



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

August 12, 2009

Gene Miskin, Director  
Office of Radiological Health  
New York City Department of Health  
and Mental Hygiene  
2 Lafayette Street, 11<sup>th</sup> Floor  
New York, NY 10007

Dear Mr. Miskin:

A periodic meeting with your Office was held on July 16, 2009. The purpose of the meeting was to review and discuss the status of the New York City Department of Health and Mental Hygiene's Agreement State program. The NRC was represented by Monica Orendi and me.

I have completed and enclosed a general meeting summary, including any specific actions that will be taken as a result of the meeting.

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) 337-5214, or email to [James.Kottan@nrc.gov](mailto:James.Kottan@nrc.gov) to discuss your comments.

Sincerely,

*/RA/*

James Kottan  
Regional State Agreements Officer  
Division of Nuclear Materials Safety

Enclosure: As stated

**AGREEMENT STATE PERIODIC MEETING SUMMARY FOR NEW YORK CITY  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE (NYC)**

DATE OF MEETING: July 16, 2009

<b>NRC Attendees</b>	<b>New York City Department of Health Attendees</b>
James Kottan, Region I RSAO	Chris Boyd, Assistant Commissioner
Monica Orendi, FSME	Gene Miskin, Director
	Tobias Lickerman, Chief

**DISCUSSION:**

In November 2006, the Integrated Materials Performance Evaluation Program (IMPEP) review team found the NYC Agreement State Program's (the Program) performance to be satisfactory for all common and non-common performance indicators with the exception of the Compatibility Requirements non-common performance indicator. This indicator was found to be unsatisfactory. Additionally, one recommendation was made by the review team regarding the Program. On February 8, 2007, the Management Review Board (MRB) met to consider the IMPEP review team's proposed findings regarding the Program. The MRB found the Program adequate to protect public health and safety and not compatible with the NRC's program. Accordingly, the MRB determined that the Program should continue on Heightened Oversight. Further, the MRB requested that the Program revise and submit their Program Improvement Plan (the Plan) and that bi-monthly conference calls continue. The MRB determined that a periodic meeting should take place in November 2007.

Subsequent to the November 2007 periodic meeting, the MRB met on March 24, 2008 to consider the findings of the November 2007 Periodic Meeting. The MRB requested that calls between NYC and NRC staffs continue to be conducted quarterly to discuss NYC's revised Plan regarding their performance with compatibility requirements. The MRB also determined that a periodic meeting should take place in the spring/summer of 2009. This summary describes this periodic meeting.

The status of the State's actions to address the open recommendation follows:

The review team recommended that NYC develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

Status: The Program is in the process of enacting regulations to make the Program compatible with the NRC program. Revised Plans have been submitted to the NRC periodically (ML072280086, ML072280098, ML081700395, ML081700396 and ML082950402). NYC is coordinating development with the New York State Health Department (DOH) where necessary. The latest Plan submitted to the NRC during this periodic meeting calls for having the final regulations required for compatibility adopted in December 2009.

This recommendation remains open and should be evaluated at the next IMPEP review.

OTHER TOPICS COVERED DURING THE MEETING INCLUDED:Program Strengths

A well-trained, stable, and experienced staff is the strength of the Program. Two staff have joined the Program since the last periodic meeting, one individual is a transfer from the Radiation Producing Equipment functional area, and the other is a new hire who has been in place not quite a year. The Program is fully staffed. Mr. Miskin stated that when vacancies do arise, he is able to fill them in a timely manner from a well-qualified pool of applicants.

Feedback on the NRC's Program

The Program noted that NRC initiatives related to security, such as the order for increased controls, the National Source Tracking System, and fingerprinting, required considerable effort on the part of the Program. The Program commented that both the overall relationship with the NRC and communication with the NRC are good. Additionally, the Program appreciates the NRC funding of training. The Program would like the NRC to provide guidance to the Agreement States on acceptable practices for compliance with NRC security initiatives. The program stated that these could be in the form of "best practices" or some other guidance. The Program felt that the potential existed for each Agreement State to regulate this area in an uncoordinated manner without such guidance.

