STAFF REPORT AND EVALUATION

OF THE

NEW YORK STATE DEPARTMENT OF LABOR

RADIATION CONTROL PROGRAM

FOR THE PERIOD

AUGUST 24, 1984 TO JULY 26, 1985

23rd Regulation Program Review

RADIATION CONTROL PROGRAM: New York State Department of Labor
REVIEW MEETING NUMBER: 23
DATES OR REVIEW: May 6, 7 and July 22-26, 1985
PERIOD OF REVIEW: August 24, 1984 to July 26, 1985
NRC REPRESENTATIVES: John R. McGrath and Joel Lubenau
RADIATION CONTROL PROGRAM REPRESENTATIVE: Francis J. Bradley, Principal Radiophysicist, Radiological Health Unit

CONCLUSIONS

The New York State Department of Labor program for control of agreement materials is, in the staff's opinion, adequate to protect the public health and safety and compatible with the NRC program.

SUMMARY MEETING WITH MANAGEMENT

A summary meeting to present the result of the regulatory program review was held with Robert Ratajack, Administrative Assistant to the Director, Division of Safety and Health and Francis J. Bradley, Principal Radiophysicist, Radiological Health Unit. The following comments were offered.

1. The Department has made significant progress in addressing the program deficiencies noted during the previous review. The approval of two additional staff positions is an especially important step. Additional improvement noted include the adoption in June 1985 of revised regulations, a reduction in the inspection backlog, and the drafting of administrative procedures for managing the licensing and inspection programs.

2. Although the inspection backlog has been reduced, it is still significant and additional staff effort should be placed on this area.

3. The review of enforcement actions revealed a number of cases where citations were inappropriate. Notices of Violation should be given more careful scrutiny by program management. In addition, new staff members should be provided instruction on the proper preparation of citations.

4. In a number of cases, inspection reports did not provide adequate justification or support for items of noncompliance. Program management should give more careful scrutiny to those reports. The staff should also be instructed in adequate documentation to support enforcement actions.

5. Although the Department's investigation of the Auburn Steel incident has been completed, no final report has been prepared. The Department's draft report should be completed and a copy forwarded to NRC.

PROGRAM CHANGES RELATED TO PREVIOUS NRC COMMENTS AND RECOMMENDATIONS

1. Comment and Recommendation

We believe that a major problem area in the program is the level of professional staff. Our guidelines suggest a professional staffing level of 1.0 to 1.5 staff-years per 100 licenses. The present staffing level is 1.1 and is essentially unchanged since the last review. We have previously commented that while the staffing effort appears to be within guidelines, the large proportion of complex licensed activities administered by the Department creates larger demands on staff resources. Your staff has been operating well under difficult circumstances, but without additional staff, we question whether the program will be able to make necessary improvements. Given the backlog the licensing and inspection, the large proportion of complex licensed activities administered by your Department and the need to be able to adequately respond to special situations and incidents such as Auburn Steel, Radium Chemical Company and EAD Metallurgical, Inc., we believe you should examine the personnel requirements for the program. We believe there is an urgent need to add at least two professional staff positions to the program.

State Response

In a letter dated February 6, 1985, the Department submitted a detailed action plan to address the deficiencies noted during the review, including details on a budget request for three additional positions.

Present Status

On additional radiophysicist reported for duty the week of the review. A second new hire was undergoing final selection.

2. Additional technical comments were provided to the Department subsequent to the last review. The Department's response of February 6, 1985 also addressed these issues. The comments and response are too voluminous to reiterate here, but they are included in the 23rd Regulatory Program Review meeting report located in SAP and Region I files. Progress has been made in all areas. Those areas where additional effort is needed were addressed in the NRC comment letter dated August 26, 1985.

EVALUATION OF AGREEMENT STATE RADIATION CONTROL PROGRAM
STATE REVIEW GUIDELINES, QUESTIONS AND ASSESSMENTS
Name of State Program: New York State Department of Labor
Date of NRC Review (Month Year): July 1985

I. LEGISLATION AND REGULATIONS

A. Legal Authority (Category I)

NRC Guidelines: Clear statutory authority should exist, designating a state radiation control agency and providing for promulgation of regulations, licensing, inspection and enforcement. States regulating uranium or thorium recovery and associated wastes pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) must have statutes enacted to establish clear authority for the State to carry out the requirements of UMTRCA. Where regulatory responsibilities are divided between State agencies, clear understandings should exist as to division of responsibilities and requirements for coordination.

Questions:

1. Please list all currently effective legislation that impacts the State's radiation control program.

   General Business Law Article 28D.
   Labor Law, Sections 27, 27-a, 29.

2. What changes have been made to the statutory authority of the Radiation Control Program (RCP) to license, inspect, and otherwise regulate agreement materials since the last review?

   None

3. If your State regulates uranium or thorium recovery operations and associated wastes pursuant to an amended agreement and UMTRCA, explain any changes to the statutory authority for these functions.

   N/A

4. Are copies of the current enabling act and other statutes (e.g., Administrative Procedures Act, Sunshine Act., etc.) which govern the conduct of the agreement materials program on file in the RCP office and with the NRC? If revisions have occurred since the last review, the changes should be included.

   Yes. No changes in enabling legislation since last review.

5. If the State's regulatory authorities are divided between agencies, what procedures and memoranda are in effect to provide clear understanding of the divisions of responsibilities and requirements for coordination?

Regulatory responsibilities are divided between several State agencies. The New York State Department of Labor is responsible for all commercial and industrial uses of radioactive materials throughout New York State. The New York State Department of Health (NYSDOH) is responsible for all medical and academic uses of radioactive materials throughout New York State, excluding New York City. The New York City Department of Health has similar responsibility as NYSDOH within the New York City limits. As of October 1, 1982, the NYSDOH is also responsible for the environmental radiation surveillance program in New York State. The New York State Department of Environmental Conservation maintains a permit program for installations that discharge radioactive materials to the environment.

Coordination is the responsibility of the New York State Energy Office by statute.

In addition, a recently formed "coordination committee" composed of program directors from the various agencies was developed to improve coordination efforts of the radiation program within New York State.

6. Does the State have the authority to:

a. apply civil penalties? If so, cite legislation.

No

b. collect fees? If so, cite legislation.

Legislative authority exists to levy fees, but no fees are presently levied. Fees were proposed in the Governor's budget for last fiscal year, but they were removed by the legislature.

c. require surety or long-term care funds? If so, cite legislation.

No.

d. require performance bonds or sureties for decommissioning licensed facilities? If so, cite legislation.

