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

APR 16 1993

Mr. Jerry Griepentrog-Carlin, Director
Department of Human Resources
505 East King Street
Carson City, NV 89710

Dear Mr. Griepentrog-Carlin:

This letter confirms the discussion Jack Hornor and Teresa Darden held with Ms. Crawford, Deputy Director, Department of Human Resources and your staff on March 5, 1993, following our review of the State's radiation control program.

As a result of our review of the State's program and the routine exchange of information between the NRC and the State, the NRC review team determined that the State's program for regulating agreement materials is adequate to protect the public health and safety. However, a finding of compatibility is being withheld because of the State's failure to make the necessary amendments to their regulations in a timely manner.

Status and Compatibility of Regulations is a Category I Indicator. For those regulations deemed a matter of compatibility by the NRC, State regulations should be amended as soon as practicable but no later than three years from the published date of NRC regulations.

a. The NRC decommissioning rule was amended on July 27, 1988, making the State's time limit for adoption July 27, 1991. Although the Nevada regulations were last updated on November 20, 1991, the financial requirements in the decommissioning rule were not adopted.

b. The time limit for adopting the emergency planning rule is April 7, 1993; however, the promulgation process has not begun.

Both amendments are matters of compatibility.

Uniformity among regulatory agencies is an important part of the Agreement State Program and we urge your staff to make every effort to expedite the final adoption of these rules and the others identified in Enclosure 2.

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APR 16 1993

Problems were also found in two other Category I Indicators, Enforcement Procedures and Technical Quality of Licensing Actions. These issues, which are further addressed in Enclosure 2, were discussed at length with Ms. Crawford, Ms. Yvonne Sylva, Acting Administrator, Nevada Health Division, and other members of upper management who gave us strong commitments that these problems will be corrected. These problems will be evaluated during a follow-up review in approximately twelve months. The finding of adequacy may be reconsidered at that time.

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

Enclosure 2 contains our summary of the review findings which were discussed during meetings with the staff. At the exit meeting we explained that we request specific responses to the comments and recommendations. You may wish to ask Mr. Stanley Marshall, Supervisor, Radiological Health Section to respond to Enclosure 2.

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

I appreciate the courtesy and cooperation extended the NRC staff during the review. I am looking forward to your response to our comments regarding the Category I Indicator, Status and Compatibility of Regulations and to your staff responses to the Enclosure 2 comments and recommendations.

Sincerely,

original signed by Carlton Kammerer

Carlton Kammerer, Director
Office of State Programs

Enclosures:
As stated

cc w/encls:
Yvonne Sylva, Acting Administrator, Nevada Health Division
Stanley Marshall, Supervisor, Nevada Radiological Health Section
James M. Taylor, Executive Director for Operations, NRC
John B. Martin, Regional Administrator, NRC Region V
Robert R. Loux, State Liaison Officer, Nevada
State Public Document Room
NRC Public Document Room

by E-mail by E-mail by E-mail

OFC	OSP:SA	RV:SAO	RV:DRSS	RV:RA	SP:SA:AD		
NME	CMaupin:dd	JHornor	RScarano	JMartin	VMiller		
DTE	04/22/93	04/11/93	04/17/93	04/17/93	4/6/93		

OFC	OSP:DD	NMSS:D	OSP:D	DEDS	EDO	
NME	SSchwartz	RBernero	CKammerer	HLThompson	JMTaylor	
DTE	04/ 7 /93	04/9/93	04/13/93	04/16/93	04/17/93	

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APPLICATION OF "GUIDELINES FOR NRC REVIEW OF AGREEMENT STATE RADIATION CONTROL PROGRAMS"

The "Guidelines for NRC Review of Agreement State Radiation Control Programs" were published in the Federal Register on May 28, 1992, as an NRC Policy Statement. The guidelines provide 30 indicators for evaluating Agreement State program areas. Guidance as to their relative importance to an Agreement State program is provided by categorizing the indicators into two categories.

Category I indicators address program functions which directly relate to the State's ability to protect the public health and safety. If significant problems exist in one or more Category I indicator areas, then the need for improvements may be critical.

