

NEW YORK MONITORING CONFERENCE CALL  
January 20, 2016

<b>NRC Attendees</b>	<b>New York Attendees</b>
Donna Janda, RSAO, Region I	Stephen Gavitt, CHP, Director, Bureau of Environmental Radiation Protection, NYSDOH
Paul Michalak, Branch Chief, ASPB, NMSS	Robert Dansereau, Assistant Director, Bureau of Environmental Radiation Protection, NYSDOH
Lisa Dimmick, Senior Health Physicist, ASPB, NMSS	Daniel Samson, CHP, Acting Chief, Radioactive Materials Section, Bureau of Environmental Radiation Protection, NYSDOH
	Robert Snyder, Chief, Field Operations Section, Bureau of Environmental Radiation Protection, NYSDOH
	Christopher Boyd, Assistant Commissioner, Bureau of Environmental Sciences and Engineering, NYC
	Geoffrey Korir, Director, Office of Radiological Health, Department of Health and Mental Hygiene, NYC
	Hailu Tedla, CHP, Health Physicist, Office of Radiological Health, Department of Health and Mental Hygiene, NYC
	Sandra Hinkel, Chief, Radiation Control Permits Section, Division of Environmental Remediation, NYSDEC
	Timothy Rice, Chief, Radiological Sites Section, Division of Environmental Remediation, NYSDEC
	Ann Marie Gray, Environmental Radiation Specialist, Radiological Sites Section, Division of Environmental Remediation, NYSDEC

**SUMMARY**

The agencies which comprise the New York Agreement State program (Program) are the New York State Department of Health (NYSDOH), New York State Department of Environmental Conservation (NYSDEC), and New York City Department of Health and Mental Hygiene (NYC). During the March 2014 Integrated Materials Performance Evaluation Program (IMPEP) review of the New York Program, the review team found the State's performance satisfactory for five performance indicators; satisfactory, but needs improvement, for the performance indicator, Technical Staffing and Training; and unsatisfactory for the performance indicator, Compatibility Requirements. The review team found the performance indicator, Technical Quality of Licensing Actions, to be satisfactory, but needs improvement; however, the Management Review Board (MRB) determined this indicator should be found satisfactory. The review team made three recommendations regarding program performance in technical staffing, technical quality of licensing, and compatibility requirements, and determined that the six recommendations from the 2011 IMPEP review, regarding reciprocity inspections, development of an action plan to adopt NRC regulations, and incident reporting and incident procedures, should be closed.

On August 4, 2014, the MRB found the Program to be adequate to protect public health and safety and not compatible with NRC's program. The MRB commended the Program for progress made under the indicator, Technical Quality of Incident and Allegation Activities, where performance was improved from unsatisfactory to satisfactory during the review period, and the progress made in adopting several overdue rules. As a result, the MRB directed that the period of Heightened Oversight be discontinued and a period of Monitoring be initiated. The MRB also directed that quarterly calls be conducted between the New York and NRC staffs.

## DISCUSSION OF PROGRAM STATUS

### Technical Staffing and Training

The 2014 IMPEP review team made one recommendation for this performance indicator:

**Recommendation:** The review team recommends that the DOH and DEC continue to pursue vacancy waivers and implement a strategy to address current and future staffing vacancies in order to maintain effectiveness, and that NYC should update its staffing and qualification program to include approved documentation of staff's qualifications.

**Status:** The NYSDOH Program continues to submit vacancy waivers to their management as part of their hiring process. When a staff member leaves NYSDOH, a replacement can only be hired on a case-by-case basis. NYSDOH has one Radiological Health Specialist training in radioactive materials. No staff members have left the radioactive materials program since the last conference call. The Program prioritizes workloads to maintain effectiveness of inspection and licensing activities.

NYSDEC has one vacancy in the Radiological Controls Permit Section and one vacancy in the Radiological Sites Section. Both Sections have applied for waivers which had not been approved at the time of this call. The Program adjusts workloads and schedules to meet Program demands.

