



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION I
2100 RENAISSANCE BLVD., SUITE 100
KING OF PRUSSIA, PA 19406-2713

July 5, 2016

Geoffrey Korir, Director
Office of Radiological Health
Department of Health and Mental Hygiene
42-09 28th Street, 14th Floor CN #60
Long Island City, NY 11101

Dear Mr. Korir:

A periodic meeting with you and your staff was held on May 3, 2016. The purpose of this meeting was to review and discuss the status of the New York Agreement State Program. The U.S. Nuclear Regulatory Commission (NRC) was represented by James Trapp, Lisa Dimmick, and me.

I have completed and enclosed a general meeting summary. 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 via e-mail at Donna.Janda@nrc.gov to discuss your concerns.

Sincerely,

/RA/

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

Enclosure:
Periodic Meeting Summary for New York City

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
OFFICE OF RADIOLOGICAL HEALTH

DATE OF MEETING: May 3, 2016

U.S. Nuclear Regulatory Commission (NRC) Attendees	New York City Office of Radiological Health Attendees
Donna Janda, State Agreements Officer, Region I	Geoffrey Korir, Director
James Trapp, Director, Division of Nuclear Materials Safety, Region I	Rejina Alam, Chief, Radiological Health Unit
Lisa Dimmick, Senior Health Physicist, Agreement State Programs Branch, Office of Nuclear Material Safety and Safeguards	Narenta Bici, Radiological Analyst
	Jose Lorenzo, RAM Inspection Supervisor
	Hailu Tedla, RAM Licensing Section

DISCUSSION:

The agencies which comprise the New York Agreement State program (Program) are the New York State Department of Health (DOH), which has jurisdiction over industrial uses of radioactive material throughout the State as well as medical, academic, and research uses outside the five boroughs of New York City; New York State Department of Environmental Conservation (DEC), which has jurisdiction throughout the State over discharges of radioactive material to the environment, including releases to the air and water, and the disposal of radioactive waste in the ground; and New York City Department of Health and Mental Hygiene (NYC), which has jurisdiction over medical, academic, and research uses of radioactive material within the five boroughs of New York City. During the March 2014 Integrated Materials Performance Evaluation Program (IMPEP) review of the New York Program, the review team found the State's performance satisfactory for five performance indicators; satisfactory, but needs improvement, for the performance indicator, Technical Staffing and Training; and unsatisfactory for the performance indicator, Compatibility Requirements. The review team found the performance indicator, Technical Quality of Licensing Actions, to be satisfactory, but needs improvement; however, the Management Review Board (MRB) determined this indicator should be found satisfactory. The review team made three recommendations regarding program performance in technical staffing, technical quality of licensing, and compatibility requirements, and determined that the six recommendations from the 2011 IMPEP review, regarding reciprocity inspections, development of an action plan to adopt NRC regulations, and incident reporting and incident procedures, should be closed.

On August 4, 2014, the MRB found the Program to be adequate to protect public health and safety and not compatible with NRC's program. The MRB commended the Program for progress made under the indicator, Technical Quality of Incident and Allegation Activities, where performance was improved from unsatisfactory to satisfactory during the review period, and for the progress made in adopting several overdue rules. As a result, the MRB directed that the period of Heightened Oversight be discontinued and a period of Monitoring be initiated. The MRB directed that quarterly calls be conducted between the New York and NRC staffs. The MRB also directed that a Periodic Meeting be conducted in approximately March 2016. This report is a summary of the Periodic Meeting held with NYC.

TOPICS COVERED DURING THE MEETING INCLUDED:Program Strengths

- Staffing levels in licensing and inspection areas have improved since the 2014 IMPEP review. The Program has two qualified license reviewers and two license reviewers undergoing qualification training. The Program also has three qualified materials inspectors and one materials inspector undergoing qualification training. The Program has a new Unit Chief and a new Radiological Analyst.
- The Program has updated licensing and inspection forms for use by technical staff
- The Program has developed an in-house training program which focuses on job activities. The Program uses grant money to conduct training such as Radiation Safety Officer training to be held in May 2016 and for an annual RSO Symposium to discuss current topics (such as 10 CFR Part 37).
- The Program also participates in NRC qualification training courses as appropriate.

