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August 7, 2014

MEMORANDUM TO: Roy P. Zimmerman
Acting Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs

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for Reactor and Materials Rulemaking
Office of the General Counsel

Brian E. Holian, Acting Director
Office of Federal and State Materials
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Region I

FROM: Michelle R. Beardsley, Health Physicist /RA/
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SUBJECT: MINUTES: JULY 22, 2014 TEXAS
MANAGEMENT REVIEW BOARD (MRB) MEETING

Enclosed are the minutes of the MRB meeting held on July 22, 2014. If you have comments or questions, please contact me at (610) 337-6942.

Enclosure: Meeting Minutes

cc w/encl.: Michael Ortiz, NM
Organization of Agreement States
Liaison to the MRB

Management Review Board Members

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DATE	08/07/14

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MINUTES: MANAGEMENT REVIEW BOARD MEETING OF JULY 22, 2014

The attendees were as follows:

In person at U.S. Nuclear Regulatory Commission (NRC) Headquarters in Rockville, Maryland:

Roy Zimmerman, Acting MRB Chair, OEDO
Brian Holian, MRB Member, FSME
Bradley Jones, MRB Member, OGC
David Esh, Team Member, FSME
Dennis Sollenberger, Team Member, FSME
Lisa Dimmick, FSME
Ashley Cockerham, FSME
Michele Sampson, OEDO
Kelly Cook, TXCEQ

Duncan White, FSME
Stephen Poy, Team Member, FSME
Elise Striz, Team Member, FSME
Susan Abraham, FSME
Laura Dudes, FSME
Ray Lorson, FSME
David Spackman, FSME
Charles Maguire, TXCEQ

By videoconference:

David Lew, MRB Member, Region I
Linda Gersey, Team Member, Region IV
Michelle Beardsley, FSME
Linda Howell, Region IV

Janine Katanic, FSME
Binesh Tharakan, Team Member, Region IV

By telephone:

Michael Ortiz, MRB Member, NM
Richard Ratliff, TX

Randy Erickson, RIV
Robert Dansereau, NY

- 1. Convention.** Ms. Lisa Dimmick convened the meeting at 1:00 p.m. (ET). She noted that this Management Review Board (MRB) meeting was open to the public; one member of the public participated in this meeting. Ms. Dimmick then transferred the lead to Mr. Roy Zimmerman, Acting Chair of the MRB. Introductions of the attendees were conducted.
- 2. Texas IMPEP Review.** Ms. Donna Janda, Team Leader, led the presentation of the Texas Integrated Materials Performance Evaluation Program (IMPEP) review results to the MRB. She summarized the review and the team's findings for the eight indicators reviewed. The on-site review was conducted by a review team composed of technical staff members from the NRC and the State of Washington during the period of February 10-14, 2014. A draft report was issued to the State for factual comment on May 21, 2014. The State responded to the review team's findings by letter dated June 26, 2014. The last IMPEP review for Texas was conducted in February 2010. Ms. Janda noted that the review team is recommending to the MRB that all eight performance indicators reviewed be found satisfactory. Also, Ms. Janda stated that the team is making three recommendations regarding program performance in the Low Level Radioactive Waste (LLRW) and Uranium Recovery (UR) Programs. Overall, the team is recommending to the MRB that the Program be found adequate to protect public health and safety, and compatible with the NRC's program.

