



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I**
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PENNSYLVANIA 19406-2713

December 6, 2012

Sandra Hinkel, Chief
Radiation Control Permits Section
Remedial Bureau
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, NY 12233-7255

Dear Ms. Hinkel:

A periodic meeting was held with you and your staff on September 26, 2012. 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 Michelle Beardsley and me.

I have completed and enclosed a general meeting summary, including any specific actions that will be taken as a result of this 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) 337-5371, or email to Donna.Janda@nrc.gov to discuss your comments.

Sincerely,

/RA/

Donna M. Janda
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

cc: Timothy Rice, NYS DEC

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

DATE OF MEETING: September 26, 2012

NRC Attendees	New York State Department of Environmental Conservation Attendees
Donna Janda, Region I RSAO	Robert Schick, Director, Division of Environmental Remediation
Michelle Beardsley, FSME	Jim Harrington, Director, Remedial Bureau A
	Sandra Hinkel, Chief, Radiation Control Permit Section (RCPS)
	Timothy Rice, Chief, Radiological Sites Section (RSS)
	Jessie Owens, Radiological Sites Section

DISCUSSION:

The Integrated Materials Performance Evaluation Program (IMPEP) review of the New York Agreement State Program (the Program) was conducted on June 6-16, 2011. On October 11, 2011, the Management Review Board (MRB) met to consider the proposed final IMPEP report on the Program and found the Program adequate, but needs improvement, to protect public health and safety, and not compatible with the U.S. Nuclear Regulatory Commission's (NRC) program. The agencies which comprise the New York Agreement State program are the New York State Department of Health (NYS DOH), New York State Department of Environmental Conservation (NYS DEC), and New York City Department of Health and Mental Hygiene (NYC). Because of the significance of the findings, the MRB determined that the Program should continue the period of heightened oversight, which was initiated in November 2005. The MRB also directed each of the agencies that comprise the Agreement State program to revise their Program Improvement Plans (PIP) as part of their response to the final IMPEP report. The NRC reviewed the agencies' initial PIPs and concluded that each PIP contained a reasonable and realistic approach to addressing the recommendations made in the final IMPEP report. The MRB also directed that bimonthly calls be conducted between the New York and NRC staffs. As part of the heightened oversight process, each agency submits an updated PIP prior to each bimonthly call. In addition, the MRB determined that a periodic meeting should be held within one year of the MRB meeting to assess the State's progress in addressing the open recommendations. This summary describes the periodic meeting with the NYS DEC.

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

Recommendation: The 2006 IMPEP 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. (Open recommendation from the 2006 IMPEP review)

Status: Since the June 2011 IMPEP, NYS DEC has updated their PIP to address their overdue regulation amendments. The adoption process for the eight overdue amendments has slipped six to nine months due to managing other Program priorities (e.g., Marcellus Shale issues).

Enclosure

OTHER TOPICS COVERED DURING THE MEETING INCLUDED:

Program Strengths

The Section Chiefs stated that having a well-trained, experienced staff is a major strength of the DEC's radioactive materials program.

Feedback on the NRC's Program

The Section Chiefs are appreciative of NRC-funded training courses. The Section Chiefs noted that it is more difficult for staff to attend NRC-sponsored training courses, particularly the new health physics course series, due to the increased demand for the courses now that there are more Agreement States.

Agreement State Program Staffing and Training

Since the 2011 IMPEP review, the DEC has filled one of their two vacant technical staff positions. This position has been moved to the DEC's Region 9 office in Buffalo. The RCPS Chief does not anticipate any impacts to the Program due to the position being moved from the Albany office to Buffalo. Currently there are 6.75 full-time equivalents (FTE) between both Sections to administer the Program.

Support for staff training exists in the DEC. Staff members have attended NRC-funded training courses as part of their training process. The Sections also use other means (i.e., in-house training and inspector accompaniments) to train current staff. State staff members need approval from the Governor's office for out-of-state travel which at times impacts State employees' attendance at the NRC-funded training courses.

