



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

May 11, 2005

Adele Salame-Alfie, Ph.D., Director
New York State Health Department
Bureau of Environmental Radiation Protection
547 River Road
Troy, NY 12180-2216

SUBJECT: SUMMARY OF PERIODIC MANAGEMENT MEETING

Dear Dr. Salame-Alfie:

A periodic meeting with the New York State Health Department 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 changes in the Bureau's staffing and organization.

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

A. Salame-Alfie
New York State Health Department

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR NEW YORK STATE DEPARTMENT OF HEALTH (DOH)

DATE OF MEETING: April 13, 2005

ATTENDEES:

Duncan White, Regional State Agreement Officer
Kevin Hsueh, Agreement State Project Officer
Richard Svenson, Division Director
Adele Salame-Alfie, Director, Bureau of Environmental Radiation Protection (Program Director)
Steven Gavitt, Assistant Director
Robert Dansereau, Radioactive Materials Section Chief
Gary Baker, Field Operations Section Chief

DISCUSSION:

The proposed status of each of the three recommendations applicable to DOH 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 DOH provide prompt, in-depth, documented review of events with the potential for significant health and safety consequence (Section 3.5.5)

Current Status: As discussed during the previous periodic meeting in November 2003, the Bureau developed and initiated the use of in-house database system (called INCIDENT) for the tracking and documenting all events reported to the Bureau. Since the last periodic meeting, the Bureau has been enhanced and expanded capabilities added and all events back through 2002 have been entered into the database. It is recommended that this item be verified at the next IMPEP review.

2. 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: The Bureau has reported two events to NMED since the last periodic meeting. The NRC staff discussed recent charges to the NMED database and suggested that the Bureau view their events from the NMED website externally to ensure that all information has been entered correctly into the national database. NRC staff noted and expressed appreciation for the Bureau prompt identification and reporting of a contamination event involving a New York hospital from the use of a device received from an NRC licensee (Advanced Care) in Connecticut. The subsequent joint investigation by Region I and the Bureau at both facilities led to the NRC taking action against the NRC licensee to correct the device. It is recommended that this item be verified at the next IMPEP review.

3. 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 Bureau review the status of the DOH's regulations on the STP website for completeness and accuracy. The Radioactive Materials Section Chief 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, DOH has made little progress in adopting NRC regulations. There are currently seven NRC amendments that DOH has not adopted in accordance with NRC policy on adequacy and compatibility. Bureau staff indicated that draft amendments to their regulations including the overdue NRC amendments have been prepared and will be submitted for Department review in May 2005. NRC staff reviewed STP's regulation review process with the Bureau staff and requested that the Bureau submit legally binding requirements in addition to proposed and final regulations for NRC review. This recommendation remains open.

Since the last periodic meeting, the Bureau has undergone changes in terms of structure and staffing. One new Section was formed (Emergency Response). The Bureau indicated that their staffing levels have increased compared to levels discussed at the last periodic meeting in November 2003. The Radioactive Materials Section based in Troy is currently fully staffed. Since the last periodic meeting, two individuals in the materials program (Cynthia Costello and Mark Virgil) moved to the new Emergency Response Section and were replaced by two individuals (Charles Burns and Alex Damiani) from other State programs. One materials inspector in the Rochester office (Robert Snyder) moved to the Environmental Radiation/Radon Section in the Troy office and was replaced by a new hire (Mai Tran). The Bureau continues to have five experienced materials inspectors in the Buffalo, Syracuse and New Rochelle field offices. There are currently three junior level positions pending to be filled in the Environmental Radiation and Emergency Response Sections. Despite the change in structure and staffing, the overall level of experience with the materials program has increased since the three individuals who are no longer working on a daily basis in the materials program are still in the Bureau and are available if necessary. Bureau management indicated that there is sufficient technical staff at this time, but noted a need for more administrative staff. The new hire (Ms. Tran) will be trained in accordance with the Bureau's training policy which will include both NRC and in-house courses.

Due to the restructuring, movement of experienced staff to other Sections and the new hire (the only materials inspector based in Rochester), the Radioactive Materials Section currently has two broad scope licensees and five lesser priority licensees overdue for inspection. All overdue inspections have been scheduled to be performed in the next two months. Inspector accompaniments are being conducted on a routine basis. Bureau management indicated that State Health is not likely at this time to enter into Section 274i agreement with the NRC to perform security inspections due to the difficulty in getting additional staff.

As reflected in the Bureau's reorganization, emergency preparedness continues to be a high priority for the Department and the State. The Radioactive Materials Section Chief indicated that the Bureau is performing inspections involving the transfer of radioactive materials with quantities of concern. The Bureau is also denying public requests for information on licensees from the public. One of the emerging technologies that the Bureau is currently reviewing is a request to use of Gilasites in outpatients. The Bureau indicated that this matter is still under review.

There has been no new legislation approved that affects the Agreement State program, but there are two legislative proposals that would impact the Radioactive Materials Section. One proposal is for the licensure of nuclear medicine technologists and the second is a proposal by the Governor's Office of Regulatory Reform (GORR) to merge the Department of Labor's Radiological Health Unit into the Bureau. Bureau management indicated that budget levels are stable (the Radioactive Materials Program has a dedicated fund). The only limitation experienced by the Bureau is the limitation on filling approved positions in the State budget.

Bureau management 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. Bureau attendees at the meeting noted that the NYPD is very concerned regarding the potential use of a radiological dispersal device by terrorists.

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

The Bureau has no formal mechanism to evaluate performance. As noted previously, the Bureau's INCIDENT database has been useful in ensuring the timely and complete followup of events. The Radioactive Materials Section Chief indicated that Section staff meets on a weekly basis to share information. The Bureau status reports to upper management tend to focus on non-routine activities.

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, clearance rule, recent security initiatives for material licensees and the status of the National Materials Program pilot projects. The Bureau 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 accompaniments prior to the IMPEP in 2006. The NRC should coordinate any accompaniments with the Radioactive Materials Section Chief.

State Regulation Status Data Sheet (SRS)

State: New York State Department of Health

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			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-N	12/11/97	12/30/92
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	see 1998 IMPEP report	
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1		no longer required	
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-LC	see 2002 IMPEP report	
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 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-LC	see 2002 IMPEP report	

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)
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		currently no licensees - see 2002 IMPEP report	overdue
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3		use DEC requirements	Not Applicable SECY-95-112 ⁴
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			Not Applicable SECY-95-112 ⁴
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	F-LC	see 2002 IMPEP report	
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F-N	see 1998 IMPEP report	
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	by reference in current regs.	
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	F	see 1998 IMPEP report	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1		use DEC requirements	
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-LC	see 2002 IMPEP report	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F-N	see 1998 IMPEP report	
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

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)
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 Cabon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			overdue
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F	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		use DEC requirements	
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		currently no licensees	overdue
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

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			
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			

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.