



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

March 18, 2024

Ali Tarquino-Morris, Deputy Secretary
Office of Waste Air and Radiation
Management
Pennsylvania Department of
Environmental Protection
Bureau of Radiation Protection
Rachel Carson State Office Building
P.O. Box 8469
Harrisburg, PA 17105-8469

SUBJECT: PENNSYLVANIA DRAFT IMPEP REPORT

Dear Ali Tarquino-Morris:

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) to review radiation control programs. The enclosed draft report documents the results of the Pennsylvania Agreement State Program review conducted on January 29, 2024–February 2, 2024. The team’s preliminary findings were discussed with Pennsylvania on the last day of the review. The team’s proposed recommendations are that Pennsylvania be found adequate to protect public health and safety and compatible with the NRC’s program.

The NRC conducts periodic reviews of radiation control programs to ensure that public health and safety are adequately protected from the potential hazards associated with the use of radioactive materials and that Agreement State programs are compatible with the NRC’s program. The IMPEP reviews are conducted by a team of Agreement State and NRC staff. All reviews use common criteria in the assessment and place primary emphasis on performance. The final determination of adequacy and compatibility of each program, based on the team’s report, is made by the Management Review Board (MRB) Chair after receiving input from the MRB members, the IMPEP team, and the radiation control program being reviewed. The MRB is composed of NRC senior managers and an Organization of Agreement States program manager.

In accordance with the IMPEP implementation procedures, the NRC is providing you with a copy of the draft report for your review and comment prior to submitting the report to the MRB. Comments are requested within 28 days. This schedule will permit the issuance of the final report in a timely manner. If the State has comments other than minor comments to the report, the team will review your response, make the necessary changes, and issue a proposed final report to the MRB.

The MRB meeting is scheduled to be conducted as a hybrid meeting, via Microsoft Teams, on May 9, 2024, at 1:00pm EST. The NRC will provide you with Microsoft Teams connection information prior to the MRB meeting. Because the team has recommended all indicators be rated satisfactory, you have the option to attend the MRB meeting remotely and do not need to

travel. The NRC will also provide invitational travel for you or your designee to attend the MRB meeting at the NRC Headquarters in Rockville, Maryland. If you have any questions regarding the enclosed report, please contact Darren Piccirillo, at (301) 807-5251.

Thank you for your cooperation.

Sincerely,



Signed by Giantelli, Adelaide
on 03/18/24

Adelaide S. Giantelli, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety and Safeguards

Enclosure:

Pennsylvania Draft IMPEP Report

cc: Dwight Shearer, P.E., Bureau Director
Pennsylvania Department of
Environmental Protection
Bureau of Radiation Protection



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM
REVIEW OF THE PENNSYLVANIA AGREEMENT STATE PROGRAM

January 29 – February 2, 2024

DRAFT REPORT

EXECUTIVE SUMMARY

The results of the Integrated Materials Performance Evaluation Program (IMPEP) review of the Pennsylvania Agreement State Program are discussed in this report. The review was conducted from January 29-February 2, 2024. Inspector accompaniments were conducted during the weeks of December 11 and December 18, 2023.

The team found Pennsylvania's performance to be satisfactory for all six performance indicators reviewed.

As a result of the licensing backlog and potential conflicts of non-standard license conditions identified in Section 3.4, *Technical Quality of Licensing Actions*, the team proposes two new recommendations:

- Develop a specific plan to reduce the backlog, including periodic checks between management and staff on the status of the backlog.
- Identify all non-standard licensing conditions, evaluate the need to retain the non-standard conditions, and submit any non-standard conditions to the NRC for a compatibility review, consistent with the guidance provided in SA-107 and SA-201.

Accordingly, the team recommends that the Pennsylvania radiation control program be found adequate to protect public health and safety and compatible with the NRC's program. Since Pennsylvania has had at least two consecutive IMPEP reviews with all performance indicators being found satisfactory, the team recommends that a periodic meeting be conducted in approximately 2.5 years and the next IMPEP review be conducted in approximately 5 years.

