

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR NEW YORK STATE DEPARTMENT OF HEALTH (DOH)

DATE OF MEETING: November 28, 2007

ATTENDIES:

NRC

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

New York DOH

A. Salame-Alfie, Ph.D., Acting Division Director
S. Gavitt, CHP, Director, Bureau of Environmental Radiation
Protection
G. Baker, CHP, Chief, Inspection and Enforcement 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.

DOH submitted their revised and updated Plan to the NRC in August 2007, and a revision to the August 2007 plan was submitted in September 2007. After receipt and review of the Plans 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 28, 2007. This summary describes this periodic meeting.

DISCUSSION:

Status of the State's Actions to Address All Open Previous DOH 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: The review team recommends that DOH develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

Status: The DOH Plan describes 16 NRC amendments which are overdue and in the process of rule making. This rulemaking will consolidate the New York Department of Labor radiation regulations in DOH regulations since the July 2006 merger of the Department of Labor's Radiological Health Unit into DOH. Based on the schedule in DOH's Plan, the regulations are scheduled to be implemented by the first quarter of 2009.

During discussions with the DOH staff, the NRC representative stated that in cases where DOH has implemented orders or license conditions in order to implement NRC amendments, DOH 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 DOH 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

DOH also stated that their staff was a program strength. The staff was experienced, well trained and credentialed.

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

DOH stated that the NRC web site was adequate for their needs. Additionally, DOH welcomed the funding of training by NRC. Also, the attachment of PDF files to all agreement state letters and the switch to Word by the NRC were viewed as positives.

Status of the State Program Including:

a. Staffing and Training

DOH is essentially fully staffed with only a few 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. Support for staff training exists in DOH, and staff has attended NRC and other training courses.

b. Materials Inspection Program

At the present time there is no inspections backlog. 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. The first round of increased controls inspections has been completed.

c. Regulations and Legislative Changes

There have been no legislative changes affecting the Agreement State Program since the last IMPEP review. However, Article 35 of the Public Health Law was amended to require a licensure program for nuclear medicine technicians. The licensure program is to be implemented by January 1, 2009.

DOH submitted their Plan which describes 16 NRC amendments which are overdue and in the process of rulemaking. The Plan includes New York Department of Labor regulations that will be consolidated with DOH regulations since the merger of the Department of Labor's Radiological Health Unit into DOH. DOH expects to submit the draft regulations for NRC review in January 2008.

For DOH, the following NRC amendments are overdue for adoption:

"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.

"Medical Administration of Radiation and Radioactive Materials," 10 CFR Parts 20 and 35 amendments (60 FR 48623), that became effective on October 20, 1995, and was due for Agreement State adoption by October 20, 1998

"Compatibility with the International Atomic Energy Agency," 10 CFR Part 71 amendment (60 FR 50248 and 61 FR 28724), that became effective on April 1, 1996, and was due for Agreement State adoption on April 1, 1999

"Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction With an Agreement State," 10 CFR Part 150 amendment (62 FR 1662), that became effective on February 27, 1997, and was due for Agreement State adoption by February 27, 2000.

"Criteria for the Release of Individuals Administered Radioactive Material," 10 CFR Parts 20 and 35 amendments (62 FR 4120), that became effective on May 29, 1997, and was due for Agreement State adoption by May 29, 2000.

"Deliberate Misconduct by Unlicensed Persons," 10 CFR Parts 30, 40, and 70 amendments (63 FR 1890, 63 FR 13773), that became effective on February 12, 1998, and was due for Agreement State adoption by February 12, 2001.

"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.

“Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 amendments (67 FR 20249), that became effective on April 24, 2002, and was due for Agreement State adoption by October 24, 2005.

“Compatibility with IAEA Transportation Safety Standards and other Transportation Safety Amendments,” 10 CFR Part 71 amendment (69 FR 3697), that became effective on October 1, 2004, and is due for Agreement State adoption by October 1, 2007.

“Termination or Transfer of Licensed Activities: Recordkeeping 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.

“Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations,” 10 CFR Parts 30, 34, 71, and 150 amendments (62 FR 28947), that became effective on June 27, 1997, and was due for Agreement State adoption by June 27, 2000.

