



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION I
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KING OF PRUSSIA, PA 19406-2713

July 5, 2016

Sandra Hinkel, Chief
Radiation Control Permit Section
Remedial Bureau A
Division of Environmental Remediation
Department of Environmental Conservation
625 Broadway, 11th Floor
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Timothy Rice, Chief
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Department of Environmental Conservation
625 Broadway, 11th Floor
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Dear Ms. Hinkel and Mr. Rice:

A periodic meeting with you and your staff was held on May 4, 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 Joseph Nick, Lisa Dimmick, Robin Elliott 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 Department of Environmental Conservation

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
 NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 DIVISION OF ENVIRONMENTAL REMEDIATION

DATE OF MEETING: May 4, 2016

| U.S. Nuclear Regulatory Commission (NRC) Attendees | New York Department of Environmental Conservation Attendees |
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| Donna Janda, State Agreements Officer, Region I | Robert Schick, Director, Division of Environmental Remediation |
| Joseph Nick, Deputy Director, Division of Nuclear Materials Safety, Region I | Jim Harrington, Director, Bureau A |
| Lisa Dimmick, Senior Health Physicist, Agreement State Programs Branch, Office of Nuclear Material Safety and Safeguards | Sandra Hinkel, Chief, Radiation Control Permit Section |
| Robin Elliott, Acting State Agreements Officer, Division of Nuclear Materials Safety, Region I | Timothy Rice, Chief, Radiological Sites Section |
| | Ann Marie Gray, Environmental Radiation Specialist, Radiation Control Permit Section |
| | Jessie Sangster, Environmental Program Specialist, Radiological Sites 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 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 DEC.

TOPICS COVERED DURING THE MEETING INCLUDED:

Program Strengths

- The DEC Program has an experienced, well-trained staff with few staff losses since the 2014 IMPEP review.

Program Challenges

- Filling vacancies is a challenge due to the State hiring freeze. The Program must compete with other programs for the few job openings that are approved to be filled. A vacancy waiver is needed to hire new staff.
- The Program anticipates having two retirements within the next two to three years.
- Having one new technical staff member stationed in the Buffalo office can be challenging at times for training purposes due to travel issues within the State.
- Getting regulations through the adoption process is a challenge once the regulations are out of the Program office and held up by another office.

Feedback on the NRC's Program

The Program managers noted that there is good communication and support from NRC related to the Agreement State Program. The Program also appreciates the training courses and opportunities provided by NRC. The Program noted that there are concerns related to the decrease in NRC's funding for the Agreement State staff training. Of particular interest to the Program is the Environmental Risk Assessment Course (H-420) which is not considered to be a core course for qualification training; therefore, NRC does not provide funding for Agreement State personnel to attend this course. The DEC Program considers this course to be a core course for their environmental staff in the Agreement State Program and would appreciate it if NRC reconsiders its decision.

Organization

There have been no reorganizations affecting the Program since the 2014 IMPEP review. The Program is administered by the Radiation Control Permit Section (the Permit Section) and the Radiological Sites Section (the Sites Section) in Remedial Bureau A of the Division of Environmental Remediation (the Division), within the DEC. The Program is managed by a Section Chief in both the Permit Section and the Sites Section.

Program Budget/Funding

THE DEC Program is funded mostly by the State Low Level Waste Fund with some funding contribution from FUSRAP. There has been no change in funding 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 five technical staff to the Permit Section, including the Section Chief, and seven technical staff to the Sites Section (six in the Central Office and one in the Buffalo office), including the Section Chief, for a total of 8.1 full-time equivalents to the radioactive materials program. Since the 2014 IMPEP review, one technical staff member left the Permit Section. This position has been vacant for approximately one year. One additional technical position has been vacant in the Sites Section for approximately three years.

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

Recommendation: The review team recommends that the DEC continue to pursue vacancy waivers and implement a strategy to address current and future staffing vacancies in order to maintain effectiveness.

Status: Since the 2014 IMPEP review, DEC continues to pursue vacancy waivers wherever possible. Waiver approvals do not approve backfill of a position, so if a promotion is given, the Program would need a waiver to backfill the lower grade position. The Program has managed its workload effectively despite the vacancies with all inspections completed timely since the 2014 IMPEP review and no current overdue inspections. In addition, the Program noted that there is no backlog in issuing permits.

Status of Materials Inspection Program (2014 IMPEP: Satisfactory)

The Program reported that it completed 37 routine inspections and 1 initial inspection since the 2014 IMPEP review. As noted above, no inspections were completed overdue according to the priorities established in NRC Inspection Manual Chapter 2800.

Technical Quality of Inspections (2014 IMPEP: Satisfactory)

The Program has not had any changes to inspection procedures since the 2014 IMPEP review. The Sites Section Chief completed two supervisor inspection accompaniments in 2015 and has not completed any accompaniments in 2016 as of the Periodic Meeting. The Permit Section Chief completed six accompaniments in 2015 and has not completed any accompaniments in 2016 as of the Periodic Meeting.

