

## MONITORING CALL SUMMARY FOR THE CALIFORNIA RADIOLOGIC HEALTH PROGRAM

<b>NRC Attendees</b>	<b>California Attendees</b>
Randy Erickson, RSAO	Steve Hsu, Licensing Supervisor
Duncan White, NMSS	Phillip Scott, Health Physicist
Michelle Beardsley, NMSS	John Fassell, Inspection Supervisor

### **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.

### **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.

**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.

**May 14, 2013 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 the two individuals hired to augment the rule development program are working well and regulation development is moving faster than in the past. They also have an Attorney assigned to also assist with regulation development.

**September 11, 2013 status:**

The Program reported that Department Regulation Package DPH11-024 which left the Program on October 24, 2012 continues to work its way through the Department's regulation adoption process. Most recently the package was submitted to the Agency on June 10, 2013. When approved there, it will move to the State Finance Department for review.

The Program also reported that the additional staff they were able to hire following the 2011 IMPEP review continues to be a real asset to the Program and regulation development continues to move at a faster pace than in the past. They still have access to an Attorney to assist when needed.

**January 9, 2014 status:**

The Program reported that Department Regulation Package DPH11-024 which left the Program on October 24, 2012 continues to work its way through the Department's regulation adoption process. Most recently the package was approved by the Agency and moved to the State Finance Department on December 31, 2013.

**April 21, 2014 status:**

The Program reported that Department Regulation Package DPH11-024 which left the Program on October 24, 2012 continues to work its way through the Department's regulation adoption process. The package has left the State Finance Department and is currently with the Department of Regulations within the Department. The Department of Regulations is presently preparing the documents for publication and finalizing the Public Notice and when filed it will begin the official 45 day public comment period. Concurrently with that, the Branch intends to send the regulation package to NRC for review.

**July 21, 2014 status:**

The Program reported that Department Regulation Package DPH11-024 which left the Program on October 24, 2012 continues to work its way through the Department's regulation adoption process. The package has left the Department of Regulations. The Department of Regulations prepared the documents for publication, finalized the Public Notice and filed them for the official 45 day public comment period. Concurrently with that, the Branch sent the regulation package to NRC for an official review. NRC staff reviewed the package and it's now with NRC's Office of General Counsel for review. During the 45 day comment period, the Department received one comment. When NRC's comments are received and all comments are addressed, the Department will file the package for an additional 15 day comment period.

The Program also has a second regulation package nearly ready to place into the system. This package contains RATS ID: 2011-1, 2012-1, 2012-2, 2012-3, 2012-4, 2013-1 and 2013-2. None of these amendments are currently due for adoption but because some of them amend regulations contained in DPH11-024, they can't enter them into the system until DPH11-024 is finalized.

**October 27, 2014 status:**

The Program reported that Department Regulation Package DPH11-024 containing RATS ID: 1997-5, 1998-5, 2001-1, 2002-2, 2005-2, 2006-1, 2007-1, 2007-2, 2007-3, 2009-1, 2012-1 and 2012-4, which initially left the Program on October 24, 2012, has now been through the required 45 day public comment period and has also been reviewed by NRC. The Deputy Director has now approved the package and a rulemaking file is being compiled. The next step is to send that file to the Office of Administrative Law for review. The Program believes they can get that file to the Office of Administrative Law by November 30<sup>th</sup> and after a 30 day review, if all goes as planned, they have an estimated date for rule adoption of April 1, 2015.

Two additional overdue amendments including RATS ID: 1994-3 and 1997-6 are tied to the license termination rule and remain open. They are not included in any of the Department Regulation Packages at this time. The 10 CFR Part 20 portion of the regulation was initially adopted by the Program and subsequently 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. These two amendments remain open.

The Program has been developing a second regulation package containing seven amendments for placement into the system. This includes RATS ID: 2011-1, 2012-2, 2012-3, 2013-1 and 2013-2. None of these amendments are past due for adoption. However, because of internal department rules, RATS ID 2011-1 will be sent through the process as a separate rule package. The remaining amendments will go through together as a single rule package. This remaining rule package includes the new Part 37 which the Department will adopt via incorporation by reference.

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.

Lastly, a discussion was held concerning the current status of the Program. At the time of this meeting the Program had 1794 licensees, they are adequately staffed, their budget is good, they are current on inspections but have a backlog of license renewals, event investigations and SS&D transfers and sheet inactivations. Historically, the Program receives approximately 300 license renewals each year in addition to an even greater number of amendment requests. In 2013 the Program opened approximately 365 event investigations. And because their SS&D fees are very low, the Program receives many SS&D amendment requests putting a strain on resources.

**February 10, 2015 status:**

The Program reported that Department Regulation Package DPH11-024 containing RATS ID: 1997-5, 1998-5, 2001-1, 2002-2, 2005-2, 2006-1, 2007-1, 2007-2, 2007-3, 2009-1, 2012-1 and 2012-4 which initially left the Program on October 24, 2012, has been through the required 45 day public comment period and reviewed by NRC. The Deputy Director and the Office of Administrative Law have reviewed and approved the package. NRC has also approved the final comment resolution document. The regulations have been incorporated into California regulations and will be formally adopted on April 1, 2015.

Two additional overdue amendments including RATS ID: 1994-3 and 1997-6 are tied to the license termination rule and remain open. They are not included in any of the Department Regulation Packages at this time. The 10 CFR Part 20 portion of the regulation was initially adopted by the Program and subsequently 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. These two amendments remain open.

The Program has developed Department Regulation Package DPH12-004 containing RATS ID: 2011-1. Currently it has been approved by the Deputy Director of the Center for Environmental Health within the Department of Public Health. The package has been submitted for approval by the acting Executive Director of the California Department of Public Health, and the Agency Secretary of the Health and Human Services Agency. It is being prepared for entry into the Department's regulation adoption process.

The Program has also developed Department Regulation Package DPH13-001 containing RATS ID: 2012-2, 2012-3, 2013-1 and 2015-2. This regulation package is currently in the departmental approval process. It is being prepared for eventual entry into the Department's regulation adoption process.


Lastly, the Program has not yet addressed RATS ID: 2015-1. This amendment will not require adoption of regulations but only require a letter which has yet to be developed. The program will submit the letter by March 1, 2015.

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.

A general discussion regarding the overall status of the Program was also conducted. At the time of this call the Program reported they had 1803 licensees, are adequately staffed and their budget is sufficient. They are current on inspections but have a backlog of 459 license renewals which they are working to reduce. The Program receives a minimum of 2000 licensing actions each year with the majority of those being amendment requests. They also have a backlog of event investigations but have a goal of reducing that number by 25 percent each quarter. The Program receives on average five new SSD applications annually, and currently has a backlog of 27 SSD amendments and sheet transfers to address. Part of the reason for the backlog noted by the Program is that they currently have three Level 2 reviewers and need two more. A contributing reason is that their fees have been historically low resulting in a large number of individual amendments being submitted. We also briefly discussed the upcoming FY16 California IMPEP review.

The next Monitoring call is scheduled for May 5, 2015 at 11:00 am PST.

A handwritten signature in black ink, appearing to read "Randy Erickson". The signature is fluid and cursive, with a large initial "R" and "E".


Randy Erickson  
State Agreements Officer  
Region IV

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Mark Shaffer, DNMS  
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Pam Henderson, NMSS  
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Michelle Beardsley, NMSS  
Karen Meyer, NMSS

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