



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
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May 3, 2005

Barbara Youngberg
Chief, Radiation Section
NY State Department of Environmental Conservation
Division of Solid & Hazardous Materials
Bureau of Hazardous Waste and Radiation Management
625 Broadway, 8th Floor
Albany, NY 12233-7255

SUBJECT: SUMMARY OF PERIODIC MANAGEMENT MEETING

Dear Ms. Youngberg:

A periodic meeting with NY Department of Environmental Conservation was held on April 12, 2005. The purpose of this meeting was to review and discuss the status of the Department's Agreement State program. The NRC was represented by Kevin Hsueh from the NRC's Office of State and Tribal Programs and me. Specific topics and issues of importance discussed at the meeting included the status of the Department's efforts to 1) adopt overdue NRC amendments required for compatibility; and 2) complete the investigation of sites for the NRC formerly licensed sites grant project.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at 610-337-5042 or an e-mail to adw@nrc.gov to discuss your concerns.

Thank you for your cooperation.

Sincerely,

Original signed by Duncan White

Duncan White, CHP
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

cc:
K. Hsueh , STP

B. Youngberg 2
NY State Department of Environmental Conservation

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SISP Review Completed by: CXL 4/29/05

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)

DATE OF MEETING: April 12, 2005

ATTENDEES:

Duncan White, RSAO
Kevin Hsueh, ASPO
Barbara Youngberg, Program Manager
Edwin Dassatti, Director
David O'Toole, Assistant Director

DISCUSSION:

The proposed status of each of the four recommendations applicable to DEC in Section 5.0 of the 2002 Integrated Materials Performance Evaluation Program (IMPEP) review of New York are summarized below.

1. The review team recommends that NYC, DOL and DEC perform core inspections in a timely manner, and that NYC take appropriate action to improve the tracking mechanisms necessary to evaluate their own timeliness for initial inspections. (Section 3.1.5)

Current Status: DEC's Radiation Section currently has 38 permittees for the discharge of radioactive materials into the environment from facilities licensed and inspected by one of the other three New York radiological protection programs. Permittees are required to report their environmental discharges annually to the DEC. During the previous periodic meeting, the Radiation Section indicated that its inspection frequencies were revising its inspection priorities to routinely inspect its permittees based primarily on the amount of actual environmental discharges rather than based on the maximum allowed level in the permit. An annual reevaluation is conducted to reassign the inspection priorities based on actual emissions. Based on the new frequencies, the Section currently has two overdue inspections which have been scheduled. The Program Manager indicated the two overdue inspections are the result of these inspections being deferred due to the higher priority cyclotron inspections. It is recommended that this item be verified at the next IMPEP review.

2. The review team recommends that NYC and DEC transmit inspection findings to their licensees within thirty days after the close of the inspection. (Section 3.1.5)

Current Status: The Program Manager indicated that most inspection reports are issued within 30 days. It is recommended that this item be verified at the next IMPEP review.

3. The review team recommends that DOL and DEC perform annual supervisory accompaniments of all materials inspections. (Section 3.2.5)

Current Status: The Program Manager indicated that all inspectors are accompanied every other year due to the small number of inspections performed annually. It is recommended that this item be verified at the next IMPEP review.

4. The team recommends that each New York Agency (NYC, DOH, DEC, and DOL) develop and implement an action plan to adopt NRC regulations in accordance with current NRC policy on adequacy and compatibility. (Section 4.1.3)

Current Status: Prior to the periodic meeting, the RSAO requested that the Section review the status of the DEC's regulations on the STP website for completeness and accuracy. The Program Manager and NRC staff discussed the status of each overdue NRC regulation amendment required for compatibility. The results of this review can be found in the attached table. Since the last periodic meeting, the Section has made little progress in adopting NRC regulations. There are currently nine NRC amendments that DEC has not adopted in accordance with NRC policy on adequacy and compatibility. The Section plans to adopt by consensus (direct) rulemaking the new transportation requirements and various low level radioactive waste (LLRW) requirements by the end of 2005. DEC management present indicated that the Governor's Office of Regulatory Reform (GORR) review process presents a significant hurdle to the adoption of regulations by New York agencies. NRC staff reviewed STP's regulation review process with the Program Manager and requested that the Section submit legally binding requirements in addition to proposed and final regulations for NRC review.

Since the last periodic meeting in November 2003, overall technical staffing levels in the Section have remained the same. The Section currently has 10 technical and 0.5 full-time equivalent (FTE) administrative staff members. There are currently three technical and one administrative vacancies. The Agreement State program portion of the Section is approximately 3 to 3.5 FTE. One individual was promoted (Marcus Spivak) within the Section to a position not directly involved with Agreement State activities and one of the vacant positions was filled (John Frisone) through an exemption. There is one vacancy in the Agreement State program (the Part 380 permit unit).

The Program Manager indicated that the Section's strengths continue to be its experienced staff and availability of equipment. The Section continues to upgrade its field and laboratory equipment over the last year. Program weaknesses also continue to be the loss of staff and the difficulty in filling vacancies due to the tight budget situation faced by the Department which limits its FTE ceiling. The Program Manager also noted the growing salary disparity between the Department and the private sector in that several quality candidates turned down the recently filled vacant position due to its salary.