Surety bonds or equivalent are required to ensure proper decontamination of licensed installations pursuant to Section 38.7 of Industrial Code, Rule 38; enabling authority is Labor Law, Section 27, 27-a, 29 and General Business Law Article 28D.

e. require performance bonds or sureties for clean-up of licensed facilities after a contamination accident? If so, cite legislation.

The surety required pursuant to Industrial Code, Rule 38 covers both normal and abnormal operations. Enabling legislation is same as (d) above.

f. require long-term care funds for uranium mill or low-level waste facilities? If so cite legislation.

N/A

g. enter into low-level waste compacts? If so, cite legislation.

No; proposed legislation has been introduced into State legislature but it has not been acted on to date.

h. establish, license and/or operate a low-level waste site?

As evidenced by the operation of a low-level radioactive waste burial site by Nuclear Fuel Services, Inc. in West Valley, N.Y. from 1963 to 1975, New York State has the authority to establish, license and operate a low-level waste site.

7. If any responses to the above question are negative, explain any plans the State may have regarding those issues.

In the case of uranium/thorium mining operations the State has no plans to approve such mining at present. Plans have been proposed to rework old mining tailings that may be above Exemption No. 3 (<0.05%) of Industrial Code Rule 38. These operations would be handled as standard licensed operations. With respect to the issue of low-level radioactive waste compacts and the establishment of a low-level radioactive waste site, the Governor has introducted legislation that would set in place a mechanism for selecting several potential sites for low-level radioactive wastes; on an interim basis storing low-level radioactive waste at a Temporary Storage Facility; and gives the Governor the option of entering a compact.

I.A Reviewer Assessment: The Department meets these indicator guidelines.

B. Status of Regulations (Category I)

NRC Guidelines: The State should have regulations essentially identical to 10 CFR Part 19, Part 20 (radiation dose standards and effluent limits), and those required by UMTRCA, as implemented by Part 40. The State should adopt other regulations to maintain a high degree of uniformity with NRC regulations.

Questions:

1. When did the RCP last amend regulations in order to maintain compatibility and when did the revisions become effective?

   An updated Industrial Code Rule 38 was distributed in March 1985 for public comment. Public hearings on the proposed changes were held in Buffalo, April 30; Albany, May 1; and New York City, May 2, 1985. The revisions became effective in June 1985.

2. Referring to the enclosed NRC chronology of amendments (Attachment A) note the effective date of the NRC changes last adopted by the RCP.

   August 9, 1983

3.a. Were there any compatibility items that were not adopted by the RCP?

   No

   b. If so, please identify and explain why they were not adopted.

   N/A

I.B. Reviewer Assessment: The Department meets these indicator guidelines.

C. Updating of Regulations (Category II)

NRC Guidelines: The RCP should establish procedures for effecting appropriate amendments to State regulations in a timely manner, normally within 3 years of adoption by NRC. For those regulations deemed a matter of compatibility by NRC, State regulations should be amended as soon as practicable but no later than 3 years. Opportunity should be provided for the public to comment on proposed regulation changes. (Required by UMTRCA for uranium mill regulation.) Pursuant to the terms of the Agreement, opportunity should be provided for the NRC to comment on draft changes in State regulations.

1. Does the RCP have a schedule or program for revising and adopting changes to regulations within three years of adoption by the NRC?

   Procedures require that every 2.5 years that accumulated NRC revisions and amendments together with RHU recommended revisions be forwarded to Engineering Services Unit for final assembly and processing. This will ensure a 3 year cycle for updating Code Rule 38.

2. Has the RCP adopted all regulations deemed a matter of compatibility by NRC within three years? (Refer to NRC chronology).

   Yes

3. What are the RCP's procedures for adopting new regulations? Briefly describe each step in the procedure.

   Following formulation of a Public Hearing Draft of Industrial Code Rule 38 it is sent to the Department's Counsel. It is reviewed and forwarded to the Secretary of State for publishing in State Register: Public Hearings are scheduled; public announcements are made and copies of the Public Hearing Draft are sent to interested parties. Following public hearings, and incorporation of relevant public comments, the updated Code Rule is promulgated.

4. How is the public involved in the process?

   Through public hearings.

5. a. Does the NRC have the opportunity to comment on draft changes to RCP regulations?

      Yes

   b. If so, does the RCP respond to the comments?

      Yes

I.C. Reviewer Assessment: The Department meets these indicator guidelines.

II. ORGANIZATION

A. Location of the Radiation Control Program Within the State Organization (Category II)

NRC Guidelines: The RCP should be located in a State organization parallel with comparable health and safety programs. The Program Director should have access to appropriate levels of State management.

1. Attach a dated organization chart(s) showing the RCP and its location within the department and State organization.

   A Department organization chart is attached as Appendix A.

2. Is the RCP on a comparable level within the State organization with other health and safety programs so as to compete effectively for funds and staff?

   Yes

3. Does the program director have access to appropriate levels of State management?

Yes

II.A Reviewer Assessment: The Department meets these indicator guidelines. Since the last review, Department Management has been instrumental in addressing program deficiencies. Program improvements could not have been realized without the strong committment of Department Management.

B. Internal Organization of the RCP (Category II)

NRC Guidelines: The RCP should be organized with the view toward achieving an acceptable degree of staff efficiency, place appropriate emphasis on major program functions, and provide specific lines of supervision from program management for the execution of program policy. Where regional offices are utilized, the lines of communication and administrative control between the regions and the central office (Program Director) should be clearly drawn to provide uniformity in inspection policy, procedures and supervision.

Questions:

1. Attach dated copies of your internal RCP organization charts.

An RCP organization chart is attached as Appendix B.

2. How is the RCP organized so as to provide specific lines of supervision from program management for executing program policy?

Procedures are in place through a Licensing and Inspection Procedures Manual delineating the responsibilities of each staff member including assignments, issuance of citations, licenses, follow-up inspections, laboratory analysis and finally escalated enforcement actions. Periodic reviews are conducted of workload objectives and progress on meeting objectives.

3. If regional offices are used:

a. To whom do regional personnel report administratively?

b. To whom do regional personnel report technically?

a & b Answer: One radiophysicist is located in the Buffalo Office of the Division of Safety and Health. This individual reports technically and administratively to the Chief, Radiological Health Unit.

4. If the RCP contracts with other agencies to administer the program:

   a. Identify the contracting agencies and indicate their responsibilities.

      N/A

   b. To whom do contract personnel report administratively?

      N/A

   c. To whom do contract personnel report technically?

