December 27, 2005

Jeanine Prud'homm, Assistant Commissioner
Office of Environmental Sciences & Engineering
New York City Department of Health
125 Worth Street, Room 613
New York, NY 10013

Dear Ms. Prud'homm:

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: Gene Miskin, NYCDOH
Jack Spath, NYSERDA

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Sincerely,

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Martin J. Virgilio
Deputy Executive Director for Materials, Research,
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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		

ATTACHMENT 1

Regulations That Are Overdue or Will Be Due in the Future
for the
New York City Health Department

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

1. RATS ID # 1995-2, "Frequency of Medical Examinations for Use of Respiratory Protection Equipment" 10 CFR Part 20 amendment (60 FR 7900) that became effective March 13, 1995, due for State adoption March 13, 1998.

2. RATS ID # 1999-3, "Respiratory Protection and Controls to Restrict Internal Exposure" 10 CFR Part 20 amendment (64 FR 54543) that became effective February 2, 2000, due for State adoption February 2, 2003.

3. RATS ID # 2002-1, "Revision of Skin Dose Limit" 10 CFR 20 amendment (67 FR 1629) that became effective April 5, 2002, due for State adoption April 5, 2005.

4. RATS ID # 2002-2, "Medical Use of Byproduct Material" 10 CFR 30, 31, 32 amendment (67 FR 20249) that became effective April 24, 2002, due for State adoption October 24, 2005.

5. RATS ID # 2003-1, "Financial Assurance for Materials Licensees" 10 CFR 30, 40, 70 amendment (68 FR 57327) that became effective December 3, 2003, due for State adoption December 2, 2006.

6. 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.

7. RATS ID # 2005-1, "Security Requirements for Portable Gauges Containing Byproduct Material" 10 CFR Part 30 amendment (70 FR 2001) that became effective July 2, 2005, due for State adoption July 2, 2005.

8. RATS ID # 2005-2, "Medical Use of Byproduct Material--Recognition of Specialty Boards" 10 CFR 35 amendment (70 FR 16335) that became effective April 29, 2005, due for State adoption April 29, 2008.

ATTACHMENT 2