

## **AGREEMENT STATE PERIODIC MEETING SUMMARY FOR NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)**

DATE OF MEETING: November 27, 2007

### ATTENDIES:

#### NRC

Kathleen Schneider, Senior Project Manager, FSME  
James Kottan, RSAO, Region I

#### New York DEC

R. Phaneuf, Acting Bureau Director  
B. Youngberg, Chief, Radiological Sites Section  
S. Hinkel, Chief, Radiation Control Permit Section

### BACKGROUND

During the November 2006 IMPEP the review team found New York's performance to be satisfactory for all common and non-common performance indicators with the exception of the non-common performance indicator, Compatibility Requirements. This indicator was found to be unsatisfactory. Additionally, two recommendations were made by the review team. On February 8, 2007 the Management Review Board (MRB) met to consider the proposed final IMPEP report on the New York Agreement State Program. The MRB found the New York State Agreement State Program adequate to protect public health and safety and not compatible with the NRC's program. Accordingly, the MRB determined that the New York Agreement State Program should continue on Heightened Oversight. Further, the MRB requested that the New York Agreement State Program revise and submit their Program Improvement Plans (the Plans), and that bi-monthly conference calls continue. The MRB also determined that a periodic meeting should take place in November 2007.

DEC submitted their revised and updated Plan to the NRC in July 2007. After receipt and review of the Plan by NRC, the first bi-monthly call was held in September 2007. Subsequent to the bi-monthly call, a periodic meeting was scheduled for November 27, 2007. This summary describes this periodic meeting.

### DISCUSSION:

#### Status of the State's Actions to Address All Open Previous DEC IMPEP Review Findings and/or Open Recommendations

The proposed status for each of the recommendations and suggestions in Section 5 of the New York 2006 final IMPEP is summarized below.

Recommendation 1: The review team recommends that DEC transmit inspection findings to their licensees within 30 days after the close of the inspection.

Status: The Radiation Control Permit Section Chief stated that inspection findings are now being transmitted to licensees within 30 days after the close of the inspection. The Section Chief also provided a list of DEC inspections conducted since the last IMPEP and the letter dates for transmittal of the inspection findings. All routine inspection findings were transmitted within 30 days. Inspection findings for two former land burial sites (monitoring and maintenance permits) were transmitted in excess of 30 days, but the Section Chief stated that these were complex inspections and required more time.

It is recommended that this item be closed at the next review.

Recommendation 2: The review team recommends that DEC develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

Status: The DEC Plan describes eight NRC amendments (seven of which are overdue) which are in the process of rule making. Based on the schedule in DEC's Plan, the regulations are scheduled to be implemented by the end of 2009.

During discussions with DEC staff, the NRC representative stated that in cases where DEC has implemented orders or license conditions in order to implement NRC amendments, DEC should submit these legally binding requirements to the NRC for compatibility review in accordance with FSME Procedure SA 201, Review of State Regulatory Requirements. Further DEC should inform the NRC of any amendments (by RATS ID) that they believe do not apply or have been previously addressed through reviews of legally binding requirements conducted under SA 201.

#### Strengths and/or Weaknesses of the State Program as Identified by the State or the NRC

DEC stated that their staff along with their instrumentation, including their in-house lab, was a program strength. Potential weaknesses included upcoming retirements. Although no retirements were expected in the Radiation Control Permit Section, the Chief of the Radiological Sites Section stated that she was planning to retire in 2008. DEC has been working on secession planning.

#### Feedback on the NRC's Program as Identified by the State, Including Identification of any Action that Should be Considered by the NRC

DEC stated that the NRC website was not user friendly, specifically the ability to link to other NRC documents. DEC welcomed the funding of training by NRC. Additionally, the attachment of PDF files to all agreement state letters was viewed by DEC as positive.

#### Status of the State Program Including:

##### a. Staffing and Training

DEC is essentially fully staffed with only two vacancies due to normal staff attrition. Vacancies are filled in a timely manner. Staff is stable with low turnover. The staff is experienced and well trained. DEC management supports staff training, and staff has attended NRC and other training courses.

b. Materials Inspection Program

At the present time there are no backlog inspections. Tracking systems are in place to monitor inspection scheduling/tracking, and management is aware of the importance of inspection program schedules. Inspection frequencies for various types of licensees are the same as or more restrictive than those listed in IMC 2800.

c. Regulations and Legislative Changes

There have been no legislative changes affecting the Agreement State Program since the last IMPEP review.

