



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
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KING OF PRUSSIA, PENNSYLVANIA 19406-1415

May 3, 2005

Barbara Youngberg
Chief, Radiation Section
NY State Department of Environmental Conservation
Division of Solid & Hazardous Materials
Bureau of Hazardous Waste and Radiation Management
625 Broadway, 8th Floor
Albany, NY 12233-7255

SUBJECT: SUMMARY OF PERIODIC MANAGEMENT MEETING

Dear Ms. Youngberg:

A periodic meeting with NY Department of Environmental Conservation was held on April 12, 2005. The purpose of this meeting was to review and discuss the status of the Department's 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 status of the Department's efforts to 1) adopt overdue NRC amendments required for compatibility; and 2) complete the investigation of sites for the NRC formerly licensed sites grant project.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions.

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 610-337-5042 or an e-mail to 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

Enclosure: As stated

cc:
K. Hsueh , STP

B. Youngberg 2
NY State Department of Environmental Conservation

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)

DATE OF MEETING: April 12, 2005

ATTENDEES:

Duncan White, RSAO
Kevin Hsueh, ASPO
Barbara Youngberg, Program Manager
Edwin Dassatti, Director
David O'Toole, Assistant Director

DISCUSSION:

The proposed status of each of the four recommendations applicable to DEC in Section 5.0 of the 2002 Integrated Materials Performance Evaluation Program (IMPEP) review of New York are 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: DEC's Radiation Section currently has 38 permittees for the discharge of radioactive materials into the environment from facilities licensed and inspected by one of the other three New York radiological protection programs. Permittees are required to report their environmental discharges annually to the DEC. During the previous periodic meeting, the Radiation Section indicated that its inspection frequencies were revising its inspection priorities to routinely inspect its permittees based primarily on the amount of actual environmental discharges rather than based on the maximum allowed level in the permit. An annual reevaluation is conducted to reassign the inspection priorities based on actual emissions. Based on the new frequencies, the Section currently has two overdue inspections which have been scheduled. The Program Manager indicated the two overdue inspections are the result of these inspections being deferred due to the higher priority cyclotron 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: The Program Manager indicated that most inspection reports are issued within 30 days. It is recommended that this item be verified at the next IMPEP review.

3. The review team recommends that DOL and DEC perform annual supervisory accompaniments of all materials inspections. (Section 3.2.5)

Current Status: The Program Manager indicated that all inspectors are accompanied every other year due to the small number of inspections performed annually. It is recommended that this item be verified at the next IMPEP review.

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 current NRC policy on adequacy and compatibility. (Section 4.1.3)

Current Status: Prior to the periodic meeting, the RSAO requested that the Section review the status of the DEC's regulations on the STP website for completeness and accuracy. The Program Manager and NRC staff discussed the status of each overdue NRC regulation amendment required for compatibility. The results of this review can be found in the attached table. Since the last periodic meeting, the Section has made little progress in adopting NRC regulations. There are currently nine NRC amendments that DEC has not adopted in accordance with NRC policy on adequacy and compatibility. The Section plans to adopt by consensus (direct) rulemaking the new transportation requirements and various low level radioactive waste (LLRW) requirements by the end of 2005. DEC management present indicated that the Governor's Office of Regulatory Reform (GORR) review process presents a significant hurdle to the adoption of regulations by New York agencies. NRC staff reviewed STP's regulation review process with the Program Manager and requested that the Section submit legally binding requirements in addition to proposed and final regulations for NRC review.

Since the last periodic meeting in November 2003, overall technical staffing levels in the Section have remained the same. The Section currently has 10 technical and 0.5 full-time equivalent (FTE) administrative staff members. There are currently three technical and one administrative vacancies. The Agreement State program portion of the Section is approximately 3 to 3.5 FTE. One individual was promoted (Marcus Spivak) within the Section to a position not directly involved with Agreement State activities and one of the vacant positions was filled (John Frisone) through an exemption. There is one vacancy in the Agreement State program (the Part 380 permit unit).

The Program Manager indicated that the Section's strengths continue to be its experienced staff and availability of equipment. The Section continues to upgrade its field and laboratory equipment over the last year. Program weaknesses also continue to be the loss of staff and the difficulty in filling vacancies due to the tight budget situation faced by the Department which limits its FTE ceiling. The Program Manager also noted the growing salary disparity between the Department and the private sector in that several quality candidates turned down the recently filled vacant position due to its salary.