Agreement State Program Staffing and Training

The Program staff consists of eight individuals including the supervisor and is currently fully staffed. Support for staff training exists in the Program. NYC welcomed the NRC's revised policy on funding training for Agreement States. Program staff have attended NRC and other training courses, including the NRC's Security Systems and Principles Course. NYC noted that other activities that are not specifically training, such as participation on IMPEP teams and attendance at meetings, also provide valuable opportunities for knowledge sharing.

Organization

The Program is administered by the Office of Radiological Health in the Bureau of Environmental Sciences and Engineering under the Division of Environmental Health of the NYC. There have been no changes to the Program's organization since the previous periodic meeting.

There are two functional areas within the Office of Radiological Health: Radioactive Materials and Radiation Producing Equipment. The Radioactive Materials functional area makes up the Program, which administers approximately 370 licenses.

### Program Budget/Funding

Mr. Miskin stated that while there are some budget constraints, funding for the program is stable, and the Program is adequately funded. Although pending budget cuts may result in travel restrictions for Program staff, Mr. Miskin stated that when necessary, and with the appropriate justification, travel for the Program staff has been approved.

### Inspection Program

NYC's inspection frequencies are at least as frequent as NRC's. No inspections were overdue with respect to NRC inspection priorities. The Program maintains a database to monitor inspection scheduling and tracking. Management is aware of the importance of inspection program schedules. The Program is implementing a new tracking system that will provide for scheduling and tracking of inspections, and also licensee source inventories as well. This system is expected to be operational within about two months.

The Program had no licensing actions that were pending for greater than one year. Mr. Miskin stated that the number of licensees has remained approximately constant over the last several years at about 370 licensees. Mr. Miskin also stated that NYC is aware of the requirement for "pre-licensing" visits, and pre-licensing visits will be conducted.

### Regulations

The Program submitted the latest version of their Plan dated July 15, 2009 to the NRC during this Periodic Meeting. (ML092100609) The Plan calls for the completion of the three remaining overdue regulations by December 2009.

The following three regulations are overdue:

- "Medical Use of Byproduct Material," 10 CFR Parts 20, 32, and 35 amendments (67 FR 20249), that became effective on April 24, 2002, and was due for Agreement State adoption by October 24, 2005. (RATS ID 2002-2)
- "Medical Use of Byproduct Material - Recognition of Specialty Boards," 10 CFR 35 Part amendment (70 FR 16336; 71 FR 1926), that became effective on April 29, 2005, and is due for Agreement State adoption by April 29, 2008. (RATS ID 2005-1)
- "Minor Amendments," 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendments (71 FR 15005), that became effective on March 27, 2006, and is due for Agreement State adoption by March 27, 2009. (RATS ID 2006-1)

When these three regulations are adopted, the Program will have no overdue regulations. The Program has made good progress in adopting overdue regulations. NYC coordinates with (DOH) when required in the adoption of regulations. Quarterly coordination meetings are held between NYC and DOH. Adoption of RATS ID 2002-2 will require coordination with DOH. Additionally, Mr. Miskin stated that NYC is attempting to be proactive with respect to future regulations.

The following regulations are listed on the NRC's State Regulation Status (SRS) sheets as overdue and are not part of the NYC Plan. However, Mr. Miskin stated that NYC had adopted these regulations, either by license condition or regulation, and would provide documentation to the NRC indicating this fact.

