



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

November 26, 2024

Michelle Miano, Director
Environmental Protection Division
New Mexico Environmental Department
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

SUBJECT: NEW MEXICO 2024 PERIODIC MEETING SUMMARY

Dear Ms Miano:

A periodic meeting with you and your staff was held on September 18, 2024. The purpose of this meeting was to review and discuss the status of the New Mexico Agreement State Program. The U.S. Nuclear Regulatory Commission (NRC) was represented by Tamara Bloomer, Director, Division of Radiological Safety and Security, NRC Region IV, and me.

I have completed and enclosed a general meeting summary. 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 to discuss your concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read "Randy Erickson", is written over a light blue horizontal line.

Signed by Erickson, Randy
on 11/26/24

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

Enclosure:
New Mexico Periodic Meeting Summary

cc: Dana Bahar, Deputy Director
Environmental Protection Division



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

PERIODIC MEETING WITH THE STATE OF NEW MEXICO

TYPE OF OVERSIGHT: NONE

September 18, 2024

PERIODIC MEETING PARTICIPANTS

NRC

- Tamara Bloomer, Director, Division of Radiological Safety and Security, Region IV
- Randy Erickson, State Agreements Officer, Region IV

New Mexico Radiation Control Bureau

- Michelle Miano, Director, Environmental Protection Division
- Michael Ortiz, Program Manager, Radiation Control Bureau
- Connie Joseph, Program Manager, Medical Imaging and Radiation Therapy
- Victor Diaz, Radiation Specialist

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 New Mexico. The meeting was held on September 18, 2024. The meeting was conducted in accordance with the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-116 "Periodic Meetings between IMPEP Reviews," dated June 3, 2009.

The New Mexico Agreement State Program is administered by the Radiation Control Bureau (the Bureau) which is in the Environmental Protection Division (the Division). At the time of the meeting, the Bureau regulated 211 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 New Mexico.

The Bureau remains mostly fee funded; however, it does periodically receive special appropriations and capital outlay funds from the New Mexico legislature. All fees collected go into a special revenue fund specifically for the Bureau's use. Any unexpended funds are returned to the fund and not returned to general revenue. The Bureau reported that on May 1, 2024, they received their first fee increase in 22 years. Prior to the 2024 fee increase, fee collection on average was approximately \$825K annually. The 2024 fee increase raised their annual budget to approximately \$2.3M, which will allow the Bureau to make organizational changes and expand the staff to continue to be responsive while better distributing the high workload that the staff had previously experienced.

The New Mexico Environmental Department is about to undertake a reorganization effort by creating a new Compliance and Enforcement Division within the agency. This new organization is scheduled to launch with the new fiscal year on July 1, 2025, and while it's not yet been fully developed, the new organizational structure is anticipated to potentially transition three of the Bureau's full-time inspection staff to the new Division. Currently Bureau staff are responsible for performing all the Bureau's licensing and inspection activities; however, with this reorganization, staff duties are anticipated to be limited to either inspection (within the new Division) or licensing (within the Bureau's current Division). These anticipated staffing realignments and the corresponding changes in line supervision, and how this might affect compatibility with NRC requirements was discussed with New Mexico managers during the meeting. Managers stated that they would keep this in mind as final reorganizational decisions are made.

The Bureau last underwent an Integrated Materials Performance Evaluation Program (IMPEP) review in September 2021. A Management Review Board (MRB) meeting to discuss the outcome of the IMPEP review was held on January 6, 2022.

