



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
1600 EAST LAMAR BOULEVARD  
ARLINGTON, TEXAS 76011-4511

January 5, 2024

Renee Mallory, RN, BSN, Director  
Arkansas Department of Health  
4815 West Markham Street  
Little Rock, Arkansas 72205-3867

SUBJECT: ARKANSAS PERIODIC MEETING SUMMARY

Dear Ms. Mallory:

A periodic meeting was held with management and staff of the Arkansas Radiation Control Program on January 19, 2023. The purpose of this meeting was to review and discuss the implementation of Arkansas' Agreement State Program. A meeting to discuss the outcome of the meeting was held with management representatives and staff following the meeting. The Nuclear Regulatory Commission (NRC) was represented by Mary Muessle, Director, Division of Nuclear Materials Safety, and I. Following the periodic meeting, a management briefing to discuss the outcome of the meeting was held with Cassie Cochran, Deputy Director for Public Health; Don Adams, Deputy Director for Administration; Connie Melton, Director, Center for Health Protection; and other members of your staff.

I have completed and enclosed a general meeting summary including any specific actions resulting from the discussions. If you feel that our comments, conclusions, or actions to be taken 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 email at [Randy.Erickson@nrc.gov](mailto:Randy.Erickson@nrc.gov) to discuss your concerns.

Sincerely,

A handwritten signature in black ink that reads "Randy Erickson".

Signed by Erickson, Randy  
on 01/05/24

Randy Erickson  
Regional State Agreements Officer  
Division of Radiological Safety and Security

Enclosure:  
Periodic Meeting Summary for Arkansas

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

PERIODIC MEETING WITH THE STATE OF ARKANSAS

TYPE OF OVERSIGHT: NONE

JANUARY 19, 2023

Enclosure

## PERIODIC MEETING PARTICIPANTS

### **NRC**

- Mary Muesle: Director, Division of Nuclear Materials Safety, NRC Region IV
- Randy Erickson: RSAO, NRC Region IV

### **State of Arkansas**

- Bernard Bevill: Chief, Radiation Control Section
- Don Betts: Manager, Radiation Control Program
- Susan Elliott: Health Physicist

## Arkansas Periodic Meeting Summary

### 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 Arkansas. The meeting was held on January 19, 2023, and was conducted in accordance with Nuclear Materials Safety and Safeguards (NMSS) Procedure SA-116, "Periodic Meetings between IMPEP Reviews," dated October 29, 2021.

The Arkansas Agreement State Program is administered by the Radioactive Materials Program (Program). The Program is one of three organizations within the Radiation Control Section, which is a part of the Health Systems Licensing and Regulation Branch. The Health Systems Licensing and Regulation Branch is part of the Center for Health Protection, which is within the Arkansas Department of Health (Department). The Director of Health leads the agency and reports to the Governor. The Program has not had any reorganizations since the 2022 IMPEP review and none are expected.

At the time of the meeting, the Arkansas Agreement State Program regulated 174 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 Arkansas.

The Program is fee funded. Fees are collected and go into general revenue with a yearly appropriation made for the Program. The last fee increase was in 2012, authorized by the Arkansas Board of Health and was calculated based on 15 percent of NRC fees for that year. Subsequent fee increases have been requested but have not been authorized. The previous fee increase was in 1995. The Department can also reallocate existing funds when it determines it's necessary, and most recently reallocated funds from all state agencies, including radiation control, to assist in covering pandemic related costs. In addition, both the Governor and legislature can reallocate funds as they determine appropriate after following established legal processes.

The Program last underwent a full Integrated Materials Performance Evaluation Program (IMPEP) review from January 24-28, 2022. That report is in the NRC's Agencywide Documents Access and Management System Accession Number [ML22135A001](#). A Management Review Board (MRB) meeting to discuss the outcome of the IMPEP review was held on April 28, 2022.