Category II indicators address program functions which provide essential technical and administrative support for the primary program functions. Good performance in meeting the guidelines for these indicators is essential in order to avoid the development of problems in one or more of the principal program areas, i.e, those that fall under Category I indicators. Category II indicators frequently can be used to identify underlying problems that are causing, or contributing to, difficulties in Category I indicators.

It is the NRC's intention to use the categories in the following manner. In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety and is compatible with the NRC's program. If one or more Category I comments are noted as significant, the State will be notified that the program deficiencies may seriously affect the State's ability to protect the public health and safety and that the need for improvement in particular program areas is critical. The NRC would request an immediate response. If, following receipt and evaluation, the State's response appears satisfactory in addressing the significant Category I comments, the staff may offer findings of adequacy and compatibility as appropriate or defer such offering until the State's actions are examined and their effectiveness confirmed in a subsequent review. If additional information is needed to evaluate the State's actions, the staff may request the information through follow-up correspondence or perform a follow-up or special, limited review. NRC staff may hold a special meeting with appropriate State representatives. No significant items will be left unresolved over a prolonged period.

If the State program does not improve or if additional significant Category I deficiencies have developed, a staff finding that the program is not adequate will be considered and the NRC may institute proceedings to suspend or revoke all or part of the Agreement in accordance with Section 274j of the Act, as amended. The Commission will be informed of the results of the reviews of the individual Agreement State programs, and copies of the review correspondence to the States will be placed in the NRC Public Document Room.

SUMMARY OF ASSESSMENTS AND COMMENTS
FOR THE NEVADA RADIATION CONTROL PROGRAM
APRIL 26, 1991 TO MARCH 5, 1993

SCOPE OF REVIEW

This program review was conducted in accordance with the Commission's Policy Statement for reviewing State Agreements Program published in the Federal Register on May 28, 1992, and the internal procedures established by the Office of State Programs, Agreement States Program. The State's program was reviewed against the 30 program indicators provided in the Guidelines. The review included inspector accompaniments, discussions with program management and staff, technical evaluation of selected license and compliance files, and the evaluation of the State's responses to an NRC questionnaire that was sent to the State in preparation for the review.

The 16th regulatory program review meeting with Nevada representatives was held during the period March 1-5, 1993, in Carson City. The State was represented by Stanley Marshall, Supervisor, Radiologic Health Section.

Selected license and compliance files were reviewed by Jack Hornor, Regional State Agreements Officer, Region V, assisted by Teresa Darden, Acting Regional State Agreements Officer, Region I. During his visit to the Las Vegas Regional office on February 15-18, 1993, Mr. Hornor conducted two inspector accompaniments, including an inspection of the Beatty low-level waste burial site.

A summary meeting regarding the results of the review was held with Charlotte Crawford, Deputy Director, Department of Human Resources, on March 5, 1993.

CONCLUSION

The State's program for controlling agreement materials is adequate to protect the public health and safety but a finding of compatibility was withheld because of the State's failure to adopt the decommissioning rule. Problems were found in two other Category I Indicators, Enforcement Procedures and Technical Quality of Licensing Actions. These infractions were considered less significant but need correction as soon as possible. During the exit meeting, Ms. Crawford and the other State managers gave the NRC their strong commitment to correct these problems immediately. The State's corrective actions to these problems should be evaluated during a follow-up review in approximately 12 months, and a finding of adequacy should be reconsidered at that time.

ENCLOSURE 2

STATUS OF PROGRAM RELATED TO PREVIOUS NRC FINDINGS

The results of the previous review were reported to the State in a letter to Mr. Griepentrog dated June 5, 1991. All comments made at that time were satisfactorily resolved and closed out prior to the April 3, 1992 visit.

CURRENT REVIEW COMMENTS AND RECOMMENDATIONS

All 30 program indicators were reviewed and the State fully satisfies 25 of these indicators. Specific comments and recommendations for the remaining five indicators are as follows:

I. Status and Compatibility of Regulations is a Category I Indicator. We consider the following comment to be significant.

Guideline Statement

For those regulations deemed a matter of compatibility by the NRC, State regulations should be amended as soon as practicable but no later than three years from the published date of the NRC regulation.

