



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

REGION I  
2100 RENAISSANCE BLVD., SUITE 100  
KING OF PRUSSIA, PA 19406-2713

July 19, 2016

Stephen Gavitt, CHP, Director  
Bureau of Environmental Radiation Protection  
Department of Health  
Empire State Plaza, Corning Tower – 12<sup>th</sup> Floor  
Albany, NY 12237

Dear Mr. Gavitt:

A periodic meeting with you and your staff was held on May 5, 2016. The purpose of this meeting was to review and discuss the status of the New York Agreement State Program. The U.S. Nuclear Regulatory Commission (NRC) was represented by Joseph Nick, Lisa Dimmick, Robin Elliott, and me.

I have completed and enclosed a general meeting summary. If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (610) 337-5371 or via e-mail at [Donna.Janda@nrc.gov](mailto:Donna.Janda@nrc.gov) to discuss your concerns.

Sincerely,

*/RA/*

Donna M. Janda  
Regional State Agreements Officer  
Division of Nuclear Materials Safety

Enclosure:  
Periodic Meeting Summary for New York  
Department of Health

July 19, 2016

Stephen Gavitt, CHP, Director  
Bureau of Environmental Radiation Protection  
Department of Health  
Empire State Plaza, Corning Tower – 12th Floor  
Albany, NY 122

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**SUNSI Review Complete: DMJ (Reviewer's Initials)**

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OFFICE	DNMS/RI								
NAME	Janda/dmj								
DATE	07/19/16								

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR  
NEW YORK DEPARTMENT OF HEALTH  
BUREAU OF ENVIRONMENTAL RADIATION PROTECTION

DATE OF MEETING: May 5, 2016

<b>U.S. Nuclear Regulatory Commission (NRC) Attendees</b>	<b>New York Department of Health Attendees</b>
Donna Janda, State Agreements Officer, Region I	Stephen Gavitt, Director, Bureau of Environmental Radiation Protection
Joseph Nick, Deputy Director, Division of Nuclear Materials Safety, Region I	Robert Dansereau, Assistant Director, Bureau of Environmental Radiation Protection
Lisa Dimmick, Senior Health Physicist, Agreement State Programs Branch, Office of Nuclear Material Safety and Safeguards	Daniel Samson, Chief, Radioactive Materials Section
Robin Elliott, Acting State Agreements Officer, Division of Nuclear Materials Safety, Region I	

**DISCUSSION:**

The agencies which comprise the New York Agreement State program (Program) are the New York State Department of Health (DOH), which has jurisdiction over industrial uses of radioactive material throughout the State as well as medical, academic, and research uses outside the five boroughs of New York City; New York State Department of Environmental Conservation (DEC), which has jurisdiction throughout the State over discharges of radioactive material to the environment, including releases to the air and water, and the disposal of radioactive waste in the ground; and New York City Department of Health and Mental Hygiene (NYC), which has jurisdiction over medical, academic, and research uses of radioactive material within the five boroughs of New York City. 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 for 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 directed that quarterly calls be conducted between the New York and NRC staffs. The MRB also directed that a Periodic Meeting be conducted in approximately March 2016. This report is a summary of the Periodic Meeting held with DOH.

#### TOPICS COVERED DURING THE MEETING INCLUDED:

##### Program Strengths

- Experienced, well-trained staff
- Good Program support from senior management; meet weekly with Division Director to review issues

##### Program Challenges

- Filling vacancies is a challenge due to the State hiring freeze. A vacancy waiver is needed to hire each new staff member.
- No longer having dedicated IT support for the Program; IT support has now been consolidated into one State IT function

##### Feedback on the NRC's Program

DOH is 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. DOH is not informed of these shipments and would like to discuss their concerns with OIP. All parties agree that a conference call with NRC and DOH should be arranged to discuss the matter.

The Program managers noted that has been working with the Environmental Protection Agency, the National Park Service, and NRC to resolve jurisdiction issues related to cleanup activities at the Great Kills National Park site.

Due to the limited number of NRC courses and participants per course and the funding issues NRC is facing with Agreement State training, the Program managers mentioned that it can be challenging to meet Program training needs.

The Program appreciates the opportunity to comment on NRC documents; however, sometimes the comment period is not long enough (e.g., 30-day comment period for a large document). The Program would like to see a comment period that is appropriate for and based on the length of the document.

##### Organization

The Program is administered by the Bureau of Environmental Radiation Protection (the Bureau) which is located in the Division of Environmental Health Investigation (the Division). The Division is part of the Center for Environmental Health (the Center) within the DOH. Since the 2014 IMPEP review, the Center has dissolved one division and now operates with two divisions. Within the Bureau, there is no longer a field operations supervisor position. Those job duties are now split between the Radioactive Materials Section Chief and the X-Ray Section Chief.

### Program Budget/Funding

The Program reported that there has not been a fee increase since 2000-2001. The Program is interested in raising licensee fees but has not received support for a fee increase. Licensee fees are placed into a restricted fund; however, approval is required prior to spending the funds.

### Technical Staffing and Training (2014 IMPEP: Satisfactory, but Needs Improvement)

At the time of the periodic meeting, the Program had approximately 12.0 full-time equivalents supporting the radioactive materials program including one recent vacant position. No other staff have left the Program since the 2014 IMPEP review. The Program anticipates some retirements in the next few years and will handle them through the same vacancy waiver process as the current practice.

