



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

February 6, 1992

Barbara DeBuono, M.D., M.P.H.
Director
Department of Health
3 Capitol Hill
Providence, RI 02908

Dear Dr. DeBuono:

This letter confirms the discussion Messrs. Frank Costello and Richard Blanton held with Mr. John Tierney, Deputy Director, Department of Health, and other members of your staff on November 22, 1991, following our review of the State's radiation control program.

As a result of our review of the Rhode Island radiation control program and the routine exchange of information between the NRC and the State, we believe that the State's program for regulating agreement materials is adequate to protect the public health and safety and is compatible with the regulatory programs of the NRC. We note that at each program review since Rhode Island became an Agreement State in 1980 has resulted in a similar finding. We are pleased that the State's radiation control program continues to be conducted in an excellent manner.

We also note the prompt adoption by the State of those regulations deemed to be matters of compatibility. Uniformity among regulatory agencies is an important part of the Agreement State program. We appreciate your efforts and are providing below for your information, a list of additional regulatory amendments which will require adoption by the dates shown:

- 10 CFR 20, Standards for Protection Against Radiation, (January 1, 1994)
- 10 CFR 30.32, Emergency Preparedness for Radioactive Material Licensees, (April 7, 1993)
- 10 CFR 35.32 and 35.33 Quality Management Program and Misadministrations, (January 27, 1995)

As discussed during the review, we understand that the Department of Health is working with the Rhode Island Emergency Management Agency to update the State's Emergency Operations Plan and emergency contacts list to reflect the Department's expertise and role in responding to radiation emergencies. We further understand that this update will be complete in the first calendar quarter of 1992. Please advise me if this changes.

Enclosure 1 contains an explanation of our policies and practices for reviewing Agreement State programs.

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Enclosure 2 is a summary of the review findings which were discussed with Mr. McMahon. We request specific responses from the State on the comments in Enclosure 2.

In accordance with NRC practice, I am also enclosing a copy of this letter for placement in the State's Public Document Room or otherwise to be made available for public review.

I appreciate the courtesy and cooperation extended the NRC staff during the review. I am looking forward to your comments regarding the revision of the State's Emergency Operations Plan, and your responses to the Enclosure 2 recommendations.

Sincerely,

Original signed by Carlton Kammerer
Carlton Kammerer, Director
Office of State Programs

Enclosures:
As stated

cc w/encls:
Charles McMahon, State of Rhode Island
James M. Taylor, Executive Director
for Operations, NRC
Thomas T. Martin, Regional Administrator,
Region I, NRC
State Liaison Officer
NRC Public Document Room
State Public Document Room

Distribution: See next page.

*See previous concurrence.

OFC	RI:RSAO <i>per</i>	RI:RA	SP: <i>SA</i>	SP:D <i>SA</i>	EDO:DEBS	EDO
NME	FCostello <i>Per K</i>	TMartin	VMiller	CKammerer	HLThompson	JMTaylor
DTE	12/13/91* <i>1/7/92</i>	12/13/91*	1/7/92	1/05/92	2/1/92	2/1/92

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Handwritten notes:
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Barbara DeBuono, M.D., M.P.H.

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bcc w/encls:
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Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque

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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.

ENCLOSURE 1

SUMMARY OF ASSESSMENTS AND COMMENTS
FOR THE RHODE ISLAND RADIATION CONTROL PROGRAM
OCTOBER 27, 1989 TO NOVEMBER 22, 1991

SCOPE OF REVIEW

This program review was conducted in accordance with the Commission's Policy Statement for reviewing Agreement State Programs published in the Federal Register on June 4, 1987, and the internal procedures established by the Office of State Programs, State Agreements Program. The State's program was reviewed against the 29 program indicators provided in the Guidelines. The review included inspector accompaniments, discussions with program management and staff, technical evaluation of selected license and compliance files, and the evaluation of the State's responses to an NRC questionnaire that was sent to the State in preparation for the review.

The eighth regulatory program review meeting with Rhode Island representatives was held during the period November 18-22, 1991 in Providence, Rhode Island. The State was represented by Charles McMahon, Supervising Radiation Control Specialist.

Selected license and compliance files were reviewed by Mr. Frank Costello, Regional State Agreements Officer, Region I, assisted by Mr. Richard Blanton, State Programs. A field accompaniment of an inspector was made by Mr. Costello on October 10-11, 1991 and by Mr. Blanton on November 19, 1991. A summary meeting regarding the results of the review was held with the Deputy Director of the Department of Health, Mr. John Tierney, on November 22, 1991.

