**New York State Department of Environmental Conservation**
**Division of Solid and Hazardous Materials**
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January 24, 2007

Mr. Lloyd Bolling
Office of Federal and State Materials
and Environmental Management Programs
US Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Bolling:

This responds to your December 21, 2006 letter to Edwin Dassatti, transmitting the draft IMPEP report for the New York Agreement State Program. We have reviewed the draft and offer the enclosed comments for the team's consideration.

Thank you for the opportunity to comment. If you have any questions, please contact me at 518-402-8572.

Sincerely,

Barbara Youngberg
Chief, Radiation Section

Enclosure
cc w/enc: S. Gavitt, NYS DOH
G. Miskin, NYC DOHMH
J. Spath, NYSERDA

New York State Department of Environmental Conservation
Division of Solid & Hazardous Materials
Bureau of Hazardous Waste & Radiation Management
Radiation Section

Comments on December 2006 Draft IMPEP Report

January 24, 2007

**Section 3.1, Technical Staffing and Training**

(1) On page 6, in the first paragraph, the statements regarding staffing correctly describe staffing at the time of the IMPEP team's visit. Since the IMPEP review, the staff member who was expected to return did so on November 16.

(2) On page 6, in the third paragraph, it is stated, "DEC will continue to regulate the construction, operation, and decommissioning of accelerators." This implies, incorrectly, that DEC has licensing responsibilities. The sentence should be revised to read, "DEC will continue to regulate the construction, operation, and maintenance of the radiological effluent treatment and monitoring systems of accelerators."

**Section 3.3.4, Technical Quality of Inspections**

(3) On page 14, the fifth paragraph describes DEC's regulation of LLRW transportation. It should also be noted that LLRW manifests are required to be sent to NYSDEC by transporters, and these manifests are used to prepare our annual LLRW transportation report. These manifests also constitute a LLRW shipment tracking system.

(4) On page 4, the sixth paragraph reads,

> Enforcement actions are taken against generators for shipment of regulated medical waste contaminated with radioactive material to the landfills. Warning letters are sent to the waste generators for improper handling and shipment of regulated medical waste to the landfills.

In New York State, untreated regulated medical waste cannot legally be shipped to landfills for disposal; untreated regulated medical waste must be shipped to an approved regulated medical waste treatment facility. Therefore, the word "landfills" in this paragraph should be replaced with the term "regulated medical waste treatment facilities" to accurately reflect New York State regulatory requirements.

**Section 3.4, Technical Quality of Licensing Actions**

(5) On page 18, in the second paragraph, it is stated, "The review team *issued* six exemptions of 6 NYCRR Part 381 . . . "[italics added]. The word "issued" should be replaced with "reviewed."

(6) On page 18, the fourth paragraph discusses delays that have occurred in the issuance of Part 380 permits by regional permit administrators. The last sentence of that paragraph states, "There are no metrics for the completion of the permit process." That statement is incorrect. The permit unit supervisor monitors the status of permits sent to the regional permit administrator for issuance, documents the status in monthly reports, and maintains contact with the regional permit administrator until the permit is issued. In the case of an excessive delay, metrics for the outstanding permit are communicated to DEC's Chief Permit Administrator for follow-up action.

**Section 4.1.2, Program Elements Required for Compatibility**

(7) On page 26, the last paragraph lists all of DEC's radiation regulations and states that they "apply to the environmental release and disposal of radioactive material." The description is incomplete. The list of regulations includes those that apply to the transport and manifesting of LLRW shipments into, within, and through New York State, and the description should be revised accordingly.

(8) On page 27, the report states that DEC will need to adopt the Minor Amendments (71FR 15005) by March 27, 2009. We have reviewed those amendments and found that virtually all of them are amendments to 10 CFR Part 35, which is outside of DEC's jurisdiction. Only two amendments are remotely relevant to DEC's regulations: the correct spelling of "thulium" and the definition of "radiation safety officer." 'Thulium" is already correctly spelled in Part 380. Although the term "radiation safety officer" is defined in Part 380, it is used only once, and we now expect to delete it in our current rulemaking.

