

December 28, 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 appreciate your June 1, 2005, response to our April 6, 2005 letter, regarding our continued concerns with the New York State Department of Labor (DOL) Agreement State program's continued practice of not providing the required reporting of nuclear material event data to the U.S. Nuclear Regulatory Commission (NRC). Our delay in response to your letter was to take into consideration any new information, or reasons to support your position that may have been presented during the November 3, 2005, management review board (MRB) meeting. The MRB meeting was held to discuss the results of the periodic meeting held with DOL in May 2005, where event reporting was discussed in addition to other topics. During the MRB meeting, no commitments to report material events, beyond those contained in your June 1, 2005 letter, were made by DOL radiation control program management in attendance.

In response to your June 1, 2005 letter, we cannot accept an annual summary of event information from DOL under our compatibility requirements. Agreement States are expected to report certain material events in a timely manner to the NRC in accordance with the Office of State and Tribal Programs Procedure SA-300, *Reporting Material Events*. The NRC has a continued interest in receiving significant material event reports as close as possible to real time. As discussed during the recent MRB meeting, timely reporting by the Agreement States allows the NRC to evaluate trends in radioactive materials events across the Nation. By analyzing trends, the NRC is able to issue communications to Agreement States and licensees to alert them to potential problems, and to decrease the likelihood of reoccurrence. This is consistent with the NRC's and Agreement States' collective mission to protect public health and safety.

We firmly believe that timely reporting of nuclear material events is an important element of the Agreement State program. As such, we request that DOL reconsider its position and inform us of your position within 30 days from the date of this letter. If your position remains unchanged, we believe that our responsibility compels us to elevate this important issue within our respective agencies. In addition, this area will be examined as part of the Integrated Material Performance Evaluation Program (IMPEP) review of the New York Agreement State Program in July 2006. We note that an unsatisfactory performance finding with regard to event reporting or other IMPEP performance indicators, could result in the New York program continuing on heightened oversight, or further action on the part of the NRC, including placing the program on probation or other escalated actions.

L. Angello

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

Sincerely,

/RA/

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

cc: P. Smith, State Liaison Officer
President, NYSERDA

C. Bradt, Principal Radiophysicist
New York Department of Labor

B. Hamrick, Chair
Organization of Agreement States

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