CONCLUSION

The program for control of agreement materials is adequate to protect the public health and safety and is compatible with the regulatory programs of the NRC.

STATUS OF PROGRAM RELATED TO PREVIOUS NRC FINDINGS

The results of the previous review were reported to the State in a letter to H. Denman Scott, M.D., dated February 20, 1990. All comments, except one, made at that time were satisfactorily resolved and closed out prior to this meeting.

The revision of the State's Emergency Operations Plan to explicitly include Health Department personnel in radiological emergency response is still pending. While the Department has met with the Rhode Island Emergency Response Agency (RIEMA) to discuss updating the Emergency Operations Plan and the emergency contacts list, these revisions were not complete at the time of this review. Health Department management and RIEMA management stated that they expect these revisions to be completed during the first calendar quarter of 1992.

ENCLOSURE 2

CURRENT REVIEW COMMENTS AND RECOMMENDATIONS

All 29 program indicators were reviewed and the State fully satisfies 25 of these indicators. Specific minor comments and recommendations for the remaining 4 indicators are made as follows:

1. Quality of Emergency Planning is a Category I Indicator.

Comment

The Rhode Island Emergency Management Agency (RIEMA) has the responsibility for coordinating emergency response in the State. However, the Rhode Island Department of Health has regulatory responsibility for radiation safety in the State, and further, possesses technical expertise on radiation matters. During the 1989 program review and the 1990 review visit, the NRC recommended that the State's Emergency Operations Plan, specifically Annex G, and the State's emergency contacts list be amended to include Health Department personnel in all aspects of radiological emergency response. While the Department has met with RIEMA to enact these revisions, neither revision had been completed at the time of this review. It is noted that the State plans to make these revisions in the first calendar quarter of 1992.

Recommendation

The Health Department management should support and urge the revision of the State's Emergency Operations Plan, Annex G, and the emergency contacts list, to reflect the role of Health Department personnel in responding to radiological emergencies. This should be accomplished during the first calendar quarter of 1992.

2. Enforcement Procedures is a Category I Indicator.

Comment:

The reviewer noted that several inspection reports revealed Severity Level III violations, including one repeat Severity Level III violation. There were no indications that consideration had been given to any enforcement action stronger than a Notice of Violation. The radiation control program's enforcement procedures have not been revised since 1982, and these procedures offer no guidance to the selection of enforcement actions for the more serious Severity Levels I, II & III violations. The program does not have civil penalty authority, although this authority can be a useful method for deterring violations.

It is noted that the program is planning to update the enforcement procedures and will provide guidance on the selection of enforcement actions for severity Level I-III violations. Discussions with Health

Department management during the review indicated that the Department would be willing to consider seeking civil penalty authority for the radiation control program.

Recommendation

The radiation control program should update its enforcement procedure to include guidance for enforcement actions for Severity Levels I, II & III violations. These could include enforcement conferences, follow-up inspections, and stronger language in the inspection cover letters in addition to enforcement actions such as orders to modify or suspend licenses. The State should review the value of providing civil penalty authority to the radiation control program. The program should seek to obtain and implement this authority.

3. Administrative Procedures is a Category II Indicator.

Comment

The radiation control program has adopted decommissioning regulations compatible with those in 10 CFR 30 which require certain licensees to submit financial assurance for decommissioning by July 28, 1990. However, no licensees have submitted such plans and the program has no plan of action to assure compliance with this requirement.

Recommendation

The program should establish administrative procedures to identify those licensees which are required by the decommissioning rule to submit financial assurance for decommissioning funding and assure compliance with the decommissioning rule.

4. Inspection Procedures is a Category II Indicator.

Comment

There were 29 instances where out-of-state licensees performed licensed activities under reciprocity in Rhode Island since the last program review in 1989. Most of the licensed activities involved industrial radiography performed under field conditions. No inspections of these activities were performed by the radiation control program, primarily because of the difficulties involved in locating field radiography sites. Field radiography performed under reciprocity represents a substantial fraction of the total amount of field radiography performed in Rhode Island.

Recommendation

The radiation control program should adopt an inspection procedure calling for inspections of a percentage of the licensed activities performed in Rhode Island under reciprocity, particularly in the case of field radiography.

SUMMARY DISCUSSION WITH STATE REPRESENTATIVES

A summary meeting to present the results of the regulatory program review was held with Mr. Tierney on November 22, 1991. The meeting was also attended by Mr. McNahon and by Ms. Shelley Robinson, Director, Occupational and Radiological Health Division.