The Program Manager indicated that there is sufficient funding to perform its Section related activities including providing the necessary training for the new staff member. The Section's current funding level is essentially the same as that of last fiscal year. The Section receives none of its funding from general State revenue funds. Funding for the Section comes from an assessment on nuclear power plants, a federal grant from the Army Corp of Engineers for FUSRAP sites and the Department of Energy for the oversight of West Valley. Current priorities in the Section include cyclotrons, West Valley and water treatment waste (radium in drinking water).

The Section has two closed low level radioactive sites (West Valley and Cornell). The Section continues to regulate the State-Licensed Disposal Area at West Valley under a permit issued to New York State Energy Research and Development Agency (NYSERDA) which oversees the State owned portion of the West Valley site. The cover for the Cornell disposal site is complete but the Section continues to regulate cover maintenance and discharges from the pump and treatment system for the chemically contaminated groundwater at the site.

There were no allegations referred to the Program by NRC Region I since the last periodic meeting. There were no reportable events since last meeting. DEC rarely reports to the NRC Operations Center since all their permittees also have a specific license from one of the other three New York agencies. The Section generally will respond to events involving radiation alarms at landfills, transfer stations or incinerators. The Program Manager noted that the operators of radiation detection systems in use at some waste facilities are now experienced at handling alarms. Some operators have gamma spectroscopy instrumentation and can provide detailed information.

The Program Manager and NRC staff discussed the status of the NRC formerly licensed sites grant project. Under the grant project, DEC is reviewing ten license files which consist of 14 sites. Among them, twelve sites have been closed out. For the remaining two sites, one is expected to be closed out in May 2005 and the other one still requires site visits or further review which may take a couple more months. Based on a follow-up discussion on this subject between the NRC staff and the Program Manager after the meeting, DEC planned to send a status report to NRC by early May to close out the 13 sites and provide a time frame when the review of the last site is expected to be completed.

The NRC staff discussed recent developments at the agency including the recess appointment of two new commissioners, the status of NRC's activities in the areas of high level waste and low level waste, recent security initiatives for material licensees and the status of the National Materials Program pilot projects. There was also a brief discussion of the proposed legislation for the West Valley site proposed by NYSERDA. The Section indicated satisfaction with the level and availability of electronic communication from STP through electronic mailings or the STP website.

The Program Manager indicated that the Section prepares monthly metrics and a report of programmatic highlights. The Section also performs a quarterly assessment of the inspection program in addition to the annual review of the reported effluent discharges from its permittees.

The NRC staff indicated that the next IMPEP of the New York State Agreement State Program is scheduled for FY 2006 and that the results of this periodic meeting will be discussed with the Management Review Board at a scheduled meeting within the next few months.

State Regulation Status Data Sheet (SRS)

State: New York Department of Environmental Conservation

Date: April 12, 2005

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			Not Applicable SECY-95-112 ⁴
ANT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F		3/24/94
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			overdue
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			Not Applicable SECY-95-112 ⁴
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1			overdue
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			Not Applicable SECY-95-112 ⁴
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Not Applicable SECY-95-112 ⁴
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			Not Applicable SECY-95-112 ⁴
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not Applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3			Not Applicable SECY-95-112 ⁴

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243 60 FR 322; (1/1/98)	1995-1			Not Applicable SECY-95-112 ⁴
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2			Not Applicable SECY-95-112 ⁴
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	(see 1998 IMPEP report)	7/9/97
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			Superseded by 62 FR 28948 due 6/27/00
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5			overdue
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6			Not Applicable SECY-95-112 ⁴
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			Not Applicable SECY-95-112 ⁴
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	F	(see 1998 IMPEP report)	7/9/97
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3			overdue
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F - LBR		8/20/04
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2			Not Applicable SECY-95-112 ⁴
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3			Not Applicable SECY-95-112 ⁴
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5			Not Applicable SECY-95-112 ⁴

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6			overdue
Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			Not Applicable SECY-95-112 ⁴
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	under DEC legal review		overdue
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4			Not Applicable SECY-95-112 ⁴
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5			overdue
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6			overdue
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not Applicable SECY-95-112 ⁴
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3			Not Applicable SECY-95-112 ⁴
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			Not Applicable SECY-95-112 ⁴
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2			Not Applicable SECY-95-112 ⁴
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1			Not Applicable SECY-95-112 ⁴
Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1			overdue



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May 11, 2005

Clayton J. Bradt, C.H.P.
Principal Radiophysicist
New York State Department of Labor
Division of Health and Safety
Radiological Health Unit
NYS Office Campus, Bldg. 12, Room 169
Albany, NY 12240

SUBJECT: SUMMARY OF PERIODIC MANAGEMENT MEETING

Dear Mr. Bradt:

A periodic meeting with New York Department of Labor was held on April 13, 2005. The purpose of this meeting was to review and discuss the status of the Department's Agreement State program. The NRC was represented by Kevin Hsueh from the NRC's Office of State and Tribal Programs and me. Specific topics and issues of importance discussed at the meeting included the status of the Department's efforts to adopt overdue NRC amendments required for compatibility; and address and resolve an outstanding issue related to the reporting of nuclear material event data by the Department to the NRC.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at 610-337-5042 or an e-mail to adw@nrc.gov to discuss your concerns.

