

March 24, 2006

Mr. Anthony Germano, Director
Division of Safety and Health
New York State Department of Labor
W. Averell Harriman State Office Campus
Building 12
Albany, NY 12240-0001

Dear Mr. Germano:

We have reviewed your Program Improvement Plan (Plan) submitted to this office as required by the heightened oversight process. In addition, we have taken into consideration information provided during the first heightened oversight call on March 15, 2006. The minutes from this call are enclosed. We believe your Plan meets the requirements of the heightened oversight process, however, we have one comment. As discussed during the heightened oversight call, the Plan does not account for the NRC amendments that will become due during the process of promulgating the currently overdue rules. We request that you modify the Plan to include these amendments, found on your State's Regulation Status Data sheet. This modification will ensure that at the completion of the Plan, all currently overdue amendments will have been adopted and no further amendments will have become overdue during this process.

The NRC Regional State Agreements Officers, Sheri Minnick and Duncan White of the Region I Office, will continue to schedule bi-monthly calls with your staff. We request that you submit a modified Plan including the amendments as discussed, with an updated status of the corrective actions associated with the Plan, two weeks prior to next bi-monthly call.

Although your Program has been placed on heightened oversight due to overdue adoption of NRC rules, this action does not affect our finding that your Program is adequate to protect public health and safety. We appreciate the effort and the cooperation that you and your staff have shown during this process. I thank you for 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/

Janet R. Schlueter, Director
Office of State and Tribal Programs

Enclosure:
As stated

cc: Clayton Bradt
New York State Department of Labor

John P. Spath
New York State Energy Research
and Development Authority

A. Germano

March 24, 2006

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**Minutes from the March 10, 2006 Heightened Oversight Call with
New York State Department of Labor**

March 15, 2006, 4:00 p.m.

Attendees:

Anthony Germano, New York State Department of Labor (NYDOL)
Clayton Bradt, NYDOL
George Pangburn , U.S. Nuclear Regulatory Commission (NRC), Region I
Duncan White, NRC, Region I
Sheri Minnick, NRC, Region I
Janet Schlueter, NRC, Office of State and Tribal Programs (STP)
Kevin Hsueh, NRC, STP
John Zabko, NRC, STP

Mr. George Pangburn requested clarification on the length of time it would take to complete the rulemaking action as stated in the Program Improvement Plan (Plan). Mr Pangburn indicated that the NRC understands that the legislation process is outside of NYDOL's control and may take time to complete, however, the NRC will be looking for any of the work that NYDOL has control over, to be completed as quickly as possible. Mr. Anthony Germano briefly described the State's rulemaking process and indicated that they would do their part to move the rules along as expeditiously as possible. In addition, Mr. Germano indicated that NYDOL was covering some of the overdue NRC rules by existing NYDOL rules or by alternate means.

Mr. Pangburn requested clarification of NYDOL's statement that some of the overdue NRC rules were being covered by alternate means. Mr. Germano indicated that they had reviewed the requirements of some of the overdue NRC rules and determined that the essential objectives had been implemented by existing NYDOL rules. Mr. John Zabko discussed the NRC's regulation review process and the options available to NYDOL. Mr Zabko indicated that if NYDOL is using other means to cover NRC regulations, they need to send in the rules, legally binding requirements or license conditions for NRC review. Mr. Zabko indicated that these "other means" need to undergo an NRC compatibility review to ensure they meet the compatibility requirements of the associated NRC rule and also ensure there are not gaps or conflicts created. Mr Zabko also explained that NYDOL does not need to adopt the NRC rules if they can show compatible methods to cover all of the requirements of the amendments. Mr. Zabko offered the assistance of the STP Agreement State regulation project manager, if NYDOL needed help with regard to what they need to submit.

Mr. Germano reiterated that NYDOL had not neglected the protection of the health and safety of the public and that NYDOL believes that their existing rules meet the intent of the NRC rules. Mr. Germano indicated that NYDOL will work to ensure the rules are submitted to the NRC for review.

Mr. Germano inquired about when NYDOL could be removed from heightened oversight. Mr. Pangburn summarized the NRC heightened oversight process and discussed the various outcomes of the New York Integrated Materials Performance Evaluation Program scheduled in July 2006. Mr. Pangburn indicated that the outcome of the July IMPEP and the decision of the Management Review Board subsequent to the IMPEP, would determine if the State could be removed from heightened oversight.

Mr Pangburn raised the point that the NYDOL Plan addresses only the currently overdue rules, however, there is no mention of the regulations that will become due in the future before the

completion of the Plan. Mr. Clayton Bradt questioned whether the Plan should include the rules that will become due in the future. Mr. Pangburn indicated that the direction from the MRB in placing NYDOL on heightened oversight was “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.” Mr. Zabko indicated that this approach will ensure that at the completion of the Plan, all currently overdue amendments will have been adopted and no further amendments will have become overdue during the process.

The call ended at approximately 4 :35 p.m.