During the 2022 MRB meeting, Arkansas's performance was found to be satisfactory, but needs improvement for the performance indicator, Technical Quality of Licensing Actions and satisfactory for all other indicators reviewed. The team recommended, and the MRB agreed, to modify the recommendation from the 2017 IMPEP review and add two new recommendations. Accordingly, the team recommended, and the MRB agreed, that the Arkansas Agreement State Program be found adequate to protect public health and safety, and compatible with the NRC's program. In addition, the team recommended, and the MRB agreed, that the next periodic meeting take place in approximately 1 year, a follow-up IMPEP review of the Technical Quality of Licensing Actions performance indicator take place in approximately 2 years, and the next full IMPEP review be conducted in approximately 4 years.

### 2.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review the NRC's Regional Office and Agreement State radioactive materials programs during an IMPEP review. These indicators are

## Arkansas Periodic Meeting Summary

(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 (2022 IMPEP Rating: Satisfactory)

The Program when fully staffed is comprised of six full time equivalents which includes one Program Manager, one administrative assistant, and four technical staff members who perform licensing actions, inspections; and event and allegation investigations. At the time of the 2022 IMPEP review, the Program had one vacancy. Several years ago, the program had five technical staff members, but one of the positions had been eliminated. The program reported that it would be ideal to have that position back to provide programmatic depth because in recent years they have had on average at least one staff leave the program each year, and maintaining several qualified staff has been difficult.

Since the 2022 IMPEP review, two individuals left the program for other opportunities and one former fully trained individual returned to the Program resulting in two fully trained individuals in the Program at the time of the meeting. However, one of those two individuals has been experiencing severe health issues effectively leaving the Program with only one fully qualified individual capable of performing licensing and inspection activities. Arkansas is working towards qualifying the Program Manager in both licensing and inspections to help keep up with the Program's work. The Program also reported they were in discussions with a fully qualified former employee to provide contracted licensing services to the Program.

On January 1, 2023, Arkansas swore in a new Governor who on January 10, 2023, issued an Executive Order freezing all hiring. Just prior to the hiring freeze, the Program was able to hire one additional individual who had recently retired from working as the Emergency Planning Manager at the state's only power reactor. The Program believes that with the individual's previous training and work experience, the time necessary to fully qualify this individual will be shortened.

The Program also has a training and qualification plan program that is consistent with NRC's Inspection Manual Chapter (IMC) 1248, "Qualification Programs for Federal and State Materials and Environmental Management Programs." Program management tracks continuing education requirements of 24 hours every 2 years for each qualified individual and provides ample opportunities for staff to fulfill this requirement.

### 2.2 Status of the Materials Inspection Program (2022 IMPEP Rating: Satisfactory)

The Program's inspection frequencies are the same as the NRC's inspection frequencies identified in IMC 2800. At the time of the meeting, the Program reported that they were not overdue on any inspections for in State licensees. Since the 2022 IMPEP review, the Program had performed 12 Priority 1 inspections, 4 Priority 2 inspections, and 6 Priority 3 inspections. The Program reported that they also have 3 Arkansas licensees who are physically located outside the State and rarely work in the State but do hold Arkansas licenses. However, when they do come into Arkansas to work, they are not required to notify the Program. The Program reported that these 3 licensees had not been inspected in more than one year and were currently overdue. When they do perform these inspections, they either perform a telephone inspection or site visit, depending on if they are aware of the jobsite location. The Program also

## Arkansas Periodic Meeting Summary

completed 4 initial inspections since the 2022 IMPEP review, all of which they reported were completed timely.

Arkansas has adopted a performance-based, risk-informed approach to conducting reciprocity inspections which is consistent with the guidance in the IMC 2800. At the time of the 2022 IMPEP review, the Program reported that they had averaged approximately 30 potential reciprocity inspections each year. The Program did not have information at the time of the periodic meeting on how many reciprocity candidates had entered the State since the 2022 IMPEP review; however, due to staffing shortages, the Program had only performed one reciprocity inspection since the 2022 IMPEP review.