NYC is currently fully staffed in the radioactive materials licensing and inspection programs. NYC continues to develop a blended program in which technical staff will be trained in both radiological materials and radiation machine-based activities. NYC has updated its staffing and qualification program to include approved documentation of staff's qualifications. The new qualification program is equivalent to NRC Inspection Manual Chapter 1248.

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.

### Status of the Materials Inspection Program

All three agencies stated that their Programs are on track with their inspections and have had no issues since the March 2014 IMPEP review. Pre-licensing visits are being conducted when applicable.

NYSDOH noted that staffing vacancies sometimes impact performance of initial inspections if the licensee reports that it does not possess licensed material at the time the inspection is due. Inspectors periodically check with these licensees to determine if they possess licensed material.

### Technical Quality of Inspections

All three agencies reported that they have had no issues arise in this area since the March 2014 IMPEP review. Annual supervisory inspection accompaniments are ongoing. NYSDOH noted that the Program has integrated different modalities (commercial and medical licenses) and has inspectors accompanying their peers to gain familiarity with the modalities that they are now inspecting. Also, the newest inspectors in the Buffalo and NYC offices are accompanying inspectors with more experience as part of their training.

## Technical Quality of Licensing

The 2014 IMPEP review team made one recommendation for this performance indicator:

**Recommendation:** The review team recommends that NYC (1) provide additional training to technical staff members regarding technical review of licensing actions, including training to ensure that the staff acquires increased familiarity with the regulations under NYC's equivalent to 10 CFR Parts 30, 33, and 35, and applicable licensing guidance documents and license conditions, and (2) take measures to ensure that the NYC's review of licensing actions are complete and well-documented.

**Status:** NYC continues to conduct training on licensing activities when applicable. New staff continue to attend NRC's licensing course. NYC has developed a more streamlined approach to licensing. A chart is used to track completion of licensing actions. Complex actions receive a peer review. NYC reported that there is no backlog in licensing actions at this time. A new licensing chief will be joining the Program this week. NYC continues to use pre-licensing checklists, conduct pre-licensing site visits when appropriate, and document the site visits.

Since the 2014 IMPEP review, NYSDOH has made significant progress addressing their backlog of licensing renewal actions. In 2015, NYSDOH received approximately 900 licensing actions and completed approximately 850 actions. The Program continues to use pre-licensing checklists, conduct pre-licensing site visits when appropriate, and document the site visits. The Program conducts weekly staff meetings to ensure consistency in licensing.

NYSDEC reported that the Program had no backlog with regards to permitting actions. The NYSDEC Program continues to conduct pre-permit visits for new facilities.

## Technical Quality of Incidents and Allegations

NYSDOH reported that the Program handled a few incidents in the past year and has made progress in meeting reporting requirements. The Program noted that weekly meetings are helpful with keeping staff involved in event follow up through completion.

NYSDEC reported no incidents or allegations affecting their Program. The NYSDEC Program refers significant issues to licensing agencies except for NORM which is handled in house.

NYC reported that one incident being tracked by the Program involves a licensee who vacated an office and left behind some check sources. The building owner contacted NYC who ensured that the licensee will store the sources until a third party disposes of the sources appropriately. No other issues were identified.

## Compatibility Requirements

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

Since the March 2014 IMPEP review, NYC submitted eight final regulation packages to NRC for review. NYC has the following three amendments overdue for adoption:

- "Decommissioning Planning," Parts 20, 30, 40, and 70 amendments (76 FR 35512) that became effective on December 17, 2012, and was due for Agreement State adoption by December 17, 2015.

- “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste,” Part 71 amendment (77 FR 34194) that became effective on August 10, 2012, and was due for Agreement State adoption by August 10, 2015.
- “Technical Corrections,” Parts 30, 34, 40, and 71 amendments (77 FR 39899) that became effective on August 6, 2012, and was due for Agreement State adoption by August 6, 2015. (Part 71 amendment only)

NYC plans to submit a proposed regulation package to NRC for citing NRC regulations by reference. Once the cited regulations are final, NYC will rescind the current regulations. NYC anticipates having final regulations in place by September 2016.