1.0 INTRODUCTION

The Pennsylvania Agreement State Program (Pennsylvania) Integrated Materials Performance Evaluation Program (IMPEP) review was conducted on January 29, 2024-February 2, 2024, by a team of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the states of Illinois, and Texas. Team members are identified in Appendix A. Inspector accompaniments were conducted during the weeks of December 11 and December 18, 2023. The inspector accompaniments are identified in Appendix B. The review was conducted in accordance with the "Agreement State Program Policy Statement," published in the *Federal Register* on October 18, 2017 (82 FR 48535), and NRC Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated July 24, 2019. Preliminary results of the review, which covered the period of January 12, 2019-February 2, 2024, were discussed with Pennsylvania's managers on the last day of the review.

In preparation for the review, a questionnaire addressing the common performance indicators and applicable non-common performance indicators was sent to Pennsylvania on October 24, 2023. Pennsylvania provided its response to the questionnaire on January 12, 2024. A copy of the questionnaire response is available in the NRC's Agencywide Documents Access and Management System (ADAMS) Accession Number [ML24022A234](#).

The Commonwealth of Pennsylvania's Agreement State Program is administered by the Bureau of Radiation Protection which is in the Department of Environmental Protection. The Program is managed by the Bureau Director, the Radiation Protection (RP) Program Manager, and the RP Program Supervisors for Inspection and Licensing. The Department of Environmental Protection is divided into six regional offices, with the RP Program housed in the three southern regions and each having a RP Manager, and a RP Supervisor. Organization charts for Pennsylvania are available in ADAMS Accession Number [ML24019A007](#).

At the time of the review, Pennsylvania regulated 479 specific licenses authorizing possession and use of radioactive materials. The review focused on the radiation control program as it is carried out under Section 274b. (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the Commonwealth of Pennsylvania.

The team evaluated the information gathered against the established criteria for each common and applicable non-common performance indicator(s) and made a preliminary assessment of Pennsylvania's performance.

2.0 PREVIOUS IMPEP REVIEW AND STATUS OF RECOMMENDATIONS

The previous IMPEP review concluded on Friday, January 11, 2019. The final report is available in ADAMS Accession Number [ML19105B133](#). The results of the review are as follows:

Technical Staffing and Training: Satisfactory
Recommendation: None

Status of Materials Inspection Program: Satisfactory
Recommendation: None

Technical Quality of Inspections: Satisfactory
Recommendation: None

Technical Quality of Licensing Actions: Satisfactory
Recommendation: None

Technical Quality of Incident and Allegation Activities: Satisfactory
Recommendation: None

Legislation, Regulations, and Other Program Elements (formerly Compatibility Requirements):
Satisfactory
Recommendation: None

Overall finding: Adequate to protect public health and safety, and compatible with the NRC's program.

3.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review the NRC and Agreement State radiation control programs. 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.

3.1 Technical Staffing and Training

The ability to conduct effective licensing and inspection programs is largely dependent on having experienced, knowledgeable, well-trained technical personnel. Under certain conditions, staff turnover could have an adverse effect on the implementation of these programs and could affect public health and safety. Apparent trends in staffing must be assessed. Review of staffing also requires consideration and evaluation of the levels of training and qualification. The evaluation standard measures the overall quality of training available to, and taken by, materials program personnel.

a. Scope

The team used the guidance in State Agreements procedure (SA) [SA-103](#), "Reviewing the Common Performance Indicator: Technical Staffing and Training," and evaluated Pennsylvania's performance with respect to the following performance indicator objectives:

- A well-conceived and balanced staffing strategy has been implemented throughout the review period.
- Any vacancies, especially senior-level positions, are filled in a timely manner.
- There is a balance in staffing of the licensing and inspection programs.
- Management is committed to training and staff qualification.
- Agreement State training and qualification program is equivalent to NRC Inspection Manual Chapter (IMC) 1248, "Formal Qualifications Program for Federal and State Material and Environmental Management Programs.
- Qualification criteria for new technical staff are established and are followed, or qualification criteria will be established if new staff members are hired.
- Individuals performing materials licensing and inspection activities are adequately qualified and trained to perform their duties.
- License reviewers and inspectors are trained and qualified in a reasonable period.