Thank you for your cooperation.

Sincerely,

Original signed by Duncan White

Duncan White, CHP
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

cc:
K. Hsueh, STP

C. Bradt
New York Department of Labor

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SISP Review Completed by JDK 5/11/05

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
NEW YORK DEPARTMENT OF LABOR (DOL)

DATE OF MEETING: April 13, 2005

ATTENDEES:

Duncan White, RSAO
Kevin Hsueh, ASPO
Clayton Bradt, Program Manager
Anthony Germano, Division Director

DISCUSSION:

The proposed status of each of the four recommendations applicable to DOL in Section 5.0 of the 2002 Integrated Materials Performance Evaluation Program (IMPEP) review of New York are summarized below.

1. The review team recommends that NYC, DOL and DEC perform core inspections in a timely manner, and that NYC take appropriate action to improve the tracking mechanisms necessary to evaluate their own timeliness for initial inspections. (Section 3.1.5)

Current Status: The Program Manager indicated that all inspections have been completed in a timely manner with one exception. This overdue inspection has been scheduled to be completed shortly. The Program is currently experiencing problems with inspection tracking system which may have made it difficult for inspectors to update inspection data. Department information technology staff is working to correct the problem. It is recommended that this item be verified at the next IMPEP review.

2. The review team recommends that DOL and DEC perform annual supervisory accompaniments of all materials inspections. (Section 3.2.5)

Current Status: The Program Manager indicated that accompaniments of inspectors are performed but not on an annual basis. Due to the experience of the inspectors, the consistent high technical quality of inspections, and the availability of other metrics for inspector performance, the Program Manager has determined that his time is better spent on other tasks. It is recommended that this item be verified at the next IMPEP review.

3. The review team recommends that NYC, DOL, and DOH draft and implement a method to ensure timely submittal of information to NRC and the Nuclear Materials Event Database (NMED) and implement an effective procedure to identify, track and review all incident reports. (Section 3.5.5)

Current Status: In an April 6, 2005 letter from Martin Virgilio, NRC to Linda Angelo, Commissioner, Department of Labor (ADAMS Accession No. ML050910053), the NRC requested the Commissioner's assistance in helping address and resolve an outstanding issue related to the reporting of nuclear material event data by the Department to the NRC. This issue was previously discussed during the previous periodic management meeting on November 13, 2003 (ML033500338). The Division Director stated that the Department is currently reviewing the letter, will discuss the matter with the Commissioner and will provide a response prior to the NRC Management Review Board regarding this periodic meeting. NRC staff stated that prompt event reporting is an important issue with the Commission and with senior NRC management. This recommendation remains open.

4. The team recommends that each New York Agency (NYC, DOH, DEC, and DOL) develop and implement an action plan to adopt NRC regulations in accordance with current NRC policy on adequacy and compatibility. (Section 4.1.3)

Current Status: Prior to the periodic meeting, the RSAO requested that the Section review the status of the DOL's regulations on the STP website for completeness and accuracy. The Program Manager and NRC staff discussed the status of each overdue NRC regulation amendment required for compatibility. The results of this review can be found in the attached table. Since the last periodic meeting, DOL has made little progress in adopting NRC regulations. There are currently eight NRC amendments that DOL has not adopted in accordance with NRC policy on adequacy and compatibility. NRC staff reviewed STP's regulation review process with the Program Manager and requested that the Program submit legally binding requirements in addition to proposed and final regulations for NRC review. This recommendation remains open.

The Division Director discussed a legislative proposal that would expand the enforcement capabilities of the Department, including those for the Program. Currently, the Program can only issue Notice of Violations or Orders. If the proposal is adopted, the Program would be able to issue civil penalties. The Program Director also indicated that a recent State Law that impacts the Program requires that all guidance documents use by State agencies must be on-line.

The Program is scheduled this summer to have a new fee structure in place that will expand the number of categories from three to five and increase the fees. The Program's new fees are now more comparable with those fees currently used by the Bureau of Environmental Radiation in the State Department of Health. There continues to be interest by the Governor's Office of Regulatory Reform to combine the radiation programs in the State Departments of Health and Labor.

Since the last periodic meeting in November 2003, one individual left the Program (Charles Burns) and this vacancy was recently filled. The new individual (M. Ashrat Chaudhry) has a nuclear medicine technologist background and is currently working on licensing. The Program Director indicated that the staff continues to be the program's strength. The Program is considering succession planning since one of the three inspectors in the Manhattan office is

now eligible for retirement. The Division Director indicated that the Division has an updated Civil Service list available for use if it needs to fill any future vacancies.

The Program Manager stated that since the last periodic meeting, the Program has issued a new sealed source and device registry sheet (NY-1210-D-101-B) for a device containing tritium or Nickel 63 in an electron capture/micro argon ionization detector cell.

