

NYS DEC Response to NRC Compatibility Comments on Proposed Amendment to Part 380 Regulations

DEC's Portion of New York's Agreement State Program

The New York State Department of Environmental Conservation (DEC) is one of three agencies within the state that implements New York's Agreement State Program. DEC's authority is limited to the regulation of radioactive materials in the environment; DEC does not issue radioactive materials licenses. As such, DEC is only authorized to adopt those rules, or portions of those rules, that are applicable to the regulation of radioactive material in the environment.

Recent Communication Between DEC and NRC

On March 29, 2017 DEC submitted its proposed amendments to the 6 NYCRR Part 380 regulations, *Prevention and Control of Environmental Pollution by Radioactive Materials* to NRC for review and comment. On May 9, 2017 NRC provided DEC with comments on three provisions of DEC's proposed amendments to Part 380, and issued an updated State Regulatory Status (SRS) for DEC which reflected those comments. DEC does not agree with two of NRC's comments, as explained below.

DEC's Response to NRC Comments

Notification of Incidents (RATS 1991-4)

As stated by NRC in the previous SRS for DEC dated February 24, 2017, "NYDEC does not need to implement this provision under its portion of the Agreement." The reason DEC does not need to adopt this provision is because it is already covered by the State's licensing agencies, which captures the universe of regulated parties within the State. Nonetheless, DEC included a Notification of Incidents provision in the proposed (and final) amendment to Part 380; the notification threshold in the proposed amendment is significantly lower than NRC's thresholds, to require reporting of environmental release incidents of interest to DEC.

However, NRC's May 9, 2017 comment did not reflect the fact DEC does not need to adopt this provision. NRC's comment stated that DEC needed to replace its proposal to require notification of incidents "by the next business day" to "within 24 hours." DEC disagrees with NRC's comment, because this requirement does not need to be adopted by DEC at all. Even if DEC were required to adopt this provision (which is not the case), this is a Category C provision - the essential objectives of the program element should be adopted by the State to avoid conflicts, duplications or gaps; the manner in which the essential objectives are addressed need not be the same as NRC. In addition, the notification threshold is significantly lower than the threshold in NRC's rule. On March 22, 2018, NRC revised the SRS for DEC to restate, "NYDEC does not need to implement this provision under its portion of the Agreement."

Definition: Public Dose (RATS 1995-5)

DEC agrees with NRC's comment regarding this provision and has added the phrase "from exposure to individuals administered radioactive material and released..." to the final rule as suggested by NRC.

Deliberate Misconduct (RATS 1998-1)

NRC made two comments regarding this provision. In its first comment, NRC stated that DEC's proposed rule omitted the terms "employees of a licensee" and "employees of a contractor or subcontractor." DEC disagrees with NRC's comment, because these terms are included in the proposed (and final) rule. Please see proposed Section 380-10.8(a) which states, "This section applies to the following persons and their *employees*" (emphasis added).

DEC agrees with NRC's second comment regarding this provision, and has added the phrase "that causes or would have caused, if not detected..." to the final rule as suggested by NRC.