b. Discussion

Pennsylvania is comprised of 54 staff members which equals 33.8 full-time equivalent (FTE) for the radiation control program when fully staffed. This includes 13 managers, 4 administrative staff, 4 attorneys, and the remaining are technical staff. During the review

period, 13 staff members left the program and 12 staff members were hired. There were four vacancies at the time of the review. Three of the vacancies were due to staff promotions and one position was added to the Decommissioning Section. The vacancies were open from one week to one year. Staff track their refresher training which is also reviewed by the Section Chief. Management has been supportive of the staff attending training and providing opportunities for training. No impacts from the pandemic were identified.

c. Evaluation

The team determined that, during the review period, Pennsylvania met the performance indicator objectives listed in Section 3.1.a. Based on the criteria in MD 5.6, the team recommends that Pennsylvania's performance with respect to the indicator, Technical Staffing and Training, be found satisfactory.

d. MRB Discussion and Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

3.2 Status of Materials Inspection Program

Inspections of licensed operations are essential to ensure that activities are being conducted in compliance with regulatory requirements and consistent with good safety and security practices. The frequency of inspections is specified in [IMC 2800](#), "Materials Inspection Program," and is dependent on the amount and type of radioactive material, the type of operation licensed, and the results of previous inspections. There must be a capability for maintaining and retrieving statistical data on the status of the inspection program.

a. Scope

The team used the guidance in [SA-101](#), "Reviewing the Common Performance Indicator: Status of the Materials Inspection Program," and evaluated Pennsylvania's performance with respect to the following performance indicator objectives:

- Initial inspections and inspections of Priority 1, 2, and 3 licensees are performed at the prescribed frequencies (<https://www.nrc.gov/materials/miau/mat-toolkits.html>).
- Deviations from inspection schedules are normally coordinated between technical staff and management.
- There is a plan to perform any overdue inspections and reschedule any missed or deferred inspections or a basis has been established for not performing any overdue inspections or rescheduling any missed or deferred inspections.
- Candidate licensees working under reciprocity are inspected in accordance with the criteria prescribed in IMC 2800 and other applicable guidance or compatible Agreement State Procedure.
- Inspection findings are communicated to licensees in a timely manner (30 calendar days, or 45 days for a team inspection), as specified in [IMC 0610](#), "Nuclear Material Safety and Safeguards Inspection Reports."

b. Discussion

Pennsylvania performed 610 Priority 1, 2, and 3 inspections, and 7 Initial inspections during the review period. During the review it was found Pennsylvania conducted 3.7 percent of these inspections overdue (23 of 610 priority 1, 2, and 3 inspections, and zero out of 7 initial

inspections). This is an increase compared to Pennsylvania's previous performance of zero overdue inspections noted in the 2019 IMPEP review.

Pennsylvania's pandemic plan was initiated on March 13, 2020, and ended June 17, 2021. The southeast (SE) and southcentral (SC) regions were impacted more than the southwest (SW) region. The SE region and the SC region performed remote inspections and followed up with on-site inspections within a year. The SW region resumed on-site inspections in June 2020.

During the evaluation of 27 inspections, there were two inspections communicated past the 30-day goal. The late reports were from the SC region and the SE region. The report from the SC region was overdue by 17 days and the SE region was overdue 49 days, due to personnel issues.