The Program noted that the license for the Self-Powered Lighting facility in Nyack was terminated and the facility decontaminated since the last periodic meeting. This facility manufactured and recycled tritium exit signs. The Program Manager also noted that the Radiac Research facility is currently renewing their chemical permit which will be discussed at a public hearing. The facility has a DOL license to store packaged radioactive waste. The primary issues to be discussed as part of the permit renewal will be security and reduction of on-site quantities. Last year, a local citizens group unsuccessfully petitioned the NRC to close the Radiac facility due to security concerns.

There were no allegations referred to the Program by NRC Region I since the last periodic meeting.

The Program Manager attended the April 12 meeting in New York City between the NRC and various State and New York City radiological, police and security agencies to discuss the NRC and State initiatives regarding the use of radioactive materials by terrorists. The Program Manager noted that the NYPD is very concerned regarding the potential use of a radiological dispersal device by terrorists.

The Program does not currently perform any self audits. The Unit's performance is monitored by monthly, quarterly and annual reports to Division and Department management. The Division Director indicated that RHU has gotten positive feedback during informal discussions with their licensees.

The NRC staff discussed recent developments at the agency including the recess appointment of two new commissioners, the status of NRC's activities in the areas of high level waste and low level waste, recent security initiatives for material licensees and the status of the National Materials Program pilot projects. The Program indicated satisfaction with the level and availability of electronic communication from STP through electronic mailings or the STP website.

The NRC staff indicated that the next IMPEP of the New York State Agreement State Program is scheduled for FY 2006 and that the results of this periodic meeting will be discussed with the Management Review Board at a scheduled meeting within the next few months. The NRC staff discussed the need to perform an inspector accompaniment prior to the IMPEP in 2006. The Program Manager indicated that the NRC should coordinate the accompaniment with the inspector.

State Regulation Status Data Sheet (SRS)

State: New York Department of Labor

Date: April 13, 2005

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	F		6/29/94
ANT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F-Y	12/5/97 12/24/97	6/29/94
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N 1/28/00	4/15/99
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			Not Applicable SECY-95-112 ⁴
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F	N 1/28/00	4/15/99
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F	N 1/28/00	4/15/99
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Not Applicable SECY-95-112 ⁴
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			Not required ³
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not Applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 1/28/00	4/15/99
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243 60 FR 322; (1/1/98)	1995-1	F	N 1/28/00	4/15/99

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N 1/28/00	4/15/99
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	N 1/28/00	4/15/99
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F	N 1/28/00	4/15/99
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 1/28/00	4/15/99
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 1/28/00	4/15/99
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			Not Applicable SECY-95-112 ⁴
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	F	N 1/28/00	4/15/99
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	covered by LC, but not reviewed		overdue
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F	N 1/28/00	4/15/99
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2	F	see 2002 IMPEP report	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3			Not Applicable SECY-95-112 ⁴
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	F-Y certification needed	see 2002 IMPEP report	overdue (certification portion)
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6			overdue
Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			Not Applicable SECY-95-112 ⁴

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	cannot adopt per legal counsel	see 2002 IMPEP report	
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4			Not required ³
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5			overdue
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F	N 1/28/00	4/15/99
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not Applicable SECY-95-112 ⁴
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3	no licensees		Overdue, but Not Applicable SECY-95-112 ⁴
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	need to change reference date		Overdue
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2			Overdue
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F-LC for 32.52 (a) & (b)	N 4/2/04 ML040930388	Not Applicable SECY-95-112 ⁴
Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1			Overdue

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2	Pharmacy portions only		
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			
Medical Use of Byproduct Material--Recognition of Specialty Boards - Part 35	70 FR 16335; (04/29/08)	2005-2	Pharmacy portions only		

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means "Yes," there are comments in the review letter that the State needs to address.
N means "No," there are no comments in the review letter.
3. Not Required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to the regulation. See: "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," III.1.Time From For Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number.

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2			Not Applicable SECY-95-112 ⁴
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			Not Applicable SECY-95-112 ⁴
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			Not Applicable SECY-95-112 ⁴
Medical Use of Byproduct Material--Recognition of Specialty Boards - Part 35	70 FR 16335; (04/29/08)	2005-2			Not Applicable SECY-95-112 ⁴

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5. ADAMS ML Number.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

May 11, 2005

Adele Salame-Alfie, Ph.D., Director
New York State Health Department
Bureau of Environmental Radiation Protection
547 River Road
Troy, NY 12180-2216

SUBJECT: SUMMARY OF PERIODIC MANAGEMENT MEETING

Dear Dr. Salame-Alfie:

A periodic meeting with the New York State Health Department was held on April 13, 2005. The purpose of this meeting was to review and discuss the status of the Department's Agreement State program. The NRC was represented by Kevin Hsueh from the NRC's Office of State and Tribal Programs and me. Specific topics and issues of importance discussed at the meeting included the status of the Department's efforts to adopt overdue NRC amendments required for compatibility and changes in the Bureau's staffing and organization.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at 610-337-5042 or an e-mail to adw@nrc.gov to discuss your concerns.

Thank you for your cooperation.

