

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

DATE OF MEETING: July 16, 2009

<b>NRC Attendees</b>	<b>New York City Department of Health Attendees</b>
James Kottan, Region I RSAO	Chris Boyd, Assistant Commissioner
Monica Orendi, FSME	Gene Miskin, Director
	Tobias Lickerman, Chief

**DISCUSSION:**

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

Subsequent to the November 2007 periodic meeting, the MRB met on March 24, 2008 to consider the findings of the November 2007 Periodic Meeting. The MRB requested that calls between NYC and NRC staffs continue to be conducted quarterly to discuss NYC's revised Plan regarding their performance with compatibility requirements. The MRB also determined that a periodic meeting should take place in the spring/summer of 2009. This summary describes this periodic meeting.

The status of the State's actions to address the open recommendation follows:

The review team recommended 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 Program is in the process of enacting regulations to make the Program compatible with the NRC program. Revised Plans have been submitted to the NRC periodically (ML072280086, ML072280098, ML081700395, ML081700396 and ML082950402). NYC is coordinating development with the New York State Health Department (DOH) where necessary. The latest Plan submitted to the NRC during this periodic meeting calls for having the final regulations required for compatibility adopted in December 2009.

This recommendation remains open and should be evaluated at the next IMPEP review.

## NYC Periodic Meeting Summary

### OTHER TOPICS COVERED DURING THE MEETING INCLUDED:

#### Program Strengths

A well-trained, stable, and experienced staff is the strength of the Program. Two staff have joined the Program since the last periodic meeting, one individual is a transfer from the Radiation Producing Equipment functional area, and the other is a new hire who has been in place not quite a year. The Program is fully staffed. Mr. Miskin stated that when vacancies do arise, he is able to fill them in a timely manner from a well-qualified pool of applicants.

#### Feedback on the NRC's Program

The Program noted that NRC initiatives related to security, such as the order for increased controls, the National Source Tracking System, and fingerprinting, required considerable effort on the part of the Program. The Program commented that both the overall relationship with the NRC and communication with the NRC are good. Additionally, the Program appreciates the NRC funding of training. The Program would like the NRC to provide guidance to the Agreement States on acceptable practices for compliance with NRC security initiatives. The program stated that these could be in the form of "best practices" or some other guidance. The Program felt that the potential existed for each Agreement State to regulate this area in an uncoordinated manner without such guidance.

#### Agreement State Program Staffing and Training

The Program staff consists of eight individuals including the supervisor and is currently fully staffed. Support for staff training exists in the Program. NYC welcomed the NRC's revised policy on funding training for Agreement States. Program staff have attended NRC and other training courses, including the NRC's Security Systems and Principles Course. NYC noted that other activities that are not specifically training, such as participation on IMPEP teams and attendance at meetings, also provide valuable opportunities for knowledge sharing.

#### Organization

The Program is administered by the Office of Radiological Health in the Bureau of Environmental Sciences and Engineering under the Division of Environmental Health of the NYC. There have been no changes to the Program's organization since the previous periodic meeting.

There are two functional areas within the Office of Radiological Health: Radioactive Materials and Radiation Producing Equipment. The Radioactive Materials functional area makes up the Program, which administers approximately 370 licenses.

## NYC Periodic Meeting Summary

### Program Budget/Funding

Mr. Miskin stated that while there are some budget constraints, funding for the program is stable, and the Program is adequately funded. Although pending budget cuts may result in travel restrictions for Program staff, Mr. Miskin stated that when necessary, and with the appropriate justification, travel for the Program staff has been approved.

### Inspection Program

NYC's inspection frequencies are at least as frequent as NRC's. No inspections were overdue with respect to NRC inspection priorities. The Program maintains a database to monitor inspection scheduling and tracking. Management is aware of the importance of inspection program schedules. The Program is implementing a new tracking system that will provide for scheduling and tracking of inspections, and also licensee source inventories as well. This system is expected to be operational within about two months.

