



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

May 17, 2005

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

SUBJECT: SUMMARY OF PERIODIC MANAGEMENT MEETING

Dear Mr. Miskin:

A periodic meeting with the New York City Department of Health was held on April 19, 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 for each of the recommendations in the 2002 Integrated Materials Performance Evaluation Program review and emergency preparedness.

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 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

Enclosure: As stated

cc:
K. Hsueh, STP

G. Miskin
New York City Department of Health

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR NEW YORK CITY HEALTH DEPARTMENT (NYC)

DATE OF MEETING: April 19, 2005

ATTENDEES:

Duncan White, Regional State Agreement Officer
Kevin Hsueh, Agreement State Project Officer
Jeanine Prud'homme, Assistant Commissioner
Gene Miskin, Director
Tobias Lickerman, Supervisor, Radioactive Materials

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 are summarized below.

1. The review team recommends that NYC, State Department of Labor (DOL), and State Department of Environmental Conservation (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 of Radiological Health (Bureau) continues to implement a number of actions detailed during the previous periodic meeting to ensure that core inspections are performed in a timely manner. As part of the upgrade of the Bureau's inspection database (RAD), the Department determined that one computer was not properly updating the system when new data were entered into the database due to an old version of the software. This matter is currently being addressed and will be resolved shortly. The Bureau stated that they currently have one overdue inspection which has been scheduled. 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 inspection. (Section 3.1.5)
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 documentation of the inspection and that cited violations are supported in the inspection field notes. (Section 3.2.5)

Current Status (items 2 and 3): As discussed in November 2003, the inspectors are now responsible for the preparation of the inspection correspondence to the licensee in addition to the inspection field notes. The Senior Radioactive Materials Inspector reviews the correspondence and field notes to ensure all violations are cited properly and documented. Combined with weekly meetings with inspectors to emphasize the accuracy and timely transmittal of inspection findings, the Director noted that the Bureau has been successful in meeting the 30-day goal. It is recommended that these items 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 action on each affected license to ensure that licensees meet codified financial assurance requirements. (Section 3.5.5)

Current Status: The Bureau identified 11 licensees requiring financial assurance for decommissioning. To date, six are finalized and four are currently under review or additional information has been requested. One licensee did not submit the required information after a number of requests and consequently, the Bureau initiated enforcement action. Consequently, this licensee recently committed to submit the required financial assurance instrument. It is recommended that this item be verified at the next IMPEP review.

5. The review team recommends that NYC, DOL, and State Department of Health (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 continues to maintain monthly metrics for incidents and complaints (i.e., allegations). The Bureau indicated that they had only a couple of reportable events involving Agreement State materials reported to the NRC Operations Center since the last periodic meeting. Most reportable events received by the Bureau involved naturally occurring or accelerator produced material. 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 current NRC policy on adequacy and compatibility. (Section 4.1.3)

Current Status: In February 2005, the Bureau submitted proposed revisions to their regulations that incorporated nine overdue NRC amendments. These regulations were reviewed by NRC staff and a number of comments were noted and transmitted to the Bureau on April 27. The Bureau's recent package reviewed by the NRC did not include one overdue NRC amendment (RATS ID 2001-2). The Bureau will be submitting a regulatory agenda for 2006 shortly to address this amendment and several other amendments including the two amendments to the medical rules (RATS ID 2002-2 and 2005-2). The Director noted that NYC regulations cannot be less restricted than State Health regulations. This requires that both agencies adopt new regulations within a similar time period. It was also noted that the Bureau has benefitted by having access to the services of an experienced Department attorney during the preparation of the last regulations package. This recommendation remains open.

A major focus of the Bureau's activities continues to emphasize radiological emergency preparedness. Since the last periodic meeting, the Bureau has filled two emergency preparedness positions with grant money and has approval to hire a third individual into a supervisory emergency preparedness position. The Director and Assistant Commissioner noted that NYC Health Department has been able to obtain grant money which has been used to upgrade the Department radiation detection and information technology capabilities.