Pennsylvania has a 20 percent reciprocity target, consistent with the previous version of NRC's IMC 2800. Pennsylvania performed 30 percent of reciprocity inspections in 2019, 28 percent in 2020, 18 percent in 2021, 39 percent in 2022, and 48 percent in 2023. Pennsylvania met their 20 percent target during the review period, except for 2021. The reciprocity inspections in 2021 were impacted by the pandemic; however, Pennsylvania was only 2 percent below the target.

c. Evaluation

The team determined that, during the review period, Pennsylvania met the performance indicator objectives listed in Section 3.2a. Based on the criteria in MD 5.6, the team recommends that Pennsylvania performance with respect to the indicator, Status of Materials Inspection Program, be found Satisfactory.

d. Management Review Board (MRB) Discussion and Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

3.3 Technical Quality of Inspections

Inspections, both routine and reactive, provide reasonable assurance that licensee activities are carried out in a safe and secure manner. Accompaniments of inspectors performing inspections and the critical evaluation of inspection records are used to assess the technical quality of an inspection program.

a. Scope

The team used the guidance in [SA-102](#), "Reviewing the Common Performance Indicator: Technical Quality of Inspections," and evaluated Pennsylvania's performance with respect to the following performance indicator objectives:

- Inspections of licensed activities focus on health, safety, and security.
- Inspection findings are well-founded and properly documented in reports.
- Management promptly reviews inspection results.
- Procedures are in place and used to help identify root causes and poor licensee performance.
- Inspections address previously identified open items and violations.
- Inspection findings lead to appropriate and prompt regulatory action.

- Supervisors, or senior staff as appropriate, conduct annual accompaniments of each inspector to assess performance and assure consistent application of inspection policies.
- For Programs with separate licensing and inspection staffs, procedures are established and followed to provide feedback information to license reviewers.
- An adequate supply of calibrated survey instruments is available to support the inspection program.

b. Discussion

The team evaluated 26 inspection reports and enforcement documentation, and interviewed inspectors involved in materials inspections conducted during the review period. The team reviewed casework for inspections conducted by 21 of Pennsylvania's inspectors and covered medical, industrial, commercial, academic, research, and service licenses.

Team members accompanied six inspectors during the weeks of December 11, 2023, and December 18, 2023. The inspector accompaniments are identified in Appendix B. The accompaniments included medical broad scope, medical therapy, nuclear laundry, portable gauge, and industrial radiography. The inspectors were well prepared and performed their inspections using a risk-informed performance-based approach. The inspectors were knowledgeable of the requirements for each license type and were able to identify potential health, safety, and security concerns. The team noted that supervisory accompaniments were performed annually for all qualified inspectors in each year of the review period except for one instance in 2023, due to events outside of Pennsylvania's control that affected the work status of the employee and the supervisor. The supervisory accompaniment is scheduled to be completed in April 2024. As part of this IMPEP review, this inspector was accompanied by an IMPEP team member with no issues noted.

The team noted that Pennsylvania's inspection results were well documented, and violations were well supported. Pennsylvania followed NRC inspection procedures and guidance documents. The team did not note any impact to the inspection program due to the pandemic.

The team verified that Pennsylvania maintained an adequate supply of appropriate and calibrated survey instruments to support the inspection program and to respond to radioactive materials incidents.

c. Evaluation

The team determined that, during the review period, Pennsylvania met the performance indicator objectives listed in Section 3.3.a. Based on the criteria in MD 5.6, the team recommends that Pennsylvania's performance with respect to the indicator, Technical Quality of Inspections be found satisfactory.

d. MRB Discussion and Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

3.4 Technical Quality of Licensing Actions

The quality, thoroughness, and timeliness of licensing actions can have a direct bearing on public health and safety, as well as security. An assessment of licensing procedures, implementation of those procedures, and documentation of communications and associated

actions between the Pennsylvania licensing staff and regulated community is a significant indicator of the overall quality of the licensing program.

a. Scope

The team used the guidance in [SA-104](#), "Reviewing the Common Performance Indicator: Technical Quality of Licensing Actions," and evaluated Pennsylvania's performance with respect to the following performance indicator objectives:

