

K. Schneider

New York State Department of Environmental Conservation

Division of Solid and Hazardous Materials

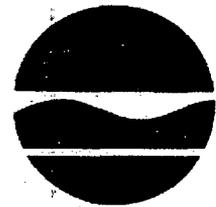
Bureau of Hazardous Waste and Radiation Management, 9th Floor

Radiation Control Permit Section

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Alexander B. Grannis
Commissioner

July 2, 2008

Mr. Robert Lewis, Director
Division Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Lewis:

This letter is to follow-up an issue discussed during the November 2007 interim Integrated Materials Performance Evaluation Program (IMPEP) review meeting between representatives from the US Nuclear Regulatory Commission (NRC) and the NYS Department of Environmental Conservation (DEC). During that meeting, we reviewed the list of 10 CFR rules, identified by RATS ID number, appearing on the State Regulation Status (SRS) for DEC. The SRS reflects NRC's current position regarding which 10 CFR rules DEC must adopt. During that meeting, we discussed the reasons why DEC will not be adopting some of those rules. We were advised to notify your office in writing which of those rules would be adopted. As requested, enclosed is a list of the outstanding rules that currently appear on the SRS, and our plans regarding each of them.

The New York State Agreement State program is divided among three agencies, the New York State Department of Health (NYSDOH), the New York City Department of Health and Mental Hygiene (NYCDHMH), and DEC. NYSDOH and NYCDHMH are the licensing agencies. DEC regulates the disposal of radioactive materials and the discharge of radioactive material to the environment. We defer to NYSDOH and NYCDHMH on licensing issues. Therefore, in the enclosed list, a status of "N/A" means that the rule is outside of our authority, and we are deferring to the licensing agencies. Statements to the effect that DEC will adopt compatible requirements mean that we will adopt those requirements that are consistent with our statutory authority. Finally, the fact that DEC plans to adopt certain requirements does not necessarily preclude the licensing agencies from adopting similar provisions, consistent with their own statutory authority. In our rulemaking efforts, we are working with the two licensing agencies to avoid contradictory or redundant requirements.

As you know, DEC's program is currently under heightened oversight, due to the large number of overdue regulations. We have submitted, and periodically update, a program improvement plan which describes two rulemakings we are now undertaking. One is an amendment of 6 NYCRR Part 380, our regulations for discharges and disposal of radioactive material to the environment. The second is the adoption of a new Part 384, which will contain our version of the license termination rule, and certain parts of the timeliness in decommissioning rule.

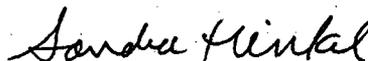
Enclosure 1 is a list of the open items on our SRS. In the "Status" column we have indicated whether or not we intend to adopt compatible provisions, and if so, in which rulemaking.

Enclosure 2 is a copy of the permit condition we include in every Part 380 permit we issue for discharges of radioactive material to the air. In past IMPEP reviews, we have been told that this permit condition meets the compatibility requirements of the constraint rule (RATS ID 1997-1), but we are now requesting a formal determination.

We request that, after NRC review, the SRS for DEC be updated accordingly.

If you have any questions, please contact me at (518) 402-8479.

Sincerely,



Sandra Hinkel
Chief, Radiation Control Permit Section
Bureau of Hazardous Waste & Radiation Management
Division of Solid & Hazardous Materials

Enclosures

cc: Kathleen Schneider, State Regulation Review Coordinator kxs@nrc.gov
James Kottan, Regional State Agreement Officer jjk@nrc.gov
Timothy Rice, Radiological Sites Section, NYSDEC
Edwin Dassatti, Director, Division of Solid & Hazardous Materials, NYSDEC
David O'Toole, Assistant Director, Division of Solid & Hazardous Materials, NYSDEC
Robert Phaneuf, Acting Director, Bureau of Hazardous Waste & Radiation Management
Steve Gavitt, New York State Department of Health
Gene Miskin, New York City Department of Health and Mental Hygiene

