

JAN 25 1991

The Honorable Ben Nelson
Governor of Nebraska
State Capitol
Lincoln, Nebraska 68509-4848

Dear Governor Nelson:

Please accept my congratulations on your election as Governor of Nebraska.

On November 19, 1990 your predecessor, the Honorable Kay A. Orr, wrote to Mr. Robert J. Doda, Region IV State Agreements Officer, updating the State's actions to strengthen the Nebraska radiation control program (enclosure). I wish to express my appreciation for the commitments made to support the program.

Based upon Governor Orr's letter and the results of our recent follow-up review, we were pleased to find significant improvements in the Nebraska radiation control program. Although the program still has some difficult problems to overcome, particularly with respect to recruiting sufficient staff, it is a pleasure to inform you that we find the Nebraska radiation control program presently adequate to protect the public health and safety and compatible with the NRC program. Details on our follow-up review have been documented in a formal review letter to the Directors of the Department of Health (DOH) and the Department of Environmental Control (DEC). We have enclosed a copy for your information.

I appreciate the courtesy and cooperation the staffs of DOH and DEC extended to the NRC reviewers during our follow-up review meeting. We look forward to a continuing, effective partnership in the protection of the public health and safety.

Sincerely,

original signed by:
Kenneth M. Carr

Kenneth M. Carr

Enclosures:
As stated

cc: G. F. Wright, Director, DOH
D. Grams, Director, DEC
T. R. Lamberson, State Liaison Officer

OCM
KCarr
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*See previous concurrence.

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The Honorable Ben Nelson

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Commissioner Curtiss

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Nebraska File

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STATE OF NEBRASKA

KAY A. ORR, GOVERNOR

November 19, 1990

U.S. Nuclear Regulatory Commission
State Agreements Program
Region IV
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76011

NOV 27 1990

Attention: Robert J. Doda

Dear Mr. Doda:

On June 29, 1990, I sent you a letter containing responses to the issues raised as a result of the agreement state review.

Following is an update of agency actions taken to address NRC concerns

I. Radiation Control Program Other Than the Commercial Disposal of LLRW

1. Status and Compatibility of Regulations (Category I Indicator)

The NDOH Rules and Regulations have been approved by the Nebraska Attorney General's office. My office will review them by mid November.

2. Staffing Level (Category II Indicator)

Unfortunately, the State has been unable to make progress toward increasing the Radiation Control program staffing level. Recruitment of an additional Health Physicist is being actively pursued.

During the interim period, NDOH has taken preliminary steps which will allow an internal promotion to a Health Physicist position in Radioactive Materials. This individual is currently training for the Health Physicist position in Radioactive Materials. The training includes attendance at both the Medical Uses and Inspections Courses; and participation in 15 inspections, six of which have been completed since the NRC review in June.

3. Status of Inspection Program (Category I Indicator)

To date, NDOH has not been able to reduce the backlog of inspections. Recruitment of the position and the staff promotion identified above will provide the long term solution to this problem.

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4. Enforcement Procedures (Category I Indicator)

The 1988 UNL inspection follow-up has been completed by a Health Physics consultant and a letter of noncompliance was sent to the licensee.

Additionally, the chemical explosion investigation was completed by a Health Physics Consultant and a letter of noncompliance results was sent to the licensee. A current inspection was also completed and a letter of noncompliance was sent to the licensee.

Future plans include contracting with a Health Physics Consultant to assist with the license renewal review as well as a follow-up inspection. This inspection will be conducted within two months of receipt of responses to noncompliance items.

II. Radiation Control Program for the Commercial Disposal of Low-Level Radioactive Waste (LLRW)

1. Legal Authority (Category I Indicator)

Since June 29, 1990 the NDEC and NDOH have been working under the revised Memorandum of Understanding (MOU). To date no problems have been identified by either agency.

2. Organization (Category II Indicator)

Cheryl Rogers was named acting Health Physics Section Chief at the beginning of July to act as "program manager" in the low-level radioactive waste section of the NDOH. Ms. Rogers is housed in the LLRW program office to facilitate agency activities. NDOH has fulltime involvement in the planning and decision making concerning the regulatory application review of the proposed low-level radioactive waste.

Regular joint meetings are being held by the agency directors and staffs to coordinate efforts. Each agency also meets regularly to keep management apprised of progress, upcoming issues or requirements for policy direction.

