



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 31, 2020

Santiago Rodriguez, Bureau Chief
Radiation Control Bureau
Environmental Protection Division
Environmental Department
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

Dear Mr. Rodriguez:

A periodic meeting with you and your staff was held on July 17, 2019. The purpose of this meeting was to review and discuss the status of the New Mexico Agreement State Program. The U.S. Nuclear Regulatory Commission (NRC) was represented by Linda Howell, Acting Director, Division of Nuclear Materials Safety, NRC Region IV, Jackie Cook, Regional State Agreements Officer and me.

I have completed and enclosed a general meeting summary. A Management Review Board (MRB) meeting to discuss the outcome of the periodic meeting has been scheduled for March 3, 2020 at 2:00 pm. A final summary will be issued to you within 30 days of the MRB.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (817) 200-1143 or via e-mail at Randy.Erickson@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Randy Erickson
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure:
Periodic Meeting Summary for New Mexico

cc w/encl.: Michael Ortiz, Program Manager
Radiation Control Bureau

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***Signed via email**

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

PERIODIC MEETING WITH THE STATE OF NEW MEXICO

TYPE OF OVERSIGHT: NONE

July 17, 2019

DRAFT

PERIODIC MEETING PARTICIPANTS

NRC

- Linda Howell, Acting Director, Division of Nuclear Materials Safety, Region IV
- Randy Erickson, State Agreements Officer, Region IV
- Jackie Cook, State Agreements Officer, Region IV

New Mexico Radiation Control Bureau

- Santiago Rodriguez, Bureau Chief
- Michael Ortiz, Program Manager
- James Hesch, Radiation Specialist
- Victor Diaz, Radiation Specialist
- Carl Sullivan, Radiation Specialist
- Bobby Bicknell, Radiation Specialist
- Thomas Collins, Radiation Specialist

1.0 INTRODUCTION

This report presents the results of the periodic meeting held between the U.S. Nuclear Regulatory Commission (NRC) and the State of New Mexico. The meeting was held on July 17, 2019. The meeting was conducted in accordance with the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-116 "Periodic Meetings between IMPEP Reviews," dated June 3, 2009.

The New Mexico Agreement State Program (the Bureau) is administered by the Radiation Control Bureau which is in the Environmental Protection Division. At the time of the meeting, the Bureau regulated approximately 207 specific licenses authorizing possession and use of radioactive materials. The meeting focused on the radioactive materials Program as it is carried out under the Section 274b. (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of New Mexico.

The Bureau is 100 percent fee funded and all fees collected go into a protected fund specific for the Bureau's use. While the State can take excess funds in an emergency, the Bureau can also accumulate surplus funds. At the time of the meeting, the Bureau had an approximate \$1M reserve surplus. One organizational change was made where the Office of Nuclear Workers is now a part of the Radiation Control Bureau.

The Bureau last underwent an Integrated Materials Performance Evaluation Program (IMPEP) review in June 2017. A Management Review Board (MRB) meeting to discuss the outcome of the IMPEP review was held on September 28, 2017.

Based on the findings presented, the MRB found the Bureau's performance satisfactory for the following performance indicators: Technical Staffing and Training, Status of Materials Inspection Program, Technical Quality of Licensing Actions, Technical Quality of Inspections, and Technical Quality of Incident and Allegation Activities. The Bureau was rated as satisfactory but needs improvement for the indicator Compatibility Requirements. However, based on discussions held during the MRB meeting, the MRB directed the staff to reevaluate the compatibility of the New Mexico program at the time of the periodic meeting and, if appropriate, propose a change for the indicator rating of Compatibility Requirements to satisfactory. The MRB also found the Bureau adequate to protect public health and safety and compatible with the NRC's Program. At the direction of the MRB, the team closed the recommendation from the 2013 review and opened a refocused recommendation under the Staffing and Training indicator. Additionally, the MRB directed that a periodic meeting should be held in approximately 2 years and a full IMPEP review be held in 4 years.

2.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review the NRC regional and Agreement State radioactive materials programs during an IMPEP review. These indicators are (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. Each of these indicators was discussed during the September 2017 periodic meeting.

New Mexico Periodic Meeting Summary

2.1 Technical Staffing and Training (2017 IMPEP review: Satisfactory)

The Bureau is comprised of the Bureau Chief, a Program Manager, and seven additional full-time equivalents. At the time of the periodic meeting, the Bureau had three senior inspectors, two junior inspectors and two vacancies. The Bureau has a documented training plan for technical staff that is equivalent to the NRC's Inspection Manual Chapter 1248. This training plan includes a requirement that qualified licensing and inspection staff complete 24 hours of continuing education every 24 months. One recommendation was made during the 2017 IMPEP review.