Status of New York State Department of Environmental Regulations			
June 2008			
RATS ID #	Title	Sections	DEC's Plan
1991-4	Notification of Incidents	20.2202 (a) - (d)	DEC will adopt compatible requirements in Part 380.
1993-1	Decommissioning Record keeping		N/A
1994 - 3	Timeliness of Decommissioning	30.36 (c),(d),(e)	N/A
		30.36(g)(1)	DEC will adopt compatible requirements in Part 384.
		30.36(g)(2)	N/A
		30.36(g)(3) and (4) (I) through (vi)	DEC will adopt compatible requirements in Part 384.
		30.36(g)(4)(v)	N/A
		30.36(g)(4)(vi) 30.36(g)(5) 30.36(h)(1)	DEC will adopt compatible requirements in Part 384.
		30.36(h)(2)	N/A
		30.36(j)	DEC will adopt compatible requirements in Part 384.
		30.36(k)	N/A
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria	19.12 Instructions to Workers	N/A
		20.1003 Definitions	We will adopt the definitions for "member of the public" and "public dose" in Part 380. "Occupational dose" is not applicable.
1996-3	Termination or Transfer of Licensed Activities: Record keeping Requirements	20.2108 30.35(g) 30.36(k)	N/A

Status of New York State Department of Environmental Regulations

June 2008

RATS ID #	Title	Sections	DEC's Plan
		61.30(a) and (c)(3)	These regulations pertain to low-level radioactive waste (LLRW) disposal facilities. Currently, there are no operating LLRW facilities in New York State, nor are there any proposals to build one. In the event that one is proposed, DEC would impose these requirements by permit condition, for which ample authority already exists in 6 NYCRR Parts 382 and 383.
1997-1	Constraint Rule		DEC currently implements the constraint rule by permit condition (see enclosure 2). We believe this is compatible with the NRC's requirements. Nevertheless, we plan to incorporate compatible provisions into Part 380.
1997-6	License Termination Rule		DEC will adopt compatible requirements in Part 384.
1998-1	Deliberate Misconduct		DEC's statutory enforcement authority does not extend to parties not regulated by DEC.

Status of New York State Department of Environmental Regulations

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RATS ID #	Title	Sections	DEC's Plan
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Definitions	20.1003 Definitions	DEC will adopt the amended definition for "lens dose equivalent"(20.1003) and amend the term where it is used in Part 380. The remaining definitions are not applicable.
		20.1101 20.1201 20.1203 20.1206 20.1208	N/A
		20.1501	DEC will adopt compatible requirements in Part 380.
		20.1502 20.1903 20.1906	N/A
		20.2101(b) and (d)	DEC will adopt compatible requirements in Part 380.
		20.2106	N/A
		20.2202(a)(1)(ii) 20.2202((b)(1)(ii)	N/A
		20.2202(d)(2)	DEC will adopt compatible requirements in Part 380.
2002-1	Revision of the Skin Dose Limit	20.1003	DEC will adopt the definition of "shallow dose equivalent" in Part 380.
		20.1201	N/A
2006-1	Minor Amendments		N/A
2006-2	National Source Tracking System - Serialization Requirements		N/A
2006-3	National Source Tracking System - Part 20		N/A
2007-1	Medical Use of Byproduct Material- Minor Corrections and Clarifications		N/A

Status of New York State Department of Environmental Regulations

June 2008

RATS ID #	Title	Sections	DEC's Plan
2007-3	Requirements for Expanded Definition of Byproduct Material	Appendix B	DEC will add O-15 and N-13 to the Tables of Concentrations in Part 380.
2007-4	Fingerprinting and Criminal History Records Check Requirements (NRC Order EA-07-305)		N/A
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent	19.13	N/A
		20.1003	DEC will adopt the revised definition of "total effective dose equivalent" in Part 380
		20.1201 20.1905(g) 20.2104 2205	N/A

CONSTRAINT RULE

The following is the text of the permit condition that is included in every Part 380 radiation control permit issued authorizing discharges of radioactive material to the air. This permit condition has been implemented since 2004. During past IMPEP reviews, we have been told that this condition meets the compatibility requirements of the constraint rule (RATS ID 1997-1); we are now requesting a formal determination.

Permit condition: Emissions of radioactive material to the environment, excluding radon-222 and its daughters, shall be constrained such that no member of the public will receive a total dose equivalent in excess of 10 mrem per year from these emissions.