(9) On page 27, we do not dispute the list of overdue regulations presented in the report. However, the report should also note that since our last IMPEP review, we have adopted revisions to Part 381 that meet the compatibility requirements of these two rulemakings:

> 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
>
> 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

**Section 4.3, Low-Level Radioactive Waste (LLRW) Disposal Program**

(10) On page 30, the description of DEC's LLRW program contains several inaccurate statements. The following revised paragraphs correct those errors, with explanations given in brackets:

> New York has two former radioactive waste disposal sites: the State-Licensed Disposal area (SDA) on the Western New York Nuclear Service Center at West Valley (West Valley site), and the University of Cornell Radiation Disposal Site (RDS) in Lansing.
>
> The SDA has been owned by the State of New York since its creation in 1963, and was operated by Nuclear Fuel Services from inception until they turned over control of the site to the New York State Energy Research and Development Authority (NYSERDA) in 1976. Disposal of radioactive wastes was originally authorized by the DOH. In 1974, regulation of the site passed from the DOH to the newly created DEC Radiation program. [We do not know when the former DOL program issued its first license for the SDA.] In 1975, DEC required the closure of the SDA due to uncontrolled leachate releases. The wastes, approximately 2.4 million cubic feet, that were received from various places such as nuclear power plants, government facilities, industries, waste brokers, decontamination companies, and the adjacent West Valley spent nuclear fuel reprocessing center [the center's contribution was significant] were placed in 14 parallel disposal trenches capped with compacted native clay. With the exception of two smaller special purpose trenches, [important detail] they range from approximately 350 to nearly 700 feet in length and were approximately 33 feet wide and 20 feet deep. In addition to the trenches, the SDA contains three excavated lagoons (now filled) which were formerly used to manage water pumped from the trenches during operation.
>
> Currently NYSERDA holds one permit for the SDA from the DEC, which regulates monitoring and maintenance of the facility. [There are no reported environmental discharges.] NYSERDA also holds a radioactive materials license from the Industrial Unit for the West Valley Site.
>
> Disposal operations at the Cornell RDS occurred between 1956 and 1978. The trenches cover an area roughly 290 by 300 feet in size. Wastes were buried in narrow trenches 6 to 12 feet deep. Low-level radioactive laboratory wastes were disposed of at the RDS, including scintillation solvents such as paradioxane. Cornell currently operates under a broad scope radioactive materials license from DOH.

The RDS has been closed pursuant to a closure plan developed under a Consent Order issued by DEC [the disposal site itself has been closed with a slurry wall, grout curtain and robust multi-layer cap including a rubble layer for resistance to animal burrowing and root penetration]. As part of the conditions of that Consent Order, Cornell operates a groundwater treatment system for the non-radioactive contaminants. The review team reviewed a substantive permit [while the Order is in effect, actual permits are not issued, but Cornell must meet the substantive requirements of the regulations; hence the term "substantive permit"] issued by DEC in April 2002 authorizing discharges of radioactive materials, the presence of which is incidental to discharges of the groundwater treatment system. When remedial activities required by the Consent Order have ended, [the remaining consent order requirements relate to the groundwater treatment system] DEC will issue a permit through the radiation program for monitoring and maintenance activities at the RDS.

**Appendix C, Inspection Casework Reviews**

(11) On page C.6, the last comment states, "Item listed as a violation in the field notes issued as a recommendation in the letter to the permittee." This statement is incorrect. A review of the file confirmed that the item listed as a recommendation in the subject inspection letter is also listed as a recommendation in the field notes. This comment should therefore be deleted.

**Appendix E, Incident Casework Review**

(12) On page E.3, the last comment on the page states, "File did not contain incident log number." This is true; however, DEC does not assign incident log numbers. Therefore, this comment should be deleted.