Inspection and Licensing Programs

The Section Chiefs noted that since the 2011 IMPEP review, there have been no backlogs in either permit applications or inspections.

Regulations and Legislative Changes

During the 2011 IMPEP review, the review team identified eight NRC amendments that were overdue for adoption by DEC. The DEC submitted the latest version of their PIP to the NRC in June 2012 (ML12235A447). The DEC is addressing the overdue regulations in two packages.

The following two overdue regulations are being addressed in Part 384:

- "Timeliness in Decommissioning Materials Facilities," 10 CFR Parts 30, 40, and 70 amendments (59 FR 36026), that became effective on August 15, 1994 and were due for Agreement State adoption by August 15, 1994. (RATS ID 1994-3)
- "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 were due for Agreement State adoption by August 20, 2000. (RATS ID 1997-6)

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The following six overdue regulations are being addressed in Part 380:

- “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 were due for Agreement State adoption by August 15, 1994. (RATS ID 1991-4)
- “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 were due for Agreement State adoption by August 14, 1998. (RATS ID 1995-5)
- “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 were 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)
- “Requirements for Expanded Definition of Byproduct Material,” 10 CFR Parts 20, 30, 31, 32, 35, 61, and 150 amendments (72 FR 55864), that became effective on November 30, 2007, and were due for Agreement State adoption by November 30, 2012. (RATS ID 2007-3)
- “Occupational Dose Records, Labeling containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendments (72 FR 68043), that became effective on February 15, 2008, and were due for Agreement State adoption by February 15, 2011. (RATS ID 2008-1)

Since the 2011 IMPEP, one step in the legislative review process has been eliminated. The regulation packages no longer require review by the Environmental Board.

Organization

The radioactive materials program is administered by two Sections, the Radiation Control Permits Sections and the Radiological Sites Section. The Sections are administered by the Remedial Bureau A (Bureau) of the Division of Environmental Remediation (Division). The Division is located in the New York State Department of Environmental Conservation. One organizational change, a new permanent Division Director, has occurred since the 2011 IMPEP review. The DEC has had no changes to their enabling legislation since the IMPEP.

Program Budget/Funding

The Section Chiefs do not anticipate an increase in the program budget. They noted that it can be a challenge in their ability to spend money for the Program. The DEC Radiological Laboratory was closed within the last six months. Samples now get sent out for contract analysis. Travel approval, both in-state and out-of-state, can be challenging as noted above.

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Event Reporting

The DEC has had no reported events since the 2011 IMPEP review.

Response to Incidents and Allegations

DEC continues to be sensitive to notifications of incidents and allegations. The Section Chiefs stated that there have been no significant events or events with generic implications in DEC's jurisdiction since the 2011 IMPEP review. No allegations were referred to the DEC from NRC since the IMPEP.

Low-Level Radioactive Waste Disposal Program

DEC maintains regulatory oversight of two former radioactive waste disposal sites in the State of New York. These sites are inspected on an annual basis and are due to be inspected in the last quarter of 2012.

Current State Initiatives

The RCPS is planning to revisit veterinary facilities that handle unsealed I-131 that did not previously need discharge permits (within the last 10 years) to determine if any of them now require a permit. The RCPS is also addressing new permits from cyclotron facilities. One new permit has been issued this year and the Section expects to receive another permit application in the near future.

To address issues with Marcellus Shale waste, the RSS is working with the Solid Waste Program to issue guidance on how to handle these new waste streams. The Solid Waste Program will make a requirement to have radiation monitors at all solid waste facilities.

State's Mechanisms to Evaluate Performance

Supervisors accompany all inspectors on an annual basis. All inspection and permitting work receive supervisory reviews. Periodic staff meetings are held to discuss issues.

SUMMARY:

The DEC has experienced some delay in moving regulation amendments through the adoption process; however, the removal of one step in the process may help offset some of the delay being experienced. The DEC does not have a backlog in either permitting or inspections and has hired an inspector to fill one of the two vacant positions.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2013 (tentatively September 2013).