The Program Manager indicated that there is sufficient funding to perform its Section related activities including providing the necessary training for the new staff member. The Section's current funding level is essentially the same as that of last fiscal year. The Section receives none of its funding from general State revenue funds. Funding for the Section comes from an assessment on nuclear power plants, a federal grant from the Army Corp of Engineers for FUSRAP sites and the Department of Energy for the oversight of West Valley. Current priorities in the Section include cyclotrons, West Valley and water treatment waste (radium in drinking water).

The Section has two closed low level radioactive sites (West Valley and Cornell). The Section continues to regulate the State-Licensed Disposal Area at West Valley under a permit issued to New York State Energy Research and Development Agency (NYSERDA) which oversees the State owned portion of the West Valley site. The cover for the Cornell disposal site is complete but the Section continues to regulate cover maintenance and discharges from the pump and treatment system for the chemically contaminated groundwater at the site.

There were no allegations referred to the Program by NRC Region I since the last periodic meeting. There were no reportable events since last meeting. DEC rarely reports to the NRC Operations Center since all their permittees also have a specific license from one of the other three New York agencies. The Section generally will respond to events involving radiation alarms at landfills, transfer stations or incinerators. The Program Manager noted that the operators of radiation detection systems in use at some waste facilities are now experienced at handling alarms. Some operators have gamma spectroscopy instrumentation and can provide detailed information.

The Program Manager and NRC staff discussed the status of the NRC formerly licensed sites grant project. Under the grant project, DEC is reviewing ten license files which consist of 14 sites. Among them, twelve sites have been closed out. For the remaining two sites, one is expected to be closed out in May 2005 and the other one still requires site visits or further review which may take a couple more months. Based on a follow-up discussion on this subject between the NRC staff and the Program Manager after the meeting, DEC planned to send a status report to NRC by early May to close out the 13 sites and provide a time frame when the review of the last site is expected to be completed.

The NRC staff discussed recent developments at the agency including the recess appointment of two new commissioners, the status of NRC's activities in the areas of high level waste and low level waste, recent security initiatives for material licensees and the status of the National Materials Program pilot projects. There was also a brief discussion of the proposed legislation for the West Valley site proposed by NYSERDA. The Section indicated satisfaction with the level and availability of electronic communication from STP through electronic mailings or the STP website.

The Program Manager indicated that the Section prepares monthly metrics and a report of programmatic highlights. The Section also performs a quarterly assessment of the inspection program in addition to the annual review of the reported effluent discharges from its permittees.

The NRC staff indicated that the next IMPEP of the New York State Agreement State Program is scheduled for FY 2006 and that the results of this periodic meeting will be discussed with the Management Review Board at a scheduled meeting within the next few months.

State Regulation Status Data Sheet (SRS)

State: New York Department of Environmental Conservation

Date: April 12, 2005

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			Not Applicable SECY-95-112 ⁴
ANT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F		3/24/94
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			overdue
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			Not Applicable SECY-95-112 ⁴
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1			overdue
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			Not Applicable SECY-95-112 ⁴
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Not Applicable SECY-95-112 ⁴
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			Not Applicable SECY-95-112 ⁴
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not Applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3			Not Applicable SECY-95-112 ⁴

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Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243 60 FR 322; (1/1/98)	1995-1			Not Applicable SECY-95-112 ⁴
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2			Not Applicable SECY-95-112 ⁴
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	(see 1998 IMPEP report)	7/9/97
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			Superseded by 62 FR 28948 due 6/27/00
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5			overdue
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6			Not Applicable SECY-95-112 ⁴
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			Not Applicable SECY-95-112 ⁴
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	F	(see 1998 IMPEP report)	7/9/97
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3			overdue
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F - LBR		8/20/04
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2			Not Applicable SECY-95-112 ⁴
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3			Not Applicable SECY-95-112 ⁴
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5			Not Applicable SECY-95-112 ⁴

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Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6			overdue
Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			Not Applicable SECY-95-112 ⁴
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	under DEC legal review		overdue
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4			Not Applicable SECY-95-112 ⁴
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5			overdue
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6			overdue
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not Applicable SECY-95-112 ⁴
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3			Not Applicable SECY-95-112 ⁴
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			Not Applicable SECY-95-112 ⁴
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2			Not Applicable SECY-95-112 ⁴
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1			Not Applicable SECY-95-112 ⁴
Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1			overdue

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Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2			Not Applicable SECY-95-112 ⁴
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			Not Applicable SECY-95-112 ⁴
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			Not Applicable SECY-95-112 ⁴
Medical Use of Byproduct Material--Recognition of Specialty Boards - Part 35	70 FR 16335; (04/29/08)	2005-2			Not Applicable SECY-95-112 ⁴

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means "Yes," there are comments in the review letter that the State needs to address.
N means "No," there are no comments in the review letter.
3. Not Required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to the regulation. See: "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," III.1.Time From For Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number.