



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
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May 11, 2005

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

SUBJECT: SUMMARY OF PERIODIC MANAGEMENT MEETING

Dear Mr. Bradt:

A periodic meeting with New York Department of Labor was held on April 13, 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 adopt overdue NRC amendments required for compatibility; and address and resolve an outstanding issue related to the reporting of nuclear material event data by the Department to the NRC.

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

C. Bradt
New York Department of Labor

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

DATE OF MEETING: April 13, 2005

ATTENDEES:

Duncan White, RSAO
Kevin Hsueh, ASPO
Clayton Bradt, Program Manager
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 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: The Program Manager indicated that all inspections have been completed in a timely manner with one exception. This overdue inspection has been scheduled to be completed shortly. The Program is currently experiencing problems with inspection tracking system which may have made it difficult for inspectors to update inspection data. Department information technology staff is working to correct the problem. It is recommended that this item be verified at the next IMPEP review.

2. 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 accompaniments of inspectors are performed but not on an annual basis. Due to the experience of the inspectors, the consistent high technical quality of inspections, and the availability of other metrics for inspector performance, the Program Manager has determined that his time is better spent on other tasks. 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 implement an effective procedure to identify, track and review all incident reports. (Section 3.5.5)

Current Status: In an April 6, 2005 letter from Martin Virgilio, NRC to Linda Angelo, Commissioner, Department of Labor (ADAMS Accession No. ML050910053), the NRC requested the Commissioner's assistance in helping address and resolve an outstanding issue related to the reporting of nuclear material event data by the Department to the NRC. This issue was previously discussed during the previous periodic management meeting on November 13, 2003 (ML033500338). The Division Director stated that the Department is currently reviewing the letter, will discuss the matter with the Commissioner and will provide a response prior to the NRC Management Review Board regarding this periodic meeting. NRC staff stated that prompt event reporting is an important issue with the Commission and with senior NRC management. 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 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 DOL'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, DOL has made little progress in adopting NRC regulations. There are currently eight NRC amendments that DOL has not adopted in accordance with NRC policy on adequacy and compatibility. NRC staff reviewed STP's regulation review process with the Program Manager and requested that the Program submit legally binding requirements in addition to proposed and final regulations for NRC review. This recommendation remains open.

The Division Director discussed a legislative proposal that would expand the enforcement capabilities of the Department, including those for the Program. Currently, the Program can only issue Notice of Violations or Orders. If the proposal is adopted, the Program would be able to issue civil penalties. The Program Director also indicated that a recent State Law that impacts the Program requires that all guidance documents use by State agencies must be on-line.

The Program is scheduled this summer to have a new fee structure in place that will expand the number of categories from three to five and increase the fees. The Program's new fees are now more comparable with those fees currently used by the Bureau of Environmental Radiation in the State Department of Health. There continues to be interest by the Governor's Office of Regulatory Reform to combine the radiation programs in the State Departments of Health and Labor.

Since the last periodic meeting in November 2003, one individual left the Program (Charles Burns) and this vacancy was recently filled. The new individual (M. Ashrat Chaudhry) has a nuclear medicine technologist background and is currently working on licensing. The Program Director indicated that the staff continues to be the program's strength. The Program is considering succession planning since one of the three inspectors in the Manhattan office is

now eligible for retirement. The Division Director indicated that the Division has an updated Civil Service list available for use if it needs to fill any future vacancies.

The Program Manager stated that since the last periodic meeting, the Program has issued a new sealed source and device registry sheet (NY-1210-D-101-B) for a device containing tritium or Nickel 63 in an electron capture/micro argon ionization detector cell.

The Program noted that the license for the Self-Powered Lighting facility in Nyack was terminated and the facility decontaminated since the last periodic meeting. This facility manufactured and recycled tritium exit signs. The Program Manager also noted that the Radiac Research facility is currently renewing their chemical permit which will be discussed at a public hearing. The facility has a DOL license to store packaged radioactive waste. The primary issues to be discussed as part of the permit renewal will be security and reduction of on-site quantities. Last year, a local citizens group unsuccessfully petitioned the NRC to close the Radiac facility due to security concerns.

There were no allegations referred to the Program by NRC Region I since the last periodic meeting.

The Program Manager attended the April 12 meeting in New York City between the NRC and various State and New York City radiological, police and security agencies to discuss the NRC and State initiatives regarding the use of radioactive materials by terrorists. The Program Manager noted that the NYPD is very concerned regarding the potential use of a radiological dispersal device by terrorists.

The Program does not currently perform any self audits. The Unit's performance is monitored by monthly, quarterly and annual reports to Division and Department management. The Division Director indicated that RHU has gotten positive feedback during informal discussions with their licensees.

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. The Program indicated satisfaction with the level and availability of electronic communication from STP through electronic mailings or the STP website.

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. The NRC staff discussed the need to perform an inspector accompaniment prior to the IMPEP in 2006. The Program Manager indicated that the NRC should coordinate the accompaniment with the inspector.

State Regulation Status Data Sheet (SRS)

State: New York Department of Labor

Date: April 13, 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	F		6/29/94
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-Y	12/5/97 12/24/97	6/29/94
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N 1/28/00	4/15/99
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	F	N 1/28/00	4/15/99
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F	N 1/28/00	4/15/99
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 required ³
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	F	N 1/28/00	4/15/99
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	F	N 1/28/00	4/15/99

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁴	NRC Review / Y, N² / Date / ML #⁴	Final State Regulation¹ (Effective Date)
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N 1/28/00	4/15/99
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	N 1/28/00	4/15/99
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F	N 1/28/00	4/15/99
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 1/28/00	4/15/99
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 1/28/00	4/15/99
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	N 1/28/00	4/15/99
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	covered by LC, but not reviewed		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	N 1/28/00	4/15/99
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	F	see 2002 IMPEP report	
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	F-Y certification needed	see 2002 IMPEP report	overdue (certification portion)
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

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁴	NRC Review / Y, N² / Date / ML #⁴	Final State Regulation¹ (Effective Date)
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	cannot adopt per legal counsel	see 2002 IMPEP report	
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 required ³
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	F	N 1/28/00	4/15/99
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	no licensees		Overdue, but 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	need to change reference date		Overdue
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2			Overdue
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F-LC for 32.52 (a) & (b)	N 4/2/04 ML040930388	Not Applicable SECY-95-112 ⁴
Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1			Overdue

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)
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2	Pharmacy portions only		
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			
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			
Medical Use of Byproduct Material--Recognition of Specialty Boards - Part 35	70 FR 16335; (04/29/08)	2005-2	Pharmacy portions only		

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.