

2015 UTAH IMPEP  
 Comment Resolution of Draft Report

Comment #	Section	Comment	Resolution
1	Executive Summary	The cause of the unsatisfactory finding in the compatibility indicator was due to <del>recent a number of</del> modifications to Utah statutes which <u>arguably</u> are not compatible with the NRC requirements. The modifications were made by the <u>Utah State Legislature during the 2015 General Session and became effective May 12, 2015</u> <del>without concurrence by the Radiation Control Program</del> . This matter is discussed in Section 4.1.	The team accepts the requested edits with the exception of inserting the word “arguably.” The draft report is representative of the findings based on the information available to the review team. The U.S. Nuclear Regulatory Commission (NRC) March 18, 2015, letter to the Utah Department of Environmental Quality represents the NRC staff position on the Utah’s statutes based on the NRC’s technical and legal review.
2	1.0 Introduction	<del>For all but two weeks of the review period, the Utah Agreement State Program (the Program) was administered by the Division of Radiation Control (the Division) within the Department of Environmental Quality. Under the Division of Radiation Control, the radioactive materials, low-level radioactive waste, and uranium mills/recovery programs were housed. As of July 1, 2015, The Utah Agreement State Program (the Program) is administered by the newly created Division of Waste Management and Radiation Control (the Division). Within the new Division are the Uranium Mills/Radioactive Materials (U Mills/RAM) Section and the Low-Level Radioactive Waste (LLRW) Section. The new Division remains a</del> part of the Utah Department of Environmental Quality (the Department).	The review team accepts the requested edits.
3	3.1.b. Discussion	The Program also lost two experienced managers to retirement approximately <del>15</del> to <del>78</del> months before the end of the review period. The manager of the former Compliance Section for Uranium Mills and Low-level Waste was selected to be the manager of the U Mills/RAM Section. A new manager with experience managing the Resource Conservation and Recovery Act (RCRA) <u>commercial and federal</u> waste <u>management</u> sites	The review team accepts the requested edits.

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		within the State of Utah was selected for the LLRW Section.	
4	3.5.c. Evaluation	The Program has detailed procedures for incidents and allegations. <u>The review team determined that staff had been trained in the proper procedures; however, they</u> <del>The review team</del> identified that these procedures were not being consistently followed throughout the review period.	The review team accepts the requested edits.
5	4.1.b. Discussion	When the NRC amends its regulations, the appropriate Section Manager initiates the rulemaking process. The State is required to adopt Federal rules by reference whenever possible. Draft rules are published in the <u>Utah State Bulletin</u> for public comment.  Utah regulations are subject to sunset review. <u>By state law (UCA 63G-3-305), e</u> <del>E</del> ach State Agency is required to review each of its administrative rules every 5 years. Agencies file a “5-Year Notice of Review and Statement of Continuation” to meet the requirement.	The review team accepts the requested edits.
6	4.1.b. Discussion	...At the time of this review, one amendment (RATS 2011-2) <u>had been adopted and made effective by the State within the required timeframe</u> <del>was overdue for adoption</del> , however, the final regulation package for RATS 2011-2 was <u>not submitted</u> <del>mailed</del> to the NRC <u>prior to</u> <del>during</del> the review. <u>The package was submitted to the NRC during the review.</u>	The review team accepts the requested edits with further modifications. The sentence was rewritten to say: “...however, the final regulation package for RATS 2011-2 was not submitted to the NRC prior to its due date. The package was submitted to the NRC during the review.”
7	4.1.c. Evaluation	One of the proposed legislation packages, Utah Senate Bill 173 (SB 173), also discussed in Section 4.2 below, addresses the financial surety required for the LLRW disposal licensee. <u>Upon its public availability, t</u> <del>T</del> he package was sent to the NRC on February 25, 2015. The NRC provided three comments to Utah in a letter dated March 18, 2015, <u>after the 2015 General Session concluded on March 12, 2015.</u>	The review team <i>does not</i> accept these edits. The added text is irrelevant to the review and has no bearing on the outcome.

