

April 6, 2005

Ms. Linda Angello, Commissioner
New York State Department of Labor
State Office Building Campus, Bldg. 12, Room 592
Albany, NY 12240

Dear Commissioner Angello:

We are writing to request your assistance in helping address and resolve an outstanding issue related to the reporting of nuclear material event data by your Department to the U.S. Nuclear Regulatory Commission (NRC). We are meeting with the Radiological Health Unit (RHU) management from your Division of Safety and Health on April 13, 2005 and will again discuss this on-going issue. Enclosed for your review is the agenda for the meeting (Enclosure 1). This issue was discussed with your staff during a periodic meeting held between the NRC and your staff on November 12, 2003. The issue relates to your Department not providing complete event report information to the NRC. We would appreciate your assistance in ensuring that complete event report information is submitted to the NRC in accordance with our requirements. In a 2002 letter to RHU management (Enclosure 2), we believe we adequately addressed RHU management concerns on the broader question of NRC's oversight authority to perform program reviews to ensure adequate and compatible Agreement State programs, and the specific issue of the compatibility requirement that Agreement States report their materials events to NRC in accordance with policy.

Reporting material events is a mandatory requirement of Agreement States to be compatible with the NRC's regulatory program, as stated in the *1997 Statement of Principles and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs* (62 FR 46517). The NRC has been clear in this regard since the aforementioned 1997 policy, specifically that Agreement State reporting of material event data is necessary and required for an Agreement State program to be compatible with NRC and to foster a coherent national regulatory program. The policy is implemented through our Office of State and Tribal Programs Procedure SA-300: *Reporting Material Events*.

In addition, Agreement State material events data is important from a national perspective, in that the data is used in our annual report to the U.S. Congress, which is required by the Government Performance Results Act of 1993 (GPRA). The GPRA requires NRC to develop a strategic plan and measurable performance goals and metrics that indicate how well NRC and the Agreement States are performing in protecting public health and safety. The material event data collected from Agreement States is an important data source for accurately measuring performance, and without the data from RHU, we are not getting a complete national picture of our collective performance in this area. Enclosure 3 is an excerpt from *NRC's Performance and Accountability Report - Fiscal Year 2004* sent to Congress, that includes material event data from Agreement State and NRC licensees. The entire report can be viewed at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1542/v10/>.

L. Angello

-2-

Thank you in advance for your attention to this important issue and please contact me if you have any questions at (301) 415-1705, or Paul H. Lohaus, Director, Office of State and Tribal Programs at (301) 415-3340.

Sincerely,

/RA/

Martin J. Virgilio
Deputy Executive Director
for Materials, Research and State Programs
Office of the Executive Director for Operations

Enclosures: As stated

cc: Jared Thompson, Chair
Organization of Agreements

Clayton Bradt, CHP
Radiological Health Unit
Division of Safety and Health

L. Angello

-2-

Thank you in advance for your attention to this important issue and please contact me if you have any questions at (301) 415-1705, or Paul H. Lohaus, Director, Office of State and Tribal Programs at (301) 415-3340.

Sincerely,

/RA/

Martin J. Virgilio
Deputy Executive Director
for Materials, Research and State Programs
Office of the Executive Director for Operations

Enclosures: As stated

cc: Jared Thompson, Chair
Organization of Agreements

Clayton Bradt, CHP
Radiological Health Unit
Division of Safety and Health

Distribution:

DIR RF (5-42) DCD (SP05)

SISP Review Complete

: Publicly Available Non-Publicly Available
: Non-Sensitive Sensitive

DOCUMENT NAME: E:\Filenet\ML050910066.wpd

***See previous concurrence.**

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	STP	STP:DD	OGC	STP:D	DEDMRS
NAME	TABrock:gd:kk	MRShaffer	SATreby	PHLohaus	MJVirgilio
DATE	04/1/05	03/23/05	03/25/05*	03/31/05	04/06/05

ML050910053 Pkg.

OFFICIAL RECORD COPY