3. Budget (Category II Indicator)

NDOH has prepared a LLRW program budget. This budget includes funding the acting Health Physics Section Chief position and two additional Health Physicists for the LLRW program as well as necessary travel and operating expenses. Health physics consultants are being retained to aid the NDOH in its technical review of LLRW license application.

4. Technical and Administrative Procedures (Category II Indicator)

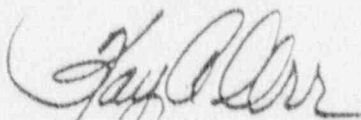
As projected in our June 29, 1990 letter, the licensing program plan and procedures for review of the license application were in place by July 16, 1990. The procedures address activities to be conducted in reviewing the Safety Analysis Report and Environmental Report, communicating and resolving deficiencies with the applicant, and developing and documenting the State's conclusions concerning the adequacy of the application in a draft safety evaluation report and a draft environmental impact analysis. Additional procedures are planned concerning public and contested case hearings and the final decision on license issuance.

5. Management (Category II Indicator)

As was discussed in Item 2, many steps have been taken to increase management involvement in this project. Actions have been taken to fulfill the NRC's recommendation to add a person for the earth science review. NDOH's Acting Health Physics Section Chief is a health physicist with an earth science background. To further supplement the State's overview capabilities, NDEC has assigned a .75 FTE groundwater geologist/hydrologist to assist with the license application review.

The State looks forward to the NRC follow-up review the week of November 26. Further detailed information concerning the nine areas discussed above will be provided at that time.

Sincerely,



KAY A. ORR
Governor

KAO:hs



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

January 17, 1991

Gregg F. Wright, M.D.
Director
Department of Health
301 Centennial Mall South
P.O. Box 95007
Lincoln, NE 68509

Mr. Dennis Grams, Director
Department of Environmental Control
P.O. Box 98922
Lincoln, NE 68509

Dear Dr. Wright and Mr. Grams:

This is to confirm the separate discussions Messrs. V. L. Miller, R. J. Doda, and J. A. Shaffner held with each of you and your staff members on November 28 and 29, 1990 after our follow-up review of the State's radiation control program.

Governor Orr wrote us on November 19, 1990 just prior to our follow-up review and provided the current status of all program areas identified as needing improvement. We thank the Governor for this very helpful update of State actions.

We were pleased to note the many improvements that have taken place in your program. Especially noteworthy, was the completion of the Department of Health's (DOH) radiation control regulations on November 25, 1990 to achieve compatibility with the NRC's regulations. As a result of our review, we find that the State's program for regulating agreement materials is adequate to protect the public health and safety and is compatible with the Commission's program.

We are also pleased with the improvement in the overall inspection and enforcement actions related to the University of Nebraska at Lincoln. We agree with your staff that the repeated violations at the University need to be corrected and resolved before full confidence is regained in the responsibilities afforded under the University's broad license for radioactive materials. The use of a consultant for conducting the last inspection at the University during August 1990 is an appropriate approach for resolving this kind of problem. This effort will be closely followed in the months to come by our Region IV staff.

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We were also pleased that the Department of Environmental Control (DEC) has provided funding for the acting Health Physics Section Chief and two additional Health Physicists for the Low Level Radioactive Waste (LLRW) program. The appointment of this full time Health Physics Section Chief has, in our opinion, been an important factor in the improvements found during this review. The coordination of LLRW responsibilities has allowed the Division of Radiological Health in DOH to be kept fully involved in the LLRW license review process. We believe both Departments will continue to benefit from the organizational arrangements currently in place. The memorandum of understanding between DOH and DEC provides the basis for this working arrangement.

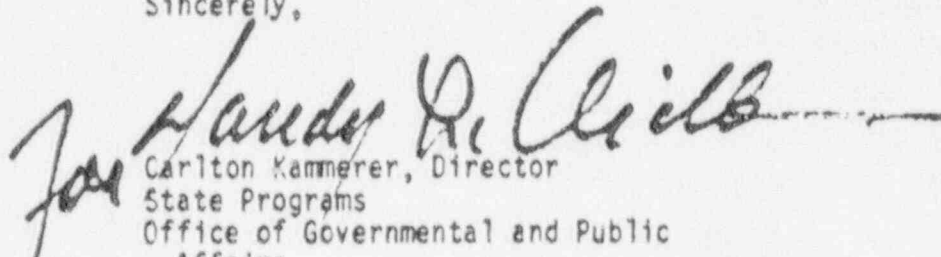
We note that a significant problem continues to exist where the Division of Radiological Health in DOH is still understaffed and well below NRC guidelines for Agreement Material Programs. Two current staff openings in the Division continue to exist despite active recruiting. We believe that until this step is concluded, the State will not be able to address the deficiencies previously noted regarding the inspection program. With regard to the inspection backlog, the Division knows what is needed to address the problem in terms of maintenance inspections and catch-up inspections, and a plan is in place to eliminate the backlog. However, because of the above shortage of staff, the resources are not available to work on the elimination of the inspection backlog. The State should continue its recruiting effort. NRC will give priority to Nebraska to provide training to personnel hired for these positions. If the State continues to be unsuccessful in recruiting personnel, we recommend an examination be made to determine the underlying reasons and take appropriate measures to improve the recruiting process.