      N/A

II.B Reviewer Assessment: The organization chart in Appendix B does not completely reflect the Division organization. There are currently three inspector slots under Cabasino and one licensing slot under Kasyk, in addition to the regional inspector in Buffalo. The Department meets these indicator guidelines.

C. Legal Assistance (Category II)

NRC Guidelines: Legal staff should be assigned to assist the RCP, or procedures should exist to obtain legal assistance expeditiously. Legal staff should be knowledgeable regarding the RCP program, statutes, and regulations.

Questions:

1. Are legal staff members assigned to assist the RCP or do procedures exist to obtain legal assistance expeditiously?

   There is a Counsel's Office in the Department which handles all Department legal matters except in case of court actions which are referred to the Attorney General. Formal referrals of matters to Counsel's Office are made through the Division Director. Such matters might include promulgation of new/amended Code Rule, referrals for court action against a licensee or resolution of varying interpetations of Code Rule requirements. Once an attorney is assigned to the case, RHU technical staff have direct access to that attorney. Over the years several attorneys in the Counsel's Office have become knowledgeable in the Code Rules enforced by the RHU.

2. Is the legal staff knowledgeable regarding the RCP, statutes, regulations and needs?

   Yes

3. If legal assistance was utilized since last review, provide a summary of the circumstances.

   In conjunction with the Departments of Health and Environmental Conservation the case of EAD Metallurgical, Inc., Tonawanda, N.Y. was referred to the Attorney General for appropriate action. In addition the Department as part of its escalated enforcement procedures and upon recommendation of an Interagency Task Force held a Compliance Conference. No definite results have come out of this Conference to date but the State attorneys and EAD (mainly its insurance carrier) attorney are still talking.

II.C Reviewer Assessment: The Department meets these indicator guidelines.

D. Technical Advisory Committees (Category II)

NRC Guidelines: Technical Committees, Federal Agencies, and other resource organizations should be used to extend staff capabilities for unique or technically complex problems. A State Medical Advisory Committee should be used to provide broad guidance on the uses of radioactive drugs in or on humans. The Committee should represent a wide spectrum of medical disciplines. The Committee should advise the RCP on policy matters and regulations related to use of radioisotopes in or on humans. Procedures should be developed to avoid conflict of interest, even though Committees are advisory. This does not mean that representatives of the regulated community should not serve on advisory committees or not be used as consultants.

Questions:

1. Discuss practices followed for obtaining technical assistance when needed (e.g., consultants, technical and medical advisory committees, licensees, the NRC and other State and Federal Agencies).

   The Department has no standing advisory committee. Requests are routinely made to NRC, DOT or DOE for technical assistance or interpretation of their regulations when needed.

2. What steps are taken to avoid conflicts of interest?

   N/A

3. Are any committees involved in setting policies? If so, explain.

   N/A

4. Attach a list showing the membership, specialties and affiliations of the Medical and/or Technical Advisory Committees.

   N/A

5. Indicate whether the advisory committees are established by statute, by appointment of the Governor, by appointment of the Board of Health, by appointment of the Agency, or by other means.

   N/A

6. What is the formal meeting frequency of each committee, and are minutes of committee meetings prepared?

   N/A

7. What was the date of the last formal meeting of each committee?

   N/A

8. Are individual committee members contacted for consultation?

   N/A

9. Discuss how each committee is used, the average workload placed on the committee, and the remuneration, if any.

   N/A

II.D Reviewer Assessment: Although the Department has no advisory committee of its own, the Department has on occasion requested assistance from the State Department of Health and their advisory committee in conjunction with the evaluation of medical devices.

III. MANAGEMENT AND ADMINISTRATION

A. Quality of Emergency Planning (Category I)

NRC Guidelines: The State RCP should have a written plan for response to such incidents as spills, overexposures, transportation accidents, fire or explosion, theft, etc.

The Plan should define the responsibilities and actions to be taken by State agencies. The Plan should be specific as to persons responsible for initiating response actions, conducting operations and cleanup. Emergency communication procedures should be adequately established with appropriate local, county and State agencies. Plans should be distributed to appropriate persons and agencies. NRC should be provided the opportunity to comment on the Plan while in draft form.

The plan should be reviewed annually by Program staff for adequacy and to determine that content is current. Periodic drills should be performed to test the plan.

Questions:

1. Is the RCP responsible for its own emergency plan or are accidents involving radioactive materials incorporated into a comprehensive State plan developed and administered by another State agency? Please provide copies of all applicable plans for review.

   Off-site emergencies involving radioactive material are the responsibility of the Department of Health. The Department of Health has a comprehensive plan for Emergencies involving Nuclear Power Plants on which is grafted other off-site radiological emergencies. RHU Staff and equipment are part of this State Radiological Emergency Plan and would function as directed by the Commissioner of Health. On-site Emergencies are the responsibility of the individual radioactive material licensee and normally each licensee must provide a Radiological Emergency Plan as part of his operating procedures.

2. What written procedures or plans does the RCP use for responding to incidents involving radioactive materials?

   State Radiological Emergency Plan

3. If the plan covers major accidents at nuclear facilities, how does it cover non-catastrophic incidents such as those involving transportation of materials?

   See Plan

4. How does the plan define responsibilities and actions to be taken by all State Agencies (initiating response actions, operations, cleanup, etc.)?

   See Plan

5. How does the plan provide for notification of and communications with appropriate government agencies?

   See Plan

6. How is the response program organized so that qualified individuals are readily available through identifiable channels of communication?

   See Plan

7. Has the plan been distributed to all participating agencies?

   Yes

8. Has the NRC had opportunity to comment on the plan in draft form?

   Yes

9. Is the plan reviewed annually by the RCP for adequacy and to assure the content is current?

   Yes

10. Are drills performed periodically to test the plan for radioactive materials emergencies? Explain, for example, how non-routine office hours communications are checked.

    Drills are performed for nuclear power plant emergencies. For non-power plant emergencies, the plan is activited several times per year in responding to actual incidents.

III.A Reviewer Assessment: The State's Radiological Emergency Plan has previously been determined to be adequate.

B. Budget (Category II)

NRC Guidelines: Operating funds should be sufficient to support program needs such as: staff travel necessary to conduct an effective compliance program, including routine inspections, followup or special inspections (including pre-licensing visits) and responses to incidents and other emergencies; instrumentation and other equipment to support the RCP; administrative costs in operating the program including rental charges, printing costs, laboratory services, computer and/or word processing support, preparation of correspondence, office equipment, hearing costs, etc. as appropriate. Principal operating funds should be from sources which provide continuity and reliability, i.e., general tax, license fees, etc. Supplemental funds may be obtained through contracts, cash grants, etc.