Common Performance Indicators. Ms. Janda presented the findings regarding the common performance indicator, *Technical Staffing and Training*. Her presentation corresponded to Section 2.1 of the proposed final IMPEP report. Ms. Janda noted that the Texas Agreement State Program is administered by two State agencies: the Texas Department of State Health Services (Department) and the Texas Commission on Environmental Quality (Commission). The Department is organized into functional groups rather than program groups: the Health Care Quality Section and the Environmental and Consumer Safety Section. The Radiation Safety Licensing Branch is within the Health Care Quality Section and the manager is designated as the radiation control program director and provides a coordinating role among the functional groups. Licensing functions, including sealed source and device reviews, are performed in the Austin office by the Radioactive Materials Group of the Radiation Safety Licensing Branch. The inspection and incident response functions are performed by the Radiation Branch of the Inspection Unit, which is located in the Environmental and Consumer Safety Section. Most of the inspection staff is based in 11 regional offices, which are located throughout the State. The Radiation Group in the Policy/Standards/Quality Assurance Unit coordinates rule development, prepares enforcement cases for referral to the Enforcement Review Committee, and plays a major role in quality assurance for the inspection program. She reported that at the time of the IMPEP review, the Texas Agreement State Program (Program) was comprised of 42 individuals totaling approximately 38 full-time equivalents (FTEs). Ms. Janda reported that during the review period, a total of 18 individuals left the radioactive materials program, including 4 managers. Eighteen staff members were added during the review period, including 4 managers; all of which were well qualified candidates. The review team determined that staffing levels were adequate for the Agreement State materials program (not including the low level radioactive waste and uranium recovery programs). She further reported that the Program has a documented training plan for technical staff that is consistent with the requirements in the NRC/Organization of Agreement States Training Working Group Report and NRC's Inspection Manual Chapter (IMC) 1248, "Formal Qualification Programs for Federal and State Materials and Environmental Management Programs. The MRB discussed the Department's turnover of 18 staff (43 percent) during the review period to better understand the extent of knowledge lost and gaps in experience. The Department responded the staff departures occurred intermittently and the vacancies were filled with technical staff holding science degrees who were able to move through the qualification process. Further in response to questions on retraining, the Department offered that qualified staff mentor new staff and keep their qualifications current through professional education training. The final report was update to include this information.

The review team found Texas' performance with respect to this indicator to be "satisfactory" The MRB agreed that Texas' performance met the criteria for a "satisfactory" rating for this indicator.

Ms. Janda presented the findings regarding the common performance indicator, *Status of the Materials Inspection Program*. Her presentation corresponded to Section 2.2 of the proposed final IMPEP report. Ms. Janda reported that the Program conducted 1403 Priority 1, 2, and 3 inspections, 7 of which were conducted overdue; they performed 204 initial inspections during the review period of which 7 were overdue. Overall, the review team calculated that the Program performed 2.9 percent of its inspections overdue. She further noted that the Program was timely in issuing inspection reports in all 32 files reviewed. Ms. Janda stated that the team determined that the Program exceeded the NRC's criteria of inspecting 20 percent of candidate licensees operating under reciprocity

in each of the years covered by the review period. The MRB commended the State on their performance in this area.

The review team found Texas' performance with respect to this indicator to be "satisfactory." The MRB agreed that Texas' performance met the criteria for a "satisfactory" rating for this indicator.

Ms. Janda presented the findings regarding the common performance indicator, *Technical Quality of Inspections*. Her presentation corresponded to Section 2.3 of the proposed final IMPEP report. Ms. Janda reported that the team's review of inspection casework showed that inspections covered all aspects of the licensee's radiation safety programs, and that 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. She further reported that during inspection accompaniments, the team determined that the inspectors were well-trained, prepared and thorough in their audits and that overall, the inspections were adequate to assess radiological health, safety and security at the licensed facilities.

The review team found Texas' performance with respect to this indicator to be "satisfactory." The MRB agreed that Texas' performance met the criteria for a "satisfactory" rating for this indicator.

Ms. Janda presented the findings regarding the common performance indicator, *Technical Quality of Licensing Actions*. Her presentation corresponded to Section 2.4 of the proposed final IMPEP report. She reported that the team reviewed licensing actions covering a range of programs and reviewers. She noted that licensing actions were complete, consistent and of high technical quality. She reported that there were 68 license renewals greater than one year old as of January 2013 and noted that the Program does not have a deadline or metric associated with their completion. The MRB questioned the Program as to the status of their efforts to reduce the backlog. The Program reported that they currently have 47 renewal actions in backlog; but reported that they have recently implemented a procedure in which staff are required to issue deficiency letters to address deficiencies in the renewal applications, within 90 days. As this was implemented recently, the Program has not had enough time to provide feedback on the effectiveness of this change. The final report was updated to reflect the backlog at the time of the MRB (47 renewal actions).

