

## Michigan and the US Nuclear Regulatory Commission Agreement State Program

Agreement State Informational Meeting  
August 8, 2007

### MEETING SUMMARY

#### 1. Welcome and Overview

Bruce Matkovich, Manager of the Radiation Safety Section in the Department of Community Health (DCH), encouraged those present to sign the attendance sheet and to include their E-mail addresses. Meeting summaries and other information are sent electronically to those on the E-mail list.

Currently, the radiation machine regulatory program is in the DCH and the radioactive material regulatory program is in the Department of Environmental Quality (DEQ). Staff from the two departments have been meeting with a group of stakeholders for several years. The stakeholder committee wants the "Ionizing Radiation Rules" updated, encouraged the two radiation programs to be recombined in the DCH, and indicated that the departments should investigate and move forward with the agreement state process.

A briefing paper was prepared for the governor. As a result, the governor sent a letter to the U.S. Nuclear Regulatory Commission (NRC) stating that Michigan was interested in pursuing an Agreement with the NRC. The next step will be the introduction of legislation necessary to continue the process. Attendees were encouraged to contact their legislative representatives when the legislation is introduced.

#### 2. History of Michigan's Pursuit of an Agreement with the NRC

George Bruchmann, Chief of the Waste and Hazardous Materials Division in DEQ, described past events regarding Michigan's pursuit of an agreement with the NRC. In 1965, the state legislature passed and the governor signed Act 54 of 1965 authorizing the governor to enter into agreements with the federal government to transfer regulatory authority over sources of ionizing radiation to the state. Michigan negotiated with the NRC from 1975 to 1979 and had finally agreed on all aspects of the agreement, including resolution of the "mutuality of termination" provision. This provision stipulated that the NRC will make a finding to terminate or suspend the agreement if the governor and legislature makes a request to the NRC to terminate or suspend the agreement. The Atomic Energy Act states that the NRC may make such a finding. However, citing the emerging economic recession, the governor declined to take the final step in pursuing the agreement.

In 1996, an executive order split the radiation machine and the radioactive materials regulatory programs and sent them to two departments. The DEQ strategic plan for 2004 stated that the potential for an agreement with the NRC should be investigated. The DEQ and the DCH began meeting with interested stakeholders in 2005 to consider becoming an agreement state. The subsequent enactment of the Energy Policy Act of 2005 added accelerator produced radioactive material and discrete sources of naturally occurring radioactive material to the Atomic Energy Act; thus transferring regulatory responsibility for this material to the NRC.

In 2006, the NRC sent a letter to the governors of non-agreement states asking whether their state was planning to become an agreement state. Governor Granholm replied that she had directed the DCH and the DEQ to investigate the possibility of Michigan doing so. After meetings with stakeholders in 2006 and 2007, discussions with NRC staff, and discussions with staff from other agreement states, DCH and DEQ staff prepared a draft briefing paper for the governor. The two department directors endorsed the briefing paper and sent it to the governor for her consideration. The governor signed a letter of intent to the NRC dated July 31, 2007. Currently, the departments are working with their legislative liaisons to prepare draft legislation for introduction in the fall of 2007. When the legislation is introduced, stakeholders will be encouraged to contact their legislators indicating their support.

### 3. Agreement State Proposal and Strategy

Thor Strong, Chief of the Radiological Protection Section in DEQ, provided additional background on the recent involvement of the Agreement State Advisory Committee. He explained that the Advisory Committee had met several times since March, and would be meeting again in the afternoon, following the informational meeting. He explained that this informational meeting was scheduled at the recommendation of members of the Advisory Committee, who felt that their committee could not adequately represent all 540 licensees in Michigan. He presented a slide show describing in detail the recent activities of department staff and stakeholders. See the PowerPoint presentation accompanying this meeting summary.