- Licensing action reviews are thorough, complete, consistent, and of acceptable technical quality with health, safety, and security issues properly addressed.
- Essential elements of license applications have been submitted and elements are consistent with current regulatory guidance (e.g., pre-licensing guidance, Title 10 of the *Code of Federal Regulations* (CFR) Part 37, financial assurance, etc.).
- License reviewers, if applicable, have the proper signature authority for the cases they review independently.
- License conditions are stated clearly and can be inspected.
- Deficiency letters clearly state regulatory positions and are used at the proper time.
- Reviews of renewal applications demonstrate a thorough analysis of a licensee's inspection and enforcement history.
- Applicable guidance documents are available to reviewers and are followed (e.g., NUREG-1556 series, pre-licensing guidance, regulatory guides, etc.).
- Licensing practices for risk-significant radioactive materials (RSRM) are appropriately implemented including the physical protection of Category 1 and Category 2 quantities of radioactive material (10 CFR Part 37 equivalent).
- Documents containing sensitive security information are properly marked, handled, controlled, and secured.

b. Discussion

During the review period, Pennsylvania performed 2,333 radioactive materials licensing actions. The team evaluated 19 of those licensing actions. The licensing actions selected for review included 9 new applications, 6 amendments, 3 renewals, and 1 termination. The team evaluated casework from four license reviewers which included the following license types: broad scope, medical diagnostic and therapeutic, commercial manufacturing and distribution, industrial radiography, research and development, veterinary, academic, nuclear pharmacy, gauges, panoramic irradiators, well-logging, decommissioning, bankruptcies, and change of ownership notifications.

In reviewing the license files and through interviews with licensing staff, the team determined that staff members are consistently following the Pennsylvania program's procedures and license templates, using NRC NUREG-1556 series licensing and other guidance, in completing its licensing reviews. The team observed that licensing actions were well documented and addressed health, safety, and security issues. Renewal applications demonstrated a thorough analysis of the licensee's inspection and enforcement history. Staff obtained all necessary licensee commitments, and deficiency letters were well supported by information contained in the licensing files. In reviewing standard conditions found on the licensing actions, the team observed that they primarily were clear, inspectable, and consistent with regulatory requirements. The team determined that appropriate financial assurance instruments were properly submitted when required, and that licenses and other documents containing sensitive security-related or protected information were properly marked and secured in accordance with their procedures for controlling sensitive information.

The team assessed Pennsylvania's use of NRC's "Checklist to Provide a Basis for Confidence that Radioactive Material will be used as Specified on the License" (pre-licensing guidance) and the pre-licensing site visits in evaluating new license applications. The team concluded that Pennsylvania conducted pre-licensing site visits for all unknown entities in accordance with the checklist, and properly implemented the guidance. The team noted that Pennsylvania performs pre-licensing visits for all new licenses and terminations, whether identified during the pre-licensing review or not.

The team evaluated Pennsylvania's use of the NRC's RSRM Checklist. The team determined that the Pennsylvania program is completing on-site security reviews for any new license applications requesting RSRM, new RSRM location of use authorizations, and possession limit increases that would be identified using the NRC's RSRM checklist.

In reviewing Pennsylvania's logs of pending and completed licensing actions, the team noted that Pennsylvania had a significant backlog of complex licensing actions, including 16 renewals pending for over 1 year and 26 amendments pending for over 3 months. The team determined that most of the backlog was affected by in-office work restrictions during the pandemic. Although Pennsylvania program management is committed to reducing the backlog within the 2024 calendar year, the team is concerned about the complexity of the backlog and the lack of a specific plan to accomplish this. The lack of a specific plan could pose future challenges to the program, especially as staff transition to retirement or other responsibilities and the open actions remain.

Although licenses mostly were inspectable and clear, several license conditions were identified as being inconsistent with NRC regulations, such as sealed source inventory requirements, time periods for recordkeeping requirements, and portable device control requirements. The team found several instances where Pennsylvania had not submitted non-standard conditions to the NRC for a compatibility review, consistent with the guidance in SA-107 and SA-201.

The team noted that Pennsylvania program typically dispositions routine, low-complexity license amendment requests, such as new portable gauge storage locations or certain new medical authorized user additions in less than 10 days. The quick attention to routine actions reduces the program's administrative burdens and permits staff to focus on more complex and safety-significant issues.