- "Notification of Incidents," 10 CFR Parts 20, 30, 31, 34, 39, 40 and 70 (56 FR 64980), that became effective on October 15, 1991, and was due for Agreement State adoption by October 15, 1994. (RATS ID 1991-4)
- "Quality Management Program and Misadministrations," 10 CFR Part 35 (56 FR 34104), that became effective on January 27, 1992, and was due for Agreement State adoption by January 27, 1995. (RATS ID 1992-1)
- "Decommissioning Recordkeeping and License Termination: Documentation Additions (Restricted areas and spill sites)," 10 CFR Parts 30 and 40 (58 FR 39628), that became effective on October 25, 1993, and was due for Agreement State adoption by October 25, 1996. (RATS ID 1993-1)
- "Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use," 10 CFR Parts 30, 32 and 35 (59 FR 61767, 59 FR 65243 and 60 FR 322), that became effective on January 1, 1995 and was due for Agreement State adoption by January 1, 1998. (RATS ID 1995-1)
- "Criteria for the release of Individuals Administered Radioactive Material," 10 CFR Parts 20 and 35 (62 FR 4120) that became effective on May 29, 1997 and was due for Agreement State adoption by May 29, 2000. (RATS ID 1997-3)
- "Minor Corrections, Clarifying Changes, and a Minor Policy Change," 10 CFR Parts 20, 35 and 36 (63 FR 39477 and 63 FR 45393) that became effective on October 26, 1998 and was due for Agreement State adoption by October 26, 2001. (RATS ID 1998-5)
- "Transfer for Disposal and Manifests: Minor Technical Conforming Amendment," 10 CFR Part 20 (63 FR 50127) that became effective on November 20, 1998 and was due for Agreement State adoption by November 20, 2001, (RATS ID 1998-6)

### Event Reporting

NYC communicates reportable incidents to the NRC Operations Center and Region I when appropriate in a prompt manner. Since the last Periodic Meeting in November 2007, one event was reported to the NRC. Mr. Miskin stated that the majority of events that occur in New York City are related to machine-produced ionizing radiation rather than the use of radioactive material.

### Response to Incidents and Allegations

NYC continues to be sensitive to notifications of incidents and allegations. There were no allegations referred to the program since the last periodic meeting in November 2007.

Action Items Resulting From the Meeting

None.

CONCLUSIONS:

The overall performance of the Program continues to be good. The Program staff is experienced, well trained, and remains stable. The occasional vacancy is filled in a timely manner. The Program is adequately funded. NYC continues to make progress on adopting overdue regulations, with only three regulations remaining for adoption.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2011 (tentatively November 2010).



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

August 19, 2009

Robert Phaneuf  
Acting Director  
Bureau of Hazardous Waste and  
Radiation Management  
Division of Solid and Hazardous Materials  
New York State Department of  
Environmental Conservation  
625 Broadway, 9<sup>th</sup> Floor  
Albany, NY 12233-7255

Dear Mr. Phaneuf:

A periodic meeting with your Bureau was held on July 28, 2009. The purpose of the meeting was to review and discuss the status of the New York State Department of Environmental Conservation's Agreement State program. The NRC was represented by Monica Orendi and me.

I have completed and enclosed a general meeting summary, including any specific actions that will be taken as a result of the meeting.

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) 337-5214, or email to [James.Kottan@nrc.gov](mailto:James.Kottan@nrc.gov) to discuss your comments.

Sincerely,  
*/RA/*

James Kottan  
Regional State Agreements Officer  
Division of Nuclear Materials Safety

Enclosure: As stated

cc with encl:  
Timothy Rice, State of New York  
Sandra Hinkel, State of New York

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

DATE OF MEETING: July 28, 2009

<b>NRC Attendees</b>	<b>New York DEC Attendees</b>
Monica Orendi, Health Physicist, FSME	David O'Toole, Assistant Division Director
James Kottan, Region I RSAO	Robert Phaneuf, Acting Bureau Director
	Timothy Rice, Section Chief
	Sandra Hinkel, Section Chief

**DISCUSSION:**

In November 2006, the Integrated Materials Performance Evaluation Program (IMPEP) review team found the DEC Agreement State Program's (the Program) performance to be satisfactory for all common and non-common performance indicators with the exception of the Compatibility Requirements non-common performance indicator. This indicator was found to be unsatisfactory. Additionally, two recommendations were made by the review team regarding the Program. On February 8, 2007, the Management Review Board (MRB) met to consider the IMPEP review team's proposed findings regarding the Program. The MRB found the Program adequate to protect public health and safety and not compatible with the NRC's program. Accordingly, the MRB determined that the Program should continue on Heightened Oversight. Further, the MRB requested that the Program revise and submit their Program Improvement Plan (the Plan) and that bi-monthly conference calls continue. The MRB determined that a periodic meeting should take place in November 2007.

