



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
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LISLE, ILLINOIS 60532-4352

November 8, 2021

Gene Phillips, Chief
Bureau of Environmental Health
and Radiation Protection
Ohio Department of Health
246 North High Street
Columbus, OH 43215

SUBJECT: Ohio FY21 IMPEP Periodic Meeting Summary

Dear Mr. Phillips:

A periodic meeting with Ohio was conducted via Teams on September 28, 2021. The purpose of this meeting was to review and discuss the implementation of Ohio's Agreement State Program. The Nuclear Regulatory Commission (NRC) was represented by Joseph Nick, Deputy Director, Division of Nuclear Materials Safety; and Darren Piccirillo, Regional State Agreements Officer from NRC's Region III Office.

We have completed and enclosed a general meeting summary. If you feel that our comments or conclusions do not accurately summarize the meeting discussion, please contact me at 630 829-9661, or via email at Darren.Piccirillo@nrc.gov to discuss your comments.

Sincerely,

Darren W. Piccirillo

Darren W. Piccirillo
Regional State Agreements Officer

Enclosure: Periodic Meeting Summary for Ohio

G. Phillips

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Letter to Gene Phillips from Darren Piccirillo, dated November 8, 2021.

SUBJECT: Ohio FY21 IMPEP Periodic Meeting Summary

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DATE	11/8/2021						

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

PERIODIC MEETING WITH THE STATE OF OHIO

TYPE OF OVERSIGHT: NONE

September 28, 2021

PERIODIC MEETING PARTICIPANTS

NRC

- Joseph Nick: Deputy Director, Division of Nuclear Materials Safety, NRC Region III
- Darren Piccirillo: Regional State Agreements Officer, NRC Region III

State of Ohio

- Gene Phillips, Bureau Chief, Bureau of Environmental Health and Radiation Protection
- Rebecca Fugitt, Deputy Bureau Chief, Bureau of Environmental Health and Radiation Protection
- Michael Snee, Administrator, Radioactive Materials Licensing and Inspection
- Michael Rubadue, Supervisor, Medical Licensing & Inspection; Decommissioning

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 Ohio. The meeting was held remotely via Microsoft Teams on September 28, 2021 and was part of the Integrated Materials Performance Evaluation Program (IMPEP) review. It was conducted in accordance with NMSS Procedure SA-116 "Periodic Meetings between IMPEP Reviews," dated June 3, 2009.

The Ohio Agreement State Program is administered by the Bureau of Environmental Health and Radiation Protection which is located within the Ohio Department of Health.

At the time of the periodic meeting, the Ohio Agreement State Program (the Program) regulated 536 specific licenses authorizing possession and use of radioactive materials. The review 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 Ohio.

The Program is fee funded and continues to seek approval to increase fees as supported by industry. At current staffing levels, the radioactive materials licensing fees fully cover both personnel and operational costs. There is support from senior administration to maintain funds as allocated.

The Program last underwent a full IMPEP review from February 25 – March 1, 2019 (ML19141A225). A Management Review Board (MRB) meeting to discuss the outcome of the IMPEP review was held on May 16, 2019.

During the May 16, 2019, MRB meeting, the Ohio Agreement State Program's performance was found to be satisfactory for all indicators reviewed. The team made no new recommendations and there were no open recommendations from the previous review for the team to consider. Accordingly, the team recommended, and the MRB agreed, that the Ohio Agreement State Program is adequate to protect public health and safety and compatible with the NRC's program. The team recommended, and the MRB agreed, that the next full IMPEP review will take place in approximately 5 years with a periodic meeting in approximately 2.5 years.

2.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review the NRC Regional Office 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.

2.1 Technical Staffing and Training (2019 IMPEP Rating: Satisfactory)

The Program, when fully staffed, is comprised of a Bureau Chief, an Assistant Bureau Chief, a Program Administrator, three Supervisors, and 20 technical staff members, which equals approximately 18.20 full time equivalents (FTE) dedicated to the Agreement State Program. The third supervisor handles instrument calibration and

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emergency response. The allocation of full-time equivalents (FTE) for the Agreement State Program has not changed since the 2019 IMPEP.