Comment

Review of the State's radiation control regulations disclosed that the State's regulations are compatible with the NRC regulations up to the 10 CFR Parts 30, 40, and 70 amendments on decommissioning that became effective on July 27, 1988. This decommissioning amendment is a matter of compatibility. In a letter dated September 14, 1990, we informed the States that the Commission planned to include a formal comment in its review letters to any State that has not adopted the Decommissioning Rule by the three year target date, i.e., July 27, 1991.

Other regulations have been adopted by NRC that are also matters of compatibility. These regulations are identified below with the Federal Register (FR) notice and the date that the State needs to adopt the regulation to maintain compatibility.

- "Emergency Planning Rule," 10 CFR Parts 30, 40, and 70 amendments (54 FR 14051) needed by April 7, 1993.
- "Standards for Protection Against Radiation," 10 CFR Part 20 amendment (56 FR 61352) needed by January 1, 1994.

- "Safety Requirements for Radiographic Equipment," 10 CFR Part 34 amendment (55 FR 843) needed by January 10, 1994.

- "Notification of Incidents," 10 CFR Parts 20, 31, 34, 39, 40, and 70 amendments (55 FR 40757) needed by October 15, 1994.

- "Quality Management Program and Misadministrations," 10 CFR Part 35 amendment (56 FR 153) needed by January 27, 1995.

We were advised that the State has not begun to work on these changes.

Recommendation

During the review meeting, the State presented a plan to adopt all outstanding compatibility regulations by January 1994. We recommend that the State make an effort to exceed that goal by devoting the necessary staff resources to the task. We also suggest that in the future the State initiate the process of revising regulations with sufficient lead time to meet the target date. The State should also consider the use of the Suggested State Regulations to expedite their rulemaking process.

II. Enforcement Procedures is a Category I Indicator.

Guideline Statement

Enforcement Procedures should be sufficient to provide a substantial deterrent to licensee noncompliance with regulatory requirements. Written procedures should exist for handling escalated enforcement cases of varying degrees. Enforcement procedure letters should be issued within 30 days following inspections and should employ appropriate regulatory language clearly specifying all items of noncompliance and health and safety matters identified during the inspection and referencing the appropriate regulation or license condition being violated.

Comments

A. Except for low-level waste inspection, the State has no procedures establishing escalated enforcement action assigned to various severity levels of violations.

B. Although the State took appropriate escalated enforcement in some instances, during our review of a representative sample of 11 compliance files, we found the following examples of inadequate enforcement action:

1. One case in which a hospital was cited for 16 violations including four repeated from the previous inspection. No escalated enforcement action was taken although the licensee was apparently operating with knowledge of being in violation.

2. One case in which the State took no further escalated enforcement action after a licensee they felt was willfully disregarding regulations failed to show at a scheduled enforcement conference.

3. Three other cases in which appropriate escalated enforcement actions were not taken in response to numerous violations, including several repeats.

4. Three "items of concern" identified in enforcement letters should have been cited as items of noncompliance.

C. A computer listing of inspections performed since the April 1991 review showed that of 48 enforcement letters sent, seven letters failed to be sent within the 30 day timeframe following the inspection; in fact, six exceeded 60 days and one exceeded 90 days.

Recommendations

(1) We recommend that increased management oversight be provided to the enforcement program.

(2) We recommend that the State develop and implement written enforcement procedures which specify actions to be taken at various levels of severity. The Conference of Radiation Control Program Directors, Inc.'s E.15 procedures provide guidance in developing these procedures.

(3) We recommend that the State consider various methods of escalated enforcement actions used by other States without civil penalties. These could include follow-up inspections, enforcement conferences which require top management attendance in the Carson City office, license restrictions, or requirements for independent audits by outside consultants.

(4) We recommend that the internal procedures be changed to ensure enforcement letters are sent within 30 days after the inspection.

III. Technical Quality of Licensing Actions is a Category I Indicator.

Guideline Statement

The radiation control program should assure that essential elements of applications have been submitted to the agency, and that these elements meet current regulatory guidance for describing the isotopes and quantities to be used, qualifications of persons who will use material, facilities and equipment, and operating and emergency procedures sufficient to establish the basis for licensing actions. Licenses should be clear, complete, and accurate as to isotopes, forms, quantities, authorized uses, and permissive or restrictive conditions.