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8	4.1.c. Evaluation	As of July 31, 2015, the comment letter from the NRC has not been answered. <u>However, during the team's discussion with the Division staff, the Division noted that an administrative appeal between the Division and the licensee addressing similar financial surety matters was in progress. The Division indicated that a response to the NRC letter was delayed in order to coordinate the Division's responses and actions associated with the administrative appeal. Additionally, the Division has been considering the various options to address the NRC's comments and a response letter is forthcoming.</u>	The review team does not accept the requested edits. The additional text represents future actions planned by Utah and are more appropriate as actions being considered by Utah in response to NRC's March 18, 2015 letter, but not as part of the IMPEP report.
9	4.1.c. Evaluation	The <u>comment concluded that the</u> legislation conflicts with this requirement, as it specifies, "...financial assurance for closing the areas within the disposal embankments shall be limited to the cost of closing areas where waste has been disposed."	The review team <i>does not</i> accept this edit. The comment letter to which this section is referring is the NRC's staff position based on its technical and legal review of the proposed legislation and was conducted in accordance with NRC policy.
10	4.1.c. Evaluation	The second comment relates to the annual evaluation of financial surety needs for the LLRW disposal site. The <u>letter concluded that the</u> legislation went beyond the existing compatible Utah provisions on decommissioning funding and is in conflict with 10 CFR 61.62(c) that requires the licensee's surety mechanism will be annually reviewed to assure that sufficient funds are available for completion of the closure plan.	The review team <i>does not</i> accept this edit. See the response to Comment 9.
11	4.1.c. Evaluation	<u>Further, the letter stated t</u> he proposed language allows the licensee to update financial assurance requirements annually without a detailed review by the Program to assure that sufficient funds are available for completion of a site closure plan.	The review team does not accept these edits. The report language following the requested edit was not part of the letter. This report language serves to summarize the issue.
12	4.1.c. Evaluation	The third comment identified that the legislation authorizes the Division Director to conduct inspections at any location where waste is generated, transported, stored, treated, or disposed of. Since some of those	The <u>review team</u> <i>does not</i> accept these edits. In its response to the NRC's letter dated March 18, 2015, the Division should identify incorrect

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		locations are outside Utah jurisdiction, the State provision needs to limit the inspection authority to exclude facilities under the regulatory jurisdiction of the NRC or other Agreement States. <u>During the discussion of this comment, the Division noted that the comment incorrectly references the provisions in the Solid and Hazardous Waste Act and that the correct reference is the Radiation Control Act. The Radiation Control Act does make clear the regulatory jurisdiction of the Division regarding radioactive materials inspections.</u>	reference(s) that were used by NRC in the March 18, 2015.
13	4.1.c. Evaluation	In 2014, the Program issued a license amendment that <u>inter alia</u> , required the licensee to increase the amount of the surety contingency funds available for unforeseen expenses, should the site need to be remediated. The licensee <del>challenged</del> <u>appealed</u> the amendment and it is currently under <u>administrative appeal review by the Program</u> . The review team evaluated the Program's financial surety process and found it to be appropriate and in agreement with the NRC's process.	The review team accepts the requested edits except for the insertion of "inter alia."
14	4.1.c. Evaluation	Subsequent to the license amendment, the State legislature drafted SB 173. It became effective <del>on</del> <u>in</u> May <del>12, 2015 and became law. The Division noted that while public comment and agency input occurred as part of the legislative process, t</del> <u>The State Legislature acts independently as granted by the Utah State Constitution.</u> <del>'s legislative process did not, however, take into account the surety determinations made by Program staff members during their routine licensing process.</del>	The review team accepts the requested edits in part. The team agrees with the added text but not with the deleted text. The paragraph was rewritten to say: "Subsequent to the license amendment, the State legislature drafted SB 173. It became effective on May 12, 2015. The Division reported that while public comment and agency input occurred as part of the legislative process, the State Legislature acts independently as granted by the Utah State Constitution. The team noted the legislative process, however, did not take into account the surety determinations made by Program staff members during their routine licensing process."