The review team found Texas' performance with respect to this indicator to be "satisfactory." The MRB agreed that Texas' performance met the criteria for a "satisfactory" rating for this indicator.

Ms. Janda presented the findings regarding the common performance indicator, *Technical Quality of Incident and Allegation Activities*. Her presentation corresponded to Section 2.5 of the proposed final IMPEP report. Ms. Janda reported that the team examined 23 incidents for evaluation and noted that the Program's response to incidents and allegations was complete and comprehensive. She reported that the level of effort was commensurate with the health and safety significance. Ms. Janda reported that the team evaluated the casework for 11 allegations and concluded that the State took prompt and appropriate actions in response to concerns raised.

The review team found Texas' performance with respect to this indicator to be "satisfactory. The MRB agreed that Texas' performance met the criteria for a "satisfactory" rating for this indicator.

Non-Common Performance Indicators. Mr. Stephen Poy presented the findings regarding the non-common performance indicator, *Compatibility Requirements*. His presentation corresponded to Section 3.1 of the proposed final IMPEP report. Mr. Poy reported that the Texas Department and Commission developed and implemented a Memorandum of Understanding in 1996 which specified the respective responsibilities of the two agencies. Mr. Poy noted that during the review period the Program (Department and Commission) submitted a total of twelve regulation packages of which eight were overdue at the time of submission. He further noted that two amendments were overdue for adoption at the time of the review. The MRB expressed concerns regarding the untimeliness of adoption of some of the regulations, especially the regulation for the "Radiological Criteria for License Termination of Uranium Recovery Facilities" that was due for adoption in 2002. The team explained that the NRC reviewed the two license terminations issued by the State and found that their ability to terminate these licenses was not impacted by the lack of adoption of this regulation.

The review team found Texas' performance with respect to this indicator to be "satisfactory." The MRB agreed that Texas' performance met the criteria for a "satisfactory" rating for this indicator.

Mr. Poy presented the findings regarding the non-common performance indicator, *Sealed Source and Device Evaluation Program (SS&D)*. His presentation corresponded to Section 3.2 of the proposed final IMPEP report. Mr. Poy reported that the team reviewed 16 SS&D casework files and found that 3 of those did not ensure that the foreign manufacturers possessed the appropriate license(s). The State noted that all three of these licenses had the proper exemption to import/export the devices; however they committed to addressing this on all current and future licenses of this type. He noted that the Program currently has five qualified reviewers. Mr. Poy stated that the team determined that evaluations were based on sound conservative assumptions to ensure public health and safety is adequately protected.

The review team found Texas' performance with respect to this indicator to be "satisfactory." The MRB agreed that Texas' performance met the criteria for a "satisfactory" rating for this indicator.

Mr. Dennis Sollenberger presented the findings regarding the non-common performance indicator, *Low Level Radioactive Waste Disposal (LLRW) Program*. His presentation corresponded to Section 3.3 of the proposed final IMPEP report. Mr. Sollenberger noted that the regulatory responsibility for the LLRW disposal program resides with the Commission; the Radioactive Materials Licensing Section is responsible for licensing of LLRW disposal and processing activities and the Radioactive Materials Compliance Team is responsible for inspection activities. Mr. Sollenberger reported that the Licensing Section currently has seven full or part-time staff totaling 5 FTE which includes staffing support by the Uranium Recovery Section. He noted that at the time of the review the Licensing Section had two vacancies, and the Compliance Team was fully staffed. Mr. Sollenberger stated that the team found performance issues (untimely and non-comprehensive reviews) with the inspection activities in both the LLRW and Uranium Recovery Programs. Further, he stated that the team was concerned that any future