Pennsylvania has also improved the quality and completeness of licensing requests it receives by routinely including detailed application guidance, such as the types of items to attach or statements to confirm, in its Notice of Expiration reminder letters. Similarly, when the program becomes aware of an entity's plans to submit a new license application, it sends a letter containing similar details to the prospective new license applicant, allowing reviewers to quickly address the technical aspects of the reviews.

The team also noted that Pennsylvania has created a variety of internal tools, such as checklists for evaluating requests for emerging medical technology authorizations, designed to highlight key items from NRC's emerging technologies guidance. The clarity of these tools improved staff's ability to review the diverse and complex array of radioactive materials use applications in use in Pennsylvania.

c. Evaluation

The team determined that, during the review period, Pennsylvania met the performance indicator objectives listed in Section 3.4.a. Based on the criteria in MD 5.6, the team recommends that Pennsylvania's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory.

Due to the issues associated with Pennsylvania's licensing backlog and non-standard licensing conditions, the team is making the following two recommendations:

- Develop a specific plan to reduce the backlog, including periodic checks between management and staff on the status of the backlog.
- Identify all non-standard licensing conditions, evaluate the need to retain the non-standard conditions, and submit any non-standard conditions to the NRC for a compatibility review, consistent with the guidance provided in SA-107 and SA-201.

d. MRB Discussion and Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

3.5 Technical Quality of Incident and Allegation Activities

The quality, thoroughness, and timeliness of response to incidents and allegations of safety concerns can have a direct bearing on public health, safety and security. An assessment of incident response and allegation investigation procedures, actual implementation of these procedures internal and external coordination, timely incident reporting, and investigative and follow-up actions, are a significant indicator of the overall quality of the incident response and allegation programs.

a. Scope

The team used the guidance in [SA-105](#), "Reviewing the Common Performance Indicator: Technical Quality of Incident and Allegation Activities," and evaluated Pennsylvania's performance with respect to the following performance indicator objectives:

- Incident response and allegation procedures are in place and followed.
- Response actions are appropriate, well-coordinated, and timely.
- On-site responses are performed when incidents have potential health, safety, or security significance.
- Appropriate follow-up actions are taken to ensure prompt compliance by licensees.
- Follow-up inspections are scheduled and completed, as necessary.
- Notifications are made to the NRC Headquarters Operations Center for incidents requiring a 24-hour or immediate notification to the Agreement State or NRC.
- Incidents are reported to the Nuclear Material Events Database (NMED) and closed when all required information has been obtained.
- Allegations are investigated in a prompt, appropriate manner.
- Concerned individuals are notified within 30 days of investigation conclusions.
- Concerned individuals' identities are protected, as allowed by law.

b. Discussion

During the review period, 86 incidents were reported to Pennsylvania. The team evaluated 24 radioactive materials incidents. The casework reviewed included: six events involving lost or stolen radioactive materials; one potential overexposure; seven medical events including one Abnormal Occurrence; seven incidents involving damaged equipment; one leaking source; one contamination event; and one transportation incident.

When an event is reported to Pennsylvania, the program's process is to perform an on-site reactive inspection regardless of the safety significance of the incident. Pennsylvania dispatched inspectors for on-site follow-up to evaluate 21 of the events reviewed. For the three other events reviewed, Pennsylvania performed a virtual reactive inspection due to impacts from pandemic. These three events were of low safety significance and Pennsylvania's response was adequate to appropriately evaluate the events. The team found that Pennsylvania's evaluation of incident notifications and its response to those incidents was thorough, well balanced, complete, and comprehensive.

The team also evaluated Pennsylvania's reporting of incidents to the NRC's Headquarters Operations Officer (HOO). The team noted that in each case requiring HOO notification, Pennsylvania reported the incidents within the required timeframe. The team also evaluated whether Pennsylvania had not reported any required incidents to the HOO. The team did not identify any missed reporting requirements. Pennsylvania updated and closed out event records in the NRC's National Material Events Database in a timely manner.