Technical Quality of Licensing Actions (2014 IMPEP: Satisfactory)

At the time of the Periodic Meeting, the Program reported having 31 permits, including 2 new permits since the 2014 IMPEP review. All DEC permittees also possess DOH and/or NYC specific radioactive materials licenses. The agencies conduct their permit and license reviews in parallel. The Permit Section conducts pre-permit site visits for all new applicants and conducts initial inspections within six months after a new permit is issued. The DEC had one permit termination, which was completed in 2015.

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

Since the 2014 IMPEP review, the DEC Permits Section has followed up on one incident involving a rejected shipment of regulated medical waste generated by a radiopharmacy and

one allegation, which was referred to DEC from NRC. Both of these cases were investigated and closed out by DEC.

The DEC Sites Section follows up on incidents involving waste facilities alarms within the State of New York. DEC will refer incidents involving radioactive material to DOH for follow up. Since the 2014 IMPEP review, DEC has followed up on 25 incidents at waste facilities. Nineteen of these incidents involved known or suspected iodine-131 (I-131) originating from either household waste or hospitals. In addition, since the 2014 IMPEP review, the Sites Section has followed up on three allegations, including two that were referred from NRC. All cases were investigated and are either closed out or still under investigation by the Program.

Compatibility Requirements (2014 IMPEP: Unsatisfactory)

The DEC regulations related to the radioactive materials program are found in 6 NYCRR Chapter IV, Subchapter C, Part 380, Prevention and Control of Environmental Pollution by Radioactive Materials. The DEC is also drafting new regulations related to cleanup criteria and site remediation. These regulations will be promulgated in the planned new Part 384, Cleanup Criteria for Remediation of Sites Contaminated with Radioactive Material. The Permit Section is responsible for drafting Part 380 regulations and the Sites Section is responsible for drafting Part 384 regulations. The DEC rulemaking adoption process takes approximately two years to complete if there are no mitigating factors.

The 2014 IMPEP review team made one recommendation 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: During the Periodic Meeting, the Permit Section Chief noted that the Part 380 regulation amendment package, which had been with the Governor's Office for approximately one year, has shown some progress with moving forward in the adoption process. The Section Chief noted that the regulation package will be sent to the NRC for comment within two months of being cleared from the Governor's Office. This step will be concurrent with a 90-day public comment period. Once the public comment period has ended, a public hearing will take place. The final rule will be published after comments are addressed. The Permit Section Chief anticipates that the earliest date for the final rule to be effective will be in early 2017.

The Sites Section Chief noted that the draft Regulation Initiation Memo for the new Part 384 has been completed by the staff and, at the time of the Periodic Meeting, was under review by the Bureau Director. Once the draft regulations are approved by the Bureau Director, the rulemaking adoption process will begin.

Low-Level Radioactive Waste (LLRW) Disposal Program (2014 IMPEP: Satisfactory)

New York has two former radioactive waste disposal sites: the State-licensed Disposal Area (SDA) on the Western New York Nuclear Service Center at West Valley (West Valley Site) and the University of Cornell Radiation Disposal Site (RDS) in Lansing. The Sites Section inspects both of these sites annually. In addition, each site is issued a permit from the Permit Section for monitoring and maintenance activities. The Program noted that the LLRW Disposal Program has not had any changes since the 2014 IMPEP review.

Current State Initiatives

The Sites Section Chief noted that changes to the Solid Waste regulations (Part 360) are currently undergoing a public comment period. Once final, these regulations will require radiation monitors at all solid waste facilities in New York. The Sites Section Chief anticipates that radiation alarms will increase as a result of facilities adding these monitors and anticipates that some of that increase will be attributable to I-131 from patient waste. The Section Chief noted that there is a need for better information to be provided to patients who receive I-131 treatment and would like to see an evaluation performed on the unintended consequences and/or impacts on municipal waste sites from I-131 in solid waste.

Large, Complicated, or Unusual Authorizations for Use of Radioactive Material

The Permit Chief noted that a major university in NYC intends to construct a cyclotron for both its own use and for commercial distribution. This application will require review by all three Programs (NYC, DOH, and DEC).

State's Mechanisms to Evaluate Performance

All work products receive supervisory review. Standardized work products are used to ensure consistency amongst staff. Supervisory inspection accompaniments are performed annually and feedback is provided to the inspectors regarding performance. Quarterly staff meetings are held to discuss workload and any issues to be addressed. Impromptu summary reviews are conducted when needed.

CONCLUSIONS:

The DEC Agreement State Program continues to be an effective, well maintained program. At the time of the Periodic Meeting, the Program continued to seek waivers for the two vacant technical positions, one in the Permit Section and one in the Sites Section. The Program continues to address the recommendations made for DEC during the 2014 IMPEP review. The Program is effectively managing its permitting and inspection activities and responds to incidents and allegations as appropriate. The Program has made some progress in adopting NRC regulations.

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