

December 27, 2005

Mr. Stephen Hammond, P.E., Director  
Division of Solid & Hazardous Materials  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-7250

Dear Mr. Hammond:

On November 3, 2005, the Management Review Board (MRB) met to consider the results of the April 2005 periodic meetings with the four New York State Agencies that make up the New York State Agreement State Program (Program). The purpose of the periodic meetings was to review and discuss the status of the Program and address any open items from the 2002 Integrated Materials Performance Evaluation Program (IMPEP) review. The MRB took into consideration the results of the periodic meetings and information provided by the State during the MRB meeting. Based on the information presented, we have determined that the New York Program should undergo a period of heightened oversight. Heightened oversight is an increased monitoring process used by the U.S. Nuclear Regulatory Commission (NRC) to follow the progress of improvements needed in an Agreement State program. This process involves the preparation of a Program Improvement Plan (Plan) by the Program, bimonthly conference calls between the Program and the NRC, and the submission of status reports by the Program prior to each call.

The MRB is taking this action based on the fact that all four New York Agencies that make up the New York Program have NRC regulations that are overdue for adoption. In addition, the increased number of amendments that have become overdue over the last two IMPEP periods, and the lack of action in this regard, weighed heavily on the MRB's decision to place the Program on heightened oversight.

We request that each Agency prepare and submit a Plan to address the following item that is out of standard with criteria as established in the NRC Management Directive (MD) 5.6, *Integrated Materials Performance Evaluation Program*.

1. The MRB directs that all four New York agencies promulgate, and submit to NRC for review, all overdue regulations and develop a Plan to account for future adoption of NRC amendments in the required time frames.

For your convenience, a sample Plan is Enclosure 1. In addition, a list of the regulations that are overdue or will be due in the future for your Agency is Enclosure 2. I ask that you have a representative from your staff contact Mr. Duncan White, State Agreements Officer, NRC Region I, to discuss the required elements of the Plan to ensure that the milestones and measures of success are clearly identified. The Plan should be submitted to the Office of State and Tribal Program (STP) within 30 days from the date of this letter. If your Agency is unable to meet this timeline, please promptly inform Mr. White. Upon review of the Plan by STP and NRC Region I Office, Mr. White will schedule the first conference call with your Agency. The initial conference calls should be scheduled and conducted no later than January 30, 2006.

The next IMPEP review of the New York Program is scheduled for July 2006. In addition to reviewing the status of the corrective actions required by the heightened oversight process, a full Program review will be performed in accordance with the IMPEP criteria as established in the MD 5.6. As an outcome of this review, the Program will be evaluated to determine if the Program is adequate to protect public health and safety and compatible with the NRC's program. The results of this IMPEP review could lead to the State being removed from heightened oversight or, in the event of unsatisfactory performance with regard to regulations or other IMPEP performance indicators, could lead to further action on the part of the NRC, including placing the Program on probation or other escalated actions.

I appreciate the courtesy and cooperation extended to the NRC representatives during the periodic meetings and your continuing support of the New York Agreement State radiation control program. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

*/RA/*

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

Enclosures:  
As stated

cc: Barbara Youngberg, NYDEC  
Jack Spath, NYSERDA

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**SAMPLE PROGRAM IMPROVEMENT PLAN**

(Agency) Program Improvement Plan

Date updated: (date)

Recommendation from NRC MRB	Tasks	Milestones	Assignments	Anticipated Completion Date	Current Status or Completion Date
The MRB directs the New York agencies to promulgate, and submit to NRC for review, all overdue regulations	Develop draft rule	Write rule language	Staff Assigned		
	Radiation Control Program review and comments	Review draft language	Staff Assigned		
	State agency reviews external to the radiation control program (if more than one agency, list separately)	Review by (insert NY agency name)	Agency name		
	Submit to NRC for review	STP review (60 days)	STP		
	Incorporate comments on draft rule	Reconcile comments and incorporate	Staff Assigned		
	Develop final rule	Write final rule language	Staff Assigned		
	Radiation Control Program review and comments	Review final rule language	Staff Assigned		
	State agency reviews external to the radiation control program (if more than one agency, list separately)	Review by (insert NY agency name)	Agency name		
	Incorporate Comments on final rule	Reconcile comments and incorporate	Staff Assigned		
	Publish final rule	Publish rule	Staff Assigned		
	Submit to NRC for review	STP review (60 days)	STP		

**Regulations That Are Overdue or Will Be Due in the Future  
for the  
New York State Department of Environmental Conservation**

Note: Only regulations that are currently overdue need to be addressed in the program improvement plan.

2. RATS ID # 1991-4, "Notification of Incidents" 10 CFR 20, 30, 31, 34, 39, 40, 70 amendment (56 FR 64980) that became effective March 15, 1991, due for State adoption March 15, 1994.
3. RATS ID # 1993-1, "Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]" 10 CFR 30, 40 amendment (58 FR 39628) that became effective October 25, 1993, due for State adoption October 25, 1996.
4. RATS ID # 1995-5, "Radiation Protection Requirements: Amended Definitions and Criteria" 10 CFR 19, 20 amendment (60 FR 36038) that became effective August 14, 1995, due for State adoption August 14, 1998.
5. RATS ID # 1996-3, "Termination or Transfer of Licensed Activities: Record keeping Requirements" 10 CFR 20, 30, 40, 61, 70 amendment (61 FR 24669) that became effective June 17, 1996, due for State adoption June 17, 1999.
6. RATS ID # 1997-6, "Radiological Criteria for License Termination" 10 CFR 20, 30, 40, 70 amendment (62 FR 39058) that became effective August 20, 1997, due for State adoption August 20, 2000.
7. RATS ID # 1998-1, "Deliberate Misconduct by Unlicensed Persons" 10 CFR 30, 40, 61, 70, 150 amendment (63 FR 1890 and 63 FR 13773) that became effective February 12, 1998, due for State adoption February 12, 2001.
8. RATS ID # 1998-5, "Minor Corrections, Clarifying Changes and a Minor Policy Change" 10 CFR 20, 35, 36 amendment (63 FR 39477 and 63 FR 45393) that became effective October 26, 1998, due for State adoption October 26, 2001.
9. RATS ID # 1998-6, "Transfer for Disposal and Manifests: Minor Technical Conforming Amendment" 10 CFR 20 amendment (63 FR 50127) that became effective November 20, 1998, due for State adoption November 20, 2001.
10. RATS ID # 2002-1, "Revision of Skin Dose Limit" 10 CFR 20 amendment (67 FR 1629) that became effective April 5, 1999, due for State adoption April 5, 2002.
11. RATS ID # 2004-1, "Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments" 10 CFR 71 amendment (69 FR 3697) that became effective October 1, 2004, due for State adoption October 1, 2007.