

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

DATE OF MEETING: July 29, 2009

NRC Attendees	New York State Department of Health Attendees
James Kottan, Region I RSAO	Adela Salame-Alfie, PhD, Assistant Division Director
Monica Orendi, FSME	Stephen Gavitt, CHP, Bureau Director
	Robert Dansereau, Assistant Bureau Director
	Charles Burns, Section Chief
	Clayton Bradt, Principal Radiophysicist

DISCUSSION:

In November 2006, the Integrated Materials Performance Evaluation Program (IMPEP) review team found the DOH 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 DOH and NRC staffs continue to be conducted quarterly to discuss DOH'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 DOH 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 (ML091271106, ML091271108, ML072840063 and ML072840069). DOH is coordinating development with the New York City Department of Health and Mental Hygiene (NYC) where necessary. The latest Plan submitted to the NRC calls for having the final regulations required for compatibility adopted by the third quarter of 2010.

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

OTHER TOPICS COVERED DURING THE MEETING INCLUDED:Program Strengths

A well-trained, stable, experienced and credentialed staff is the strength of the Program. Mr. Gavitt stated that an additional strength was the program equipment, and the fact that the staff were well trained in the use of the equipment. The Program also maintains emergency/incident response vehicles. One is a mobile sample analysis laboratory containing sample preparation facilities and high resolution gamma spectrometry and gas flow proportional counting equipment. The other vehicles are mobile air sampling and monitoring facilities. In addition the Program provides in-house training on such topics as new modalities, and staff are being cross trained in order to strengthen the Program.

Feedback on the NRC's Program

The Program noted that the National Source Tracking System (NSTS) appeared to still have a number of problems. DOH has about 50 Category 1 and 2 licensees and about 800 Category 3 and one tenth of Category 3 licensees. All of these licensees are in the NSTS system, and this makes the system cumbersome to use. The Program noted that the Category 3 and one tenth of Category 3 licensees need to be removed from the system, but this has not yet been done. Also the Program noted that NSTS is not working with regard to obtaining information for conducting inspections. The Program commented that both the overall relationship with the NRC and communications with the NRC are good. In particular, the Program noted the invitation to accompany NRC inspectors on inspections in New York State, and the NRC funding of training

Agreement State Program Staffing and Training

The Program staff consists of 12 individuals including the supervisor. There is one staff vacancy. Other than the one vacancy, the program is fully staffed.

Support for staff training exists in the Program. DOH 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. DOH 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 Radioactive Materials Section of the Bureau of Environmental Radiation Protection (Bureau). The Bureau is part of the Division of Environmental Health Investigations in the New York State Health Department. In addition to the Program, the Bureau is responsible for radiation producing machines, radiological emergency response and environmental radiation/radon. Since the last Periodic Meeting the position of Assistant Bureau Director was filled with the former Chief of the Radioactive Materials Section.

Program Budget/Funding

Mr. Gavitt stated that the program is adequately funded for now. Funding sources for the Bureau include fees, grants, contract monies, and appropriations. The last fee update for the Bureau occurred in 2001. There are no restrictions on in-State travel, and out of State travel is permitted for training if an outside source is funding the training.

Inspection Program

DOH'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 has completed the first round of IC inspections and continues to conduct IC inspections.

The Program had no licensing actions that were overdue. Mr. Gavitt stated that the number of licenses has remained approximately constant over the last several years at about 1100 licenses. Mr. Gavitt also stated that DOH is aware of the requirement for "pre-licensing" visits, and pre-licensing visits will be conducted. However, Mr. Gavitt inquired as to the need to conduct pre-licensing visits for nuclear cardiology. He stated that if the cardiologist is medically licensed in New York and working in New York, then why conduct the pre-licensing visit for this type of low risk licensee. The NRC will review this issue and provide a response to the Bureau.

Regulations

The Program submitted the latest version of their Plan to the NRC in April 2009. (ML091271106 and ML091271108) NRC staff concluded that the DOH Plan is a reasonable and realistic approach to addressing the DOH compatibility requirements with NRC. NRC staff review concluded that the tasks, milestones, and assignments for finalizing each overdue or upcoming regulation appeared reasonable and achievable. The Plan calls for the completion of the remaining overdue regulations by the third quarter of 2010.