As we discussed, we are pleased with the excellent progress the State has made, and we look forward to continuing to work with the State.

Enclosure 1 contains a summary of the follow-up review.

I appreciate the responsiveness of the State of Nebraska and the courtesy and cooperation you and your staff extended to Mr. Doda and the other NRC reviewers during the review meeting. An explanation of our policies and practices for reviewing Agreement State programs is enclosed as Enclosure 2. Also, I am enclosing a copy of this letter for placement in the State Public Document Room or to otherwise be made available for review.

Sincerely,


Carlton Kammerer, Director
State Programs
Office of Governmental and Public
Affairs

Enclosures:
As stated

cc w/enclosures: (see next page)

JAN 17 1991

cc w/enclosures:

J. M. Taylor, Executive Director
for Operations

R. D. Martin, Regional Administrator
Region IV

Harold R. Borchert, Director
Division of Radiological Health

Jay D. Ringenberg
LLRW Program Manager

State Liaison Officer

NRC Public Document Room

State Public Document Room

ENCLOSURE 1

STAFF REPORT AND FOLLOW-UP EVALUATION OF THE NEBRASKA CONTROL PROGRAM FOR THE PERIOD JUNE 15, 1990 TO NOVEMBER 29, 1990

The follow-up review to the 24th regulatory program review meeting with Nebraska representatives was held during the period November 26-29, 1990. The State was represented by Harold Borchert, Director, Division of Radiological Health; Jay Ringenberg, Manager, Low Level Radioactive Waste Section; and Tom Lamberson, State Liaison Officer. The review of the program also included discussions with upper level managers within the Department of Health (DOH) and the Department of Environmental Control (DEC).

The purpose of the follow-up review was to evaluate the corrective actions taken by the State in response to the findings of the Nebraska routine review of June 15, 1990, and to assess the current status of the adequacy and compatibility of the program.

CONCLUSIONS

The results of our review indicate the State's program for regulating agreement materials is adequate to protect the public health and safety and compatible with the Commission's program. Significant improvements were found in the materials program, particularly in the State's management practices, budget allotments, technical procedures, administrative procedures, enforcement procedures, and radiation control regulations. A continuing problem remains in filling several technical vacancies within the Division of Radiological Health. Without the filling of these vacancies, the Division does not have the resources to address a backlog of overdue inspections.

SUMMARY DISCUSSION WITH STATE REPRESENTATIVES

A summary meeting to present the results of the follow-up review was held on November 29, 1990, by Mr. R. Doda, Mr. V. Miller, and Mr. J. Shaffner with Dr. Gregg Wright, Director, Department of Health, and Mr. Dennis Grams, Director, Department of Environmental Control. The summary meeting was also attended by Mr. Tom Lamberson, Mr. Richard Beck, Mr. Burk Casari, Mr. Harold Borchert, Mr. Jay Ringenberg, Ms. Cheryl Rogers, and Ms. Carla Felix. The State was congratulated on the improvements in the program in response to the NRC findings during the June 15, 1990 review. In particular, the staff was praised for the completion of the revision of the State's radiation control regulations and for management coordination under the MOU between DOH and DEC.

The State's enforcement actions against the University of Nebraska at Lincoln and the findings of the unannounced inspection in August 1990 were discussed. The NRC agreed with the State that repeated violations found in the University's safety program stem from inadequate

procedures and management controls. The NRC staff concurred with the State's decision to require specific user licenses if the University is unable to correct the deficiencies in its management controls under the broad license currently in place.

The Division of Radiological Health in DOH is still understaffed and well below NRC guidelines for Agreement Material Programs. Also, the inspection backlog remains unchanged from the review of June 15, 1990. Two current staff openings in the Division continue to exist despite active recruiting.