### 4. Open discussion

The discussion consisted of questions asked by meeting attendees with responses from DEQ and DCH staff, and observations from the audience. Discussion included the following items:

- Currently, proposed changes to the Public Health Code include items necessary to become an agreement state, a provision to assess NRC licensees and state registrants an interim fee to fund the transition to a full agreement, and updates to the mammography portion of the statute to align the requirements with the recent changes to the federal Mammography Quality Standards Act. The proposed changes have been discussed with stakeholders. Staff will be meeting with the DCH and DEQ legislative liaisons to explore the next steps.
- If Michigan becomes an agreement state, staff plans to continue the inspection frequency practiced by the NRC.
- Concern was expressed that some agreement states have regulations that are more prescriptive and regulate licensees in a more restrictive manner than the NRC. Staff does not plan to be more prescriptive or more restrictive than the NRC. Staff pointed out that proposed revisions to Part 135 would help renew the involvement of a Radiation Advisory Committee.
- Staff is evaluating the pros and cons of adopting the NRC regulations by reference or adopting the "Suggested State Regulations for Control of Radiation" (SSRCR) from the Conference of Radiation Control Program Directors. Almost all other states use the

SSRCR as the template for their regulations. The SSRCR covers both radioactive materials and machine produced radiation while the NRC regulations only address radioactive material. NRC licensees are already familiar with the NRC regulations.

- After the agreement with the NRC becomes effective, Michigan's radioactive material regulatory program will be 100% supported by fees.
- Michigan plans to assess initial application and annual fees and not to assess inspection, reinspection, or amendment fees.
- Staff estimate that about 10 licensees will remain under NRC jurisdiction. These include federal facilities such as VA Hospitals, and certain DOE and DOD contractors.
- The current timeline for the effective date of an agreement between Michigan and the NRC indicates that all radioactive material facilities will be regulated by the NRC for several years before the licenses are transferred to Michigan's jurisdiction. The Energy Policy Act's expansion of NRC's authority over certain NARM within the next two years should not complicate the process for either the State or licensees.
- For training, Michigan regulatory staff have been accompanying NRC inspectors in Michigan. Other states have offered for us to visit to see their licensing process and to accompany their inspectors.
- Staff project that an interim fee assessed for four years of 40% of the 2007 NRC annual fee on licensees should be sufficient to fund the transition to a full agreement including hiring and training state staff. Staff project that Michigan can run a radioactive materials regulatory program for about 65% of the fees assessed by the NRC. Citing the experience of agreement state licensees in other states, like Wisconsin, Michigan licensees should recoup the interim fee within about four years.
- The interim fee proposal would exempt academic licensees. Some attendees suggested that academic institutions should be assessed a fee like other licensees and registrants. The NRC exempts non-profit academic institutions from fees. In response to comments made at stakeholders meetings, staff had looked at and previously considered a \$1,000 interim fee assessed for four years on academic institutions. Several small academic institutions responded to staff that the fee would create hardships for their programs. Discussion ensued about the equity of assessing the 21 small academic licensees the same interim fee as the big three – the University of Michigan, Michigan State University, and Wayne State University.
- Under the current proposal, licensees who have "small entity" status with the NRC would be charged the same 40% interim fee as other licensees. After Michigan takes over regulatory authority, staff does not anticipate a reduction of the small entity fees below those charged by the NRC. Therefore, small entities would not recoup the interim fee. It was mentioned that a number of states do not have a reduced fee for small entities. If Michigan continues the NRC small entity program, these facilities would pay less than if they had to pay full fees. An attendee indicated that having to pay an interim fee in addition to the NRC annual fee may cause him to terminate his license. Advisory Committee members recommended that this issue be discussed.

- An attendee requested specific regulations for veterinary use of radioactive materials.

## 5. Conclusion

The attendees were thanked for their participation during the meeting. Those who provided an e-mail address on the attendance list will receive regular e-mail updates on the initiative. Attendees were invited to attend the Agreement State Advisory Committee meeting across the hall after lunch.