Subsequent to the November 2007 periodic meeting, the MRB met on March 24, 2008 to consider the findings of the November 2007 Periodic Meeting. The MRB requested that calls between DEC and NRC staffs continue to be conducted quarterly to discuss DEC's revised Plan regarding their performance with compatibility requirements. The MRB also determined that a periodic meeting should take place in the spring/summer of 2009. This summary describes this periodic meeting.

The status of the State's actions to address the open recommendations follows:

Recommendation 1: The review team recommends that DEC transmit inspection findings to their licensees within 30 days after the close of the inspection.

Status: This recommendation was discussed during the previous periodic meeting. As a result of that discussion, it was recommended that this item be closed at the next review. During this periodic meeting the Radiation Control Permit Section Chief stated that inspection findings continue to be transmitted to licensees within 30 days after the close of the inspection.

It is recommended that this item be closed at the next review.

Recommendation 2: The review team recommended that DEC develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

Status: The Program is in the process of enacting regulations to make the Program compatible with the NRC program. Revised Plans have been submitted to the NRC periodically (ML0722801101, ML0722801160, ML080310348, ML080310358, ML083020548, ML090230252, ML090230262, ML091250060, and ML091250062). DEC is coordinating development with other New York State agencies where necessary. The latest Plan submitted to the NRC calls for having the final regulations required for compatibility adopted in the spring of 2011.

This recommendation remains open and should be evaluated at the next IMPEP review.

#### OTHER TOPICS COVERED DURING THE MEETING INCLUDED

##### Program Strengths

A well-trained, stable, and experienced staff is the strength of the Program. Management support exists for the program, and this allowed the previously vacant Radiological Sites Section Chief position to be filled. Additionally, DEC stated that they were well equipped, and their equipment was a program strength. This included both an in-house laboratory with gamma spectrometry and TLD systems, and emergency/incident response instrumentation mounted in dedicated vehicles. Also the Program participates in various exercises and drills, such as the recent Empire '09 exercise. Ms. Hinkel and Mr. Rice stated that participation in these exercises raises the profile of the Program, and strengthens and improves the capabilities of the Program.

##### Feedback on NRC's Program

The Program commented that both the overall relationship with the NRC and communication with the NRC are good. In particular, Mr. Rice mentioned the cooperation with the NRC on the Indian Point groundwater issue and West Valley. Additionally, the Program appreciates the NRC funding of training. Both Ms. Hinkel and Mr. Rice noted difficulty in enrolling their staff in some of the NRC training courses, especially the core courses. The Program also felt there was good communication with the NRC on rulemaking issues.

##### Agreement State Program Staffing and Training

The Program staff consists of twelve individuals, including both section chiefs. There are two staff vacancies. Ms Hinkel stated that due to budget constraints, DEC is unable to fill the two vacant positions.

Support for staff training exists in the Program. DEC welcomed the NRC's revised policy on funding training for Agreement States. Program staff have attended NRC and other training courses. DEC noted that other activities that are not specifically training, such as participation in emergency exercises, such as the recent Empire '09 exercise, and attendance at meetings, also provide valuable opportunities for knowledge sharing.

### Organization

The Program is administered by the Bureau of Hazardous Waste and Radiation Management within the Division of Solid and Hazardous Materials of the DEC. There have been no changes to the Program's organization since the previous periodic meeting.

There are two functional areas within the Bureau of Hazardous Waste and Radiation Management: Radiation Control Permit Section and Radiological Sites Section. Both sections make up the Program. The Program administers approximately 30 effluent release permits for licenses issued by the New York State Department of Health.

### Program Budget/Funding

Mr. Rice and Ms. Hinkel stated that the program is adequately funded with the exception of some areas such as sample analyses. Adequate funding exists for in-state travel, and out-of-state travel is permitted with outside funding.

