

February 28, 2008

MEMORANDUM TO: Martin J. Virgilio
Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs
Office of the Executive Director for Operations

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

Karen D. Cyr, General Counsel

Leonard D. Wert, Jr., Director
Division of Nuclear Materials Safety
Region IV

FROM: Kim K. Lukes, General Scientist */RA/*
State Agreements and Industrial Safety Branch
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: MARCH 24, 2008 SPECIAL MRB MEETING

A Special Management Review Board (MRB) meeting to discuss the results of periodic meetings with four Agreement State agencies has been scheduled for **Monday, March 24, 2008, from 3:00 p.m. to 5:00 p.m. EST, in One White Flint North, Room O-9-B6**. The periodic meeting summary reports for Illinois, the New York Department of Environmental Conservation, the New York State Department of Health, and the New York City Department of Health and Mental Hygiene will be discussed. The meeting summary for each of the Agreement State agencies is enclosed (Enclosures 1, 2, 3, and 4).

In accordance with Management Directive 5.6, the meeting is open to the public. The agenda for this meeting is enclosed (Enclosure 5).

If you have any questions or need additional information, please feel free to contact me at (301) 415-6701.

Enclosures:
As stated

cc: George Johns, MN
Organization of Agreement States
Liaison to the MRB

Management Review Board Members

February 28, 2008

Distribution: DCD (SP01)

DMSSA rf

RLewis, FSME

DWhite, FSME

SCampbell, OEDO

JLynch, RGN III

SReynolds, RGN III

JKottan, RGN I

KSchneider, FSME

MOrendi, FSME

JKlinger, IL

SGavitt, NYDOH

GMiskin, NYC

BYoungberg, NYDEC

ML080520252

OFFICE	FSME/DMSSA	FSME/DMSSA						
NAME	KLukes	ATMcCraw						
DATE	02/28/08	02/28/08						

OFFICIAL RECORD COPY

February 6, 2008

Joe Klinger, Assistant Director
Illinois Emergency Management Agency
1035 Outer Park Drive
Springfield, IL 62704

Dear Mr. Klinger:

A periodic meeting with Illinois was held on January 15, 2008. The purpose of this meeting was to review and discuss the status of Illinois' Agreement State program. The NRC was represented by Steven Reynolds and me.

I have completed and enclosed a general meeting summary, including any specific actions that will be taken as a result of the meeting.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (630) 829-9661, or e-mail to JLL2@NRC.GOV to discuss your comments.

Sincerely,

/RA/

James L. Lynch
State Agreements Officer

Enclosure:
As stated

cc w/encl: P. Eastvold, IEMA
G. Vinson, IEMA
A. McCraw, FSME
K. Lukes, FSME
S. Reynolds, RIII

ENCLOSURE 1

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR ILLINOIS

JANUARY 15, 2008

ATTENDEES:	<u>NRC</u>	<u>STATE</u>
	Steve Reynolds	Joe Klinger
	Jim Lynch	Paul Eastvold
		Gibb Vinson
		Daren Perrero
		Gary McCandless

DISCUSSION:

Previous IMPEP Review

In April 2005, an Integrated Materials Performance Evaluation Program (IMPEP) review of the Illinois Agreement State Program resulted in a non-compatibility finding. The Management Review Board (MRB) initiated a period of heightened oversight for the Illinois program and directed that a follow-up IMPEP review be conducted the next year. A follow-up review was completed in June 2006. The MRB concluded that, based on the follow-up review results, the Illinois program was again compatible with the NRC's program. The period of heightened oversight was discontinued.

Organization

In March 2007, Andrew Velasquez III was appointed as Director of the Illinois Emergency Management Agency (IEMA) by Governor Rod Blagojevich. Joseph Klinger was recently named Assistant IEMA Director. Mr. Klinger is the State Liaison Officer and remains as the NRC's main contact and responsible party for the radiation control program.

Most of the radioactive materials program functions reside in the Bureau of Radiation Safety, led by Paul Eastvold. Gibb Vinson is currently the acting Head of the Radioactive Materials Section. Some programs, such as decommissioning and financial surety are located in the Bureau of Environmental Safety. Discussions with personnel from both Bureaus indicated that they work cooperatively together and resources from one may be used to assist the other, if needed. An internal policy memorandum describes the relationship between the Bureaus.