### 2.3 Technical Quality of Inspections (2022 IMPEP Rating: Satisfactory)

Inspection guidance used by Arkansas is equivalent to the NRC's Inspection Procedures. Arkansas issues all inspection findings, regardless of whether there is a violation, by written correspondence from the office. Under normal circumstances, all inspection documentation is developed by the inspector then reviewed and signed out by the Program Manager; however, since the Program Manager was not yet qualified, reports were being signed out by the Section Chief who stated he is fully qualified. Inspection findings are routinely sent to the licensee within 30 days of the completion of an inspection.

Inspector accompaniments continue to be performed annually for all qualified inspectors performing inspections. A total of six inspector accompaniments were performed since the 2022 IMPEP review. One inspector, due to health issues, did not perform any inspections in 2022 and was therefore, not accompanied. Newer inspectors typically receive more than one inspector accompaniment each year to enhance training opportunities.

### 2.4 Technical Quality of Licensing Actions (2022 IMPEP Rating: Satisfactory but needs Improvement)

The Program had approximately 174 specific licensees at the time of the periodic meeting and actions completed since the 2022 IMPEP review included new licenses (15 total with 3 specific and 12 reciprocity), amendments (140 completed and 22 still in process), renewals (21 completed with 16 still in process), one additional renewal is pending due to a request for additional information from an out of state licensee, and reciprocity actions (52 completed). The inspection staff also performs all licensing actions which after completion are signed typically out by the Program Manager; however, since the Program Manager was not yet qualified, all licensing actions are being signed out by the Section Chief who stated he is fully qualified. All renewals and new licenses are now peer reviewed prior to being sent out under the Program Manager's signature.

The Program also reported that licensing guidance used by the materials section is equivalent to the NRC's NUREG-1556 Series guidance, pre-licensing guidance, and the Risk Significant Radioactive Materials (RSRM) checklist has been updated to the newest revised version.

The team found Arkansas's performance to be satisfactory but needs improvement for the performance indicator Technical Quality of Licensing Actions which remained unchanged from the previous IMPEP review. The team recommended and the MRB agreed that the 2019 IMPEP review recommendation be modified in 2022 as follows:

## Arkansas Periodic Meeting Summary

- Identify additional measures to help improve the thoroughness, completeness, and consistency of the license reviews, as well as to ensure license reviews are of acceptable technical quality with health, safety, and security properly addressed.

To meet this recommendation, the Program reported that they established a peer review process. The Program reported their action plan requires that other qualified staff peer review 20 percent of the work that any qualified staff member performs. At the time of the meeting, the activities for one quarter had been reviewed with no errors identified. The Program reported that management is reviewing 100 percent of all licensing actions even though the action plan currently requires only a 20 percent review.

The team also recommended, and the MRB agreed, the following two new recommendations for improved program performance:

- Implement the updated RSRM checklist and provide additional training to ensure consistent implementation of the most up to date RSRM checklist.

To meet this recommendation, the Program reported they are now consistently using the most up to date RSRM check list and placing the completed document in each file.

- Implement a financial assurance program consistent with State regulations and provide additional training to ensure that staff understand the thresholds.

To meet this recommendation, the Program is now performing a thorough review of each document potentially requiring financial assurance to ensure that if it meets the thresholds, that a guarantee is obtained from licensees before a license is issued. Documentation in each of these cases is maintained by the Program.

### 2.5 Technical Quality of Incident and Allegation Activities (2022 IMPEP Rating: Satisfactory)

Arkansas has procedures and processes in place to maintain effective responses to incidents and allegations. When an event is reported to Arkansas, the Program Manager evaluates the event to determine its health and safety significance and then decides on the appropriate response. That response can range anywhere from responding immediately to reviewing the event during the next inspection. When an event is determined to have high health and safety significance, inspectors are dispatched immediately.