The Program has incorporated the new requirements of NRC Inspection Manual Chapter 1248 into their qualification program for radioactive materials licensing and inspection staff.

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

**Recommendation:** The review team recommends that the DOH continue to pursue vacancy waivers and implement a strategy to address current and future staffing vacancies in order to maintain effectiveness.

**Status:** The Program reported that the Center has recently approved all nine vacancy waivers. Four of the positions are for new technical staff (two senior level and two trainee positions). One position is the change of the Acting Section Chief to a permanent Section Chief. Four positions are administrative. The Program has started the hiring process and anticipates having the new staff by the end of June. In addition to the new staff, three provisional staff have been made permanent staff. The Program has established a new higher grade medical physicist job title and has moved the current medical physicist on staff into that position.

### Status of Materials Inspection Program (2014 IMPEP: Satisfactory)

The Program reported that it completed four routine inspections overdue in 2015 according to the priorities established in NRC Inspection Manual Chapter 2800. No initial inspections were completed overdue since the 2014 IMPEP review. All initial inspections are completed within six months of license issuance. The Program performed 7 reciprocity inspections in 2015, which was approximately 18 percent of candidate reciprocity licensees. Performing reciprocity inspections is a challenge for the DOH due to travel budget restraints. Out-of-state licensees have a 30-day limit on working under reciprocity in New York. After 30 days, the licensee must have a specific license to work in the State.

### Technical Quality of Inspections (2014 IMPEP: Satisfactory)

With the dissolution of the Field Operations Supervisor position, the Radioactive Materials Section Chief now reviews inspection reports. The Program reported that it did not meet its goal in 2015 of performing a supervisory inspection accompaniment for each qualified inspector due to focusing on training new inspectors. The Program plans to schedule the 2016 supervisor accompaniments between the Radioactive Materials Section Chief, the Assistant Director and other senior inspectors. The Program will perform Part 37 inspections as part of the routine

inspections. The licenses which were amended to include the Part 37 license condition were mailed to the licensees along with guidance on the new Part 37 requirements. Now that DOH will be performing inspections at Category 1 licensees, the Program would like to receive information on the most recent NRC inspection at these facilities. This request is being reviewed by NMSS and the NRC Regional Office.

Technical Quality of Licensing Actions (2014 IMPEP: Satisfactory)

At the time of the Periodic Meeting, the Program reported having approximately 1,000 specific radioactive materials licenses. The Program uses pre-licensing guidance for all licensing actions and recently denied one license application request based on the applicant's failure to provide the necessary information needed to complete a review of the application. Licenses are issued for a 10-year period. The Program continues to make progress addressing the backlog of license renewal actions. Approximately 150 license renewal applications have been pending for greater than one year (down from 187 actions identified during the 2014 IMPEP review).

Technical Quality of Incidents and Allegation Activities (2014 IMPEP: Satisfactory)

Since the 2014 IMPEP review, DOH has reported 12 events involving radioactive materials to the NRC. In addition, DOH received two allegations from NRC since the last review. All cases were investigated and are either closed out or still under investigation by the Program.

Compatibility Requirements (2014 IMPEP: Unsatisfactory)

The 2014 IMPEP review team made one recommendation in this indicator:

**Recommendation:** The review team recommends that the Program make appropriate regulatory changes to resolve NRC-generated comments as noted in regulation review letters, and adopt NRC regulations in accordance with the current NRC policy on adequacy and compatibility.

**Status:** The DOH regulations related to the radioactive materials program are found in Part 16 of the New York State Health Code. The DOH has 14 NRC amendments overdue for adoption. To address the overdue regulations and the outstanding comments to final regulations not yet addressed, the Program plans to incorporate NRC regulations by reference. The Program is working directly with their legal staff in developing the adopted regulations. The DOH has already adopted 10 CFR Part 35 by reference. Once the adopted regulations are ready for adoption, Part 16 will be repealed and replaced with the adopted regulations. New York Executive Laws prohibit open ended adoption by reference; therefore, each time NRC issues new regulation amendments, DOH will need to update their regulations with the changes.

Sealed Source and Device Evaluation (SS&D) Program (2014 IMPEP: Satisfactory)

The DOH is considering returning the SS&D program to the NRC. No SS&D actions have been issued since the last Monitoring call in January 2016. The Program has two trained staff members who perform SS&D reviews.

### Current State Initiatives

The Program reported that it has implemented a new payment system for licensee fees as part of a DOH-wide initiative.

### Large, Complicated, or Unusual Authorizations for Use of Radioactive Material

The Program recently authorized the use of a new Icon gamma stereotactic radiosurgery device.

### State's Mechanisms to Evaluate Performance

The Section Chief reviews all licensing actions and inspection reports. Program managers hold weekly meetings to review and discuss workload and review inspection and licensing timeliness. The Program's database will be updated with new fields to track the length of time licensing actions are with the license reviewer. Higher priority assignments will be metrics set to ensure the actions are completed in a timely manner.

### CONCLUSIONS:

The DOH Agreement State Program continues to be an effective, well maintained program. At the time of the Periodic Meeting, the Program received vacancy waiver approval for nine positions and was in the process of filling those positions. The Program is effectively managing its licensing and inspection activities and responds to incidents and allegations as appropriate. The Program continues to address the backlog in license renewal applications. The Program is planning to address its overdue regulations by adopting NRC regulations by reference and is utilizing its legal staff in the adoption process.

NRC staff recommends that the next IMPEP review be conducted as scheduled in March 2018.