Program Challenges

- Revision of the NYC Health Code in conjunction with adoption of NRC's regulations by reference
- Customizing the NRC training requirements in Inspection Manual Chapter (IMC) 1248 to meet the needs of NYC Program staff
- Development of an internal audit program
- Having qualified full-time technical staff. Some staff split their time between radioactive materials work and other activities such as radiological response.

Feedback on the NRC's Program

The Program noted that there is good communication and support from NRC. The Program also appreciates the training courses and opportunities provided by NRC. The Program is interested in having NRC participate in an upcoming workshop to discuss risk communication. The Program would also appreciate more NRC-sponsored webinars on current topics and other training opportunities, including the possibility of NYC hosting NRC-sponsored training. The Program is considering moving to a paperless system and is interested in web-based licensing.

Organization

There have been no reorganizations affecting the Program since the 2014 IMPEP review. The NYC Program is administered by the Office of Radiological Health which is part of the Bureau of Environmental Sciences and Engineering within the Department of Health and Mental Hygiene. The Program is managed by the Program Director and the Unit Chief. The Program also has one licensing supervisor and one inspection supervisor.

Program Budget/Funding

Program funds are placed into the NYC general fund. The Program's budget has had modest increases each fiscal year since the 2014 IMPEP review.

Technical Staffing and Training (2014 IMPEP: Satisfactory, but Needs Improvement)

At the time of the Periodic Meeting, the Program devoted seven technical staff, including the licensing and inspection supervisor positions, and one Unit Supervisor, to the radioactive materials program for a total of approximately 7.6 full-time equivalents (FTE). The Program also has a Program Analyst who devotes 0.3 FTE to materials licensing. The Licensing Section has two fully qualified technical staff and one vacant position and the Inspection Section has three fully qualified inspectors and one inspector undergoing qualification training. The Unit Supervisor and Program Analyst perform some licensing activities and are undergoing qualification training. Since the 2014 IMPEP review, two individuals retired from the Program, including a Licensing Supervisor, and five individuals were hired into the Program, including the Program Director and Unit Supervisor. The vacant position has been posted and the Program Director expects interviews will start soon.

The 2014 IMPEP review team made one recommendation for NYC in this indicator:

Recommendation: The review team recommends that NYC should update its staffing and training qualification program to include approved documentation of staff's qualifications.

Status: Since the 2014 IMPEP review, NYC has developed and implemented a documented training and qualification program that is equivalent to NRC IMC 1248. The documents were provided to the NRC RSAO for review and comment prior to the meeting. The Program conducts several in-house training sessions each year and hosts symposiums for the NYC licensee community. Refresher training is conducted and documented for qualified technical staff.

Status of Materials Inspection Program (2014 IMPEP: Satisfactory)

The Program reported it has conducted 277 inspections since the 2014 IMPEP review. None of these inspections were completed overdue according to the priorities established in NRC IMC 2800. No inspections are currently overdue. The Program has completed 36 initial inspections since the 2014 IMPEP review, none of which were completed overdue (i.e., greater than 12 months after license issuance). If the licensee does not possess radioactive material, the Program will conduct the inspection anyway and set the next inspection date for no later than one year. The Program has conducted 16 reciprocity inspections since the 2014 IMPEP review.

Technical Quality of Inspections (2014 IMPEP: Satisfactory)

The Program is in the process of updating their inspection procedures to include specific inspection forms for various modalities regulated by NYC. The Program uses inspection procedures that are consistent with the inspection guidance outlined in IMC 2800. Inspectors discuss inspection findings with the Inspection Supervisor and provide the inspection documentation to the supervisor for review. Once the inspection report/letter is approved by the supervisor, the document is provided to the Unit Chief for review and approval. The Program has performed 11 supervisor inspection accompaniments since the 2014 IMPEP review and is on track to meet the goal of at least one supervisory accompaniment for each qualified materials inspector on an annual basis. The Program anticipated starting Part 37 inspections in May 2016. Approximately 12 facilities are subject to Part 37, some of which have multiple modalities subject to these new requirements.

