

EDO Principal Correspondence Control

FROM: DUE: / /

EDO CONTROL: G20060622  
DOC DT: 06/19/06  
FINAL REPLY:

Barbara Youngberg, New York State Dept.  
of Environmental Conservation

TO:

Marty Virgilio

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO:

DESC:

First Update of the Program Improvement Plan as  
Required by the Heightened Oversight Process

ROUTING:

Reyes  
Virgilio  
Kane  
Silber  
Dean  
Cyr/Burns  
RI

DATE: 07/06/06

ASSIGNED TO:

CONTACT:

STP

Schlueter

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action

Template: EDO-001

E-RIDS: EDO-01

**New York State Department of Environmental Conservation**  
**Division of Solid and Hazardous Materials**  
**Bureau of Hazardous Waste and Radiation Management, Radiation Section**  
625 Broadway, Albany, New York 12233-7255  
Phone: (518) 402-8579 • FAX: (518) 402-8646  
Website: www.dec.state.ny.us



Denise M. Sheehan  
Commissioner

June 19, 2006

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

Dear Mr. Virgilio:

Enclosed is the first update of our Program Improvement Plan, submitted as required by the heightened oversight process. The following are our accomplishments since we submitted our original plan, which was received by the NRC on February 1, 2006 (for ease of reference, in this update, we have numbered the Tasks and Milestones):

- We have completed Milestone 1.1. We have written a rulemaking initiation memorandum (RIM), which outlines the rulemaking we propose to undertake. The RIM has been approved by our Division Director and Counsel's Office. It is now in the Department's Executive Office for review and approval.
- In writing the RIM, we compiled a list of the NRC rules to be adopted, as well as a concise summary of the other updates and changes needed in our rules. This will be our starting point for writing the preliminary draft express terms, for Task 3, once the RIM is signed by the Commissioner.
- On March 7, 2006, we submitted to the NRC our explanation of the authority we have to implement the deliberate misconduct rule (RATS ID 1998-1). The NRC advised us on April 25, 2006 that the authority we had cited did not meet two of the essential objectives of the Deliberate Misconduct Rule. We will revise our regulations accordingly, and we have included the deliberate misconduct rule in the RIM

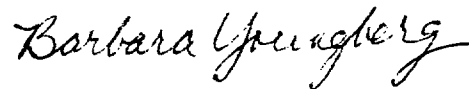
We were late in completing Milestone 1.1, due to some other matters that required immediate attention. However, this has not affected the overall schedule for the rulemaking. The only dates that have changed are the anticipated completion dates for Milestones 1.2 and 2, that is, the RIM approval and the scoping meeting have been postponed by one month. The rest of the plan remains the same, and our completion date has not changed.

TO: STP  
cys: EDO  
DED  
DEDMRS  
DEDIA  
AO  
RI

As we explained in our January 31, 2006 letter, we recognize the need to adopt these regulations, but our delay in doing so has not impaired DEC's ability to protect the environment or the public from radiation hazards.

We appreciate the NRC's assistance regarding the deliberate misconduct rule. If there are any questions on our updated plan, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Youngberg".

Barbara Youngberg  
Chief, Radiation Section

Enclosure

cc: D. White, NRC Region 1  
J. Spath, NYSEDA  
A. Salame-Alfie, NYSDOH  
C. Bradt, NYSDOL  
G. Miskin, NYCDOH  
S. Hammond  
D. O'Toole  
E. Dassatti

**New York State Department of Environmental Conservation Program Improvement Plan**

<b>RATS ID Numbers 1991-4, 1993-1, 1995-5 , 1996-3 , 1997-6, 1998-1, 1998-5, and 2002-1</b>				
<b>Tasks</b>	<b>Milestones</b>	<b>Assignments</b>	<b>Anticipated Completion Date</b>	<b>Current Status or Completion Date</b>
<b>1. Rulemaking Initiation Memorandum (RIM)</b>	<b>1.1 RIM written</b>	<b>Barbara Youngberg</b>	<b>March 2006</b>	<b>June 2006</b>
	<b>1.2 Internal review and approval of RIM</b>	<b>Barbara Youngberg</b>	<b>June 2006</b>	<b>Legal review completed. Executive office review in progress</b>
<b>2. Scoping Meeting</b>	<b>2. Meeting held</b>	<b>Barbara Youngberg</b>	<b>July 2006</b>	
<b>3. Outreach to Affected Parties</b>	<b>3. Preliminary Draft Express Terms posted on web site; letters sent to regulated and interested parties; notice published in Environmental Notice Bulletin</b>	<b>Barbara Youngberg</b>	<b>August 2006</b>	<b>NRC rules and other changes being considered were listed in the RIM.</b>
<b>4. NRC review</b>	<b>4. NRC sends comments to DEC</b>	<b>NRC OSTP</b>	<b>October 2006</b>	
<b>5. Comments received</b>	<b>5. Comment period ends</b>		<b>October 2006</b>	

