

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

DATE OF MEETING: July 28, 2009

NRC Attendees	New York DEC Attendees
Monica Orendi, Health Physicist, FSME	David O'Toole, Assistant Director, Division of Solid and Hazardous Materials
James Kottan, Region I RSAO	Robert Phaneuf, Acting Director, Bureau of Hazardous Waste and Radiation Management
	Timothy Rice, Chief, Radiological Sites Section
	Sandra Hinkel, Chief, Radiation Control Permits Section

DISCUSSION:

In November 2006, the Integrated Materials Performance Evaluation Program (IMPEP) review team found the DEC 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, two recommendations were 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 DEC and NRC staffs continue to be conducted quarterly to discuss DEC'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 recommendations follows:

Recommendation 1: The review team recommends that DEC transmit inspection findings to their licensees within 30 days after the close of the inspection.

Status: This recommendation was discussed during the previous periodic meeting. As a result of that discussion, it was recommended that this item be closed at the next review. During this periodic meeting the Radiation Control Permit Section Chief stated

that inspection findings continue to be transmitted to licensees within 30 days after the close of the inspection.

It is recommended that this item be closed at the next review.

Recommendation 2: The review team recommended 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 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 (ML0722801101, ML0722801160, ML080310348, ML080310358, ML083020548, ML090230252, ML090230262, ML091250060, and ML091250062). DEC is coordinating development with other New York State agencies where necessary. The latest Plan submitted to the NRC calls for having the final regulations required for compatibility adopted in the spring of 2011.

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, and experienced staff is the strength of the Program. Two staff have joined the Program over the past two years, and there are two staff vacancies. Management support exists for the program, and this allowed the previously vacant Radiological Sites Section Chief position to be filled. Additionally, DEC stated that they were well equipped, and their equipment was a program strength. This included both an in-house laboratory with gamma spectrometry and TLD systems, and emergency/incident response instrumentation mounted in dedicated vehicles. Also the Program participates in various exercises and drills, such as the recent Empire 09 exercise. Ms. Hinkel and Mr. Rice stated that participation in these exercises raises the profile of the Program, and strengthens and improves the capabilities of the Program.

Feedback on NRC's Program

The Program commented that both the overall relationship with the NRC and communication with the NRC are good. In particular, Mr. Rice mentioned the cooperation with the NRC on the Indian Point groundwater issue and West Valley. Additionally, the Program appreciates the NRC funding of training. Both Ms. Hinkel and Mr. Rice noted difficulty in enrolling their staff in some of the NRC training courses, especially the core courses. The Program also felt there was good communication with the NRC on rule making issues.

Agreement State Program Staffing and Training

The Program staff consists of twelve individuals, including both section chiefs. There are two staff vacancies. Ms Hinkel stated that due to budget constraints, DEC is unable to fill the two vacant positions.

Support for staff training exists in the Program. DEC welcomed the NRC's revised policy on funding training for Agreement States. Program staff have attended NRC and other training courses. DEC noted that other activities that are not specifically training, such as participation in emergency exercises, such as the recent Empire 09 exercise, and attendance at meetings, also provide valuable opportunities for knowledge sharing.

Organization

The Program is administered by the Bureau of Hazardous Waste and Radiation Management within the Division of Solid and Hazardous Materials of the DEC. There have been no changes to the Program's organization since the previous periodic meeting.

There are two functional areas within the Bureau of Hazardous Waste and Radiation Management: Radiation Control Permit Section and Radiological Sites Section. Both sections make up the Program. The Program administers approximately 30 effluent release permits for licenses issued by the New York State and New York City Departments of Health.

Program Budget/Funding

Mr. Rice and Ms. Hinkel stated that the program is adequately funded with the exception of some areas such as sample analyses. Adequate funding exists for in-state travel, and out-of-state travel is permitted with outside funding.

Inspection Program

DEC's inspection frequencies are at least as frequent as NRC's. No inspections were overdue with respect to NRC inspection priorities. Management is aware of the importance of inspection program schedules and issuing inspections in a timely manner. Approximately 25 inspections are conducted annually.

The Program had no permitting actions that were overdue. DEC processes approximately 25 permitting actions annually, including new permits, renewals, and modifications. Ms. Hinkel stated that the number of permits has remained approximately constant over the last several years at about 30 permits.

Regulations

The Program submitted the latest version (Update #9) of their Plan in April 2009 to the NRC (ML091250062). The Plan, with slippage, calls for completion of the overdue regulations by spring of 2011.

The following regulations are overdue:

"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. (RATS ID 1991-4)

“Timeliness in Decommissioning Material Facilities,” 10 CFR Parts 30, 40 and 70 (59 FR 36026), that became effective on August 15, 1994, and was due for Agreement State adoption by August 15, 1997. (RATS ID 1994-3)

“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. (RATS ID 1995-5)

“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. (RATS ID 1997-6)

“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. (RATS ID 1998-5)

“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. (RATS ID 2002-1)

NRC staff concluded that the DEC Plan is a reasonable and realistic approach to addressing the DEC 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. DEC continues to move forward with the most recent version of their Plan, although the schedule has slipped by about three months due to the workload in the Department, and the absence of an acting Section Chief due to illness.

Additionally, both Ms. Hinkel and Mr. Rice stated that DEC is attempting to be proactive with respect to future regulations.

Event Reporting

DEC communicates reportable incidents to the NRC Operations Center and Region I when appropriate in prompt manner. No events were reported to the NRC since the last Periodic Meeting in November 2007. Ms. Hinkel stated that the majority of events that occur under DEC jurisdiction involve medical waste in trash or naturally occurring radioactive material in trash. There were two allegations referred to the program by the NRC since the last Periodic Meeting in November 2007.

Response to Incidents and Allegations

DEC continues to be sensitive to notifications of incidents and allegations. There were two allegations referred to the program by the NRC since the last Periodic Meeting in November 2007. DEC responded promptly to both allegations.

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 Radiological Sites Section Chief position was filled in a timely manner. The program is adequately funded with some minor exceptions. DEC 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).