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December 11, 2003

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

SUBJECT: PERIODIC MANAGEMENT MEETING SUMMARY

Dear Mr. Bradt:

A periodic meeting with the New York Department of Labor was held on November 13, 2003. The purpose of the meeting was to review and discuss the status of the New York 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 Department's actions taken in response to the IMPEP recommendations and security of radioactive materials.

I have completed and enclosed a general meeting summary, included 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 discussions, 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

cc:
K. Hsueh, STP
R. Bores, RI

C. Bradt
Radiological Health Unit

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

DATE OF MEETING: November 13, 2003

ATTENDEES:

Duncan White, RSAO
Kevin Hsueh, ASPO
Clayton Bradt, Program Director
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 is 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 Director indicated that all inspections are currently up to date and that inspectors are starting to inspect licensees due in the next quarter. It is recommended that this item be verified at the next IMPEP review.

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

Current Status: The Program Director has accompanied some inspectors since the last review and plans to continue accompaniments. 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 implementation an effective procedure to identify, track and review all incident reports. (Section 3.5.5)

Current Status: DOL hosted NMED training on September 16 at their Albany office which was attended by other New York program offices and other Agreement State representatives from New England. DOL indicated that they fully support the reporting of radiological events for the purposes of sharing with other agencies as a matter of health and safety. They have chosen not to report events to the NRC in accordance with the requirements in STP Procedure SA-300 "Reporting of Material Events", mainly due to philosophical differences with NRC policies. Program Director continues to hold the view that DOL does not have an obligation to promptly report incidents to the NRC that do not directly impact NRC licensees or licensees from other Agreement States. NRC staff stated that prompt event reporting is still an important issue at the NRC, particular due to the interest in the security at nuclear facilities and that the Commission

continues to view event reporting as a matter of comparability. 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 the current NRC policy on adequacy and compatibility. (Section 4.1.3)

Current Status: The Program Director indicated that several amendments to the DOL regulations have been prepared and will send to the Department's legal staff for review by the end of the year. Adoption of the regulations will probably take a few years and will also require approval by the Governor's Office of Regulatory Reform. DOL has adopted portions of the general licensee rule by license condition. The program is also implementing the license termination rule and plans to adopt the rule. This recommendation remains open.

The Division Director indicated that he is currently serving on an Occupational Safety and Health Agency (OSHA) Task Force involved with developing safety and health procedures to support emergency response personnel that could be involved in responding to terrorist or other catastrophic disasters. There was a discussion regarding NRC activities in this area, particularly NRC's coordination with other federal agencies, particularly the Department of Homeland Security. DOL also inquired about the status of the National Response Plan. After the meeting, the RSAO provided the Program Director with the desired information.

Since the last IMPEP, one individual retired from the program (Andrew Awai). This position remains vacant. The program currently has eight technical and four administrative staff members. There is currently a Statewide hiring freeze and that an exemption is required to fill the vacant position. The Program Director indicated that the program's experienced staff continues to be its greatest strength.

The Program Director indicated that the program's funding level is essentially the same as last fiscal year. The program currently covers approximately 40% of its operating costs through fees with the balance from the general state funds. There have been no changes in the program's responsibilities or governing legislation since the last review.

The Program Director expressed his concern over the NRC's use of national security to directly regulate Agreement State licensees. It is the Program Director's position that the Agreement States could have implemented the necessary actions under the public health and safety provisions of the Agreement to ensure the security of licensed radioactive materials. NRC's decisions to pursue actions under national defense were not generally well thought out and have resulted in complicating and damaging the NRC's relationship with the Agreement States. As examples, the Program Director indicated the need to negotiate Section 271i Agreements for the States to perform the inspections and need for the States (and some licensees) to handle safeguards information.

Finally, despite NRC's assurances that the security and health and safety issues can be dealt with separately, The Program Director stated that circumstances may push a greater NRC role in Agreement State matters. The Program Director referred to a petition recently received by the NRC from a community group in Brooklyn pursuing the closing of a waste broker licensee based on the security concerns. By pursuing security concerns at an Agreement State licensee, a local community group can bypass the State and force the NRC, at a minimum, to expend its resources on matters that it would normally not be engaged.

The NRC staff discussed the recent developments regarding the nominations for the two vacant Commission positions. Also discussed was the consolidation of the Region I and Region II materials programs, the status of the feline hyperthyroidism policy, the status of National Materials Program pilot projects, materials security issues as they impacted the States, changes in the NMED database and program and the potential impact of NRC's aging workforce (i.e., succession planning). NRC staff also highlighted the proposed changes to two documents that directly affect the IMPEP process: Management Directive 5.6 and STP Procedure SA-116. There was also a discussion of the recent GAO report on the security of radioactive materials, and the status of various proposals in Congress to amend the Atomic Energy Act.

The Program Director indicated that the program prepares monthly metrics and a report of programmatic highlights.

There was one allegation referred to the program by NRC Region I since the last IMPEP. Shortly after the meeting, the Region received feedback from the program to close out the allegation.

The NRC staff indicated that next IMPEP of the New York Agreement State Program is scheduled for FY 2006. No issues were identified by NRC staff to change the scheduling of the next review.