The Program had no licensing actions that were pending for greater than one year. Mr. Miskin stated that the number of licensees has remained approximately constant over the last several years at about 370 licensees. Mr. Miskin also stated that NYC is aware of the requirement for "pre-licensing" visits, and pre-licensing visits will be conducted.

### Regulations

The Program submitted the latest version of their Plan dated July 15, 2009 to the NRC during this Periodic Meeting. (ML092100609) The Plan calls for the completion of the three remaining overdue regulations by December 2009.

The following three regulations are overdue:

- "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. (RATS ID 2002-2)
- "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. (RATS ID 2005-1)
- "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. (RATS ID 2006-1)

When these three regulations are adopted, the Program will have no overdue regulations. The Program has made good progress in adopting overdue regulations. NYC coordinates with (DOH) when required in the adoption of regulations. Quarterly coordination meetings are held between NYC and DOH. Adoption of RATS ID 2002-2 will require coordination with DOH. Additionally, Mr. Miskin stated that NYC is attempting to be proactive with respect to future regulations.

## NYC Periodic Meeting Summary

The following regulations are listed on the NRC's State Regulation Status (SRS) sheets as overdue and are not part of the NYC Plan. However, Mr. Miskin stated that NYC had adopted these regulations, either by license condition or regulation, and would provide documentation to the NRC indicating this fact.

-“Notification of Incidents,” 10 CFR Parts 20, 30, 31, 34, 39, 40 and 70 (56 FR 64980), that became effective on October 15, 1991, and was due for Agreement State adoption by October 15, 1994. (RATS ID 1991-4)

-“Quality Management Program and Misadministrations,” 10 CFR Part 35 (56 FR 34104), that became effective on January 27, 1992, and was due for Agreement State adoption by January 27, 1995. (RATS ID 1992-1)

-“Decommissioning Recordkeeping and License Termination: Documentation Additions (Restricted areas and spill sites),” 10 CFR Parts 30 and 40 (58 FR 39628), that became effective on October 25, 1993, and was due for Agreement State adoption by October 25, 1996. (RATS ID 1993-1)

-“Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use,” 10 CFR Parts 30, 32 and 35 (59 FR 61767, 59 FR 65243 and 60 FR 322), that became effective on January 1, 1995 and was due for Agreement State adoption by January 1, 1998. (RATS ID 1995-1)

-“Criteria for the release of Individuals Administered Radioactive Material,” 10 CFR Parts 20 and 35 (62 FR 4120) that became effective on May 29, 1997 and was due for Agreement State adoption by May 29, 2000. (RATS ID 1997-3)

-“Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 35 and 36 (63 FR 39477 and 63 FR 45393) that became effective on October 26, 1998 and was due for Agreement State adoption by October 26, 2001. (RATS ID 1998-5)

-“Transfer for Disposal and Manifests: Minor Technical Conforming Amendment,” 10 CFR Part 20 (63 FR 50127) that became effective on November 20, 1998 and was due for Agreement State adoption by November 20, 2001, (RATS ID 1998-6)

### Event Reporting

NYC communicates reportable incidents to the NRC Operations Center and Region I when appropriate in a prompt manner. Since the last Periodic Meeting in November 2007, one event was reported to the NRC. Mr. Miskin stated that the majority of events that occur in New York City are related to machine-produced ionizing radiation rather than the use of radioactive material.

### Response to Incidents and Allegations

NYC continues to be sensitive to notifications of incidents and allegations. There were no allegations referred to the program since the last periodic meeting in November 2007.

## NYC Periodic Meeting Summary

### Action Items Resulting From the Meeting

None.

### CONCLUSIONS:

The overall performance of the Program continues to be good. The Program staff is experienced, well trained, and remains stable. The occasional vacancy is filled in a timely manner. The Program is adequately funded. NYC continues to make progress on adopting overdue regulations, with only three regulations remaining for adoption.

NRC staff recommends that the next IMPEP review should be conducted as scheduled in FY 2011 (tentatively November 2010).