Sincerely,

Original signed by Duncan White

Duncan White, CHP
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

cc:
K. Hsueh, STP

A. Salame-Alfie
New York State Health Department

2

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR NEW YORK STATE DEPARTMENT OF HEALTH (DOH)

DATE OF MEETING: April 13, 2005

ATTENDEES:

Duncan White, Regional State Agreement Officer
Kevin Hsueh, Agreement State Project Officer
Richard Svenson, Division Director
Adele Salame-Alfie, Director, Bureau of Environmental Radiation Protection (Program Director)
Steven Gavitt, Assistant Director
Robert Dansereau, Radioactive Materials Section Chief
Gary Baker, Field Operations Section Chief

DISCUSSION:

The proposed status of each of the three recommendations applicable to DOH in Section 5.0 of the 2002 Integrated Materials Performance Evaluation Program (IMPEP) review of New York are summarized below.

1. The review team recommends that DOH provide prompt, in-depth, documented review of events with the potential for significant health and safety consequence (Section 3.5.5)

Current Status: As discussed during the previous periodic meeting in November 2003, the Bureau developed and initiated the use of in-house database system (called INCIDENT) for the tracking and documenting all events reported to the Bureau. Since the last periodic meeting, the Bureau has been enhanced and expanded capabilities added and all events back through 2002 have been entered into the database. It is recommended that this item be verified at the next IMPEP review.

2. The review team recommends that NYC, DOL, and DOH draft and implement a method to ensure timely submittal of information to NRC and the Nuclear Materials Event Database (NMED) and implement an effective procedure to identify, track and review all incident reports. (Section 3.5.5)

Current Status: The Bureau has reported two events to NMED since the last periodic meeting. The NRC staff discussed recent charges to the NMED database and suggested that the Bureau view their events from the NMED website externally to ensure that all information has been entered correctly into the national database. NRC staff noted and expressed appreciation for the Bureau prompt identification and reporting of a contamination event involving a New York hospital from the use of a device received from an NRC licensee (Advanced Care) in Connecticut. The subsequent joint investigation by Region I and the Bureau at both facilities led to the NRC taking action against the NRC licensee to correct the device. It is recommended that this item be verified at the next IMPEP review.

3. The team recommends that each New York Agency (NYC, DOH, DEC, and DOL) develop and implement an action plan to adopt NRC regulations in accordance with current NRC policy on adequacy and compatibility. (Section 4.1.3)

Current Status: Prior to the periodic meeting, the RSAO requested that the Bureau review the status of the DOH's regulations on the STP website for completeness and accuracy. The Radioactive Materials Section Chief and NRC staff discussed the status of each overdue NRC regulation amendment required for compatibility. The results of this review can be found in the attached table. Since the last periodic meeting, DOH has made little progress in adopting NRC regulations. There are currently seven NRC amendments that DOH has not adopted in accordance with NRC policy on adequacy and compatibility. Bureau staff indicated that draft amendments to their regulations including the overdue NRC amendments have been prepared and will be submitted for Department review in May 2005. NRC staff reviewed STP's regulation review process with the Bureau staff and requested that the Bureau submit legally binding requirements in addition to proposed and final regulations for NRC review. This recommendation remains open.

Since the last periodic meeting, the Bureau has undergone changes in terms of structure and staffing. One new Section was formed (Emergency Response). The Bureau indicated that their staffing levels have increased compared to levels discussed at the last periodic meeting in November 2003. The Radioactive Materials Section based in Troy is currently fully staffed. Since the last periodic meeting, two individuals in the materials program (Cynthia Costello and Mark Virgil) moved to the new Emergency Response Section and were replaced by two individuals (Charles Burns and Alex Damiani) from other State programs. One materials inspector in the Rochester office (Robert Snyder) moved to the Environmental Radiation/Radon Section in the Troy office and was replaced by a new hire (Mai Tran). The Bureau continues to have five experienced materials inspectors in the Buffalo, Syracuse and New Rochelle field offices. There are currently three junior level positions pending to be filled in the Environmental Radiation and Emergency Response Sections. Despite the change in structure and staffing, the overall level of experience with the materials program has increased since the three individuals who are no longer working on a daily basis in the materials program are still in the Bureau and are available if necessary. Bureau management indicated that there is sufficient technical staff at this time, but noted a need for more administrative staff. The new hire (Ms. Tran) will be trained in accordance with the Bureau's training policy which will include both NRC and in-house courses.

Due to the restructuring, movement of experienced staff to other Sections and the new hire (the only materials inspector based in Rochester), the Radioactive Materials Section currently has two broad scope licensees and five lesser priority licensees overdue for inspection. All overdue inspections have been scheduled to be performed in the next two months. Inspector accompaniments are being conducted on a routine basis. Bureau management indicated that State Health is not likely at this time to enter into Section 274i agreement with the NRC to perform security inspections due to the difficulty in getting additional staff.

As reflected in the Bureau's reorganization, emergency preparedness continues to be a high priority for the Department and the State. The Radioactive Materials Section Chief indicated that the Bureau is performing inspections involving the transfer of radioactive materials with quantities of concern. The Bureau is also denying public requests for information on licensees from the public. One of the emerging technologies that the Bureau is currently reviewing is a request to use of Gilasites in outpatients. The Bureau indicated that this matter is still under review.

