

NEW YORK HEIGHTENED OVERSIGHT
CONFERENCE CALL
June 28, 2012

NRC Attendees	New York Attendees
Raymond Lorson, Region I	Stephen Gavitt, Bureau Director (NYSDOH)
Donna Janda, Region I	Charles Burns, Chief, Radioactive Materials Section (NYSDOH)
Lisa Dimmick, FSME	Robert Snyder, Chief, Field Operations Section (NYSDOH)
Michelle Beardsley, FSME	Jim Harrington, Bureau Director (NYSDEC)
	Jesse Owens (NYSDEC)
	Sandra Hinkel, Section Chief (NYSDEC)
	Timothy Rice, Section Chief (NYSDEC)
	Gene Miskin, Office Director (NYC)

SUMMARY

In June 2011 an Integrated Materials Performance Evaluation Program (IMPEP) review of the New York Agreement State Program was conducted. The agencies which comprise the Agreement State program are the New York State Department of Health (NYSDOH), New York State Department of Environmental Conservation (NYSDEC), and New York City Health Department (NYC). On October 11, 2011, the Management Review Board (MRB) met to consider the proposed final IMPEP report. The MRB determined that the New York Agreement State Program should remain on heightened oversight, which was initiated in November 2005. The MRB also directed each of the agencies that comprise the Agreement State program to revise their Program Improvement Plan (PIP) as part of their response to the final IMPEP report. The NRC reviewed the agencies' initial PIPs and concluded that each PIP contained a reasonable and realistic approach to addressing the recommendations made in the final IMPEP report. The MRB also directed that bimonthly calls be conducted between the New York and NRC staffs. As part of the heightened oversight process, each agency submits an updated PIP prior to each bimonthly call.

This is the third bimonthly call since the October 2011 MRB. The revised PIPs for each agency were submitted on June 13, 2012 and June 26, 2012.

DISCUSSION OF PROGRAM STATUS

Technical Staffing and Training (IMPEP finding: Satisfactory but Needs Improvement)

At the time of the 2011 IMPEP review both NYSDOH and NYSDEC had staff vacancies. Since the March 2012 conference call, NYSDOH has hired one senior staff member who will work out of the Central Islip office. This individual is currently undergoing qualification training in the radioactive materials area. Two other staff members, who were hired into entry level positions since the 2011 IMPEP, are being trained in the X-ray area. Since the March 2012 conference call, NYSDOH lost two technical staff members, one full-time and one part-time, in the radioactive materials program. The NYSDOH Program managers are pursuing the replacement of these individuals.

Since the March 2012 conference call, NYSDEC has filled one of their two vacant staff positions. This position has been moved to the NYSDEC's Region 9 office in Buffalo. The Program managers stated that they do not anticipate any impacts to the Program due to the position being moved from the Albany office to Buffalo.

NYSDEC has not lost any additional staff since the IMPEP and NYC is still fully staffed. All three agencies send technical staff to the NRC-funded training as well as using other means (i.e., in house training and inspector accompaniments) to train current staff. State staff members need approval from the Governor's office for out-of-state travel which at times impacts State employees' attendance at the NRC-funded courses. Recently two NYSDOH staff members could not attend an NRC course due to this approval process.

NYSDOH recently hosted the NRC transportation course in Albany. NYC had two technical staff members attend this training. NYSDEC stated that they will be hosting a MARSAME course in August 2012.

Status of the Materials Inspection Program (IMPEP finding: Satisfactory)

All three agencies stated that their Programs are on track with their inspections and have had no issues since the June 2011 IMPEP. The 2011 IMPEP team generated one recommendation for NYSDOH for this performance indicator. This recommendation is listed below along with its status.

Recommendation 1: The review team recommends that DOH develop and implement a process to track reciprocity inspections to ensure at least 20 percent of candidate licensees for reciprocity are inspected.

Status: Mr. Gavitt stated that NYSDOH has inspected approximately 26 percent of candidate licensees this calendar year. NYSDOH continues to use their recently developed tracking system which allows for tracking and completion of reciprocity inspections.

Technical Quality of Inspections (IMPEP finding: Satisfactory)

All three agencies stated that they have had no issues arise in this area since the June 2011 IMPEP. Annual inspector accompaniments are ongoing.

Technical Quality of Licensing (IMPEP finding: Satisfactory but Needs Improvement)

Mr. Miskin stated that NYC has completed a couple of pre-licensing site visits since the March 2012 conference call.

Mr. Gavitt stated that NYSDOH has reduced their backlog of licensing renewal actions to 53 licenses under timely renewal for more than one year and to eight licenses under timely renewal for more than five years. Mr. Gavitt stated that NYSDOH now has approximately 250 renewal actions outstanding and is actively working on the renewal backlog in an attempt to bring it up to date. He also stated that no health and safety issues associated with the outstanding renewal actions.

During the June 2011 IMPEP, the review team found no issues with NYSDEC in this indicator. Ms. Hinkel stated that as of this call NYSDEC had no backlog with regards to permitting actions.

Technical Quality of Incidents and Allegations (IMPEP finding: Unsatisfactory)

The 2011 IMPEP review team generated four recommendations for this performance indicator. These recommendations are listed below along with their status.

Recommendation 2: The review team recommends that NYC respond to each incident received in accordance with its established Incident Response Procedure.

Status: Mr. Miskin stated that NYC has held several staff meetings to remind the staff of the contents of the updated Policies and Procedures Manual.

Recommendation 3: The review team recommends that NYC modify the Incident Response Procedure to add timely notifications to the NRC Operations Center in accordance with the timelines identified in SA-300.