Questions:

1. What fiscal year is used by your State?

   April 1 to March 31

2. Indicate the amount for funds obtained from each source (fees, State General funds, HHS, NRC environmental monitoring or transportation surveillance contracts, EPA, FDA and others).

   State General Fund: $425,000

3. Show the total amounts assigned to:

   a. the total radiation control program

      $425, 000

   b. the radioactive materials program.

      $400,000

4. What is the change in budget from the previous year and what is the reason for the change (new programs, change in emphasis, statewide reduction, etc.)?

   There was an increase in funds for the Radiological Health Unit from FY '84-'85 to FY '85-'86 for 2 new radiophysicist positions and one secretarial position, an increase of approximately 25%.

5. Describe your fee system, if you have one, and give the percentage of cost recovery. Enclose a copy of the fee schedule.

   N/A

6. Does the RCP administer the fee system?

   N/A

7. What recourse does the RCP have in the event of non-payment?

   N/A

8. Overall, is the funding sufficient to support all of the program needs? If not, specify the problem areas.

   Yes

III.B Reviewer Assessment: The Department meets these indicator guidelines.

C. Laboratory Support (Category II)

NRC Guidelines: The RCP should have the laboratory support capability in-house, or readily available through established procedures, to conduct bioassays, analyze environmental samples, analyze samples collected by inspectors, etc., on a priority established by the RCP.

Questions:

1. Are laboratory services readily available in-house or through other departments within the State organization?

   Yes. The Radiological Health Unit has its own radionuclide counting laboratry.

2. If services are provided by other departments, discuss the arrangements, supervision, charges and interdepartmental communications.

   N/A

3. If laboratory services must be provided by a non-State agency:

   a. Discuss the contractual arrangements.

   b. Is the party providing the service an RCP licensee?

   c. If a State licensee provides the service or equipment, what are the costs?

   N/A

4. Describe the capability of the laboratory as follows:

   a. Can it qualitatively and quantitatively analyze low-energy beta emitters?

      Yes. There is available a liquid scintillation detector and a windowless flow gas proportional counter. Quantitative analyses of all low-energy beta emitters is, of course, somewhat difficult and a function of availability of appropriate standards from NBS or commerical suppliers.

   b. Can it qualitatively and quantitatively analyze alpha emitters?

      Yes

   c. Can it selectively determine the presence and quantity of gamma emitters?

      Yes. Both a sodium iodide (thallium activated) crystal and germanium (lithium drifted) crystal are available for gamma spectrum analysis.

   d. Can it handle samples in any physical form - wipes, liquids, solids, gaseous?

      The Gel(Li) detector is bare and open and can be used to analyze any size sample within reasonable activity limits.

   e. Does the lab participate in a periodic cuality control program?

      The RHU does not participate at this time in any laboratory quality control program but all sample runs are accompanied by standards in most instances traceable to NBS.

5. How much time does it take to obtain the results from sample analyses on both a routine basis and on an emergency basis?

   Since the RHU analyzes its own samples, the turn around time in an emergency could be a matter of minutes. Routine samples are counted within 1-3 weeks.

6. List the number and types of laboratory instrumentation and services available.

   A list of laboratory instrumentation is available in Region I files.

III.C Reviewer Assessment: The Department meets these indicator guidelines.

D. Administrative Procedures (Category II)

NRC Guidelines: The RCP should establish written internal procedures to assure that the staff performs its duties as required and to provide a high degree of uniformity and continuity in regulatory practices. These procedures should address internal processing of license applications, inspection policies and procedures, decommissioning, and other functions required of the program.

Questions:

1. What procedures are established to assure adequate and uniform regulatory practices (e.g., administrative procedures, policy memos, licensing and inspection guides, escalated enforcement procedures, decommissioning procedures, etc.)?

   RHU has an Inspection Manual and a Licensing Manual which spell out the responsibility of the radiophysicist in conducting an inspection or processing a license. These Manuals are now undergoing revision with the assistance of the Office of Administrative Planning and Management Analysis and are available in draft form.

2. To what extent are the procedures documented?

   See response to question 1 above.

3. If the RCP has separate licensing and inspection staffs, what are the procedures used to communicate between the two staffs?

   Since staffs are relatively small there is constant interaction between field and licensing personnel. Any problem licensee would immediately come to attention of the radiophysicist in charge of the Licensing Group who is carbon copied in on all major compliance action and would discuss any further licensing action with the Chief of RHU before renewal or issuance of an amendment.

4. How are personnel kept informed of current regulatory policies and practices?

   Staff meetings and distribution of all pertinent NRC memos to RHU Staff. Enforcement Guides which are used to amplify or clarify Code Rule requirements are periodically issued.

5. If the RCP collects fees, are fee collection duties assigned to non-technical staff?

   N/A

6. How are contacts with communication media handled?

   Through the Department's Communications Office.

7. What procedures exist to ensure timely release of factual information on matters of interest to the public, the NRC and Agreement States?

   Press releases are prepared normally by consultation between technical staff and Communications Office staff.

8. If your RCP has regional offices:

   a. what procedures are in effect to assure the regions have complete copies of the procedures and files?

      Distribution procedures are in effect and include radiophysicist in the Buffalo Office for all memos just as if he was in the NYC Office. A State courier service provides 2 mail deliveries per day throughout the State Service.

   b. how often are periodic staff meetings held with headquarters staff?

      At the present time a schedule of quarterly staff meetings is in effect.

   c. how often are periodic visits/audits made by headquarters staff to regional offices?

      Normally at least once per year.

   d. how is uniformity controlled?

      By means of written procedures and review by NYC office of all reports from the Buffalo Office.

   e. how is supervision handled?

      Through written procedures and daily and weekly summary activity sheets sent by the radiophysicist in the Buffalo Office to the NYC Office.

III.D Reviewer Assessment: The Department meets these indicator guidelines.

E. Management (Category II)

NRC Guidelines: Program management should receive periodic reports from the staff on the status of regulatory actions (backlogs, problem cases, inquiries, regulation revisions). RCP management should periodically assess workload trends, resources and changes in legislative and regulatory responsibilities to forecast needs for increased staff, equipment, services and fundings.

Program management should perform periodic reviews of selected license cases handled by each reviewer and document the results. Complex licenses (major manufacturers, large scope - Type A Broad, or potential for significant releases to environment) should receive second party review (supervisory, committee, or consultant). Supervisory review of inspections, reports and enforcement actions should also be performed.

Questions:

1. How does the staff keep program management abreast of the status of regulatory actions (such as backlog, problem cases, inquiries, and revision of regulations)?