PROGRAM CHANGES RELATED TO JUNE 15, 1990, REVIEW FINDINGS

I. Radiation control program other than the Commercial Disposal of LLRW

A. Status and Compatibility of Regulations (Category I Indicator)

Previous Recommendation

We recommend that the State complete the revision process so that the revised regulations become effective at an early date, such that a finding of compatibility can be made for the Nebraska radiation control program.

Present Status

The Nebraska Department of Health regulations for the control of radiation were revised and became effective on November 25, 1990. With this revision, Nebraska's regulations are compatible with the NRC regulations.

B. Staffing Level (Category II Indicator)

Previous Recommendation

We recommend the Division immediately increase its staffing level for the agreement materials program into the NRC's recommended range of 1.0 to 1.5 FTE/100 licenses. We also recommend that a project manager be obtained for the radiological regulatory activities that must be undertaken by DOH during the licensing process for the LLRW disposal site that is currently being developed in the State.

Present Status

Staffing is still a serious problem in DOH. Internally they have made a couple of key reassignments as a short term fix such as assigning one of their staff members as acting project manager with DEC, which is working out in an excellent manner, and another member being moved from the X-ray group to the Licensing and Inspection Group. DOH is currently recruiting for two positions with no success thus far.

C. Status of Inspection Program (Category I Indicator)Previous Recommendation

Inspection of major licensees must be brought up to date as soon as possible and a program should be implemented to stabilize and reduce the list of Priority I and II inspections that are overdue for inspection.

Present Status

To date, the Division of Radiological Health has not been able to reduce the backlog of inspections due. The reassignment and retraining of one individual within the Division, although a step in the right direction, is not enough to address this problem fully. Recruitment of the two additional positions already authorized within the Division is a necessity.

The current inspection backlog for Priority I and II inspections stands at 22. Eleven of these are overdue by more than 50 percent of their inspection interval, approximately the same as found in the last review. The NRC staff considered the overall backlog, the number of routine inspections that need to be done to maintain the inspection program, and the staff resources that will be available to the State. We concluded that the backlog can be eliminated by adding the additional staff, as mentioned above.

The Division has a plan to address the inspection backlog; however, it can only be fully implemented by the additional staff currently being recruited.

D. Enforcement Procedures (Category I Indicator)Previous Recommendation

Since the regulatory actions at the University of Nebraska at Lincoln (UNL) are heavily dependent upon an adequate staff, we recommend that the State augment its radiation control staff and bring to an early conclusion all the outstanding regulatory actions at UNL. These are significant enforcement matters that need to be brought to a conclusion promptly. The University is a major licensee that needs positive regulatory attention. Department management oversight for this licensee is needed to assure the closing out of the last inspection and incident, work on the renewal application, and the resumption of inspections.

Present Status

Much progress has been made regarding inspection and enforcement activities at UNL. The 1988 UNL inspection follow-up has been completed by a health physics consultant and a letter of noncompliance was sent to the licensee.

Additionally, the chemical explosion investigation was completed by a health physics consultant and a letter of noncompliance was sent to the licensee. A current inspection was also completed and a letter of noncompliance was sent to the licensee.

Future plans include contracting with a health physics consultant to assist with the license renewal review as well as a follow-up inspection. These licensing and inspection activities will be conducted within the next few months.

The State has asked the consultant to provide progress reports during the transition period, and plans to have frequent discussions with the UNL staff during the application development and review, including meetings with management.

Corrective actions on items of noncompliance currently not resolved are also being required of UNL and the State is keeping the enforcement correspondence current.

II. Radiation Control Program for the Commercial Disposal of Low-Level Radioactive Waste (LLRW)

A. Legal Authority (Category 1 Indicator)

Previous Recommendation

We recommend the proposed MOU be finalized as soon as possible and a copy transmitted to the NRC.

Present Status

An MOU was finalized June 29, 1990. Both the DOH and DEC seem to be working well under the terms of the MOU. Both Departments worked cooperatively in completing a preacceptance review of the LLRW site application and forwarding a comprehensive set of application omissions to the applicant. Director's meetings among top management in each department occur on a regular basis to discuss and resolve issues defined by the working staff.