Recommendation: The team recommends that the Bureau continues to implement a well-conceived and balanced staffing strategy to ensure the program's continued adequacy and compatibility.

Status: While the Bureau continues to implement their staffing strategy, they also continue to experience difficulties in retaining entry level staff. While most of their staff have been with the Bureau for years, there are small number of entry level positions that frequently turn over, typically for higher salaries with other state or federal agencies.

2.2 Status of the Materials Inspection Program (2017 IMPEP review: Satisfactory)

The Bureau has conducted a total of 146 Priority 1, 2, and 3 inspections since the last IMPEP review. None of the inspections were completed overdue as the Bureau performs inspections more frequently than the inspection frequencies noted in Inspection Manual Chapter 2800. Of the 146 inspections conducted 37 involved Category 1 and Category 2 materials.

The Bureau continues to attempt to meet the 20 percent requirement for conducting reciprocity inspections in accordance with the requirements stated in the NRC's inspection Manual Chapter 1220. This has often proven to be difficult for the program because their office is in the northern area of the state and most reciprocity work is in the far southern area of the state. The Bureau reported that between the July 2017 IMPEP review and December 2017 the program completed four reciprocity inspections or approximately 10 percent of candidate licensees; in 2018 the program was able to complete one reciprocity inspection or approximately 1 percent of candidate licensees; and, in 2019 the program was able to again complete one reciprocity inspection or approximately 1 percent of candidate licensees.

2.3 Technical Quality of Inspections (2017 IMPEP review: Satisfactory)

The Bureau has a policy to accompany all staff performing radioactive materials inspections on an annual basis. All inspector accompaniments are performed between one and three times each year by the Program Manager.

The Bureau uses inspection procedures that are consistent with the inspection guidance outlined in the NRC's Inspection Manual Chapter 2800. Final inspection findings are not issued in the field and currently the Bureau does not have an equivalent form to the NRC's Form 591. Preliminary inspection findings may be left with the licensee to allow immediate

New Mexico Periodic Meeting Summary

licensee response when appropriate. All inspection data undergoes a quality assurance and a managerial review before being officially issued. Inspection findings are routinely sent to licensees within 30 days of the inspection exit.

2.4 Technical Quality of Licensing Actions (2017 IMPEP Review: Satisfactory)

The Bureau has approximately 207 specific licensees. All licensing actions are completed on time by one license reviewer with a final review and signature by the Bureau Chief. Since the 2017 IMPEP review, this reviewer completed 378 licensing actions which included 15 new licenses, 270 amendments, 72 renewals and 21 license terminations. Average time to completion was approximately 60 days, which was within the Program's goal. The guidance used by the Bureau is equivalent to the NRC's NUREG-1556 Series guidance, Pre-licensing Guidance, and Risk Significant Radioactive Materials (RSRM) Checklist.

2.5 Technical Quality of Incident and Allegation Activities (2017 IMPEP review: Satisfactory)

The Bureau is aware of the need to maintain an effective response to incidents and allegations. Since the 2017 IMPEP review the Bureau has only had one reportable event. This reportable event was conveyed to the NRC in the correct manner as stated in State Agreements Procedure 300, "Reporting Material Events."

The Bureau has not directly received any allegations since the 2017 IMPEP review and none were referred by NRC. The Bureau uses procedures equivalent to the NRC's incident and allegation procedures for processing events and allegations.

3.0 NON-COMMON PERFORMANCE INDICATORS

Four non-common performance indicators are used to review Agreement State Programs: (1) Compatibility Requirements, (2) Sealed Source and Device (SS&D) Evaluation Program, (3) Low-Level Radioactive Waste Disposal (LLRW) Program, and (4) Uranium Recovery (UR) Program. The NRC's Agreement with New Mexico does not relinquish regulatory authority for SS&D or UR; therefore, only the non-common performance indicators Compatibility Requirements and LLRW apply.

3.1 Compatibility Requirements (2017 IMPEP review: Satisfactory but needs improvement)

During the 2017 MRB for the New Mexico IMPEP review, the MRB directed staff to "reevaluate the compatibility of the Program at the time of the periodic meeting and, if appropriate, propose a change for the Compatibility Requirements indicator rating to satisfactory." A summary of the staff's evaluation can be found in Appendix A to this meeting summary. Based on that evaluation, staff recommends that the Program's performance with respect to the indicator, Compatibility Requirements, be revised to satisfactory.

