

EDO Principal Correspondence Control

FROM: DUE: / / EDO CONTROL: G20060155  
DOC DT: 02/03/06  
FINAL REPLY:

Anthony J. Germano  
New York State Department of Labor

TO:

Virgilio, DEDMRS

FOR SIGNATURE OF : \*\* GRN \*\*

CRC NO:

DESC:

ROUTING:

New York IMPEP -- Period of Heightened Oversight

Reyes  
Virgilio  
Kane  
Silber  
Dean  
Cyr/Burns  
Collins, RI

DATE: 02/16/06

ASSIGNED TO:

CONTACT:

STP

Schlueter

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.

Template: EDO-001

E-RIDS: EDO-01

February 3, 2006

Mr. Martin J. Virgilio  
Deputy Executive Director for Materials,  
Research, State and Compliance Programs  
Office of the Executive Director for Operations  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Mr. Virgilio:

This will respond to your December 27, 2005, correspondence concerning the Management Review Board's (MRB) determination that New York's Program undergo a period of "heightened oversight" because NRC regulations are overdue for promulgation.

The Department of Labor recognizes that in its Agreement with the Commission, the State of New York and the Commission have both committed to use "best efforts" to cooperate in maintaining their programs for controlling radiation hazards coordinated and compatible. Hence, the Department will adopt the subject regulations in accordance with the attached plan. The Program Manager has already begun the process of preparing the necessary Regulatory Reform submission and expects it to be completed for Department Counsel review by March of this year. Once approved by Counsel, it will be sent to the State's Regulatory Reform Office for final review and published for public comments and promulgation. Unfortunately, I am not at this time able to provide you with a detailed timetable for completion given the complexities associated with the promulgation process. We will, however, keep you apprised of our progress.

Permit me to re-iterate comments we provided during the November 3<sup>rd</sup> MRB meeting, as well as to members of NRC staff during past IMPEPs and other periodic meetings, relative to the necessity and urgency to promulgate these regulations. I believe these are important comments that provide specific rationale as to why the Department has not yet promulgated all of the regulations according to the NRC timeline and should not be overlooked. Simply put, our review of the health and safety implications of the eight listed overdue regulations concluded there was no pressing need for immediate adoption since in every case either the substantive requirements of

the rule were effectively implemented by other means, or the rule's applicability to our licensees was too limited to pose a hazard to the public health and safety. Therefore, to subject the Department to "heightened oversight" knowing that our Radiological Health Unit already carefully evaluated those regulations and took necessary and appropriate actions appears to be an overreaction. In that regard, I would hope that once you concur with our proposed Plan for promulgation of the standards the period of "heightened oversight" will be terminated.

I appreciate this opportunity to clear up this matter and look forward to continued cooperation between our offices. Mr. Clayton Bradt will be pleased to discuss with NRC these regulations, or any other matters of mutual concern relative to this process.

Sincerely,



Anthony J. Germano  
Director  
Division of Safety and Health

Attachment  
cc: Clayton Bradt  
Jack Spath

RATS ID 1996-3, 1997-5, 1997-6, 1998-5, 2000-1, 2000-2, 2002-1, 2002-2

Task	Milestone	Assignment	Anticipated Completion	Current Status
Develop Draft Rule	Write rule language and supporting documents for submission to DOL Counsel for review.	RHU Staff	March 2006	In preparation
Review by DOL Counsel's Office	Review rule language and supporting documents.	DOL Counsel	First Quarter 2007	
Review by Governor's Office of Regulatory Reform (GORR)	Review of rule language and supporting documents by GORR.	GORR	Fourth Quarter 2007	
Coordination with NRC	Review of proposed rule and supporting documents.	RHU Staff	Fourth Quarter 2007	
Proposed Rule Filed and Published	Proposed rulemaking filed at Department of State and published in State Register for comment.	DOL Counsel	First Quarter 2008	
Public Comment on Proposed Rule	Review and respond to public comments. Draft changes to proposed rule as a result of comments.	RHU Staff and DOL Counsel	Second Quarter 2008	
NRC Review	Review of proposed rule by NRC.	STP	Third Quarter 2008	
Final Rule Published	Final rulemaking package prepared and submitted to DOS for publication in State Register.	RHU Staff and DOL Counsel	Fourth Quarter 2008	



**New York State Department of Labor**

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