### Inspection Program

DEC's inspection frequencies are at least as frequent as NRC's. No inspections were overdue with respect to NRC inspection priorities. Management is aware of the importance of inspection program schedules and issuing inspections in a timely manner. Approximately 25 inspections are conducted annually.

The Program had no permitting actions that were overdue. DEC processes approximately 25 permitting actions annually, including new permits, renewals, and modifications. Ms. Hinkel stated that the number of permits has remained approximately constant over the last several years at about 30 permits.

### Regulations

The Program submitted the latest version (Update #9) of their Plan in April 2009 to the NRC (ML091250062). The Plan, with slippage, calls for completion of the overdue regulations by spring of 2011.

The following regulations are overdue:

"Notification of Incidents," 10 CFR Parts 20, 30, 31, 34, 39, 40, and 70 amendments (58 FR 64980), that became effective on October 15, 1991, and was due for Agreement State adoption by August 15, 1994. (RATS ID 1991-4)

"Timeliness in Decommissioning Material Facilities," 10 CFR Parts 30, 40 and 70 (59 FR 36026), that became effective on August 15, 1994, and was due for Agreement State adoption by August 15, 1997. (RATS ID 1994-3)

"Radiation Protection Requirements: Amended Definitions and Criteria," 10 CFR Parts 19 and 20 amendments (60 FR 36038), that became effective on August 14, 1995, and was due for Agreement State adoption by August 14, 1998. (RATS ID 1995-5)

“Radiological Criteria for License Termination,” 10 CFR Parts 20, 30, 40, and 70 amendments (62 FR 39057), that became effective on August 20, 1997, and was due for Agreement State adoption by August 20, 2000. (RATS ID 1997-6)

“Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 30, 40, and 70 amendments (63 FR 39477, 63 FR 45393), that became effective on October 26, 1998, and was due for Agreement State adoption by October 26, 2001. (RATS ID 1998-5)

“Revision of the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298), that became effective on April 5, 2002, and was due for Agreement State adoption by April 5, 2005. (RATS ID 2002-1)

NRC staff concluded that the DEC Plan is a reasonable and realistic approach to addressing the DEC compatibility requirements with NRC. NRC staff review concluded that the tasks, milestones, and assignments for finalizing each overdue or upcoming regulation appeared reasonable and achievable. DEC continues to move forward with the most recent version of their Plan, although the schedule has slipped by about three months due to the workload in the Department, and the absence of an acting Section Chief due to illness.

Additionally, both Ms. Hinkel and Mr. Rice stated that DEC is attempting to be proactive with respect to future regulations.

#### Event Reporting

DEC communicates reportable incidents to the NRC Operations Center and Region I when appropriate in a prompt manner. No events were reported to the NRC since the last Periodic Meeting in November 2007. Ms. Hinkel stated that the majority of events that occur under DEC jurisdiction involve medical waste in trash or naturally occurring radioactive material in trash.

#### Response to Incidents and Allegations

DEC continues to be sensitive to notifications of incidents and allegations. There were two allegations referred to the program by the NRC since the last periodic meeting in November 2007. DEC responded promptly to both allegations.

#### Action Items Resulting From the Meeting

None.

CONCLUSIONS:

The overall performance of the Program continues to be good. The Program staff is experienced, well trained, and remains stable. The Radiological Sites Section Chief position was filled in a timely manner. The program is adequately funded with some minor exceptions. DEC continues to make progress on adopting overdue regulations.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2010 (tentatively November 2010).



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

August 19, 2009

Stephen Gavitt, CHP  
Director  
Bureau of Environmental Radiation Protection  
Division of Environmental Health Investigations  
New York State Health Department  
547 River Street  
Troy, NY 12180-2216

Dear Mr. Gavitt:

A periodic meeting with your Office was held on July 29, 2009. The purpose of the meeting was to review and discuss the status of the New York State Health Department's Agreement State program. The NRC was represented by Monica Orendi and me.

I have completed and enclosed a general meeting summary, including any specific actions that will be taken as a result of the meeting.