DEC has drafted regulations to address eight NRC amendments. Seven of these regulations are overdue. For DEC, the following NRC amendments are overdue for adoption:

“Notification of Incidents,” 10 CFR Parts 20, 30, 31, 34, 39, 40, and 70 amendments (58 FR 64980), that became effective on October 15, 1991, and was due for Agreement State adoption by August 15, 1994.

“Decommissioning Record keeping and License Termination: Documentation Additions,” 10 CFR Parts 30 and 40 amendments (58 FR 39628), that became effective on October 25, 1993, and was due for Agreement State adoption by October 25, 1996.

“Radiation Protection Requirements: Amended Definitions and Criteria,” 10 CFR Parts 19 and 20 amendments (60 FR 36038), that became effective on August 14, 1995, and was due for Agreement State adoption by August 14, 1998.

“Termination or Transfer of Licensed Activities: Record keeping Requirements,” 10 CFR Parts 20, 30, 40, 61, and 70 amendments (61 FR 24669), that became effective on June 17, 1996, and was due for Agreement State adoption by June 17, 1999.

“Radiological Criteria for License Termination,” 10 CFR Parts 20, 30, 40, and 70 amendments (62 FR 39057), that became effective on August 20, 1997, and was due for Agreement State adoption by August 20, 2000.

“Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 30, 40, and 70 amendments (63 FR 39477, 63 FR 45393), that became effective on October 26, 1998, and was due for Agreement State adoption by October 26, 2001.

“Revision of the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298), that became effective on April 5, 2002, and was due for Agreement State adoption by April 5, 2005.

d. Program Reorganizations

Since the last IMPEP a Radiation Control Permit Section has been added to the Bureau of Hazardous Waste and Radiation Management. There are now two radiation sections within the Bureau, the Radiological Sites Section and the Radiation Control Permit Section. The Radiation Control Section is responsible for the issuance of permits and inspections, and the Radiological Sites Section is responsible for all other radiological issues in the Bureau, such as facility

groundwater contamination and decommissioning activities. The two sections have a total staff of 14.

e. Changes in Program Budget/Funding

There have been no changes in program budgets or funding. DEC stated that they are adequately funded.

Event Reporting, Including Follow-Up and Closure Information in NMED

DEC typically does not have incidents that meet the criteria for reporting to NMED and has very little involvement with NMED. Since the last IMPEP (November 2006), no events have been reported to NRC.

Response to Incidents and Allegations

a. Status of Allegations and Concerns Referred by the NRC for Action

There were no allegations or concerns referred by NRC to DEC during this period.

b. Significant Events and Generic Implications

No significant events were identified or discussed during the periodic meeting.

Status of the Following Program Areas

a. Sealed Source and Device Program

Not applicable.

b. Uranium Recovery Program

Not applicable.

c. Low Level Waste Program

There are two low level waste disposal sites in New York State: West Valley and Cornell University. DEC and DOH both conduct inspections at West Valley. DEC inspections focus on environmental aspects of the site, and DOH inspections focus on radiation safety. Additionally, DOH maintains a radiological environmental monitoring program at the West Valley site. No change in the status of the program was identified.

Action Items Resulting From the Meeting

DEC will provide the NRC with updated Plans, and also documentation describing NRC amendments (by RATS ID) that do not apply or which have been implemented by license condition or order.

The NRC will provide an updated FSME organization chart to the State.

CONCLUSION:

The overall performance of the DEC program continues to be good with the exception of the “Compatibility Requirements” performance indicator, which needs improvement. DEC has submitted their Plan and is working to meet the timelines specified in that Plan in order to make their program compatible with the NRC’s program. However, NRC staff recommends that the period of Heightened Oversight should continue. Additionally, the staff recommends that quarterly conference calls between the State and NRC are appropriate to monitor the State’s progress during this period of Heightened Oversight of the New York Agreement State Program, and that a periodic meeting be held during the summer of 2009. NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2010 (tentatively November 2010).