When an event is received requiring reporting to the NRC's Headquarters Operations Officer (HOO), those events are identified and HOO reporting is performed within the required time frame and in accordance guidance found in SA-300.

Since the 2022 IMPEP review, the Program had six new events required reporting to the Nuclear Materials Events Database with four remaining open. No allegations had been received from NRC or directly by Arkansas during this time; however, when allegations are received they are reviewed by Arkansas, concerned individuals are notified of the actions taken, and alleged identities are protected whenever possible in accordance with state law.



### 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 Arkansas retains regulatory authority for SS&D and UR; therefore, only the first and third non-common performance indicator applied to this meeting.

#### 3.1 Legislation, Regulations and Other Program Elements (2022 IMPEP Rating: Satisfactory)

A legislative change occurring in 2019 which affected the Program, and which is still in effect and discussed during the 2022 IMPEP review requires Arkansas to change all regulatory documents from the wording from "Rules and Regulations" to "Rules" (Act 315 – 2019). This requires the Program to amend all regulations, licenses/license conditions, forms, etc., to remove references to the word, "regulation." This requirement is still in effect.

Another change reported by the Program came in the form of an executive order issued by the new Governor on January 10, 2023, and states, "Unless granted an exemption by the Governor or exempted under a specific provision of Arkansas law, that all state departments, agencies, and offices shall submit to the Governor for her review and approval all proposed rules prior to appearing before a legislative committee of the General Assembly regarding rulemaking procedure."

At the time of the periodic meeting, there were two regulation amendments overdue for adoption and included RATS ID: 2018-1 and 2019-2 which were due in due on 1/14/2022, and 12/30/2022, respectively. Work will progress on these once the effective freeze is lifted.

During the periodic meeting, discussions were held regarding guidance documents maintained and used by the Program, and how they use those guidance documents are used to meet the requirements of other program elements (e.g., Pre-Licensing Guidance, Inspection Procedures, Reciprocity Procedures, etc.) that the NRC has designated as necessary for the maintenance of an adequate and compatible program. The Program understands that these are living documents and changes should be made to them as necessary.

#### 3.2 LLRW Disposal Program (2022 IMPEP Rating: Not Reviewed)

In 1981, the NRC amended its Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory 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. Although Arkansas has authority to regulate a LLRW disposal facility, the NRC has not required States to have a program for licensing a disposal facility until such time as the State has been designated as a host State for a LLRW disposal facility. 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 disposal program. There are no plans for a commercial LLRW disposal facility in Arkansas. Accordingly, this indicator was not reviewed.

#### 4.0 SUMMARY

The Program continues to struggle to not only hire staff but train and retain them. The Program reports that they could use the additional staff position back that was removed several years ago to add depth and resiliency to their program. Salaries are also not competitive. The result for the Program is that on average, at least one of four staff members (25 percent) leave the program every year. Since the 2022 IMPEP review the Program has lost two staff members who left for better opportunities and increased salaries.

While at the time of the meeting, the Program had only recently experienced the most recent staff losses and had not yet experienced any long-term effects from those losses. The Program only had one fully qualified staff member now performing the majority of the technical work requirements of the Program which they believe will ultimately result in falling behind on required work, they also believe it's only a matter of time before that occurs if they are not able to hire additional staff.

Following the periodic meeting, a management briefing to discuss the outcome of the meeting was held with Cassie Cochran, Deputy Director for Public Health, Don Adams, Deputy Director for Administration; Connie Melton, Director, Center for Health Protection; and other members of the Radiation Control staff. At that meeting, discussions were held with the Deputy Director for Administration regarding staff hiring and retention, and the potential to contract qualified individuals to operate as a stopgap to assist the Program in keeping up with their work.

Because they were still maintaining the Program in a stable state, the Program did not believe a Special MRB to discuss any issues was necessary. The next IMPEP review is tentatively scheduled for January 2024.