There has been no new legislation approved that affects the Agreement State program, but there are two legislative proposals that would impact the Radioactive Materials Section. One proposal is for the licensure of nuclear medicine technologists and the second is a proposal by the Governor's Office of Regulatory Reform (GORR) to merge the Department of Labor's Radiological Health Unit into the Bureau. Bureau management indicated that budget levels are stable (the Radioactive Materials Program has a dedicated fund). The only limitation experienced by the Bureau is the limitation on filling approved positions in the State budget.

Bureau management attended the April 12 meeting in New York City between the NRC and various State and New York City radiological, police and security agencies to discuss the NRC and State initiatives regarding the use of radioactive materials by terrorists. Bureau attendees at the meeting noted that the NYPD is very concerned regarding the potential use of a radiological dispersal device by terrorists.

There were no allegations referred to the Bureau by NRC Region I since the last periodic meeting.

The Bureau has no formal mechanism to evaluate performance. As noted previously, the Bureau's INCIDENT database has been useful in ensuring the timely and complete followup of events. The Radioactive Materials Section Chief indicated that Section staff meets on a weekly basis to share information. The Bureau status reports to upper management tend to focus on non-routine activities.

The NRC staff discussed recent developments at the agency including the recess appointment of two new commissioners, the status of NRC's activities in the areas of high level waste and low level waste, clearance rule, recent security initiatives for material licensees and the status of the National Materials Program pilot projects. The Bureau indicated satisfaction with the level and availability of electronic communication from STP through electronic mailings or the STP website.

The NRC staff indicated that the next IMPEP of the New York State Agreement State Program is scheduled for FY 2006 and that the results of this periodic meeting will be discussed with the Management Review Board at a scheduled meeting within the next few months. The NRC staff discussed the need to perform an inspector accompaniments prior to the IMPEP in 2006. The NRC should coordinate any accompaniments with the Radioactive Materials Section Chief.

State Regulation Status Data Sheet (SRS)

State: New York State Department of Health

Date: April 13, 2005

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			Not Applicable SECY-95-112 ⁴
ANT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F-N	12/11/97	12/30/92
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	see 1998 IMPEP report	
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1		no longer required	
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F-LC	see 2002 IMPEP report	
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			Not Applicable SECY-95-112 ⁴
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Not Applicable SECY-95-112 ⁴
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			Not required ³
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not Applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F-LC	see 2002 IMPEP report	

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243 60 FR 322; (1/1/98)	1995-1			Not Applicable SECY-95-112 ⁴
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2		currently no licensees - see 2002 IMPEP report	overdue
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3		use DEC requirements	Not Applicable SECY-95-112 ⁴
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			Not Applicable SECY-95-112 ⁴
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5			overdue
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F-LC	see 2002 IMPEP report	
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F-N	see 1998 IMPEP report	
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	F	by reference in current regs.	
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	F	see 1998 IMPEP report	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1		use DEC requirements	
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2	F-LC	see 2002 IMPEP report	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F-N	see 1998 IMPEP report	
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5			Not Applicable SECY-95-112 ⁴

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Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6			overdue
Exempt Distribution of a Radioactive Drug Containing One Micro curie of Cabon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			overdue
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F	see 2002 IMPEP report	
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
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Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5			overdue
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Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not Applicable SECY-95-112 ⁴
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3		currently no licensees	overdue
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			Not Applicable SECY-95-112 ⁴
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2			Not Applicable SECY-95-112 ⁴
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1			Not Applicable SECY-95-112 ⁴
Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1			Overdue

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2			
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			
Medical Use of Byproduct Material--Recognition of Specialty Boards - Part 35	70 FR 16335; (04/29/08)	2005-2			

1. Or other generic Legally Binding Requirements.
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5. ADAMS ML Number.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

May 17, 2005

Gene Miskin, Director
New York City Department of Health
Bureau of Radiological Health
2 Lafayette Street, 11th Floor
New York, NY 10007

SUBJECT: SUMMARY OF PERIODIC MANAGEMENT MEETING

Dear Mr. Miskin:

A periodic meeting with the New York City Department of Health was held on April 19, 2005. The purpose of this meeting was to review and discuss the status of the Department's Agreement State program. The NRC was represented by Kevin Hsueh from the NRC's Office of State and Tribal Programs and me. Specific topics and issues of importance discussed at the meeting included the status for each of the recommendations in the 2002 Integrated Materials Performance Evaluation Program review and emergency preparedness.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at 610-337-5042 or by e-mail at adw@nrc.gov to discuss your concerns.

Thank you for your cooperation.

Sincerely,

Original signed by Duncan White

Duncan White, CHP
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

cc:
K. Hsueh, STP

G. Miskin
New York City Department of Health

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR NEW YORK CITY HEALTH DEPARTMENT (NYC)

DATE OF MEETING: April 19, 2005

ATTENDEES:

Duncan White, Regional State Agreement Officer
Kevin Hsueh, Agreement State Project Officer
Jeanine Prud'homme, Assistant Commissioner
Gene Miskin, Director
Tobias Lickerman, Supervisor, Radioactive Materials

DISCUSSION:

The proposed status of each of the six recommendations applicable to NYC in Section 5.0 of the 2002 Integrated Materials Performance Evaluation Program (IMPEP) review of New York are summarized below.