The following regulations are overdue:

- "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)
- "Medical Administration of Radiation and Radioactive Materials," 10 CFR Parts 20 and 35 (60 FR 48623), that became effective on October 20, 1995, and was due for Agreement State adoption by October 20, 1998. (RATS ID 1995-7)
- "Termination or Transfer of Licensed Activities: Recordkeeping Requirements," 10 CFR Parts 20, 30, 40, 61, and 70 (61 FR 24669), that became effective on June 17, 1996, and was due for Agreement State adoption by June 17, 1999. (RATS IS 1996-3)

- “Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction With an Agreement State,” 10 CFR Part 150 (62 FR 1662), that became effective on February 27, 1997, and was due for Agreement State adoption by February 27, 2000. (RATS ID 1997-2)
- “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)
- “Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations,” 10 CFR Parts 30, 34, 71, and 150 (62 FR 28947), that became effective on June 27, 1997, and was due for Agreement State adoption by June 27, 2000. (RATS ID 1997-5)
- “Radiological Criteria for License Termination,” 10 CFR Parts 20, 30, 40, and 70 (62 FR 39057), that became effective on August 20, 1997, and was due for Agreement State adoption by August 20, 2000. (RATS ID 1997-6)
- “Deliberate Misconduct by Unlicensed Persons,” Parts 30, 40, 61, 70, 71 and 150 (63 FR 1890, 63 FR 13773), that became effective on February 12, 1998, and was due for Agreement State adoption on February 12, 2001. (RATS ID 1998-1)
- “Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations,” 10 CFR Part 34 (63 FR 37059), that became effective on July 9, 1998, and was due for Agreement State adoption by July 9, 2001. (RATS ID 1998-4)
- “Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 30, 40, and 70 (63 FR 39477, 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)
- “Energy Compensation Sources for Well Logging and Other Regulatory Clarifications,” 10 CFR Part 39 (65 FR 20337), that became effective on May 17, 2000, and was due for Agreement State adoption by May 17, 2003. (RATS ID 2000-1)
- “New Dosimetry Technology,” 10 CFR Parts 34, 36, and 39 (65 FR 63749), that became effective on January 8, 2001, and was due for Agreement State adoption by January 8, 2004. (RATS ID 2000-2)
- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31 and 32 (65 FR 79162), that became effective on February 16, 2001, and was due for Agreement State adoption by February 16, 2004. (RATS ID 2001-1)
- “Revision of the Skin Dose Limit,” 10 CFR Part 20 (67 FR 16298), that became effective on April 5, 2002, and was due for Agreement State adoption by April 5, 2005. (RATS ID 2002-1)
- “Medical Use of Byproduct Material,” Parts 20, 32 and 35 (67 FR 20249), that became effective on October 24, 2002, and was due for Agreement State adoption by October 24, 2005. (RATS ID 2002-2)

- “Financial Assurance for Materials Licensees,” 10 CFR Parts 30, 40, and 70 (68 FR 57327), that became effective on December 3, 2003, and was due for Agreement State adoption by December 3, 2006. (RATS ID 2003-1)
- “Security Requirements for Portable Gauges Containing Byproduct Material,” 10 CFR Part 30 (70 FR 2001), that became effective on July 11, 2005, and is due for Agreement State adoption by July 11, 2008. (RATS ID 2005-1)
- “Medical Use of Byproduct Material - Recognition of Specialty Boards,” 10 CFR Part 35 (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 2005-2)
- “Minor Amendments,” 10 CFR Parts 20, 30, 32, 35, 40, and 70 (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)

Mr. Dansereau stated that RATS IDs 1997-2, 1997-3 and 1999-3 were being implemented by license condition, and he would send these license conditions to the NRC for review.

Event Reporting

DOH communicates reportable incidents to the NRC Operations Center and Region I when appropriate in prompt manner. Since the last Periodic Meeting in November 2007, seven events were reported to the NRC. Mr. Gavitt 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. Two incidents and one allegation were referred to the program since the last Periodic Meeting in November 2007.

Action Items Resulting From the Meeting

NRC:

- FSME will follow-up on DOH's concerns regarding NSTS.
- FSME will provide an answer to DOH regarding pre-licensing visits to licensees of low risk (nuclear cardiologists).
- FSME will provide guidance to DOH on IC inspection frequencies.

DOH:

DOH will send license conditions for RATS IDs 1997-2, 1997-3 and 1999-3 to the NRC for review.

CONCLUSIONS:

The overall performance of the Program continues to be good. The Program staff is experienced, well trained, and remains stable. The program is adequately funded. DOH continues to make progress on adopting overdue regulations.

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