Illinois has approximately 746 specific licensees.

Agreement State Program Staffing

A well-trained, experienced staff remains a strength of the Illinois Agreement State program. The inspection staff is similar to that seen during the last IMPEP review. Five of the six materials inspectors are located in the West Chicago office, as the bulk of the inspection load is in the Chicago area. The licensing staff has experienced turnover with the promotion of Joe Klinger to Assistant Director, with Gibb Vinson's promotion to Acting Section Head, and with the recent resignation of David Price. The licensing program currently operates with three reviewers.

With the current nation-wide emphasis on increasing the security of radioactive materials, the IEMA inspection and licensing programs are being taxed to their limits. With the unfilled positions in the licensing program, the impact of increased security measures is significant. IEMA managers indicated that they are working on filling the licensing supervisor and license reviewer positions. Approval to fill vacant positions is needed from the Governor's office.

The IEMA managers commented on the usefulness of the NRC Security Action Plan to help them forecast their future staffing needs for materials licensing and inspections. The Action Plan demonstrates the need for Illinois to hire additional staff in order to address upcoming security-related workloads. IEMA has used the analysis to support their request for additional personnel.

Training

A training matrix was developed for all employees to track their training history. Formalized training requirements were developed for license reviewers. Similar requirements have been drafted for inspectors, and will be utilized if a new inspector is hired.

The recent change in NRC policy by which NRC pays training costs for Agreement State staff was applauded by the IEMA managers. This benefit will allow staff to attend training courses that would not have been possible otherwise.

Illinois has a significant number of pool irradiators containing large quantities of radioactive material. It was noted that only the Inspection Supervisor and one license reviewer have attended the pool irradiator training course. The value of additional training, as offered by this training course, was identified as a potential benefit to the program. In December 2007, a license reviewer attended the security training course. Other reviewers will be sent to the security course as workload permits.

IEMA management was strongly encouraged to continue to support the IMPEP program by providing technical staff for IMPEP reviews of NRC and other Agreement State programs to share Illinois' expertise and to strengthen staff skills and perspectives.

Inspections

Illinois inspection frequencies are at least as frequent as NRC's. No inspections are currently overdue with respect to NRC priorities. New licensees are inspected within 12 months of license issuance, regardless of whether the licensee has received radioactive material. Reciprocity inspections are performed in accordance with the frequencies identified in NRC Manual Chapter 1220.

Increased Controls inspections are up-to-date, including all but four self-shielded irradiators. Illinois is addressing the new fingerprinting requirements and will have their licensees request an amendment to incorporate the requirement into their licenses. IEMA plans to have all appropriate licenses updated with fingerprinting requirements by the June 2008 deadline.

Licensing

No significant licensing backlogs exist, however, with the shortage of license reviewers, IEMA is prioritizing licensing actions with health, safety and security-related actions taking precedence. IEMA issues licenses on a 5-year term. An expedited license renewal program is being used for licensees whose programs do not have significant changes.

A due diligence review is performed for new licensees and new radioactive material users. This review is an extensive background check. Pre-licensing visits are performed for all Increased Controls applicants and other selected applicants.

Financial assurance obligations are reevaluated every two years. A licensee may not get a re-evaluation for one review, if it indicates that no changes have occurred in the organization which would warrant a reevaluation. If the licensee does not provide an updated surety evaluation for the second review (four years), the license is subject to further action.

As required by State law, IEMA notifies local authorities upon receipt of an application for a new license.

Regulations

The State has made significant progress in maintaining compatibility-required regulations up-to-date. RATS 2005-2 (Recognition of Specialty Boards) and 2006-1 (Minor Amendments) are currently under review by NRC. The National Source Tracking System proposed regulations are in process, at the "1st Notice" stage. IEMA does not have any overdue regulations.

Security

The current security climate and potential future security measures were discussed in detail, particularly regarding fingerprinting and security of self-shielded irradiators. Illinois is keenly aware of the security issues and contributes regularly on the Increased Controls message board. The State entered into 274i agreements with the NRC to inspect materials licensee compliance with NRC-ordered security measures and with RAMQC. Safeguards information is tracked and is appropriately stored in a GSA-approved safe.

Daren Perrero pointed out errors in a recently issued table of isotope categories associated with the National Source Tracking System. FSME made the corrections and re-released the table.