B. Organization (Category II Indicator)Previous Recommendation

Senior level management should set clear policies and ensure that they are implemented. Senior level management should identify significant conflicts early on and resolve them quickly. Putting an MOU in place alone will not solve the problem. Management follow-up is needed. Periodic meetings of upper level DEC and DOH management should be considered as a means to ensure that problems receive appropriate management attention and are resolved in a timely fashion.

Present Status

Senior management in both DOH and DEC is totally involved in the Agreement Materials Program. Several management problems in the LLRW program identified during the June 1990 program review have been resolved. Both Departments deserve a lot of credit for this success. This success can be attributed to the assignment of a DOH project manager to DEC to coordinate on the LLRW program, the day-to-day involvement by the State Liaison Officer and the regular joint meetings being held by the Department Directors and staff to coordinate efforts.

C. Budget (Category II Indicator)Previous Recommendation

Full utilization should be made by DOH of existing budgetary resources. DEC and DOH management should monitor this.

Present Status

DOH and DEC are working as a team to implement a budget which gets the maximum results from resources expended. DEC is funding for and has management oversight for several consultant groups. DEC has also funded two additional DOH Health Physicists for the LLRW program. However, DOH is experiencing difficulty filling the positions.

D. Technical and Administrative Procedures (Category II Indicators)Previous Recommendation

We recommend prioritizing resources so that the procedures necessary to begin the licensing review are in place when the application is received. Additionally, it is suggested that guidelines on conflict of interest and criteria for funding levels for work outside of DEC be developed.

Present Status

Procedures for licensing review have been developed (July 18, 1990). The procedures should eliminate the potential for conflict of interest because of the involvement of many different entities in the decisionmaking process. The means for funding LLRW work in other State agencies, particularly DOH, has been established.

E. Management (Category II Indicator)Previous Recommendation

We recommend DOH take steps to enable filling the position of LLRW project manager as soon as possible. An acceptable alternative may be to accept a partially qualified individual with a goal to fully qualify such a person through supplementary training.

Additionally, the State may wish to evaluate progress in filling key positions. Senior level management should take a stronger role in filling key positions.

The State should consider adding an earth sciences staff member to the LLRW team.

Present Status

Staffing problems in LLRW have been addressed through the assignment of a full time DOH project manager with an earth sciences background. LLRW staff is also supplemented by other State technical experts, as needed, during the review process. The staffing shift in the Division to the LLRW program has caused additional staffing problems in the Agreements Materials Program however. Recruitment of the two additional positions, already authorized, within the Division is a necessity.

ENCLOSURE 2

APPLICATION OF "GUIDELINES FOR NRC REVIEW OF AGREEMENT STATE RADIATION CONTROL PROGRAMS"

The "Guidelines for NRC Review of Agreement State Radiation Control Programs," were published in the Federal Register on June 4, 1987, as an NRC Policy Statement. The Guidelines provide 29 indicators for evaluating Agreement State program areas. Guidance as to their relative importance to an Agreement State program is provided by categorizing the indicators into two categories.

Category I indicators address program functions which directly relate to the State's ability to protect the public health and safety. If significant problems exist in several Category I indicator areas, then the need for improvements may be critical.

Category II indicators address program functions which provide essential technical and administrative support for the primary program functions. Good performance in meeting the guidelines for these indicators is essential in order to avoid the development of problems in one or more of the principal program areas, i.e., those that fall under Category I indicators. Category II indicators frequently can be used to identify underlying problems that are causing, or contributing to, difficulties in Category I indicators.

It is the NRC's intention to use these categories in the following manner. In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety and is compatible with the NRC's program. If one or more significant Category I comments are provided, the State will be notified that the program deficiencies may seriously affect the State's ability to protect the public health and safety and that the need of improvement in particular program areas is critical. If, following receipt and evaluation, the State's response appears satisfactory in addressing the significant Category I comments, the staff may offer findings of adequacy and compatibility as appropriate or defer such offering until the State's actions are examined and their effectiveness confirmed in a subsequent review. If additional information is needed to evaluate the State's actions, the staff may request the information through follow-up correspondence or perform a follow-up or special, limited review. NRC staff may hold a special meeting with appropriate State representatives. No significant items will be left unresolved over a prolonged period. The Commission will be informed of the results of the reviews of the individual Agreement State programs and copies of the review correspondence to the States will be placed in the NRC Public Document Room. If the State program does not improve or if additional significant Category I deficiencies have developed, a staff finding that the program is not adequate will be considered and the NRC may institute proceedings to suspend or revoke all or part of the Agreement in accordance with Section 274j of the Act, as amended.