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) 337-5214, or email to [James.Kottan@nrc.gov](mailto:James.Kottan@nrc.gov) to discuss your comments.

Sincerely,

*/RA/*

James Kottan  
Regional State Agreements Officer  
Division of Nuclear Materials Safety

Enclosure: As stated

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

DATE OF MEETING: July 29, 2009

<b>NRC Attendees</b>	<b>New York State Department of Health Attendees</b>
James Kottan, Region I RSAO	Adela Salame-Alfie, PhD, Assistant Division Director
Monica Orendi, FSME	Stephen Gavitt, CHP, Bureau Director
	Robert Dansereau, Assistant Bureau Director
	Charles Burns, Section Chief
	Clayton Bradt, Principal Radiophysicist

**DISCUSSION:**

In November 2006, the Integrated Materials Performance Evaluation Program (IMPEP) review team found the DOH Agreement State Program's (the Program) performance to be satisfactory for all common and non-common performance indicators with the exception of the Compatibility Requirements non-common performance indicator. This indicator was found to be unsatisfactory. Additionally, one recommendation was made by the review team regarding the Program. On February 8, 2007, the Management Review Board (MRB) met to consider the IMPEP review team's proposed findings regarding the Program. The MRB found the Program adequate to protect public health and safety and not compatible with the NRC's program. Accordingly, the MRB determined that the Program should continue on Heightened Oversight. Further, the MRB requested that the Program revise and submit their Program Improvement Plan (the Plan) and that bi-monthly conference calls continue. The MRB determined that a periodic meeting should take place in November 2007.

Subsequent to the November 2007 periodic meeting, the MRB met on March 24, 2008 to consider the findings of the November 2007 periodic meeting. The MRB requested that calls between DOH and NRC staffs continue to be conducted quarterly to discuss DOH's revised Plan regarding their performance with compatibility requirements. The MRB also determined that a periodic meeting should take place in the spring/summer of 2009. This summary describes this periodic meeting.

The status of the State's actions to address the open recommendation follows:

The review team recommended that DOH develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

Status: The Program is in the process of enacting regulations to make the Program compatible with the NRC program. Revised Plans have been submitted to the NRC periodically (ML091271106, ML091271108, ML072840063 and ML072840069). DOH is coordinating development with the New York City Department of Health and Mental Hygiene (NYC) where necessary. The latest Plan submitted to the NRC calls for having the final regulations required for compatibility adopted by the third quarter of 2010.

This recommendation remains open and should be evaluated at the next IMPEP review.

OTHER TOPICS COVERED DURING THE MEETING INCLUDED:Program Strengths

A well-trained, stable, experienced and credentialed staff is the strength of the Program. Mr. Gavitt stated that an additional strength was the program equipment, and the fact that the staff were well trained in the use of the equipment. The Program also maintains emergency/incident response vehicles. One is a mobile sample analysis laboratory containing sample preparation facilities and high resolution gamma spectrometry and gas flow proportional counting equipment. The other vehicles are mobile air sampling and monitoring facilities. In addition the Program provides in-house training on such topics as new modalities, and staff are being cross trained in order to strengthen the Program.

Feedback on the NRC's Program

The Program noted that the National Source Tracking System (NSTS) appeared to still have a number of problems. DOH has about 50 Category 1 and 2 licensees and about 800 Category 3 and one tenth of Category 3 licensees. All of these licensees are in the NSTS system, and this makes the system cumbersome to use. The Program noted that the Category 3 and one tenth of Category 3 licensees need to be removed from the system, but this has not yet been done. Also the Program noted that NSTS is not working with regard to obtaining information for conducting inspections. The Program commented that both the overall relationship with the NRC and communications with the NRC are good. In particular, the Program noted the invitation to accompany NRC inspectors on inspections in New York State, and the NRC funding of training

Agreement State Program Staffing and Training

The Program staff consists of 12 individuals including the supervisor. There is one staff vacancy. Other than the one vacancy, the program is fully staffed.