3.3 Low-Level Radioactive Waste Disposal (LLRW) Program
(2017 IMPEP review: Not reviewed)

In 1981, the NRC amended its Policy Statement, “Criteria for Guidance of States and NRC in Discontinuance of NRC Authority and Assumption Thereof by States Through Agreement,” to allow a State to seek an amendment for the regulation of LLRW as a separate category. Those States with existing Agreements prior to 1981 were determined to have continued LLRW disposal authority without the need for an amendment. Although New Mexico has authority to regulate a LLRW disposal facility, the NRC has not required States to have a Program for licensing a disposal facility until the State has been designated as a host State for LLRW disposal. When an Agreement State has been notified or becomes aware of the need to regulate a LLRW disposal facility, it is expected to put in place a regulatory program that will meet the criteria for an adequate and compatible LLRW program. There are no plans for a commercial LLRW disposal facility in New Mexico. Thus New Mexico does not currently have a licensing or inspection program for LLRW facilities.

5.0 SUMMARY

The New Mexico Agreement State Program continues to be an effective and vital part of the New Mexico Environmental Protection Division. At the time of the meeting they had two vacancies they were working to fill. The Program is effectively managing its licensing and inspection activities and is responding to incidents and allegations as appropriate.

The staff also recommends, based on its evaluation, that the MRB find the State of New Mexico’s performance with respect to the Compatibility Requirements indicator, be revised to satisfactory.

NRC staff recommends that the next IMPEP review for the New Mexico Program be conducted as scheduled in 2021.

APPENDIX A:
STAFF'S EVALUATION OF THE
COMPATIBILITY REQUIREMENTS PERFORMANCE INDICATOR

Background

New Mexico became an Agreement State on May 1, 1974. The statutory authority for the New Mexico program is contained in the Radiation Protection Act, Title 20 Environmental Protection, Chapter 3, "Radiation Protection." The Department is designated as the State's radiation control agency.

The State's administrative rulemaking process normally takes approximately 12 months from drafting to finalizing a rule. After preparing draft regulations, the Bureau obtains approval to proceed through the regulation development process from the Radiation Technical Advisory Council (RTAC). The RTAC is a board comprised of six individuals acting as consultants, appointed by the Governor, who must approve all rule changes before the process for rule promulgation can proceed. Once approved, the public, NRC, other agencies, and all potentially affected licensees and registrants are then offered an opportunity to comment during the rulemaking process. Comments are considered and incorporated, as appropriate, before the regulations are finalized, approved, and filed. Once approved and finalized, rules are sent to the Environmental Improvement Board which is the rule promulgating authority for the Bureau and all other Department programs. New Mexico's rules and regulations are not subject to sunset laws. The Bureau also has the authority to issue alternate legally binding requirements, such as license conditions, in lieu of regulations.

2017 IMPEP Review

For approximately a two-year period during the previous IMPEP review period, the RTAC did not have enough governor appointed technical advisory council members to achieve a quorum which directly affected the regulation development and adoption process. When the RTAC was fully appointed and able to approve regulation development, the Bureau quickly pushed the latest eight amendments through the process. To expedite the process and to take advantage of the quorum, the Bureau did not follow the established process by sending draft rules to the NRC for an initial review, instead they went immediately to full adoption and then sent the amendments to the NRC as final regulations for a review. The NRC's review of the State's final regulations was ongoing at the time of the 2017 IMPEP review.

Because of the delay caused by the lack of a RTAC quorum, the 2017 IMPEP review team determined that seven of the eight NRC amendments due for adoption were adopted late by the State. The review team found the Bureau's performance with respect to this indicator to be satisfactory but needs improvement. During the MRB held on September 28, 2017, the MRB agreed with the team's rating for this indicator. However, the MRB directed that staff reevaluate the compatibility of the New Mexico program at the time of the periodic meeting and, if appropriate, propose a change for the rating of the Compatibility Requirements indicator to satisfactory.

New Mexico Periodic Meeting Summary

Current Status

No new legislation affecting the radiation control program was passed since the 2017 IMPEP review. Since the 2017 IMPEP review, a total of five NRC amendments came due for adoption. The State adopted four of the five amendments within three years of the NRC's implementation. One of the required rule amendments is currently overdue. This NRC amendment (RATS ID 2015-5) was due for adoption on 12/31/2018 and involved minor corrections. The corrections to the regulations required by this amendment have no health and safety impact. The State plans to adopt this amendment during its next round of adoption of NRC amendments.

During the period meeting, the staff discussed the adoption of other program elements required for compatibility with the State. The State indicated that they have adopted all program elements required for adoption since the 2017 IMPEP review including the revisions to the pre-licensing guidance and the RSRM checklist.

Staff concluded that the Bureau has improved its performance regarding the Compatibility Requirements indicator since the 2017 IMPEP review and currently meets the IMPEP criteria for satisfactory performance.