Technical Quality of Licensing Actions (2014 IMPEP: Satisfactory)

At the time of the Periodic Meeting, the Program reported having 350 specific licenses. Since the 2014 IMPEP review, the Program has implemented a peer review process for all licensing actions to ensure that the actions are complete and well-documented. NYC uses NUREG-1556 licensing guidance and the NRC pre-licensing guidance on applicable licensing actions.

The 2014 IMPEP review team made one recommendation for NYC in this indicator:

Recommendation: The review team recommends that NYC (1) provide additional training to technical staff members regarding technical review of licensing actions, including training to ensure that the staff acquires increased familiarity with the regulations under NYC's equivalent to 10 CFR Parts 30, 33, and 35, and applicable licensing guidance documents and license conditions, and (2) take measures to ensure that the NYC's review of licensing actions are complete and well-documented.

Status: (1) NYC has used a variety of training opportunities to meet this part of the recommendation, including on-the-job training, NRC-sponsored training, and NYC customized training classes. One example of in-house training is a three-day class on radiation safety training being conducted for the radioactive materials staff by a contractor in May 2016. This course will cover topics such as radiation protection standards, medical use licensing, and security of radioactive materials. In-house training is documented on a new form entitled "In-House Training for Materials Licensing and Inspection". (2) Since the 2014 IMPEP review, the Program has established standard operating procedures for licensing actions, including procedures to ensure that documentation generated from deficiency letters, emails, and telephone conversations with licensees is maintained in the license files. As part of the licensing review process, licensing staff review the licensee's history, evaluate the historical licensing and inspection documentation, and perform a quality assurance assessment of the licensee file including a review of licensees' compliance history. Protocol was developed to ensure appropriate documentation is compiled for license termination actions. Peer reviews of all licensing actions are used to ensure that documentation of the action is complete.

Technical Quality of Incidents and Allegation Activities (2014 IMPEP: Satisfactory)

At the time of the Periodic Meeting, the Program had reported seven events to the NRC. Two of these events were reported to the Nuclear Materials Event Database but were not reported to the NRC Headquarters Operations Center (HOC) as required for these types of events. The Program noted that this was an inadvertent oversight and committed to reporting the events to the HOC in order to meet the reporting requirements. The Program received two allegations since the 2014 IMPEP review, both were received in 2016. The Program conducts follow up activities, including onsite inspections, for incidents and allegations as appropriate.

Compatibility Requirements (2014 IMPEP: Unsatisfactory)

The 2014 IMPEP review team made one recommendation for NYC in this indicator:

Recommendation: the review team recommends that the Program make appropriate regulatory changes to resolve NRC-generated comments as noted in regulation review letters, and adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

Status: Since the 2014 IMPEP review, NYC has drafted proposed regulations to adopt all applicable NRC regulations by reference. On February 26, 2016, NYC submitted these proposed regulations to NRC for review. Once NYC receives NRC comments, the proposed repeal and reenactment of New York Health Code, Article 175, which governs radiological health, will be presented to the New York City Board of Health at its June 2016 meeting to initiate a 30-day public comment period and subsequent adoption by the Board at its September 2016 meeting. Once the regulations become final, NYC will submit the final regulations to NRC for review.

CONCLUSIONS:

The NYC Agreement State Program continues to be an effective, well maintained program. The Program had one vacancy in the licensing section at the time of the periodic meeting. The Program continues to address the recommendations made for the NYC program during the 2014 IMPEP review. The Program is effectively managing its licensing and inspection activities and responds to incidents and allegations as appropriate. The Program has made significant progress in adopting NRC regulations by reference.

NRC staff recommends that the next IMPEP review be conducted as scheduled in March 2018.