Comment

Both the Nevada Medical Policy Document, dated January 1989, and NRC's Regulatory Guide 10.8 require bioassay for administrations of I-131 in any form. Contrary to their own policy, the State does not require bioassays for capsule use of the isotope.

Recommendation

We recommend the State follow their own policy in requiring bioassays for all forms of I-131.

IV. Administrative Procedures is a Category II Indicator.

Guideline Statement

The RCP should establish written internal policy and administrative procedures to assure that program functions are carried out as required and to provide a high degree of uniformity and continuity in regulatory practices. These procedures should address internal processing of license applications, inspection policies, decommissioning and license termination, fee collection, contacts with communication media, conflict of interest policies for employees, exchange-of-information and other functions required of the program.

Comments

A. The State's written termination procedures fail to include essential requirements necessary to prevent the abandonment or misuse of radioactive material after licenses are terminated. In one instance, a license was terminated while the licensee still possessed radioactive material.

B. Under the exchange-of-information agreement with the NRC, Agreement States are asked to periodically supply copies of all new and amended licenses to the Office of State Programs. Our examination of the State's licenses prior to a program review helps ensure the State's licenses are technically well-drafted, do not purport to regulate areas reserved by the Commission, and are consistent and compatible with those issued by the NRC and other Agreement States. Although Nevada has provided these documents in the past, we found that none had been submitted during this review period.

Recommendations

(1) We recommend that:

1. the written termination procedures be revised to include the license termination requirements in the Nevada regulations,

2. the State use a check list or form to verify the final disposition of all radioactive material, and

3. certification of disposal or transfer should be required when receipts cannot be obtained from the new recipient.

(2) We asked the State to resume the practice of sending copies of these documents to State Programs.

V. Staffing level is a Category II Indicator.

Comment

Although the State has been able to meet the minimum staffing level requirements suggested in the guidelines, an authorized and funded professioral staff vacancy which exists in the Carson City office has not been filled due to a hiring freeze. We feel the increasing complexity of the Nevada radioactive materials licenses, coupled with the anticipated staff effort which will be needed to implement

the upcoming regulatory changes in radiation protection standards, will require additional staff.

Recommendation

We recommend this position be filled as soon as possible.

SUMMARY DISCUSSIONS WITH STATE REPRESENTATIVES

A summary meeting to present the results of the regulatory program review was held with Ms. Crawford on March 5, 1993. Mr. Hornor and Ms. Darden also held a separate meeting on March 5 with Yvonne Sylva, Acting Administrator, Health Division, Ron Lange, Administrative Health Services Officer, and Darrell Rasner, Chief, Health Protection Services. A third summary meeting was held on March 5 with Mr. Marshall.

During all three meetings, the findings and recommendations in this enclosure were discussed at length with the State representatives. Particular emphasis was placed on the need for adopting compatible regulations within the three-year time period. It was pointed out that the decommissioning rule will provide financial protection to Nevada taxpayers if a licensee lacks the necessary resources to decontaminate a facility in event the business closes.

Mr. Marshall, the radiation control program manager, was not present during meetings with his upper management. During our private summary discussion with him, he disagreed with our findings pertaining to the need for increased escalated enforcement and objected to our recommendation to establish written procedures assigning specific enforcement actions to different severity levels of violations. We relayed his objections to the other State representatives during our meetings with them. After reviewing the cases cited above, the other State representatives agreed that improvement is needed in bringing recalcitrant licensees into compliance, and that written procedures as described in the guidelines should be developed and implemented.

The State representatives offered strong commitments that these problems would be corrected immediately, and they were reminded that their corrective actions would be evaluated during our follow-up review in approximately 12 months.

Ms. Crawford was informed that the results of the review would be reported in a letter to Mr. Griepentrog-Carlin from Mr. Carlton Kammerer, Director, Office of State Programs and that a written response would be requested.

Ms. Crawford and the other State representatives thanked us for our review and concern for the program, and assured the NRC that Nevada is eager to maintain their status of adequacy and will take steps to regain compatibility as soon as possible.