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December 31, 2003

Gene Miskin, Director
Bureau of Radiological Health
New York City Department of Health and Mental Hygiene
2 Lafayette Street, 11th Floor
New York, NY 10007

SUBJECT: PERIODIC MANAGEMENT MEETING SUMMARY

Dear Mr. Miskin:

A periodic meeting with the New York City Department of Health and Mental Hygiene was held on November 14, 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.

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

G. Miskin
Bureau of Radiological Health

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

DATE OF MEETING: November 14, 2003

ATTENDEES:

Duncan White, RSAO

Kevin Hsueh, ASPO

Gene Miskin, Program Director

Alan Goldberg, Assistant Commissioner

Ken Daniels, Administrative Director - Environmental Sciences and Engineering

Richard Borri, Senior Scientist, Radioactive Materials Section

DISCUSSION:

The proposed status of each of the six recommendations applicable to NYC 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 Bureau stated that they are currently up to date with core inspections. Initial inspections are performed within six months of license issuance. The Bureau identified a list of improvements and changes needed for their RAD database. These changes have been discussed with the Department programmers and these fixes have been scheduled for upgrade. Approximately every two to three months, Bureau inspectors check licensee files manually to correlate inspections dates entered in the RAD database. The Radioactive Materials Supervisor performs a quality assurance check of the database on a monthly basis. Bureau and Office management also hold weekly tracking meetings to review the status of materials and machine inspections and productivity issues and goals. One of the monthly report metrics for the Bureau tracks the timeliness of inspections. It is recommended that this item be verified at the next IMPEP review.

2. The review team recommends that NYC and DEC transmit inspection findings to their licensees within thirty days after the close of the inspection. (Section 3.1.5)

Current Status: This item is tracked as a monthly metric and the Bureau reported that inspection results are issued to the licensee on the average of 21 days with a maximum time of 39 days. It is recommended that this item be verified at the next IMPEP review.

3. The review team recommends that NYC review and revise their inspection process, including report preparation to ensure that inspection findings are accurately described in the documentation of the inspection and that cited violations are supported in the inspection field notes. (Section 3.2.5)

Current Status: Periodic meetings are held with inspection staff to emphasize the importance of preparing inspection reports which are consistent with the observations in the field notes. The Bureau has also changed the process for the inspection correspondence. Inspectors are now required to prepare the inspection documentation to the licensee in addition to the inspection field notes. The Senior Radioactive Materials Inspector reviews the correspondence and the field notes to ensure that all violations are cited properly and documented both in the notes and the letter. It is recommended that this item be verified at the next IMPEP review.

4. The review team recommends that NYC review all licenses to ascertain if any require financial assurance, take appropriate actions on each affected license to ensure that all licensees meet codified financial assurance requirements. (Section 3.4.5)

Current Status: The Bureau has identified approximately 10 licensees that will require financial assurance. A draft letter has been prepared and will be issued to these licensees shortly requesting compliance with NYC financial assurance requirements. This recommendation remains open.

5. 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: The Bureau indicated that monthly metrics are maintained for incidents and complaints (i.e., allegations). The Bureau indicated that they have had no reportable events so far this year and only three materials events in total, two of which involved accelerator produced materials. Most events reported to the Bureau are related to accelerators and trash calls. NRC staff briefly summarized some of the changes to NMED and recommended that the Bureau periodically review their events from the NMED web site externally to ensure that all information is complete and accurate. The Program Director indicated that future reporting of medical incidents will not include any identifying patient or licensee information consistent with State law and the current State Department of Health practice. It is recommended that this item be verified at the next IMPEP review.

6. 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 Bureau has met with the Department's general counsel regarding the adoption of overdue and due NRC amendments with the exception of the Part 35 revision. The Bureau plans to adopt Part 35 in a future rule making in coordination with State Department of Health's adoption of the same NRC amendment. The Bureau is preparing a Certificate of Necessity for issuance in January 2004 with final adoption of the amendments in the summer. Subsequent to the meeting and at the request of the Bureau, the RSAO reviewed their list of NRC amendments for completeness and determined that two amendments were omitted. This information was forwarded to the Bureau. NRC staff reviewed the STP regulations review process and suggested that

the Bureau review the information available on the STP web site and contact STP or the RSAO if they have any questions. This recommendation remains open.

The Bureau has plans to hire three individuals into Radiation Emergency Response positions that are funded through the CDC terrorism grants. The positions are currently posted. NYC management present stated that the City is on the fast track to fill these positions and get the program up and operational. Equipment will also be purchased. These new positions will form a new emergency preparedness (EP) section within the Bureau. There have been no other personnel changes since the last IMPEP review.

There have been no legislative changes affecting the Agreement State program. Besides the creation of the new EP section, there have been no other changes in the Bureau's responsibilities. According to the Program Director, a small cut in budget (2%) this year did not affect the Bureau. Fees generated by the Bureau go directly to the general municipal fund. The amount of fees generated by the Bureau covers their operating costs. The Program Director indicated that the Bureau will look at changing their fees next year.

The Program Director noted that the current Administration is supportive of training staff and anticipates no particular problems in getting the necessary training for the new EP staff members. In particular, the Program Director and the Administrative Director noted that Jeanine Prud'homme, the current Assistant Director for the Office of Environmental Sciences and Engineering, has been very supportive of the Bureau and is committed to its improvement.

The Bureau has some staff members that are eligible or plan to retire in the near future. The Program Director noted that the stressed fiscal situation in the City currently and in the near future will make it difficult to fill vacated positions and for succession planning.

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 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.

There were no allegations referred to NYC by NRC Region I since the last IMPEP.

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.