   At least twice a year the status of the cyclical inspection program is reviewed with RHU Staff. Also, the number of license applications received and the number of months it takes to process a license application on the average and in extreme cases is reviewed with Licensing Staff. This information is used to prepare staffing justification and request for additional staff if necessary for Divisional budget for the following State fiscal year which is prepared approximately nine months in advance.

2. a. Is a periodic statistical tabulation of licenses, licensees, inspections and backlogs prepared by category?

      Yes

   b. If so, specify how frequently the tabulation is prepared.

      For the NRC audit and budget preparation and for staff meetings and also more frequently if a problem is developing.

3. How does RCP management assess workload trends and resources in order to determine future needs or the need for program changes?

   In the preparation of annual NRC audit and in preparation of Annual budget request the man-hour per inspection and man-hour per licensing action are determined and year to year trends are noted in these figures.

4. How does the RCP management keep abreast of changes in legislative and regulatory responsibility?

   The Department's Counsel refers all pertinent proposed legislation to the Division for review and comment. We may also be asked to comment on the fiscal impact of proposed legislation on the Unit's operation. Further review is also available when bills are passed by the legislature. The Governor's Counsel will normally refer bills to various Agencies for comment and fiscal impact prior to signature by the Governor.

5. Discuss the procedures followed by licensing supervision or RCP management to monitor licensing quality.

   As stipulated in the Licensing Procedures Manual all license applications are processed following a standard format. The license reviewer will prepare the license and it is reviewed by his supervisor. Normally each license is reviewed by one other person besides the person who prepared the license before it is issued. A revised and updated Licensing Procedures Manual has been prepared by the Department's Office of Administrative Planning and Analysis.

6. Discuss the procedures used for supervisory review of inspection reports.

   Each field radiophysicist follows a standard procedure in documenting citations, issuing citations and follow-up action. When the licensee is placed in compliance: this is recorded, reviewed by a senior field radiophysicist and in turn reviewed by the Chief of the Unit.

7. What license review practices are followed for unusual or complex license applications?

   The basic licensing procedures are followed but these are backed up by the NRC Licensing & Regulatory Guides/ and in addition direct contact with NRC/other Agreement States who may have had experience in dealing with a similar license application. There are very few absolutely new uses of radioactive material but there are continuing experiments with new radionuclides and different activity levels.

8. If applicable, discuss the procedures used for supervisory review of work performed by contract agencies or regional offices.

   The supervision of regional offices is discussed in item III. C. 8. No work is performed by contractors.

III.E Reviewer Assessment: The Department meets these indicator guidelines.

F. Office Equipment and Support Services (Category II)

NRC Guidelines: The RCP should have adequate secretarial and clerical support. Automatic typing and Automatic Data Processing and retrieval capability should be available to larger (300-400 licenses) programs. Similar services should be available to regional offices, if utilized.

1 a. In terms of the person-year/100 licenses figure, what level of secretarial/clerical support is provided?

The present secretarial/clerical staffing is 0.42 person-year/100 lic. and approval has been obtained to add one stenographer effective July 1, 1985 which would place this staffing at 0.63 person-year/100 licenses.

b. If your program has regional office, provide the figures for the support for those offices.

The regional office provides clerical support at about 0.25 person-year to our Buffalo based radiophysicist. The new secretarial staff support will be placed in the Buffalo office.

2. Describe the ADP and word processing capabilities available to the RCP.

There is a work station with video display terminal and printer located in our N.Y.C. office. The VDT is connected to the Department's central computer facilities located in Albany. At present licensing staff is cooperating with programmers in the Department's Division of Electronic Data Processing to input all our licensing information in order to type out a license from the system. This system is still being debugged. In addition the RHU licensee list was inputed into the Department's Business Administration Management System (BAMS) which permits printing of mailing lists, license renewal dates and in the future inspection due dates.

III.F Reviewer Assessment: The Department meets these indicator guidelines. In addition to the equipment described above, the Radiological Health Unit has on order automatic typing equipment. The present equipment is now being used by the professional staff for preparing correspondence and typing licenses. Most licenses typed by the clerical staff are done by hand.

G. Public Information (Category II)

NRC Guidelines: Inspection and licensing files should be available to the public consistent with State administrative procedures. Opportunity for public hearings should be provided in accordance with UMTRCA and applicable State administrative procedure laws.

Questions:

1. Are licensing and inspection files available for inspection by the public?

   Yes, when a person makes a written request.

2. Are medical and proprietary data withheld?

   Yes

3. What other parts, if any, are not available?

   Employee names are deleted from inspection reports.

4. What written procedures and laws govern this? Please provide reference citations.

   New York State Freedom of Information Law and G.A. Manual Item 0303.

5. For mill States, are opportunities provided for public hearings in accordance with UMTRCA and applicable State administrative procedures and statutes?

   N/A

III.G Reviewer Assessment: The Department meets these indicator guidelines.

IV. PERSONNEL

A. Qualifications of Technical Staff (Category II)

NRC Guidelines: Professional staff should have a bachelor's degree or equivalent training in the physical and/or life sciences. Additional training and experience in radiation protection for senior personnel should be commensurate with the type of licenses issued and inspected by the State.

Written job descriptions should be prepared so that professional qualifications needed to fill vacancies can be readily identified.

Questions:

1. Do all professional personnel hold a bachelor's degree or have equivalent training in the physical or life sciences?

   Yes

2. What additional training and experience do the senior personnel need to have in radiation protection?

   Job descriptions specify 2 years experience in radiation in addition to a bachelor's degree.

3. What written position descriptions describe the duties, responsibilities and function of each professional position?

   There are official Civil Service Job Descriptions for each position.

IV.A Reviewer Assessment: The Department meets these indicator guidelines. Copies of the Department's job descriptions are available in Region I files.

B. Staffing Level (Category II)

NRC Guidelines: Staffing level should be approximately 1-1.5 person-year per 100 licenses in effect. RCP must not have less than two professionals available with training and experience to operate RCP in a way which provides continuous coverage and continuity.

For States regulating uranium mills and mill tailings, current indications are that 2-2.75 professional person-years' of effort, including consultants, are needed to process a new mill license (including insitu mills) or major renewal, to meet requirements of Uranium Mill Tailings Radiation Control Act of 1978. This effort must include expertise in radiological matters, hydrology, geology, and structural engineering.

Questions:

1. Complete a table as below, listing the person-years of effort applied to the agreement or radioactive material program by individual. Include the name, position, fraction of time spent and the duty (licensing, inspection, administration, etc.).