At this time, one Senior Health Physicist (HP) position is vacant. That position has been vacant for over a year. A position is expected to be posted for a Senior HP in the 4th quarter of 2021. One of the Senior HP's will be transitioning to 100% Agreement State activities upon the hiring of an inspector for x-ray activities. Since the 2019 IMPEP, three Senior HP's left the Program and one Senior HP was hired. At this time, the technical FTEs allocated towards the materials program is deemed adequate.

The Program has a training and qualification program equivalent to the requirements in Inspection Manual Chapter (IMC) 1248. There have been no program changes since the 2019 IMPEP. The required 24 hours of refresher training every two years is tracked by the supervisors and exceeds the training requirement.

2.2 Status of the Materials Inspection Program (2019 IMPEP Rating: Satisfactory)

The Program inspects at a frequency at least as frequent as the NRC. The Program performed 416 inspections during the review period (March 1, 2019 – August 30, 2021). 186 of these were priority 1, 2, 3, and initial inspections. All Priority 1, 2 and 3 inspections have since been performed in accordance with the IMC 2800 inspection frequency.

The Program had no Priority 1, 2, and 3 inspections performed overdue since the last IMPEP review. The Program has some portable gauge licensees that are not in the state of Ohio. A number of these portable gauge licensees have not performed any work, so many of these companies have not used their license in over a year but they keep their license current. Due to the COVID-19 Public Health Emergency (PHE), the Program is not permitted to travel out of state for an inspection. The Program has no Priority 1, 2, and 3 currently overdue for inspections.

The Program has adopted NRC's IMC 2800 (issued March 2, 2020), which removed the quantitative inspection goals associated with reciprocity inspections but maintained internal performance-based goals. In 2019, 77 reciprocity authorizations were granted, and 3 were inspected. In 2020, 71 reciprocity authorizations were granted, and 8 were inspected. From 2021 to date, 67 reciprocity authorizations were granted, and 7 were inspected. A majority of the inspections conducted were new radiographers or blood irradiators.

Inspection findings are routinely sent to licensees within 30 days of the inspection exit.

2.3 Technical Quality of Inspections (2019 IMPEP Rating: Satisfactory)

Inspector accompaniments are conducted once per year. The two supervisors within the Medical and Industrial sections performed 11 inspector accompaniments since the 2019 IMPEP. With the exception of one newly hired Senior HP inspector, inspector accompaniments have not been performed since the start of the PHE. The Program believes that this is most the prudent approach considering the state's experienced and

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high performing inspectors. As the PHE stabilizes, the Program will resume performing inspector accompaniments.

2.4 Technical Quality of Licensing Actions (2019 IMPEP Rating: Satisfactory)

The Program had approximately 536 specific licensees at the time of the periodic meeting, which includes two pending terminations. There are 171 general licenses required to submit an annual inventory report (mainly fixed gauge licenses). Since the 2019 IMPEP review, the Program completed 932 total licensing actions, which includes: 612 license amendments, 229 license renewals, 34 new license applications, and 57 license terminations.

At the time of the Periodic Meeting, the Agency had 3 licenses under timely renewal, and no backlog exists. The Program has a licensing renewal period of 5 years. The goal for renewals is to either issue a draft license in 30 days or a request for additional information.

2.5 Technical Quality of Incident and Allegation Activities (2019 IMPEP Rating: Satisfactory)

The Program has procedures in place that are equivalent to the event reporting requirements delineated in SA-300. These procedures remain unchanged from the 2019 IMPEP review. Once uploaded to NMED and reported to the HOO, any open events are updated in NMED and electronically uploaded as needed. Following receipt of the licensee's written reports (if applicable) and determination of root cause, events are closed in a timely manner. The Program currently has three open NMED events.