Based on the findings as presented, the MRB found the Bureau's performance to be satisfactory for the following performance indicators: Technical Staffing and Training, Status of Materials Inspection Program, Technical Quality of Inspections, Technical Quality of Incident and Allegation Activities, and Legislation Regulations and Other Program Elements (LROPE). The Bureau was rated as satisfactory but needs improvement for the indicator Technical Quality of Licensing Actions. The MRB also found the Bureau adequate to protect public health and safety and compatible with the NRC's Program. The team made three new recommendations for improved program performance regarding tracking of initial inspections, implementing consistent use of the Risk-Significant Radioactive Materials (RSRM) Checklist, and processing renewal applications in accordance with current guidance; and concluded that the recommendation from

the 2017 IMPEP review regarding implementation of a well-conceived and balanced staffing strategy should remain open. Additionally, the MRB directed that two periodic meetings take place at approximately 18 and 36 months respectively, and that the next IMPEP review take place in approximately 4 years. The first of the two periodic meetings was held in April 2023 and this meeting was the second of the two scheduled periodic meetings. The IMPEP is tentatively scheduled for September 2025.

2.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review the NRC regional 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. Each of these indicators was discussed during the September 2024 periodic meeting.

2.1 Technical Staffing and Training (2021 IMPEP review: Satisfactory)

At the time of the September 2024 meeting, the Bureau had budgeted for a Bureau Chief, a Program Manager, 10 technical staff members, and 3 administrative staff members; however, due to vacancies occurring within the program, they currently had openings for the Bureau Chief and 4 technical staff equaling 5.52 full-time equivalents (FTE), down from 6.8 FTE at the time of the April 2023 periodic meeting and 5.8 FTE at the time of the September 2021 IMPEP review. After the September 2024 periodic meeting, on October 9, 2024, NRC received a call from the Deputy Director of the New Mexico Environmental Protection Division to inform us that the Program Manager had recently terminated employment, that the Bureau was left with no technical managers, and that the Director and Deputy Director of the Environmental Protection Division were acting in the Bureau's management positions until permanent replacements could be found.

Also, at the time of the September 2024 periodic meeting, two other supervisor positions and two licensing positions were also vacant. All the inspector positions were currently filled, although many of the staff in both the licensing and inspection positions were not yet fully trained, and were limited in what they could contribute to the program. New Mexico has prioritized staff training and continues to train their staff so they could achieve full qualification as rapidly as possible. One senior staff member retired following the April 2023 periodic meeting and then rejoined the agency as a contractor primarily to assist in training the staff on the more complex health, safety and security inspections. This individual also performs all shielding design reviews for the Bureau.

When the program reorganizes in 2025, they plan to create a new Naturally Occurring Radioactive Materials section with a supervisor and 4 technical staff members. While this plan initially increases the number of Bureau staff by approximately 50 percent, and as noted earlier in this report, the Division is tentatively considering transitioning the radioactive materials inspectors over to the newly formed Compliance and Enforcement Division.

The Bureau makes hiring a priority and they have been attempting to recruit individuals with Radioactive Materials experience or even full qualification if they can find them. Prior to the periodic meeting, the Bureau took anywhere from 10-24 months to find and hire qualified candidates primarily due to a lengthy hiring process. That process has been improved and at the present time, they can now onboard new staff in as little as 3 months.

At the time of the 2021 IMPEP review, the Bureau had a documented training plan for technical staff generally equivalent to the NRC's Inspection Manual Chapter 1248. This training plan includes a requirement that qualified licensing and inspection staff members complete 24 hours of continuing education every 24 months. One recommendation was made during the 2017 IMPEP review which continues to remain open:

Recommendation: The team recommends that the Bureau continues to implement a well-conceived and balanced staffing strategy to ensure the program's continued adequacy and compatibility.

Status: As the Bureau continues to implement its staffing strategy, they have hired new staff members and continue to train them. With the implementation of the new reorganization, they will have expanded staff, better salaries, and as staff continue to train, work will be better distributed across all staff in the program which is expected to improve efficiency.

2.2 Status of the Materials Inspection Program (2021 IMPEP review: Satisfactory)

During the 2021 IMPEP review, the team found that the Bureau had conducted 171 Priority 1, 2, 3 and initial inspections, of which 148 were routine inspections and 23 were initial inspections. Nine of the initial inspections had been performed overdue. While the team concluded that only 4.3 percent of inspections had been performed overdue, most of them were initial inspections which the Bureau reported were a result of database errors and in the tracking of new licenses following initial issuance. As a result, the team issued the following recommendation:

Recommendation: The team recommends that New Mexico Agreement State Program implement a method to track initial inspections to ensure that initial inspections are completed in accordance with the guidance outlined in the NRC's [IMC 2800](#), "Materials Inspection Program".