Name	Position	FTE%	Area of Effort
F. Bradely	Principal Radiophysicist	90%	Administration
G. Kasyk	Associate Radiophysicist	95%	Licensing
L. Cabasino	Senior Radiophysicist	100%	Inspection
R. Kelly	Senior Radiophysicist	100%	Inspection
H. Michael	Senior Radiophysicist	100%	Inspection
A. Awai	Senior Radiophysicist	100%	Licensing/Inspection
	Total	5.85	Person-Year

2. Compute the person-year effort of person-years per 100 licenses (excluding mills and burial sites). Show calculation.

Present staffing level: $\frac{5.85}{4.72}$ = 1.2 person-year / 100 licenses

Proposed staffing level $\frac{7.35}{4.72}$ = 1.6 person-year / 100 licenses

3. Is the staffing level adequate to meet normal and special needs and backup?

   The present staffing level has not been adequate to meet the normal and special situtation workload which the RHU has faced in the last couple of years. This was reflected in budget requests for additional staffing for State FY '83-'84, '84-85 and '85-'86. The request was granted for present fiscal year '85-'86.

IV.B Reviewer Assessment: The Department has filled one vacant professional position and is actively recruiting to fill the second. The proposed staffing level of 1.6 staff years per 100 licenses should be adequate to meet program needs.

C. Staff Supervision (Category II)

NRC Guidelines: Supervisory personnel should be adequate to provide guidance and review the work of senior and junior personnel. Senior personnel should review applications and inspect licenses independently, monitor work of junior personnel, and participate in the establishment of policy. Junior personnel should be initially limited to reviewing license applications and inspecting small programs under close supervision.

Questions:

1. Identify the junior and senior personnel.

   Senior Staff are: F. Bradley, G. Kasy, L. Cabasino and R. Kelly
   Junior Staff: H. Michael and A. Awai.

2. a. What duties are assigned to junior personnel?

      The most junior member of RHU staff has 5 years of experience with radioactive material and has just completed the abbreviated Oak Ridge Health Physics Course. He is in licensing and would not be given major new license application to process as yet. In the inspection staff there is no truly junior staff member. H. Michael has extensive experience and much additional training and performs inspections independently following Inspection Manual Procedures.

   b. Do they review applications and perform inspections independently?

      Yes

3. a. What duties are assigned to senior personnel?

Licensing: process major license applications, supervise junior staff; conduct pre-licensing visits as required, prepare Sealed Source and Device Sheets; supervise State bonding requirement. Inspection: conduct inspections at major installations, conducts verification surveys of decontaminated facilities, supervise lab work, in case of one radiophysicist reviews inspection work of other radiophysicists.

b. Do they independently review and monitor the work of junior personnel?

Yes

4. Is there adequate supervisory or senior guidance and direction for junior personnel?

Yes. Junior staff are not allowed to independently inspect a type of license until they have made an inspection of that type of license accompanied by a senior staff person who reviews junior staff work with the Unit Chief.

5. Discuss procedures established to ensure supervisory review of the licensing, inspection and enforcement functions.

As indicated above most licenses have a second person review before issuance. All inspection reports, after documented close-out of inspection, are reviewed by a senior staff member and signed off by the Chief of Unit.

6. a. Are RCP staff members allowed to consult or work part time for State licensees?

No, not in any capacity that would conflict with their official duties. If there is any doubt, circumstances have to be reviewed and approved by the Division Director.

b. If so, how are conflicts of interest avoided?

N/A

IV.C Reviewer Assessment: The Department meets these indicator guidelines.

D. Training (Category II)

NRC Guidelines: Senior personnel should have attended NRC core courses in licensing orientation, inspection procedures, medical practices and industrial radiography practices. (For mill States, mill training should also be included.) The RCP should have a program to utilize specific short courses and workshops to maintain appropriate level of staff technical competence in areas of changing technology.

Questions:

1. List all RCP personnel and the NRC training courses they have attended.

Name of Student	Course	Agency Sponsor	Dates
F. Bradley	Groundwater Contamination	NRC	1983
G. Kasyk	Licensing Orientation Course	NRC	1982
	Industrial Radiography	NRC	1973
	Health Physics Course	NRC	1972
L. Cabasino	Radiochemistry for State Personnel	NRC	1983
	Industrial Radiography	NRC	1981
R. Kelly	Industrial Radiography	NRC	1984
	Inspection Procedures	NRC	1981
	Health Physics Course	NRC	1975
	Emergency Planning	NRC	1979
H. Michael	Industrial Radiography	NRC	1981
	Inspection Procedures	NRC	1983
	Health Physics Course	NRC	1982
A. Awai	Health Physics Course (5wks)	NRC	1985
	Licensing Orientation	NRC	1983

2. How does the RCP utilize short courses and workshops to maintain staff proficiency?

   Each year one or two staff members are nominated to attend a pertinent training course, short course, workshop or seminar.

IV.D Reviewer Assessment: It was recommended that A. Awai attend the next industrial radiography course. It was also recommended that new staff attend appropriate NRC training courses. Of particular importance would be the 5-week health physics course and the inspection procedures course.

E. Staff Continuity (Category II)

NRC Guidelines:

Staff turnover should be minimized by combinations of opportunities for training, promotions, and competitive salaries. Salary levels should be adequate to recruit and retain persons of appropriate professional qualifications. Salaries should be comparable to similar employment in the geographical area. The RCP organization structure should be such that staff turnover is minimized and program continuity maintained through opportunities for promotion. Promotion opportunities should exist from junior level to senior level or supervisory positions. There also should be opportunity for periodic salary increases compatible with experience and responsibility.

Questions:

1. Identify the RCP employees who have left the program since the last review and give the reasons for the turnovers. Also state whether the positions are presently vacant, filled (name replacement), abolished or other status.

   None

2. List the RCP salary schedule:

Position Title	Annual Salary Range
Principal Radiophysicist	$47,277 - $54,449
Associate Radiophysicist	$31,074 - $36,440
Senior Radiophysicist	$23,903 - $28,334

3. Compare your salary schedule with similar employment alternatives in the same geographical area, such as industrial, medical, academic or other departments within your State.

   We do not have access to salary ranges of persons in similar positions in industry or medical fields but it is possible that the staff is below grade levels of persons with comparable duties in other State Departments. This we are presently trying to address with a request to increase the Grade Level for the Senior and Associate Radiophysicist positions.

4. What opportunities are there for promotion within the RCP organizational structure without a staff vacancy occurring?

   At present, very little. The Department is however considering additional supervisory positions in light of the expansion of staff.