Since the 2019 IMPEP review, the Program had reported 28 total events to NRC. All events which required reporting were communicated to NRC in compliance with SA-300 reporting timelines. The event response, by both the state of Ohio and the licensee, was otherwise appropriate and all nuclear material was maintained in a safe and secure condition.

Three allegations were referred to Ohio from Region III since the 2019 IMPEP review. All allegeders were contacted by the Program for additional details. Inspectors were dispatched for reactive inspections and the allegeders' identity was secured. Instances of noncompliance were addressed through appropriate enforcement action and notification provided to the allegeder on the status of their concerns within 30 days.

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 Ohio relinquishes regulatory authority for the non-common performance indicator for Sealed Source and Device (SS&D). Although the Ohio Agreement State Program has authority to regulate LLRW disposal facilities and uranium recovery activities, the NRC has not required States to have a program for licensing a disposal facility or uranium recovery facility until

such time as the State has such facilities. There are no plans for a commercial LLRW disposal facility or a uranium recovery facility in the state of Ohio.

3.1 Compatibility Requirements
(2019 IMPEP Rating: Satisfactory)

Ohio's administrative rulemaking process takes approximately 6 to 8 months from drafting to finalizing a rule. The public, NRC, other agencies, and potentially impacted licensees and registrants are offered an opportunity to comment during the process. Comments are considered and incorporated, as appropriate, before the regulations are finalized and approved by the Radiation Advisory Council. The State's rules and regulations are subject to "sunset" laws. Rules adopted pursuant to Chapter 119 (Ohio Administrative Procedures Act) are subject to review every five years. In that five-year review period, the adopting agency evaluates whether to modify the rule or maintain the rule as written. There are 11 chapters of Ohio Administrative Code rules that pertain to radioactive material. The expiration date of each rule is based on the date that it was adopted.

The following legislative changes affecting the Program are occurring since the 2019 IMPEP review. Ohio Revised Code (RC) 121.95 required state agencies to review existing rules to identify rules having one or more regulatory restrictions that require or prohibit an action and prepare a base inventory of the regulatory restrictions in its existing rules. Rules that include the words "shall," "must," "require," "shall not," "may not," and "prohibit" shall be considered to contain regulatory restrictions. RC 121.75 also prohibits a state agency from adopting a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.

The Program has not been affected by RC 121.95 due to the agreement with NRC that requires Ohio rules to be compatible with NRC rules. The Program continues to obtain direction about implementation and how it could affect rule writing.

No Ohio regulations are overdue for adoption. During the review period, the State finalized regulatory amendments and received NRC correspondence stating "No Comments" for RATS 2018-1, 2018-2, and 2019-2. There are currently six outstanding regulatory amendments (RATS 2018-3 due 7/30/22, RATS 2019-1 due 12/18/22, RATS 2020-1 due 6/16/23, RATS 2020-2 due 8/17/23, RATS 2020-3 due 11/16/23, and RATS 2021-1 due 9/8/24). Work by the Program is ongoing to provide NRC with proposed amendments ahead of schedule.

3.2 Sealed Source and Device Evaluation Program
(2019 IMPEP Rating: Satisfactory)

The Program has three staff members qualified to perform Sealed Source and Device (SS&D) reviews. Ohio has a training program for SS&D reviewers equivalent to the NRC training requirements listed in IMC 1248, Appendix D.

The Program currently has 18 active SS&D registry documents. The Program's staff evaluated 17 SS&D actions since March 1, 2019. These actions included seven amendments, six new applications, and four inactivations. Currently, the Program is not evaluating any incidents involving SS&D registered products. The Program reviews NMED on a quarterly basis for root cause and trend analysis as necessary.

4.0 SUMMARY

The Ohio Agreement State program continues to be an effective and well managed Agreement State program. The Program is effectively managing its licensing and inspection activities, even in the face of the COVID-19 PHE. The Program responds to events as appropriate, and they currently have no overdue regulation amendments. Based on the information discussed during the Periodic Meeting, NRC staff recommends that the next IMPEP review for the Ohio Agreement State Program be conducted as scheduled in 2024. The Program did not request a Special MRB.