The Department has been less successful in hiring staff. Outside the use of grant funds, the Department cannot hire new staff and will lose a position from which an individual retires. Budget cuts have been experienced over the last three years, but the Bureau has been able to maintain its program since there has been no change in staff over the last few years and grant money has been used to purchase equipment. The Director noted that the Bureau has had no problem sending staff for out-of-state training. The Bureau plans to have some staff attend the five-week health physics course later this year.

The Assistant Commissioner discussed the Department's initiative to implement the use of handheld "tablet" computers that will allow Bureau inspectors to enter data during the inspection. These computers will be networked to a server and allow the inspector to generate the letter to the licensee and inspection reports. A similar system is currently being used by another group of Health Department inspectors. The Bureau's system for radiation inspections will be customized from the existing system. The Assistant Commissioner hopes for implementation of the radiation system in the summer of 2006.

The Radioactive Materials Supervisor noted some of the challenges currently in under review by the Bureau. In addition to the Bureau's efforts to address financial assurance for decommissioning, the Bureau is currently reviewing an emerging technology that involves the use of Tc-99m imaging with mammography exams. The Bureau will be also reviewing a decommissioning plan from Memorial Sloan-Kettering Hospital, one of NYC's large medical broad scope licensees, for the decommissioning and demolition of one of the hospital's main buildings.

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. The Director noted that NYPD is very concerned regarding the potential use of a radiological dispersal device by terrorists. The Assistant Commissioner stated that the Commissioners for the Health and Police Department have discussed and agreed to collaborate on the handling of security matters. The Assistant Commissioner requested that the NRC coordinate with NYC with any security inspections to minimize impact on licensees. The Director also indicated that NYC has requested that DOL report to the Bureau if any DOL licensees are working in NYC. In light of NYC's interest in security of radioactive materials, NRC staff inquired if NYC would be interested in pursuing a 274i Agreement to perform security inspections. The Assistant Commissioner indicated that the Department did not plan to pursue an Agreement. At the request of the Assistant Commissioner, NRC staff agreed to review NYC protocol for security inspections.

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

The Bureau has a number of mechanisms to evaluate their performance. In addition to the weekly staff meetings and information technology upgrades discussed above, the Bureau submits a monthly report to Department management that includes inspection, licensing and incident metrics and non-routine activities. The Director also indicated that the inspector accompaniments are performed annually by the Senior Radioactive Materials inspector.

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, legislative proposal for NRC to regulate discrete NARM, status of Pennsylvania, Minnesota, New Jersey and Connecticut Agreement State efforts, recent security initiatives for material licensees, management changes in Region I, 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 Assistant Commissioner requested to be added on electronic distribution of NRC announcements from STP (the Director already receives these notifications). Subsequent to the meeting, the NRC staff added the Assistant Commissioner to the distribution list.

At the conclusion of the meeting, Department personnel demonstrated some of the new equipment obtained since the last periodic meeting for NRC staff. The equipment demonstrated included the use of information technology to remotely read radiation detection equipment and the mobile radiation detection van.

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 inspector accompaniments prior to the IMPEP in 2006. The Director indicated that the NRC should coordinate any accompaniments with the Radioactive Materials Supervisor.

State Regulation Status Data Sheet (SRS)

State: New York City Health Department

Date: April 19, 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-Y	10/14/97	6/7/94
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F		6/7/94
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			6/7/94
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	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		submitted for NRC review on 2/05	3/05

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 1998 & 2002 IMPEP reports	Not Applicable SECY-95-112 ⁴ plan to adopt in 2006
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	
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		submitted for NRC review in 2/05	3/05
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6		submitted for NRC review in 2/05	3/05
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F-N	submitted for NRC review in 2/05	3/05
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	P-N	2/9/99	4/99
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		submitted for NRC review in 2/05	3/05
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		submitted for NRC review in 2/05	3/05

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)
Criteria for the Release of Individuals Administered Radioactive Material- Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F-LC (10 CFR 35.75 only)	see 2002 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
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6		submitted for NRC review in 2/05	3/05
Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F-LC	see 2002 IMPEP report	
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1		submitted for NRC review in 2/05	3/05
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		submitted for NRC review in 2/05	3/05
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

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)
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3		currently no licensees	Not Applicable SECY-95-112 ⁴ plan to adopt in 2006
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
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2			plan to adopt in 2006
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.