IV.E Reviewer Assessment: Staff continuity within the RCP has been good over the past few years. It is apparent that current salary levels are adequate to retain staff. The RCP has also been able to recruit new staff without great difficulty.

V. LICENSING

A. Technical Quality of Licensing Actions (Category I)

NRC Guidelines: The RCP should assure that essential elements of applications have been submitted to the agency, and which meet current regulatory guidance for describing the isotopes and quantities to be used, qualifications of persons who will use material, facilities and equipment, and operating and emergency procedures sufficient to establish the basis for licensing actions. Prelicensing visits should be made for complex and major licensing actions. Licenses should be clear, complete, and accurate as to isotopes, forms, quantities, authorized uses, and permissive or restrictive conditions. The RCP should have procedures for reviewing licenses prior to renewal to assure that supporting information in the file reflects the current scope of the licensed program.

Questions:

1. How many specific licenses are currently in effect?

   472

2. a. How many new licenses (not amendments in entirety) have been issued since the last review?

      18

   b. How many were major licenses?

      0

3. How many specific licenses were terminated since the last review?

   17

4. How many amendments were issued during the review period?

   107

5. Identify unusual or complex licenses issued since the last review, including name and license number.

   None

6. Note any variance in licensing policies and procedures granted since the last review.

   Enforcement of stricter rules for discharges into sanitary sewers (Schedule II, Table 6 of Code Rule 38); for discharges of 500 millicuries with $T_{\frac{1}{2}} > 5$ years or 100 millicuries with $T_{\frac{1}{2}} > 10^8$ years explicit permission required; sewer monitoring for all licensees discharging into sanitary sewer.

7. Do you require license applicants to submit details on their radwaste packaging and shipping procedures?

   Yes, or license applicant must use latest instructions of their licensed waste broker which are incorporated into the manual by reference.

8 a. When do you require licensees to submit contingency plans?

   The Radiological Health Unit follows the recommendations in Information Notice No. 81-68.

   b. List the licensees who have been required to submit contingency plans.

   NRD, Inc.

9. How many prelicensing visits were made during this review period?

   9

10. What criterion does the RCP use to determine the need for a prelicensing visit?

    All radiography license applicants as well as all applicants for unsealed radioactive material except for in vitro kits.

11. How do you ensure up-to-date information has been submitted prior to a license renewal?

    The licensing staff reviews documentation from the last inspection and checks any pending license amendments.

12. Do license files contain all necessary data required to evaluate an application prior to issuing a license?

    License reviewer follows Standard license application review form which covers all pertinent items to assure compliance with Code Rule 38.

13. Has the RCP taken any unusual licensing action with respect to licensees operating under multiple jurisdiction?

    Yes; NL/Albany was transferred to U.S. DOE. The case of EAD Metallurgical, Inc. was turned over to the Attorney General to obtain compliance with Section 38.29 "Vacating Installation and Equipment" of Code Rule 38.

14. Prepare a table as below showing the RCP's major licensees with name, number and type.

INCLUDE:

- Broad (Type A) Licenses
- LLW Disposal Licenses
- LLW Brokers
- Major Manufacturers and Distributors
- Uranium Mills
- Large Irradiators (Pool Type or Other)
- Other Licenses With a Potential Significant Environmental Impact
- Other Licensees You Consider to be "Major" Licensees

Name	License Number	Type
General Electric Co.	794-0220	Broad License
Eastman Kodak (Kodak Park)	5X-0255	" "
Becton-Dickinson	275-0811	" "
IBM (Fishkill)	926-1215	" "
Union Carbide	298-1093	" "
Bristol Meyers	931-0311	" "
Norwich Eaton	720-0619	" "
NDL Organizaiton	1226-1422	LLW Brokers
Radiac Research	1944-1879	" "
SPL	1308-1611	Major Mfg. & Dist
NRD	1391-1811	" "
NRD	2169-1811	" "
UPA Tech.	741-0921	" "
Union Carbide	729-0322	" "
Twin City Internat'l.	278-0897	" "
Mallinckrodt	2312-3141	Nuclear Pharmacies
Mallinckrodt	2357-3238	" "
Syncor	2328-3174	" "
Syncor	2304-3119	" "
Syncor	2364-3250	" "

V.A. Reviewer Assessment: A review of selected license files is attached as Appendix C. No major deficiencies were noted. The licensing backlog has remained essentially unchanged. This was not judged to be of health and safety significance. With the hiring of new staff, this backlog should be addressed within a reasonable timeframe.

B. Adequacy of Product Evaluations (Category I)

NRC Guidelines: RCP evaluations of manufacturer's or distributor's data on sealed sources and devices outlined in NRC, State, or appropriate ANSI Guides, should be sufficient to assure integrity and safety for users.

The RCP should review manufacturer's information in labels and brochures relating to radiation health and safety, assay, and calibration procedures for adequacy. Approval documents for sealed source or device designs should be clear, complete and accurate as to isotopes, forms, quantities, uses, drawing identifications, and permissive or restrictive conditions.

Questions:

1. How many new and revised evaluations were made of sealed sources and devices during the review period?

   Two Sealed Sources and Device (SSD) were completed: Brandhurst and Dredge Technology. One was revised: NRD Static Eliminators.

2. How many SS&D evaluations have been made for which approval documents have not yet been prepared?

   One evaluation for SPL's Model 710 Exit Signs was completed but a written SSD has not been completed.

3. How does the RCP evaluate manufacturer's data on SS&D's to ensure integrity and safety for users?

   In accordance with ANSI standards and NRC guidance.

4. Do you determine whether the manufacturer's information on labels and brochures relating to health, safety, assay, and calibration procedures is adequate on all products?

   Yes. During inspection the field staff checks licensee's equipment, instrumentation, calibration, qualification of personnel and products in production.

V.B. Reviewer Assessment: Two recent device reviews were evaluated. No significant deficiencies were noted. It was recommended, however, that the device sheet be clarified. It could not be determined for two model gauges with two different cesium sources whether one source was meant for one gauge or both sources could be use with either gauge. In addition one model number gauge appeared on two sheets one with a cobalt source and one with a cesium source. It was suggested that one sheet listing the two sources might be less confusing.

C. Licensing Procedures (Category II)

NRC Guidelines: The RCP should have internal licensing guides, checklists, and policy memoranda consistent with current NRC practice. License applicants (including applicants for renewals) should be furnished copies of applicable guides and regulatory positions. The present compliance status of licensees should be considered in

licensing actions. Under the NRC Exchange-of- Information program, evaluation sheets, service licenses, and licenses authorizing distribution to general licensees and persons exempt from licensing should be submitted to NRC on a timely basis. Standard license conditions comparable with current NRC standard license conditions should be used to expedite and provide uniformity in the licensing process. Files should be maintained in an orderly fashion to allow fast, accurate retrieval of information and documentation of discussions and visits.