“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.

“Energy Compensation Sources for Well Logging and Other Regulatory Clarifications,” 10 CFR Part 39 amendment (65 FR 20337), that became effective on May 17, 2000, and was due for Agreement State adoption by May 17, 2003.

“New Dosimetry Technology,” 10 CFR Parts 34, 36, and 39 amendments (65 FR 63749), that became effective on January 8, 2001, and was due for Agreement State adoption by January 8, 2004.

“Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 amendments (67 FR 20249), that became effective on April 24, 2002, and was due for Agreement State adoption by April 24, 2005.

“Financial Assurance for Materials Licensees,” 10 CFR Parts 30, 40, and 70 amendments (68 FR 57327), that became effective on December 3, 2003, and was due for Agreement State adoption by December 3, 2006.

“Compatibility with IAEA Transportation Safety Standards and other Transportation Safety Amendments,” 10 CFR Part 71 amendment (69 FR 3697), that became effective on October 1, 2004, and is due for Agreement State adoption by October 1, 2007.

For DOH, the following NRC amendments will need to be addressed in upcoming rulemakings or by adopting alternate legally binding requirements:

“Minor Amendments,” 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendments (71 FR 15005), that became effective on March 27, 2006, and is due for Agreement State adoption by March 27, 2009.

“Security Requirements for Portable Gauges Containing Byproduct Material,” 10 CFR Part 30 amendment (70 FR 2001), that became effective on July 11, 2005, and is due for Agreement State adoption by July 11, 2008.

“Minor Amendments,” 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendments (71 FR 15005), that became effective on March 27, 2006, and is due for Agreement State adoption by March 27, 2009.

DOH has drafted legally binding requirements for the following NRC amendments; however, they have not been submitted to the NRC for a compatibility review:

“Decommissioning Recordkeeping 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.

“Timeliness in Decommissioning Material Facilities,” 10 CFR Parts 30, 40, and 70 amendments (59 FR 36026), that became effective on August 15, 1994, and was due for Agreement State adoption by August 15, 1997.

“Frequency of Medical Examinations for Use of Respiratory Protection Equipment,” 10 CFR Part 20 amendment (60 FR 7900), that became effective on March 13, 1995, and was due for Agreement State adoption by March 13, 1998

“Clarification of Decommissioning Funding Requirements,” 10 CFR Parts 30, 40, and 70 amendments (60 FR 38235), that became effective on November 24, 1995, and was due for Agreement State adoption by November 24, 1998.

“Termination or Transfer of Licensed Activities: Recordkeeping 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.

“Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea,” 10 CFR Part 30 amendment (62 FR 63634), that became effective on January 2, 1998, and was due for Agreement State adoption by January 2, 2001.

“Respiratory Protection and Controls to Restrict Internal Exposure,” 10 CFR Part 20 amendment (64 FR 54543, 64 FR 55524), that became effective on February 2, 2000, and was due for Agreement State adoption by February 2, 2003.

“Financial Assurance for Materials Licensees,” 10 CFR Parts 30, 40, and 70 amendments (68 FR 57327), that became effective on December 3, 2003, and was due for Agreement State adoption by December 3, 2006.

“Medical Use of Byproduct Material - Recognition of Specialty Boards,” 10 CFR 35 Part amendment (70 FR 16336; 71 FR 1926), that became effective on April 29, 2005, and is due for Agreement State adoption by April 29, 2008.

d. Program Reorganizations

There have been no program reorganizations since the last IMPEP.

e. Changes in Program Budget/Funding

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

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

DOH staff indicated that they are reporting incidents to NRC and NMED when appropriate in a prompt manner. Since the last IMPEP (November 2006) three events have been reported.

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 the State 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

DOH has sole responsibility for performing SS&D evaluations in the State of New York. Since the last IMPEP no new SS&D evaluations have been performed.

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

DOH will provide the NRC with an updated Plan, 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 DOH.

CONCLUSION:

The overall performance of all DOH continues to be good with the exception of the "Compatibility Requirements" performance indicator, which needs improvement. DOH 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 calls between the State and NRC continue in order 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).