During the review period, four allegations were received by Pennsylvania. The team evaluated all allegations, including three allegations that the NRC referred to the State, during the review period. Pennsylvania took prompt and appropriate action in response to the concerns raised. All allegations reviewed were appropriately closed and concerned individual's identities were protected whenever possible in accordance with State law.

c. Evaluation

The team determined that, during the review period, Pennsylvania met the performance indicator objectives listed in Section 3.5.a. Based on the criteria in MD 5.6, the team recommends that Pennsylvania's performance with respect to the indicator, Technical Quality of Incident and Allegation Activities, be found satisfactory.

d. MRB Discussion and Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

4.0 NON-COMMON PERFORMANCE INDICATORS

Four non-common performance indicators are used to review Agreement State programs: (1) Legislation, Regulations, and Other Program Elements; (2) Sealed Source and Device (SS&D) Evaluation Program; (3) Low-Level Radioactive Waste (LLRW) Disposal Program; and (4) Uranium Recovery (UR) Program. The NRC retains regulatory authority for SS&D Evaluation Program, LLRW Disposal Program, and UR Program; therefore, only the Legislation, Regulations, and Other Program Elements performance indicator applied to this review.

4.1 Legislation, Regulations, and Other Program Elements

State statutes should authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under the State's agreement with the NRC. The statutes must authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of adequate protection of public health, safety, and security. The State must be authorized through its legal authority to license, inspect, and enforce legally binding requirements, such as regulations and licenses. The NRC regulations that should be adopted by an Agreement State for purposes of compatibility or health and safety should be adopted in a time frame so that the effective date of the State requirement is not later than 3 years after the effective date of the NRC's final rule. Other program elements that have been designated as necessary for maintenance of an adequate and compatible program should be adopted and implemented by an Agreement State within 6 months following NRC designation. A Program Element Table indicating the Compatibility Categories for those program elements other than regulations can be found on the NRC Web site at the following address: <https://scp.nrc.gov/regtoolbox.html>.

a. Scope

The team used the guidance in [SA-107](#), "Reviewing the Non-Common Performance Indicator: Legislation, Regulations, and Other Program Elements," and evaluated Pennsylvania's performance with respect to the following performance indicator objectives. A complete list of regulation amendments can be found on the NRC website at the following address: <https://scp.nrc.gov/regtoolbox.html>.

- The Agreement State program does not create conflicts, duplications, gaps, or other conditions that jeopardize an orderly pattern in the regulation of radioactive materials under the Atomic Energy Act, as amended.
- Regulations adopted by the Agreement State for purposes of compatibility or health and safety were adopted no later than 3 years after the effective date of the NRC regulation.
- Other program elements, as defined in [SA-200](#) that have been designated as necessary for maintenance of an adequate and compatible program, have been adopted and implemented within 6 months of NRC designation.
- The State statutes authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under the agreement.
- The State is authorized through its legal authority to license, inspect, and enforce legally binding requirements such as regulations and licenses.
- Sunset requirements, if any, do not negatively impact the effectiveness of the State's regulations.

b. Discussion

The Commonwealth of Pennsylvania became an Agreement State on March 31, 2008. Legislative authority to create a radiation control program and enter into an Agreement with the NRC is granted in the Pennsylvania Statutes, Radiation Protection Act (Act 1984-147), as amended. The regulations in the Commonwealth of PA are not subject to "Sunset" laws. The following legislation affecting the Program had been passed since the IMPEP review:

- Radiation Protection Act, Act 1984-147, amendments to the Radiation Protection Act, October of 2014, also known as Act 2014-190
- Appalachian States Low-Level Radioactive Waste Compact Act, Act 1985-120

- Low-Level Radioactive Waste Disposal Act, Act 1988-12
- Low-Level Radioactive Waste Disposal Regional Facility Act, Act 1990-107

The rulemaking process takes approximately two years to complete which includes a public comment period. The Program adopts regulations required for purposes of compatibility by reference as written on a specific date. Since the state adopts applicable NRC regulations by reference this streamlined the states adoption process and there were no regulations overdue for adoption. The State Regulation Status (SRS) sheet maintained by NRC is correct. The Program submitted a single package containing 13 final regulation amendments to the NRC for a compatibility review on Wednesday, January 31, 2024. The letter pertained to RATS ID's 2018-1 through 2023-1. Even though Pennsylvania adopts by reference, they still need to provide to NRC notification that they are aware of the regulatory changes and that their adoption by reference will cover the new rule(s).