IEMA asked for the status of the pool irradiator security inspection procedures. NRC is preparing the inspection procedures with an expected issuance in the next few months. Until then, NRC and Agreement State offices are encouraged to use the NRC Inspection Manual Chapter 2800/034 Temporary Instruction for follow-up pool irradiator inspections.

Incidents

IEMA staff communicates reportable incidents promptly to the NRC Operations Center and Region III. Daren Perrero or Gibb Vinson input incident information directly into the Nuclear

Materials Events Database (NMED) as incidents occur. Since the last IMPEP review in 2006, eight reportable incidents were reported to NMED. A review of NMED identified timely and quality input of incidents.

One abnormal occurrence involving a medical event was reported by the State. A comprehensive abnormal occurrence report was prepared by IEMA and sent to NRC for inclusion in the annual report to Congress.

The NRC representatives were provided a tour of IEMA's State emergency operations center during the Periodic Meeting.

Allegations

Two allegations were transferred to Illinois from NRC since the last IMPEP review. The allegations involved dosimetry and radiation protection concerns at a hospital and the potential loss of nuclear gauges at a defunct industrial facility. IEMA staff investigated the allegations and took prompt, appropriate action. Investigation results were provided to the Regional State Agreements Officer.

Licensee Updates

The Kerr-McGee decommissioning project continues in West Chicago. The factory site decommissioning is essentially completed. Kress Creek was also decontaminated. Efforts are now ongoing in the DuPage River, downstream from Kress Creek. Groundwater remediation at the factory site will continue for several years. The total decommissioning project cost is estimated to be \$650 million.

The Spectralite thorium decommissioning project in Madison County was completed. Confirmatory surveys were recently performed by IEMA staff members.

The Chicago Magnesium facility in Blue Island is an ongoing decommissioning project. The forest preserve property was successfully decontaminated. Further work is required on the industrial site.

Sealed Sources and Devices

IEMA has an active SS&D program which issues approximately four or five SS&D amendments annually.

CONCLUSIONS:

The Illinois Radiation Control Program continues to be a strong, stable Agreement State program. Staff has remained fairly consistent for many years and the training level for staff members is good. The recent loss of two license reviewers has put a strain on the licensing program. IEMA management is hopeful that position funding for additional staffing positions will be forthcoming in the near future.

IEMA resolved the issues with late adoption of compatibility-required regulations.

During the 2006 MRB meeting, it was recommended that the next IMPEP review be scheduled in three years. Those present at this meeting agreed to schedule the review as planned, in FY 2009.

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

DATE OF MEETING: November 27, 2007

ATTENDEES:

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.

ENCLOSURE 2

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).

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

DATE OF MEETING: November 28, 2007

ATTENDEES:

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.

ENCLOSURE 3

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).

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

DATE OF MEETING: November 29, 2007

ATTENDEES:

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.

ENCLOSURE 4

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).

**Agenda for Management Review Board Meeting
March 24, 2008, 3:00 p.m. - 5:00 p.m. EST, O-9-B6**

1. Announcement of Public Meeting to all attendees and request for identification of any members of the public participating in this meeting.
2. MRB Chair convenes meeting. Introduction of MRB members, Agreement State representatives, and other participants. (OAS Liaison is George Johns of Minnesota.)
3. Discussion of Periodic Meetings:
 - a. Illinois (January 15, 2008) -
ML080390072 - Lynch
 - b. New York Department of Environmental Conservation (November 27, 2007) -
ML080360083 - Kottan/Schneider
 - c. New York State Department of Health (November 28, 2007) -
ML080430196 - Kottan/Schneider
 - d. New York City Department of Health and Mental Hygiene (November 29, 2007) -
ML080360054 - Kottan/Schneider
4. Establishment of Precedents/Lessons Learned
5. Adjournment

Invitees:	Martin Virgilio, OEDO	James Kottan, Region I
	Charles Miller, FSME	Kathleen Schneider, FSME
	Karen Cyr, OGC	Kim Lukes, FSME
	Leonard Wert, Region IV	Aaron McCraw, FSME
	George Johns, MN	Joe Klinger, IL
	Duncan White, FSME	Steven Gavitt, NYDOH
	Robert Lewis, FSME	Barbara Youngberg, NYDEC
	Stephen Campbell, OEDO	Gene Miskin, NYC
	James Lynch, Region III	

ENCLOSURE 5