Support for staff training exists in the Program. DOH welcomed the NRC's revised policy on funding training for Agreement States. Program staff have attended NRC and other training courses, including the NRC's Security Systems and Principles Course. DOH noted that other activities that are not specifically training, such as participation on IMPEP teams and attendance at meetings, also provide valuable opportunities for knowledge sharing.

Organization

The Program is administered by the Radioactive Materials Section of the Bureau of Environmental Radiation Protection (Bureau). The Bureau is part of the Division of Environmental Health Investigations in the New York State Department of Health. In addition to the Program, the Bureau is responsible for radiation producing machines, radiological emergency response and environmental radiation/radon. The Bureau experienced a minor reorganization since the last Periodic Meeting. The position of Assistant Bureau Director was created and filled with the former Chief of the Radioactive Materials Section.

Program Budget/Funding

Mr. Gavitt stated that the program is adequately funded for now. Funding sources for the Bureau include fees, grants, contract monies, and appropriations. The last fee update for the Bureau occurred in 2001. There are no restrictions on in-State travel, and out of State travel is permitted for training if an outside source is funding the training.

Inspection Program

DOH's inspection frequencies are at least as frequent as NRC's. No inspections were overdue with respect to NRC inspection priorities. The Program maintains a database to monitor inspection scheduling and tracking. Management is aware of the importance of inspection program schedules. The Program has completed the first round of IC inspections and continues to conduct IC inspections.

The Program had no licensing actions that were overdue. Mr. Gavitt stated that the number of licenses has remained approximately constant over the last several years at about 1100 licenses. Mr. Gavitt also stated that DOH is aware of the requirement for "pre-licensing" visits, and pre-licensing visits will be conducted. However, Mr. Gavitt inquired as to the need to conduct pre-licensing visits for nuclear cardiology. He stated that if the cardiologist is medically licensed in New York and working in New York, then why conduct the pre-licensing visit for this type of low risk licensee. The NRC will review this issue and provide a response to the Bureau.

Regulations

The Program submitted the latest version of their Plan to the NRC in April 2009. (ML091271106 and ML091271108) NRC staff concluded that the DOH Plan is a reasonable and realistic approach to addressing the DOH compatibility requirements with NRC. NRC staff review concluded that the tasks, milestones, and assignments for finalizing each overdue or upcoming regulation appeared reasonable and achievable. The Plan calls for the completion of the remaining overdue regulations by the third quarter of 2010.

The following regulations are overdue:

- "Quality Management Program and Misadministrations," 10 CFR Part 35 amendment (56 FR 34104), that became effective on January 27, 1992, and was due for Agreement State adoption by January 27, 1995. (RATS ID 1992-1)
- "Medical Administration of Radiation and Radioactive Materials," 10 CFR Parts 20 and 35 amendment (60 FR 48623), that became effective on October 20, 1995, and was due for Agreement State adoption by October 20, 1998. (RATS ID 1995-7)
- "Termination or Transfer of Licensed Activities: Recordkeeping Requirements," 10 CFR Parts 20, 30, 40, 61, and 70 amendment (61 FR 24669), that became effective on June 17, 1996, and was due for Agreement State adoption by June 17, 1999. (RATS IS 1996-3)
- "Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction With an Agreement State," 10 CFR Part 150 amendment (62 FR 1662), that became

effective on February 27, 1997, and was due for Agreement State adoption by February 27, 2000. (RATS ID 1997-2)