The team also reviewed other program elements that fall within this non-common performance indicator. Those other program elements are the use of compatible procedures such as the Risk-Significant Radioactive Materials (RSRM) checklist, Pre-licensing guidance, IMC 1248, IMC NUREG 1556, and NRC inspection procedures, and license conditions.

c. Evaluation

The team determined that, during the review period, Pennsylvania met the performance indicator objectives listed in Section 4.1.a., and based on the criteria in MD 5.6, recommended that Pennsylvania's performance with respect to the indicator, Legislation, Regulations, and Other Program Elements, be found satisfactory.

d. MRB Discussion and Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

5.0 SUMMARY

The team found Pennsylvania's performance satisfactory for all six performance indicators reviewed.

As a result of the licensing backlog and potential conflicts of non-standard license conditions identified in Section 3.4, *Technical Quality of Licensing Actions*, the team proposes two new recommendations:

- Develop a specific plan to reduce the backlog, including periodic checks between management and staff on the status of the backlog.
- Identify all non-standard licensing conditions, evaluate the need to retain the non-standard conditions, and submit any non-standard conditions to the NRC for a compatibility review, consistent with the guidance provided in SA-107 and SA-201.

Accordingly, the team recommends that the Pennsylvania radiation control program be found adequate to protect public health and safety and compatible with the NRC's program. Since Pennsylvania has had at least two consecutive IMPEP reviews with all performance indicators being found satisfactory, the team recommends that a periodic meeting be conducted in approximately 2.5 years and the next IMPEP review be conducted in approximately 5 years.

LIST OF APPENDICES

Appendix A IMPEP Review Team Members

Appendix B Inspector Accompaniments

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	Areas of Responsibility
Darren Piccirillo, Region III	Team Leader Legislation, Regulations, and Other Program Elements
Farrah Gaskins, Region I	Technical Staffing and Training Inspector Accompaniments
Craig Sutton, Texas	Status of Materials Inspection Program
Robin Muzzalupo, Illinois	Technical Quality of Inspections
Sara Forster, Region III	Technical Quality of Licensing Actions
Allyce Bolger, NMSS	Technical Quality of Incident and Allegation Activities

APPENDIX B

INSPECTOR ACCOMPANIMENTS

The following inspector accompaniments were performed prior to the on-site IMPEP review:

Accompaniment No.: 1	License No.: PA-1073
License Type: Nuclear Laundry	Priority: 3
Inspection Date: 12/11/2023	Inspector's initials: SB

Accompaniment No.: 2	License No.: PA-0135
License Type: Medical Institution Broad Scope	Priority: 2
Inspection Date: 12/12/2023	Inspector's initials: EC

Accompaniment No.: 3	License No.: PA-1025
License Type: Portable Gauge	Priority: 5
Inspection Date: 12/13/2023	Inspector's initials: KH

Accompaniment No.: 4	License No.: PA-1165
License Type: Industrial Radiography	Priority: 1
Inspection Date: 12/18/2023	Inspector's initials: CS

Accompaniment No.: 5	License No.: PA-1609
License Type: Medical Therapy	Priority: 2
Inspection Date: 12/19/2023	Inspector's initials: MF

Accompaniment No.: 6	License No.: PA-1077
License Type: Industrial Radiography	Priority: 1
Inspection Date: 12/19/2023	Inspector's initials: BK

PENNSYLVANIA DRAFT IMPEP REPORT DATE March 19, 2024

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DATE	Mar 1, 2024	Mar 1, 2024	Mar 1, 2024	Mar 7, 2024
OFFICE	NMSS/MSST	NMSS/MSST/SMPB		
NAME	KWilliams <i>KW</i>	AGiantelli <i>AG</i>		
DATE	Mar 18, 2024	Mar 18, 2024		

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