a working inventory of approximately 73 licensing actions with the longest action being in house six months. These actions range from amendments to new licenses to amendments in entirety.

Technical Quality of Incidents and Allegations (2012 IMPEP finding: Satisfactory)

The Program is aware of the need to maintain an effective response to incidents and allegations. Incidents are quickly reviewed for their effect on public health and safety and staff is dispatched to perform onsite investigations when necessary. The Program appropriately communicates reportable incidents to the NRC Operations Center and Region I. Since the last IMPEP, the Program has received eight reportable events and has reported them appropriately. Kentucky has five NMED items which require additional information before they can be closed and three NMED items which need to be closed by the State. The Program stated that they would look into these items after the call and complete them appropriately. The Program continues to be sensitive to allegations. The Program has received one allegation and one eBay action since the June 2012 IMPEP.

Compatibility Requirements (2012 IMPEP finding: Satisfactory but Needs Improvement)

The Program is working on promulgating proposed regulations in order to adopt equivalent regulations that are currently overdue for adoption. The 2012 IMPEP review team noted the progress the Program made to address overdue regulations. The Program anticipates changes made to address the overdue regulations and fees regulations to be final by the periodic meeting in June 2014. However this time frame could change since the regulations are currently with the Cabinet and as demonstrated in the past regulations can get held up there for quite some time.

The Program stated that given the number of issues they are having in regards to adopting regulations they are in the process of exploring adopting applicable sections of NRC's Title 10 Code of Federal Regulations (CFR) by reference. Program management stated that they plan to address 10 CFR Part 37 this way and hope to get it to the Cabinet by the end of the year.

Six NRC regulations are overdue for implementation:

- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31, and 32 (65 FR 79162), that was due for Agreement State implementation on February 16, 2004;
- “Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 (67 FR 20250), that was due for Agreement State implementation on October 24, 2005;
- “Exemptions from Licensing, General Licenses, and Distribution of Byproduct Material; Licensing and Reporting Requirements,” 10 CFR Parts 30, 31, 32, and 150 amendment (72 R 58473), that was due for Agreement State adoption by December 17, 2010;
- “Requirements for Expanded Definition of Byproduct Material,” 10 CFR Parts 20, 30, 31, 32, 33, 35, 61, 150 amendment (72 FR 55864), that was due for Agreement State adoption by November 30, 2010;
- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendment (72 FR 68043), that was due for Agreement State adoption by February 15, 2011; and
- “Medical Use of Byproduct Material – Authorized User Clarification,” 10 CFR Part 35 amendment (74 FR 33901), due for Agreement State adoption by September 28, 2012.

Sealed Source and Device (SS&D) Evaluation Program (2012 IMPEP finding: Satisfactory)

There have been no changes in the SS&D program since the June 2012 IMPEP. The Commonwealth has one device manufacturer with 11 active SS&D registrations. At the time of this call the Program did not have any pending SS&D actions in house. The last action received, an amendment, was completed and the revised sheet was issued on August 16, 2013. The Program has two qualified SS&D reviewers. The Program is working to qualify one more individual to perform SS&D reviews. This individual is learning the process as SS&D requests come in. The Program also hopes to have this individual attend the SS&D workshop being held in Kentucky in March 2014.

Low-Level Radioactive Waste Disposal (LLRW) Program (2012 IMPEP finding: Not Reviewed)

Kentucky’s LLRW program consists of oversight at one facility, the Maxey Flats site, which is located in eastern Kentucky. The site operated a commercial LLRW disposal facility from May 1963 through December 1977. The license for this site authorizes possession and activities associated with maintenance related to the closed LLRW disposal site. Since the facility is closed and has no on-site activity or operations, the activities at the site are limited to a radiological environmental monitoring program consisting of soil, surface water, and ground water monitoring. The site was added to the National Priorities list in the 1980’s and officially became a Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA) site in 1995 when a consent decree and legal decision were issued. The Program is looking for a letter of support from the NRC in order to maintain its licensing authority for activities running concurrent to the Environmental Protection Agency (EPA). The license is for regulation of another Commonwealth Agency not for regulation of EPA. The Program stated that they are not trying to circumvent CERCLA. It was noted that CERCLA does trump the Atomic Energy Act of 1954 (as amended) for the practical application of licensing. However there are several provisions in CERCLA that provide exemptions. The Program agreed to send in a document providing a detailed explanation of why they are requesting a letter of support. D.

White stated that NRC would work with the Office of General Counsel to look in to this to see if there was any help we could provide.

Conclusion

Kentucky's program continues to improve. The Program has been responsive to the recommendation that was made by the MRB stemming from the 2012 IMPEP review. The Program has performed only one inspection overdue since the June 2012 IMPEP and this was an inspection found to be overdue during the last IMPEP review. There are no vacancies in the Program. The Program is working on bringing their regulations up to date; however, there are still six regulations overdue for adoption. The Program hopes to have the overdue regulations addressed by the periodic meeting in June 2014 and is also exploring adoption by reference. The Program and the NRC will work together to determine if a letter of support is possible in regards to the licensing of the Maxey Flats site.