1. The review team recommends that NYC, State Department of Labor (DOL), and State Department of Environmental Conservation (DEC) perform core inspections in a timely manner, and that NYC take appropriate action to improve the tracking mechanisms necessary to evaluate their own timeliness for initial inspections. (Section 3.1.5)

Current Status: The Bureau of Radiological Health (Bureau) continues to implement a number of actions detailed during the previous periodic meeting to ensure that core inspections are performed in a timely manner. As part of the upgrade of the Bureau's inspection database (RAD), the Department determined that one computer was not properly updating the system when new data were entered into the database due to an old version of the software. This matter is currently being addressed and will be resolved shortly. The Bureau stated that they currently have one overdue inspection which has been scheduled. It is recommended that this item be verified at the next IMPEP review.

2. The review team recommends that NYC and DEC transmit inspection findings to their licensees within thirty days after the close of inspection. (Section 3.1.5)
3. The review team recommends that NYC review and revise their inspection process, including report preparation to ensure that inspection findings are accurately described in documentation of the inspection and that cited violations are supported in the inspection field notes. (Section 3.2.5)

Current Status (items 2 and 3): As discussed in November 2003, the inspectors are now responsible for the preparation of the inspection correspondence to the licensee in addition to the inspection field notes. The Senior Radioactive Materials Inspector reviews the correspondence and field notes to ensure all violations are cited properly and documented. Combined with weekly meetings with inspectors to emphasize the accuracy and timely transmittal of inspection findings, the Director noted that the Bureau has been successful in meeting the 30-day goal. It is recommended that these items be verified at the next IMPEP review.

4. The review team recommends that NYC review all licenses to ascertain if any require financial assurance, take appropriate action on each affected license to ensure that licensees meet codified financial assurance requirements. (Section 3.5.5)

Current Status: The Bureau identified 11 licensees requiring financial assurance for decommissioning. To date, six are finalized and four are currently under review or additional information has been requested. One licensee did not submit the required information after a number of requests and consequently, the Bureau initiated enforcement action. Consequently, this licensee recently committed to submit the required financial assurance instrument. It is recommended that this item be verified at the next IMPEP review.

5. The review team recommends that NYC, DOL, and State Department of Health (DOH) draft and implement a method to ensure timely submittal of information to NRC and the Nuclear Materials Event Database (NMED) and implement an effective procedure to identify, track and review all incident reports. (Section 3.5.5)

Current Status: The Bureau continues to maintain monthly metrics for incidents and complaints (i.e., allegations). The Bureau indicated that they had only a couple of reportable events involving Agreement State materials reported to the NRC Operations Center since the last periodic meeting. Most reportable events received by the Bureau involved naturally occurring or accelerator produced material. It is recommended that this item be verified at the next IMPEP review.

6. The team recommends that each New York Agency (NYC, DOH, DEC, and DOL) develop and implement an action plan to adopt NRC regulations in accordance with current NRC policy on adequacy and compatibility. (Section 4.1.3)

Current Status: In February 2005, the Bureau submitted proposed revisions to their regulations that incorporated nine overdue NRC amendments. These regulations were reviewed by NRC staff and a number of comments were noted and transmitted to the Bureau on April 27. The Bureau's recent package reviewed by the NRC did not include one overdue NRC amendment (RATS ID 2001-2). The Bureau will be submitting a regulatory agenda for 2006 shortly to address this amendment and several other amendments including the two amendments to the medical rules (RATS ID 2002-2 and 2005-2). The Director noted that NYC regulations cannot be less restricted than State Health regulations. This requires that both agencies adopt new regulations within a similar time period. It was also noted that the Bureau has benefitted by having access to the services of an experienced Department attorney during the preparation of the last regulations package. This recommendation remains open.

A major focus of the Bureau's activities continues to emphasize radiological emergency preparedness. Since the last periodic meeting, the Bureau has filled two emergency preparedness positions with grant money and has approval to hire a third individual into a supervisory emergency preparedness position. The Director and Assistant Commissioner noted that NYC Health Department has been able to obtain grant money which has been used to upgrade the Department radiation detection and information technology capabilities.

The Department has been less successful in hiring staff. Outside the use of grant funds, the Department cannot hire new staff and will lose a position from which an individual retires. Budget cuts have been experienced over the last three years, but the Bureau has been able to maintain its program since there has been no change in staff over the last few years and grant money has been used to purchase equipment. The Director noted that the Bureau has had no problem sending staff for out-of-state training. The Bureau plans to have some staff attend the five-week health physics course later this year.

The Assistant Commissioner discussed the Department's initiative to implement the use of handheld "tablet" computers that will allow Bureau inspectors to enter data during the inspection. These computers will be networked to a server and allow the inspector to generate the letter to the licensee and inspection reports. A similar system is currently being used by another group of Health Department inspectors. The Bureau's system for radiation inspections will be customized from the existing system. The Assistant Commissioner hopes for implementation of the radiation system in the summer of 2006.

The Radioactive Materials Supervisor noted some of the challenges currently in under review by the Bureau. In addition to the Bureau's efforts to address financial assurance for decommissioning, the Bureau is currently reviewing an emerging technology that involves the use of Tc-99m imaging with mammography exams. The Bureau will be also reviewing a decommissioning plan from Memorial Sloan-Kettering Hospital, one of NYC's large medical broad scope licensees, for the decommissioning and demolition of one of the hospital's main buildings.