Status: The Bureau made changes to the database configuration and changed their processes to better track initial inspections and as a result, between the 2021 IMPEP review and the April 2023 periodic meeting, the Bureau had conducted 61 inspections with only two having been performed overdue, neither of those were initial inspections.

Since the April 2023 periodic meeting, the Bureau has performed an additional 62 inspections with only 3 having been performed overdue. Four initial inspections were performed, and none were performed overdue. Since the 2021 IMPEP review, a total of 39 initial inspections were performed with none of them being performed overdue.

The Bureau continues to conduct reciprocity inspections on a risk-informed basis. This allows the Bureau to determine which inspections are the most risk-significant instead of simply trying to meet a percentage. This also eases the pressure on the Bureau as their office is in the northern part of the state, and most reciprocity work is in the far southern part of the State many hours away from their office.

2.3 Technical Quality of Inspections (2021 IMPEP review: Satisfactory)

The Bureau uses inspection procedures that are consistent with the inspection guidance outlined in IMC 2800. Inspection frequencies, except for industrial radiography inspections, are performed more frequently than the frequencies identified in IMC 2800. All inspection reports had been reviewed by the Program Manager and the Bureau Chief prior to issuance. Inspector accompaniments continue to be performed for each qualified inspector on an annual basis.

2.4 Technical Quality of Licensing Actions (2021 IMPEP Review: Satisfactory but needs improvement)

The Bureau had 211 specific licensees at the time of the September 2024 periodic meeting. All licensing actions are completed by one license reviewer with a final review by the Bureau Chief or the Program Manager. Between the 2021 IMPEP review and the April 2023 periodic meeting, this reviewer completed 378 licensing actions. Between the April 2023 periodic meeting and the September 2024 periodic meeting, this reviewer completed an additional 56 licensing actions. Overall, since the 2021 IMPEP review, their license reviewer completed a total of 434 licensing actions comprised of 312 amendments, 83 renewals, and 39 new licenses being issued. All licenses are issued with a 5-year expiration date.

After the 2024 periodic meeting, a telephone call was held with the license reviewer who noted that New Mexico is significantly behind on issuing licensing actions. New Mexico licensing procedures limited secondary reviews of licensing actions to be performed by Bureau managers, and because at the time of the call, the Bureau did not have any managers available, the result was a slowdown in actions being issued. Following that call, a message was received from the Director of the Environmental Protection Division notifying NRC that New Mexico's licensing procedures had recently been revised to allow non-managerial qualified staff to conduct secondary reviews of licensing actions. Additionally, the former Director of the Radiation Control Bureau, who is a qualified licensing reviewer, has agreed to assist with secondary reviews of licensing actions up to four hours each week until the Bureau can bring on additional support. New Mexico is also currently working with a contractor to begin providing licensing support soon.

The 2021 IMPEP team found, in part, that licensing actions involving both amendments and renewals had not always been performed using current licensing guidance specified in the NUREG-1556 series or applicable license guidance documents for renewal applications. This resulted in the issuance of a recommendation:

Recommendation: The team recommends that New Mexico perform reviews of renewal applications in accordance with the criteria outlined in Section 4.4 of the NRC's NUREG-1556, Volume 20, Revision 1, or equivalent Agreement State procedure.

Status: The Bureau reported that all renewals are now performed in entirety and are not accepted with minimal information on the application indicating that there have been no changes in their operation.

The 2021 IMPEP team also reviewed, in part, the Bureau's use of the revised RSRM checklist and found that the checklist was not being used. And even though the team did not identify any missed identification of RSRM as a result of not adopting and implementing the most current version of the checklist, it is a program element which is required to be adopted and implemented by Agreement States. This resulted in the issuance of a recommendation:

Recommendation: The team recommends that New Mexico adopt and consistently implement the RSRM checklist for licensing actions that meet the criteria in the applicable guidance.