- “Criteria for the Release of Individuals Administered Radioactive Material,” 10 CFR Parts 20 and 35 amendment (62 FR 4120), that became effective on May 29, 1997, and was due for Agreement State adoption by May 29, 2000. (RATS ID 1997-3)
- “Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations,” 10 CFR Parts 30, 34, 71, and 150 amendment (62 FR 28947), that became effective on June 27, 1997, and was due for Agreement State adoption by June 27, 2000. (RATS ID 1997-5)
- “Radiological Criteria for License Termination,” 10 CFR Parts 20, 30, 40, and 70 amendment (62 FR 39057), that became effective on August 20, 1997, and was due for Agreement State adoption by August 20, 2000. (RATS ID 1997-6)
- “Deliberate Misconduct by Unlicensed Persons,” Parts 30, 40, 61, 70, 71 and 150 amendment (63 FR 1890, 63 FR 13773), that became effective on February 12, 1998, and was due for Agreement State adoption on February 12, 2001. (RATS ID 1998-1)
- “Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations,” 10 CFR Part 34 amendment (63 FR 37059), that became effective on July 9, 1998, and was due for Agreement State adoption by July 9, 2001. (RATS ID 1998-4)
- “Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 30, 40, and 70 amendment (63 FR 39477, 63 FR 45393), that became effective on October 26, 1998, and was due for Agreement State adoption by October 26, 2001. (RATS ID 1998-5)
- “Energy Compensation Sources for Well Logging and Other Regulatory Clarifications,” 10 CFR Part 39 amendment (65 FR 20337), that became effective on May 17, 2000, and was due for Agreement State adoption by May 17, 2003. (RATS ID 2000-1)
- “New Dosimetry Technology,” 10 CFR Parts 34, 36, and 39 amendment (65 FR 63749), that became effective on January 8, 2001, and was due for Agreement State adoption by January 8, 2004. (RATS ID 2000-2)
- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31 and 32 amendment (65 FR 79162), that became effective on February 16, 2001, and was due for Agreement State adoption by February 16, 2004. (RATS ID 2001-1)
- “Revision of the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298), that became effective on April 5, 2002, and was due for Agreement State adoption by April 5, 2005. (RATS ID 2002-1)
- “Medical Use of Byproduct Material,” Parts 20, 32 and 35 (67 FR 20249), that became effective on October 24, 2002, and was due for Agreement State adoption by October 24, 2005. (RATS ID 2002-2)

- “Financial Assurance for Materials Licensees,” 10 CFR Parts 30, 40, and 70 amendment (68 FR 57327), that became effective on December 3, 2003, and was due for Agreement State adoption by December 3, 2006. (RATS ID 2003-1)
- “Security Requirements for Portable Gauges Containing Byproduct Material,” 10 CFR Part 30 (70 FR 2001), that became effective on July 11, 2005, and is due for Agreement State adoption by July 11, 2008. (RATS ID 2005-1)
- “Medical Use of Byproduct Material - Recognition of Specialty Boards,” 10 CFR Part 35 (70 FR 16336; 71 FR 1926), that became effective on April 29, 2005, and is due for Agreement State adoption by April 29, 2008. (RATS ID 2005-2)
- “Minor Amendments,” 10 CFR Parts 20, 30, 32, 35, 40, and 70 (71 FR 15005), that became effective on March 27, 2006, and is due for Agreement State adoption by March 27, 2009. (RATS ID 2006-1)

Mr. Dansereau stated that RATS IDs 1997-2, 1997-3 and 1999-3 were being implemented by license condition, and he would send these license conditions to the NRC for review.

#### Event Reporting

DOH communicates reportable incidents to the NRC Operations Center and Region I when appropriate in a prompt manner. Since the last Periodic Meeting in November 2007, seven events were reported to the NRC. Mr. Gavitt stated that the majority of events that occur in New York are related to machine produced ionizing radiation rather than the use of radioactive material.

#### Response to Incidents and Allegations

DOH continues to be sensitive to notifications of incidents and allegations. Two incidents and one allegation were referred to the program since the last Periodic Meeting in November 2007.

#### Action Items Resulting From the Meeting

NRC:

-FSME will follow up on DOH's concerns regarding NSTS.

-FSME will provide an answer to DOH regarding pre-licensing visits to licensees of low risk (nuclear cardiologists).

-FSME will provide guidance to DOH on IC inspection frequencies.

DOH:

DOH will send license conditions for RATS IDs 1997-2, 1997-3 and 1999-3 to the NRC for review.

CONCLUSIONS:

The overall performance of the Program continues to be good. The Program staff is experienced, well trained, and remains stable. The program is adequately funded. DOH continues to make progress on adopting overdue regulations.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2011 (tentatively November 2010).