Since the 2014 IMPEP review, NYSDOH has submitted three proposed regulation packages to NRC for review. NYSDOH has the following 14 NRC amendments overdue for adoption:

- “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. (submitted proposed regulations)
- “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. (submitted proposed regulations)
- “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. (submitted partial final for Part 35 only)
- “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. (submitted partial final for Part 35 only)
- “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. (submitted partial final for Part 35 only)
- “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. (submitted partial final for Part 35 only)
- “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.
- “Decommissioning Planning,” Parts 20, 30, 40, and 70 amendments (76 FR 35512) that became effective on December 17, 2012, and was due for Agreement State adoption by December 17, 2015.

- “Licenses, Certifications, and Approvals for Materials Licensees,” Parts 30, 36, 39, 70, and 150 amendments (76 FR 56951) that became effective on November 14, 2011, and was due for Agreement State adoption by November 14, 2014.
- “Change of Compatibility of 10 CFR 31.5 and 31.6 (see RATS ID: 2001 for Rule text),” (76 FR 3640) that became effective on January 25, 2012, and was due for Agreement State adoption by January 25, 2015.
- “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste,” Part 71 amendment (77 FR 34194) that became effective on August 10, 2012, and was due for Agreement State adoption by August 10, 2015.
- “Technical Corrections,” Parts 30, 34, 40, and 71 amendments (77 FR 39899) that became effective on August 6, 2012, and was due for Agreement State adoption by August 6, 2015.
- “Requirements for Distribution of Byproduct Material,” Parts 30, 31, 32, 40, and 70 amendments (77 FR 43666) that became effective on October 23, 2012, and was due for Agreement State adoption by October 23, 2015.

NYSDOH has made progress in updating changes to draft regulations. Because NYSDOH cannot update NYSDOL regulations, the Program has incorporated some of the NYSDOL regulations by license condition. The plan is to incorporate the NYSDOL regulations into future NYSDOH Part 16 regulations. The Program will provide proposed rule language by section to NRC for review. Once NRC approves the Part 37 license condition, NYSDOH plans to amend their licenses to implement the new requirements (will not wait until the March 19 deadline).

NYSDDEC has the following nine NRC amendments overdue for adoption:

- “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.
- “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.

- “Decommissioning Planning,” Parts 20, 30, 40, and 70 amendments (76 FR 35512), that became effective December 17, 2012 and was due for Agreement State adoption by December 17, 2015.
- “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste,” Part 71 amendment (77 FR 34194), that became effective August 10, 2012, and was due for Agreement State adoption by August 10, 2015.
- “Technical Corrections,” Part 71 amendment (77 FR 39899), that became effective August 6, 2012, and was due for Agreement State adoption by August 6, 2015.

NYSDEC noted that the Part 384 regulation package is completed and staff is responding to management questions before moving the package along for concurrence. In addition, the Part 380 regulation package has been with the Governor’s Office for approximately one year. No date for adoption of this package has been determined.

#### Sealed Source and Device (SS&D) Evaluation Program

NYSDOH is still considering returning the SS&D program to the NRC. Since the previous call, the Program has finalized one SS&D action. There are currently no pending actions.

#### Low-Level Radioactive Waste Disposal (LLRW) Program

The NYSDEC reported no changes to the LLRW program.

#### Other Discussion Items

NYSDOH is still interested in having a discussion with the NRC Office of International Programs (OIP) regarding oversight of radioactive material that is imported into the United States and misplaced/lost during transit. NYSDOH is not informed of these shipments and would like to discuss their concerns with OIP. All parties agreed that a conference call with NRC and NYSDOH should be arranged to discuss the matter.

#### Conclusion

The three agencies that make up the New York Agreement State Program are addressing the recommendations that were made during the 2014 IMPEP review. A periodic meeting will be scheduled for the spring of 2016.