

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

DATE OF MEETING: November 29, 2007

ATTENDIES:

NRC

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

NYC

A. Goldberg, Assistant Commissioner
G. Miskin, Director, Office of Radiological Health
T. Lickerman, Chief, Radioactive Materials & Radioactive
Materials Licensing Unit

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.

NYC's revised and updated Plan was submitted 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 29, 2007. This summary describes this periodic meeting.

DISCUSSION:

Status of the State's Actions to Address All Open Previous 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 NYC develop and implement an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

Status: The NYC Plan describes five NRC amendments (three of which are overdue) which are in the process of rule making. Based on the schedule in NYC's plan, the regulations are scheduled to be implemented by the second quarter of 2008. However, NYC coordinates the adoption of their regulations with those of the New York State Department of Health (DOH), so there will be some adjustment to their schedule based on DOH progress.

During discussions with NYC staff, the NRC representative stated that in cases where NYC 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 NYC should inform the NRC of any amendments (by RATS ID) that they believe do not apply or have been addressed through previous 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

NYC stated that staffing, the security program and the radiological emergency plan were program strengths along with staff training. NYC also noted the implementation of a data base for tracking and managing the materials program. The data base, NYCRADDS, will track the amount of material possessed by licensees, the materials inspection program, and any issues captured from the city's 311 system. Licensees have access to the data base with the ability to enter data in order to keep the data base current.

Additionally, NYC has determined ambient radiation levels for the five New York City boroughs for use in an emergency response or security incident. The security program, which also involves the New York Police Department, included the capability to generate maps of the radiation levels for areas of the city and maps of the radiation levels in individual buildings.

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

NYC stated that the NRC web site was adequate for their needs. Also NYC welcomed the funding of training by NRC. Additionally, 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

NYC 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. NYC supports staff training, and staff has attended NRC and other training courses.

b. Materials Inspection Program

At the present time there are no inspection backlogs. 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.

NYC submitted their Plan which describes five NRC amendments which are in the process of rule making. Some of the amendments cannot be implemented until DOH has adopted similar requirements to ensure consistent regulation of licensees through out the State and to prevent transboundary issues when licensees cross jurisdictions. NYC and DOH meet on a quarterly basis to discuss the status of the regulations.

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

“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.

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

“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.

“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.

d. Program Reorganizations

There have been no materials program reorganizations since the last IMPEP.

e. Changes in Program Budget/Funding

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

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

NYC staff stated that they are reporting incidents to NRC and NMED when appropriate in a prompt manner. Since the last IMPEP (November 2006), no 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

Not applicable.

b. Uranium Recovery Program

Not applicable.

c. Low Level Waste Program

Not applicable.

Action Items Resulting From the Meeting

NYC 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 NYC program continues to be good with the exception of the "Compatibility Requirements" performance indicator, which needs improvement. NYC has submitted their Plan and is working to meet the timelines specified in that Plan in order to make their programs 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).