

March 11, 2013

MEMORANDUM TO: Michael F. Weber
Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs

James P. Biggins, Deputy Assistant General Counsel
for Reactor and Materials Rulemaking
Office of the General Counsel

Brian E. Holian, Deputy Director
Office of Federal and State Materials
and Environmental Management Programs

Cynthia D. Pederson, Deputy Administrator
Region III

FROM: Michelle Beardsley, Health Physicist */RA K. Meyer for/*
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: MINUTES: March 5, 2013
SPECIAL MANAGEMENT REVIEW BOARD (MRB) MEETING

Enclosed are the minutes of the Special MRB meeting held on March 5, 2013, to discuss the periodic meetings held with the New York State agencies that comprise the New York Agreement State Program: New York State Department of Health, New York State Department of Environmental Conservation, and New York City Department of Health and Mental Hygiene. If you have comments or questions, please contact me at (610) 337-6942.

Enclosure: Cover Page and Minutes of the
Management Review Board Meeting

cc w/encl.: James McNees, Alabama
Organization of Agreement States
Liaison to the MRB

Management Review Board Members

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MINUTES: SPECIAL MANAGEMENT REVIEW BOARD (MRB) MEETING OF March 5, 2013

The attendees were as follows:

In person at U.S. Nuclear Regulatory Commission (NRC) Headquarters in Rockville, Maryland:

Michael Weber, MRB Chair, OEDO
Brian Holian, MRB Member, FSME
James Biggins, MRB Member, OGC

Maria Arribas, FSME
Lisa Dimmick, FSME

By telephone:

Cynthia Pederson, MRB Member, Region III
James McNees, MRB Member, AL
Raymond Lorson, Region I
Donna Janda, Region I
Monica Orendi, Region I
Michelle Beardsley, FSME
Ken Lambert, Region III
Michael Ryan, NY
Jessie Lynch, NY

Adela Salame-Alfie, NY
Stephen Gavitt, NY
Christopher Boyd, NY
Sandra Hinkel, NY
Gene Miskin, NY
Tobias Lickerman, NY
Dan Sampson, NY
Jim Harrington, NY
Charles Burns, NY

1. **Convention.** Ms. Dimmick convened the meeting at 1:04 p.m. She noted that this MRB meeting was open to the public. She then transferred the lead to Mr. Michael Weber, Chair of the MRB. Introductions of the attendees were conducted.

2. **Periodic Meetings Discussions:**

Ms. Donna Janda led the discussion of the results of the Periodic Meetings held with the New York State Department of Health (NY DOH) in Albany on September 25, 2012, the New York State Department of Environmental Conservation (NY DEC) in Albany on September 26, 2012 and the New York City Department of Health and Mental Hygiene (NYC) in New York on September 27, 2012 (ADAMS Accession Numbers: ML12328A051, ML12342A325 and ML12328A050, respectively). Ms. Janda stated that the last IMPEP review of the New York Agreement State Program was conducted in June 2011. The review team recommended, and the MRB agreed, that New York's performance be found unsatisfactory for the performance indicators, Technical Quality of Incident and Allegation Activities and Compatibility Requirements; satisfactory, but needs improvement for the performance indicators, Technical Staffing and Training and Technical Quality of Licensing Actions; and satisfactory for the remaining indicators reviewed. The team made five recommendations regarding the performance of the New York Agreement State Program and kept open one recommendation from the 2006 IMPEP review regarding the development and implementation of an action plan to adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility. The new recommendations made by team included areas for improvement to correct identified performance deficiencies. The review team recommended that (1) DOH develop and implement a process to track reciprocity inspections to ensure at least 20 percent of candidate licensees for reciprocity are inspected; (2) NYC respond to each incident received in accordance with its established Incident Response Procedure; (3) NYC modify its Incident Response Procedure to add

timely notifications to the NRC Operations Center in accordance with the timelines identified in SA-300; (4) 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; and (5) 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. The team recommended, and the MRB agreed, that the New York Agreement State Program be found adequate to protect public health and safety, but needs improvement, and not compatible with the NRC's program. The MRB directed the period of heightened oversight that was initiated in November 2005 continue, and that a periodic meeting be held one year from the October 2011 MRB meeting.

Ms. Janda reported that during this Periodic Meeting, staff found that all three agencies which comprise the New York Agreement State program continue to make progress in addressing the recommendations as described in the 2011 IMPEP review report. Staffing challenges remain, but Program managers are filling positions once they are authorized. The NYC program reported that it recently lost another staff member and now has two vacancies; however one of those vacant positions has been placed on hold until Fiscal Year 2014.

None of the Programs have identified issues with inspection backlogs. NY DOH is actively working on its license renewal backlog. Incident reporting and follow up issues are being addressed by NY DOH and NYC. The NYC program has made significant progress in addressing overdue regulations. The NY DOH and DEC have experienced delays in moving their regulation packages forward; however, they are continuing to work on the overdue amendments in anticipation of approvals being granted and final publication of the regulations being completed. The MRB questioned the State as to any progress made with regulation promulgation since the periodic meeting. All agencies reported no new significant delays or changes to the schedule since the periodic meeting.

Ms. Janda noted that the NYC office has moved from Manhattan to Long Island since the meeting. In addition, she reported that the NRC will be providing training to the State staff in the near future on the SA- 300 procedure for incident reporting/notification.

The State reiterated its concerns as to the last IMPEP review; NYC and NY DOH noted that it appeared some of the team's findings were baseless and excessively subjective. The MRB acknowledged their views and noted that these issues had been discussed and addressed during the MRB meeting held in October 2011.

Staff recommended, and the MRB agreed, that the period of heightened oversight of the New York Agreement State Program be continued, and that the next IMPEP review take place in FY 2013 (tentatively September 2013), as scheduled. The State expressed concerns with the timing of the next IMPEP review as it would take resources away from other priority work to prepare and participate in another review. Each agency believed that the next IMPEP review should take place in FY 2015 (i.e. four years from the last IMPEP) since the anticipated schedule for regulation adoption would not change much in

the next six months. The MRB discussed this issue and explained that the State is on heightened oversight not only due to the amount of overdue regulations, but also because of other significant performance issues identified during the last IMPEP. The MRB members agreed that the next IMPEP review should remain at the reduced interval in order to evaluate and document the effectiveness of the State's actions in addressing these issues, in a timelier manner.

Comments. Mr. Weber restated the MRB's decisions to maintain the next IMPEP review for the New York Agreement State Program as currently scheduled in FY 2013 (tentatively September 2013).

3. **Precedents/Lessons Learned.** None
4. **Adjournment.** The meeting was adjourned at 2:25 p.m.