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15	4.1.c. Evaluation	<p>The review team’s analysis identified a number of “disturbed lands” at the disposal site which are not currently included in the licensee’s financial surety determinations, since they are outside “where waste has been disposed” <u>or “in all areas subject to the licensed or permitted portions of the facility”</u>, as defined in the State statute.</p>	<p>The review team accepts the edits with further modifications. The team notes that SB 173 does include the language “in all areas subject to the licensed or permitted portions of the facility,” but the next line has the limiting clause “financial assurance for closing the areas within the disposal embankments shall be limited to the cost of closing areas where waste has been disposed.”</p> <p>This section has been rewritten to say: “The Utah Statue requires that “the financial assurance ... shall include the costs of closure and post closure care of radioactive waste land disposal facilities in all areas subject to the licensed or permitted portions of the facility.” The statue continues with a limiting clause, “financial assurance for closing the areas within the disposal embankments shall be limited to the cost of closing areas where waste has been disposed.” The review team’s analysis identified a number of “disturbed lands” at the disposal site which are not currently included in the licensee’s financial surety determinations, since they are outside “where waste has been disposed”, as defined in the State statute. These disturbed lands include: a railroad spur which handles train cars containing loose radioactively contaminated soil; settling ponds which may have radioactive contamination; buildings which would have to be characterized prior to, and after demolition; haul roads on the property, including roads between embankments (waste cells); and excavated land bordering the site where Department staff</p>
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			identified potential erosion and groundwater concerns.”
16	4.1.c. Evaluation	<u>The Division, in consultation with the Utah Attorney General’s Office, is preparing a response to NRC’s letter dated March 18, 2015 that will address its position with respect to this recommendation regarding compatibility requirements and may determine that the changes instituted by S.B. 173 are compatible with Federal regulations regarding financial surety for a low-level radioactive waste disposal facility.</u>	The team <i>does not</i> accept these edits for inclusion of the report. The response is owed for the March 18, 2015 letter and not the draft IMPEP report.
17	4.2.b. Discussion	<u>With the newly created consolidated organization,</u> <del>†</del> The Program has nine qualified LLRW staff members (7.5 FTE). One of the staff members is permanently assigned to the LLRW facility as an on-site inspector. In addition, three former members of the LLRW staff now have primary responsibilities within the U Mills/RAM Section, so their collective experience, process and program knowledge has been retained within the Program. The current recently <del>assigned</del> <u>hired</u> LLRW Section Manager held an equivalent position in the Department’s RCRA Section.	The review team accepts the requested edits.
18	4.2.b. Discussion	<del>One of the changes</del> <u>The amendment addressed by License Amendment 16</u> modified the license to prevent waste placement in newly added areas until financial surety reflected the newly approved embankment (waste cell) expansion.	The review team accepts the requested edits.
19	4.2.b. Discussion	In June 2014, the licensee filed a Request for Agency Action appealing Amendment 16 for which the appeal process is still pending. <u>During the 2015 General Session</u> <del>In February 2015</del> , the State <del>L</del> legislature passed a bill, <i>Financial Assurance Determination Review Process</i> (S.B. 173), limiting the amount of financial surety needed for the LLRW licensee. The legislation became effective <del>o</del> <u>in</u> May <u>12</u> , 2015.	The review team accepts the requested edits.

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20	4.2.b. Discussion	The review team determined that the Program performed an adequate evaluation of the financial surety needed for the LLRW licensee. However, S.B. 173 superseded the license amendment and creates a conflict with Federal <u>financial surety regulations</u> <del>statutes</del> .	The review team <i>does not</i> accept these edits. The NRC's technical and legal review concluded that S.B. 173 created a conflict with both Federal statutes and regulations.
21	4.2.b. Discussion	<u>However, the Division, in consultation with the Utah Attorney General's Office, is preparing a response to NRC's letter dated March 18, 2015 that will address its position with respect to the financial surety provisions of S.B. 173 and may determine that such provisions are not inconsistent with Federal financial surety regulations for a low-level radioactive waste disposal facility.</u> This issue is discussed in Section 4.1 of this report.	See comment #16. The review team <i>does not</i> accept these edits for inclusion of the report. The response is owed for the March 18, 2015 letter and not the draft IMPEP report.
22	4.3.b. Discussion	The U Mills staff is currently balanced with two groundwater hydrologists, <del>two</del> <u>one</u> health physicists, and two professional engineers. Currently, there are no vacancies	The review team accepts the requested edits.
23	5.0 Summary	Accordingly, the review team recommends that the Utah Agreement State Program be found adequate, to protect public health and safety, but needs improvement, and, <u>in consideration of the recent revisions to the statutes addressing financial surety,</u> not compatible with the NRC's program	The review team accepts the requested edits.
24	5.0 Summary	<u>However, the Division, in consultation with the Utah Attorney General's Office, is preparing a response to NRC's letter dated March 18, 2015 that will address its position with respect to the financial surety provisions of S.B. 173 and may determine that such provisions are not inconsistent with Federal financial surety regulations for a low-level radioactive waste disposal facility. Pending a review of the Division's response,</u> <del>t</del> The review team recommends that the NRC initiate a period of heightened oversight for Utah.	See comment #16 and #21. The review team <i>does not</i> accept these edits for inclusion in the report. A response is owed for the March 18, 2015, letter and not the draft IMPEP report.