losses in staff or increases in workload could further impact the Program's performance in both of these programs. The review team made a recommendation for the Commission to develop and implement a strategy to address staffing in the LLRW and uranium recovery inspection programs in order to enhance the effectiveness and efficiency of these programs. Mr. Sollneberger reported that the Compliance Team maintains two onsite resident inspectors at the Waste Control Specialists, LLC site. The team evaluated six inspection files and determined that the reports were thorough, complete, and comprehensive; and contained sufficient documentation to ensure that the disposal practices were acceptable with respect to health and safety, and security. In examining four reports for waste processor licenses, the team found that the Commission used a template which did not contain information specific to certain activities. The review team recommended that the Compliance Team, in coordination with the Radioactive Materials Section, develop detailed inspection procedures for LLRW inspections to provide feedback to the LLRW program and enhance the inspection program. Mr. Sollneberger reported that the team evaluated a sampling of licensing and license amendment actions and determined that Texas' licensing process was thorough, complete, consistent, and of acceptable technical quality.

The review team found Texas' performance with respect to this indicator to be "satisfactory" and made two recommendations as stated above. The MRB agreed that Texas' performance met the criteria for a "satisfactory" rating for this indicator. The MRB agreed with the team's recommendations.

Ms. Elise Striz and Ms. Linda Gersey presented the findings regarding the non-common performance indicator, *Uranium Recovery Program*. The presentation corresponded to Section 3.4 of the proposed final IMPEP report. Ms. Striz noted that the licensing and permitting program for uranium recovery is divided between two sections in the Radioactive Materials Division: the Uranium Recovery (UR) Section and the Underground Injection Control (UIC) Permits Section. They reported that Texas regulates twenty-four uranium recovery licenses; ranging in activities/status. They reported that this program has five technical staff members and one full-time manager; no vacancies currently exist. She further noted that staffing levels have decreased from 11 to 6 staff over the review period. In addition, staff from this program has been reassigned to the Radioactive Materials Section to support LLRW high priority work. They reported that the team found that the inspection staff missed 14 out of 20 UIC permit inspections and 10 out of 44 routine annual radioactive materials inspections. Program management reported that this was due to the higher than anticipated workload in the LLRW section. They stated that there are three licenses that may go into operation in the future, and the team is concerned that this additional workload could severely impact the State's performance in either/both the UR and LLRW programs, and restated the recommendation made under Section 3.3 regarding staffing. They stated that the team found that the Commission did not have guidance for inspection frequency nor inspection report content; and further, certain information on site conditions was not timely communicated to the licensing/permitting staff. The team made a recommendation for the Compliance Team, in coordination with the Uranium Section, to develop detailed inspection procedures for uranium recovery inspections to provide feedback to the UR program and enhance the inspection program. The MRB expressed concerns as to the team's findings of performance issues in the UR program and questioned the team as to why they were recommending that this indicator be found "satisfactory" rather than "satisfactory, but needs improvement". The team explained that the criteria in Management Directive 5.6 regarding UR program reviews did not provide enough clarity or specifics for them to

recommend a finding of “satisfactory, but needs improvement”. The MRB discussed their preferences for the appropriate indicator finding and because of a split vote (two votes for “satisfactory, and two votes for “satisfactory, but needs improvement”), the Chair of the MRB decided that Texas’ performance met the criteria for a “satisfactory” rating for this indicator. His decision was based on the State’s firm commitment to evaluate and provide an update on their efforts regarding the staffing issue, in their written response to the final report. In addition, the Chair of the MRB requested that a focused review on the LLRW and UR programs staffing be examined during the periodic meeting.

The review team found Texas’ performance with respect to this indicator to be “satisfactory”. As stated above, because of a split vote by the MRB (two votes for “satisfactory, and two votes for “satisfactory, but needs improvement”), the Chair of the MRB decided that Texas’ performance met the criteria for a “satisfactory” rating for this indicator. The MRB agreed with the recommendation.

3. **MRB Consultation/Comments on Issuance of Report.** The team recommended, and the MRB agreed, that the Texas Agreement State Program is adequate to protect public health and safety, and compatible with the NRC’s program. Based on the results of the current IMPEP review, the team recommended, and the MRB agreed, that the next full IMPEP review take place in four years.
4. **Precedents/Lessons Learned.** None applicable to this review.
5. **Adjournment.** The meeting was adjourned at approximately 4:34 p.m. (ET)