Status: The Bureau reported that the RSRM checklist is now being consistently used. They further reported that the Bureau is currently training another license reviewer to eventually be able to share the workload between the two reviewers, which should help to ensure that guidance is more consistently used.

2.5 Technical Quality of Incident and Allegation Activities (2021 IMPEP review: Satisfactory)

Since the 2021 IMPEP review, the Bureau has reported 7 events to the Nuclear Material Events Database and at the time of the September 2024 periodic meeting, one was still open awaiting closure. When an event is reported to the Bureau, it is routed to the staff member who manages the incident program to determine its health and safety significance and then with the assistance of management, together they determine the appropriate response. That response can range anywhere from responding immediately to reviewing the event during the next inspection. Enforcement actions were taken when appropriate. The Bureau responds to events in accordance with its established procedure.

From the time of the 2021 IMPEP review through the April 2023 periodic meeting, the Bureau had not received any allegations directly. NRC made no allegation referrals to the Bureau for the same time frame. Between the April 2023 periodic meeting and the September 2024 periodic meeting, NRC referred two allegations to New Mexico for review. They also received one from Texas which is currently still open and being resolved. It involved a radiography company who willfully worked repeatedly in New Mexico without filling for reciprocity. The Bureau follows-up with incidents and allegations using their established procedures.

3.0 NON-COMMON PERFORMANCE INDICATORS

Four non-common performance indicators are used to review Agreement State Programs: (1) Legislation, Regulations and Other Program Elements (LROPE), (2) Sealed Source and Device (SS&D) Evaluation Program, (3) Low-Level Radioactive Waste Disposal (LLRW) Program, and (4) Uranium Recovery Program. The NRC's Agreement with New Mexico does not relinquish regulatory authority for SS&D or UR; therefore, only the non-common performance indicators Compatibility Requirements and LLRW apply.

3.1 LROPE (2021 IMPEP review: Satisfactory)

No legislative actions affecting the Bureau had been passed since the 2021 IMPEP review. At the time of the 2021 IMPEP review, one amendment was found to be overdue. At the time of the April 2023 periodic meeting, the Bureau reported that they had one regulation package with 5 RATS IDs waiting to be assigned to an attorney. However, these regulations had already been adopted and were enforceable, making the Bureau up to date on all regulations. At the time of the September 2024 periodic meeting, the Bureau reported that no regulations were found to be overdue. Regulations applicable to the New Mexico Agreement State Program are not subject to sunset requirements.

3.2 LLRW Program (2021 IMPEP review: NR)

In 1981, the NRC amended its Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC 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. Those States with existing Agreements prior to 1981 were determined to have continued LLRW disposal authority without the need for an amendment. Although New Mexico has authority to regulate a LLRW disposal facility, the NRC has not required States to have a Program for licensing a disposal facility until the State has been designated as a host State for LLRW disposal. 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 program. There are no plans for a commercial LLRW disposal facility in New Mexico. Thus New Mexico does not currently have a licensing or inspection program for LLRW facilities.

4.0 SUMMARY

The New Mexico Agreement State Program is a program that is facing challenges. Both the Bureau Chief and the Program Manager have left employment, senior Division managers are in an acting capacity, only one individual is fully qualified for both inspection and licensing, and one individual is fully qualified for inspections only. Other staff are new and limited in the contributions they can make to the program, and there are several vacant positions. The agency is moving forward with a reorganization effort, which will divert some of their current employees to the new division. Licensing had slowed due to the lack of Bureau management who can perform a secondary review although that has recently been addressed on a limited basis. The Bureau has received its first fee increase in 22 years, and they are current on inspections. They continue to respond to incidents and allegations in accordance with their established procedures and are mostly current on rule development.

NRC staff recommends that the next IMPEP review for the New Mexico Program be conducted as scheduled in 2025. The Bureau did not request an MRB meeting following the periodic meeting.

NEW MEXICO 2024 PERIODIC MEETING SUMMARY DATE November 26, 2024

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