Bureau management attended the April 12 meeting in New York City between the NRC and various State and New York City radiological, police and security agencies to discuss the NRC and State initiatives regarding the use of radioactive materials by terrorists. The Director noted that NYPD is very concerned regarding the potential use of a radiological dispersal device by terrorists. The Assistant Commissioner stated that the Commissioners for the Health and Police Department have discussed and agreed to collaborate on the handling of security matters. The Assistant Commissioner requested that the NRC coordinate with NYC with any security inspections to minimize impact on licensees. The Director also indicated that NYC has requested that DOL report to the Bureau if any DOL licensees are working in NYC. In light of NYC's interest in security of radioactive materials, NRC staff inquired if NYC would be interested in pursuing a 274i Agreement to perform security inspections. The Assistant Commissioner indicated that the Department did not plan to pursue an Agreement. At the request of the Assistant Commissioner, NRC staff agreed to review NYC protocol for security inspections.

There were no allegations referred to the Bureau by NRC Region I since the last periodic meeting.

The Bureau has a number of mechanisms to evaluate their performance. In addition to the weekly staff meetings and information technology upgrades discussed above, the Bureau submits a monthly report to Department management that includes inspection, licensing and incident metrics and non-routine activities. The Director also indicated that the inspector accompaniments are performed annually by the Senior Radioactive Materials inspector.

The NRC staff discussed recent developments at the agency including the recess appointment of two new commissioners, the status of NRC's activities in the areas of high level waste and low level waste, clearance rule, legislative proposal for NRC to regulate discrete NARM, status of Pennsylvania, Minnesota, New Jersey and Connecticut Agreement State efforts, recent security initiatives for material licensees, management changes in Region I, and the status of the National Materials Program pilot projects. The Bureau indicated satisfaction with the level and availability of electronic communication from STP through electronic mailings or the STP website. The Assistant Commissioner requested to be added on electronic distribution of NRC announcements from STP (the Director already receives these notifications). Subsequent to the meeting, the NRC staff added the Assistant Commissioner to the distribution list.

At the conclusion of the meeting, Department personnel demonstrated some of the new equipment obtained since the last periodic meeting for NRC staff. The equipment demonstrated included the use of information technology to remotely read radiation detection equipment and the mobile radiation detection van.

The NRC staff indicated that the next IMPEP of the New York State Agreement State Program is scheduled for FY 2006 and that the results of this periodic meeting will be discussed with the Management Review Board at a scheduled meeting within the next few months. The NRC staff discussed the need to perform inspector accompaniments prior to the IMPEP in 2006. The Director indicated that the NRC should coordinate any accompaniments with the Radioactive Materials Supervisor.

State Regulation Status Data Sheet (SRS)

State: New York City Health Department

Date: April 19, 2005

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			Not Applicable SECY-95-112 ⁴
ANT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F-Y	10/14/97	6/7/94
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F		6/7/94
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			6/7/94
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F	see 2002 IMPEP report	
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			Not Applicable SECY-95-112 ⁴
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Not Applicable SECY-95-112 ⁴
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			Not required ³
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not Applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3		submitted for NRC review on 2/05	3/05

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243 60 FR 322; (1/1/98)	1995-1			Not Applicable SECY-95-112 ⁴
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2		currently no licensees - see 1998 & 2002 IMPEP reports	Not Applicable SECY-95-112 ⁴ plan to adopt in 2006
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3		use DEC requirements	
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			Not Applicable SECY-95-112 ⁴
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5		submitted for NRC review in 2/05	3/05
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6		submitted for NRC review in 2/05	3/05
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F-N	submitted for NRC review in 2/05	3/05
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	P-N	2/9/99	4/99
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3		submitted for NRC review in 2/05	3/05
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1		use DEC requirements	
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2		submitted for NRC review in 2/05	3/05

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁴	NRC Review / Y, N² / Date / ML #⁴	Final State Regulation¹ (Effective Date)
Criteria for the Release of Individuals Administered Radioactive Material- Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F-LC (10 CFR 35.75 only)	see 2002 IMPEP report	
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5			Not Applicable SECY-95-112 ⁴
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6		submitted for NRC review in 2/05	3/05
Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F-LC	see 2002 IMPEP report	
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1		submitted for NRC review in 2/05	3/05
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond- Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4			Not required ³
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5		submitted for NRC review in 2/05	3/05
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6		use DEC requirements	
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not Applicable SECY-95-112 ⁴
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3		currently no licensees	Not Applicable SECY-95-112 ⁴ plan to adopt in 2006
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			Not Applicable SECY-95-112 ⁴
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2			Not Applicable SECY-95-112 ⁴
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1			Not Applicable SECY-95-112 ⁴
Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1			Overdue
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2			plan to adopt in 2006
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			
Medical Use of Byproduct Material--Recognition of Specialty Boards - Part 35	70 FR 16335; (04/29/08)	2005-2			

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means "Yes," there are comments in the review letter that the State needs to address. N means "No," there are no comments in the review letter.
3. Not Required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to the regulation. See: "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," Ill.1.Time From For Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number.