## New York State Department of Environmental Conservation Program Improvement Plan

RATS ID Numbers 1991-4, 1993-1, 1995-5 , 1996-3 , 1997-6, 1998-1, 1998-5, and 2002-1				
Tasks	Milestones	Assignments	Anticipated Completion Date	Current Status or Completion Date
6. Proposed Rule Express Terms and Supporting Documents	5. Documents drafted: 5.1 Express Terms 5.2 Environmental Assessment Form 5.3 Coastal Assessment Form 5.4 Positive Declaration 5.4 Regulatory Impact Statement 5.5 Regulatory Flexibility Analysis 5.6 Rural Area Flexibility Analysis 5.7 Job Impact Statement 5.8 Notice of Proposed Rulemaking 5.9 Response to Comments	Barbara Youngberg	Second quarter 2007	
7. Approval to Send Proposed Rule to Governor's Office of Regulatory Reform (GORR)	7. Internal review and approval of draft express terms and supporting documents	Barbara Youngberg	Third quarter 2007	

## New York State Department of Environmental Conservation Program Improvement Plan

RATS ID Numbers 1991-4, 1993-1, 1995-5 , 1996-3 , 1997-6, 1998-1, 1998-5, and 2002-1				
Tasks	Milestones	Assignments	Anticipated Completion Date	Current Status or Completion Date
8. Approval to Propose Rule	8. Review and approval of draft express terms and supporting documents by GORR and Governor's Office	GORR	First quarter 2008	
9. Proposed Rule Filed and Published	9. Proposed Rulemaking package filed at Department of State and published in Environmental Notice Bulletin and State Register	Barbara Youngberg	First quarter 2008	
10. Public Hearings on Proposed Rule	10. Hearings held, comment period closes	Barbara Youngberg	Second quarter 2008	

## New York State Department of Environmental Conservation Program Improvement Plan

RATS ID Numbers 1991-4, 1993-1, 1995-5 , 1996-3 , 1997-6, 1998-1, 1998-5, and 2002-1				
Tasks	Milestones	Assignments	Anticipated Completion Date	Current Status or Completion Date
11. Final rulemaking package	11. Final rulemaking documents prepared: 11.1 Express Terms 11.2 Environmental Assessment Form 11.3 Coastal Assessment Form 11.4 SEQR Findings 11.5 Regulatory Impact Statement 11.6 Regulatory Flexibility Analysis 11.7 Rural Area Flexibility Analysis 11.8 Job Impact Statement 11.9 Notice of Proposed Rulemaking 11.10 Assessment of Public Comment 11.11 Notice of Adoption	Barbara Youngberg	Third quarter 2008	

**New York State Department of Environmental Conservation Program Improvement Plan**

<b>RATS ID Numbers 1991-4, 1993-1, 1995-5 , 1996-3 , 1997-6, 1998-1, 1998-5, and 2002-1</b>				
<b>Tasks</b>	<b>Milestones</b>	<b>Assignments</b>	<b>Anticipated Completion Date</b>	<b>Current Status or Completion Date</b>
12. Final Rule Package approved for submission to Environmental Board	12. Internal Review and approval of draft express terms and supporting documents	Barbara Youngberg	Fourth quarter 2008	
13 . Environmental Board Review	13. Environmental Board meets, approves final rule	Environmental Board	First quarter 2009	
14. Final Rule Adopted	14. Final rulemaking package filed at Department of State	Barbara Youngberg	First quarter 2009	



## **New York State Department of Environmental Conservation Program Improvement Plan**

<b>RATS ID #</b>	<b>Tasks</b>	<b>Milestones</b>	<b>Assignments</b>	<b>Anticipated Completion Date</b>	<b>Current Status or Completion Date</b>
<b>1998-6 2004-1 Manifests</b>	<b>Provide copy of revised 6 NYCRR 381 to NRC</b>	<b>Regulations sent to NRC</b>	<b>Barbara Youngberg</b>	<b>February 1, 2006</b>	<b>revised Part 381 was effective January 4, 2006</b>
<b>1998- 1 Deliberate Misconduct</b>	<b>Letter to NRC explaining existing DEC authority</b>	<b>Letter sent to NRC</b>	<b>Barbara Youngberg</b>	<b>March 1, 2006</b>	<b>NRC comments received. Incorporated into new rulemaking</b>