Status: NYC had no updates for this recommendation.

Recommendation 4: The review team recommends that NYC evaluate all incident statistical information received from licensees, both retrospectively and prospectively, and follow-up in a manner to ensure that each incident is properly evaluated for health, safety, and security implications.

Status: NYC had no updates for this recommendation.

Recommendation 5: The review team recommends that DOH develop comprehensive incident response and allegation procedures, and ensure that reportable incidents are reported to the NRC Operations Center in accordance with the timelines identified in SA-300.

Status: Mr. Gavitt stated that this topic has been discussed at staff meetings. NYSDOH had no other updates for this recommendation.

New York is aware of the need to maintain an effective response to incidents and allegations. During the June 2011 IMPEP the review team found no issues with NYSDEC under the indicator Technical Quality of Incidents and Allegations.

Compatibility Requirements (IMPEP finding: Unsatisfactory)

New York continues to work on addressing this indicator. All three agencies are continuing to focus attention on bringing New York up to date with compatible regulations.

NYC has the following five NRC amendments overdue for adoption:

- “Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 35, and 36 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.
- “Transfer for Disposal and Manifests: Minor Technical Conforming Amendment,” 10 CFR Part 20 amendment (63 FR 50127), that became effective on November 20, 1998 and was due for Agreement State adoption by November 20, 2001.

- “Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements,” 10 CFR Parts 30, 31, 32, and 150 amendments (72 FR 58473), that became effective on December 17, 2007 and was due for Agreement State adoption by December 17, 2010.
- “Requirements for Expanded Definition of Byproduct Material,” Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendments (72 FR 55864), that became effective on November 30, 2007 and was due for Agreement State adoption by November 30, 2010.
- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendments (72 FR 68043), that became effective February 15, 2008 and was due for Agreement State adoption by February 15, 2011.

NYC has included as part of their updated PIP a plan to adopt not only those regulations that are currently overdue but also future regulation amendments that are coming due. According to NYC, there were no updates to the PIP since the March 2012 conference call. NRC noted that the NYC PIP is out of date regarding the anticipated completion dates for tasks related to regulation adoption. NYC will need to update their PIP prior to the periodic meeting to be held in September 2012 to include revised dates for completion of tasks associated with regulation adoption.

NYSDOH has the following 16 NRC amendments overdue for adoption:

- “Quality Management Program and Misadministrations,” 10 CFR Part 35 amendment (56 FR 34104), that became effective on January 27, 1992 and was due for Agreement State adoption by January 27, 1995.
- “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.
- “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 August 20, 1997 and was due for Agreement State adoption on August 20, 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.

- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31, and 32 amendments (65 FR 79162), that became effective on February 16, 2001 and was due for Agreement State adoption on February 16, 2004.
- “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.
- “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,” 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.
- “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.
- “Medical Use of Byproduct Material – Minor Corrections and Clarifications,” 10 CFR Parts 32 and 35 amendments (72 FR 45147, 72 FR 54207), that became effective on October 29, 2007 and were due for Agreement State adoption on October 29, 2010.
- “Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements,” 10 CFR Parts 30, 31, 32, and 150 amendments (72 FR 58473), that became effective on December 17, 2007 and was due for Agreement State adoption by December 17, 2010.
- “Requirements for Expanded Definition of Byproduct Material,” Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendments (72 FR 55864), that became effective on November 30, 2007 and was due for Agreement State adoption by November 30, 2010.
- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendments (72 FR 68043), that became effective February 15, 2008 and was due for Agreement State adoption by February 15, 2011.

NYSDOH has included as part of their updated PIP a plan to adopt currently overdue regulation amendments. Mr. Gavitt noted that the medical regulations are still with the Governor’s Office. Once they are approved by the Governor’s Office, the regulations will be published for a 45-day comment period, submitted to the Public Health Council for final review and approval. The final rule will then be published and submitted to NRC for review.

NYSDEC has the following eight NRC amendments 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.
- “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.
- “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.
- “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.
- “Requirements for Expanded Definition of Byproduct Material,” Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendments (72 FR 55864), that became effective on November 30, 2007 and was due for Agreement State adoption by November 30, 2010.
- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendments (72 FR 68043), that became effective February 15, 2008 and was due for Agreement State adoption by February 15, 2011.

NYSDEC has included as part of their updated PIP a plan to adopt currently overdue regulation amendments. NYSDEC is making progress on the amendment to Part 380 and the new Part 384; however, the schedule for adopting these amendments has slipped approximately two to three months since the March 2012 conference call. According to Ms. Hinkel, this delay was due to managing other Program priorities.

Sealed Source and Device (SS&D) Evaluation Program (IMPEP finding: Satisfactory)

There have been no changes in the SS&D program since the June 2011 IMPEP. New York currently has two qualified SS&D reviewers and one individual serving as a backup. Both reviewers are considered by NYSDOH to be fully qualified. During the June 2011 IMPEP, the review team found that SS&D reviews performed by NYSDOH adequately addressed health and safety issues and were of sufficient technical quality.

Low-Level Radioactive Waste Disposal (LLRW) Program (IMPEP finding: Satisfactory)

There have been no changes in the LLRW Program since the June 2011 IMPEP. During the 2011 IMPEP, the review team found that the oversight of the two former radioactive waste disposal sites was suitable and thorough.

Conclusion

The three agencies that make up the New York Agreement State Program are addressing the recommendations that were made during the 2011 IMPEP review. A periodic meeting with the three agencies will be held in September 2012.