Questions:

1. Has the RCP developed its own licensing procedures or does it use NRC guides? Please provide for review.

   The RHU has developed its own Licensing Procedures Manual which is now undergoing revision. RHU supplements the Manual with NRC Guides and additional guidance for Gas Chromatography, Moisture/Density gauge and Radiography Applications.

2. What licensing guides, checklists and policy memoranda are made available to the staff?

   As noted above and all material received, e.g., NRC letters, instructions, Guides are distributed to Staff; comments are solicited if asked for.

3. What guides and/or regulatory position statements are furnished to license and renewal applicants?

   The standard license application packet is distributed upon request which includes a copy of Code Rule 38.

4. Describe the system for advising classes of licensees of new licensing procedures and regulations.

   New procedures would be sent with the license application packet. New regulations would require amendment of Code Rule 38.

5. a. How are licensing actions coordinated with the compliance staff?

      The master file contains both licensing and enforcement information. Prior to licensing actions the file is reviewed to verify licensee compliance with regulations and license conditions.

   b. Are licensing actions taken while enforcement action is pending?

      Only on an individual basis in consultation with the Chief of Unit.

6. For what length of time are various categories of licenses issued?

   All licenses are issued for 3 years.

7. a. Does the RCP use standard licensing conditions?

      Yes

   b. If so, how does the RCP assure they are comparable with those used by NRC?

      RHU uses NRC standard conditions plus a few of its own.

8. Are the licensing conditions on file in the RCP office and with NRC?

   Yes, they are part of the License Procedures Manual.

9. What SS&D sheets, service, distribution and "E" licenses are available for RCP staff use?

   A complete up-to-date library of all sheets sent to the RHU by NRC and the Center for Devices and Radiological Health are maintained.

10. Describe your practices for distributing SS&D sheets, as well as GL distribution and service licenses, to the NRC.

    Documents and copies of licenses are sent upon issuance to NRC.

11. Describe your procedures for maintaining the license files (How are files and folders arranged? Are telephone contacts and visits documented? Who is responsible for filing materials in folders?).

    These procedures are now being updated and are part of the Draft License Procedures Manual. Files are arranged alphabetically by Licensee name. Inside the files contain in chronological order all documents including copies of Licenses and Amendments. Telephone conversations are recorded and licensing visits result in reports. The person responsible is the staff member assigned the file.

12. Are there opportunities for license reviewers to accompany inspectors?

    Yes, when assigned and it is deemed necessary.

V.C. Reviewer Assessment: The Department meets these indicator guidelines.

VI. COMPLIANCE

A. Status of Inspection Program (Category I)

NRC Guidelines: The State RCP should maintain an inspection program adequate to assess licensee compliance with State regulations and license conditions.

The RCP should maintain statistics which are adequate to permit Program Management to assess the status of the inspection program on a periodic basis. Information showing the number of inspections conducted, the number overdue, the length of time overdue and the priority categories should be readily available.

There should be at least semiannual inspection planning for the number of inspections to be performed, assignments to senior vs. junior staff, assignments to regions, identification of special needs and periodic status reports.

Questions:

1. How is statistical information maintained about the inspection program to permit periodic assessment of its status by RCP management?

   The Present Card System is being updated by a computer system (BAMS) for the inspection program to permit periodic assessment of its status by RHU management.

2. Prepare a table as below, indicating the number of inspections made in the review period, by category and priority.

Scheduled Frequency	Inspection Priority	Number of Inspections
Annual	#1	29
Triennial	#2	42
Quadrennial	#3	15
		86

3. Prepare a table (or tables) as below which identifies the Priority 1, 2, and 3 licensees with overdue inspections. Include the license category, the due date, and the number of months the inspection is overdue. (If list is extensive, a comparable computer printout is acceptable.)

Priority #1	Priority #2	Priority #3
3 to 12 months = 4	3 to 12 months = 27	3 to 12 months = 9
13 to 24 months = 2	13 to 24 months = 17	13 to 24 months = 5
24 to 36 months = 3	25 to 36 months = 3	25 to 36 months = 9
>36 months = 1	>36 months = 10	>36 months = 5
10	57	28

4. Prepare a table as below indicating the number of overdue license inspections for Priorities 4 through 7.

   Presently Priority 4 licensees are not put on a cyclical inspection basis. There are no priority #5 to priority #7 categories identified as such.

5. How are inspection schedules planned and how are the dates and personnel assignments made?

   Inspection schedules are planned to cover priority #1, #2 and #3 licenses in order to reduce any overdue inspections. Assignments to personnel are made with dates in mind to keep the cyclical inspection schedule up to date.

VI.A Reviewer Assessment: The inspection backlog has been reduced from the time of the last review, however, the remaining backlog is significant. The inspection priority system was modified in line with our previous recommendation, but additional staff effort is needed in this area. The RHU has hired, and will hire, additional staff and this should have a significant impact on the inspection program.

B. Inspection Frequency (Category I)

NRC Guidelines: The RCP should establish an inspection priority system. The specific frequency of inspections should be based upon the potential hazards of licensed operations, e.g., major processors, broad licensees, and industrial radiographers should be inspected approximately annually -- smaller or less hazardous operations may be inspected less frequently. The minimum inspection frequency should be consistent with the NRC system.

Questions:

1. Enclose a copy of the RCP's inspection priority system.

   A copy of the RHU's priority system is available in Region I files.

2. Who assigns licenses to the priority categories?

   The senior staff member assigns priority categories through use of Table #1 of the Inspection Procedures Manual which is now undergoing updating and revision.

3. Discuss any significant variances in the RCP's priorities from the NRC priority system.

   The Radiological Health Unit presently has three (3) categories for cyclic inspections. Priority #1 presents the most potential hazard in licensed operations. Priority #2 catagory presents a lesser potential hazard in licensed operations and Priority #3 presents the least potential hazard in licensed operation.

4. Is the inspection priority system designed to assure that the more hazardous and/or complex operations are inspected at an appropriate frequency?

   Yes

5. Describe the RCP's policy for unannounced inspections and exceptions to the policy.

   All inspections are unannounced. Exceptions to this policy are made only when in consultation with the chief of the unit.

6. Describe the RCP's policy for conducting follow-up inspections.

   Non-compliance items are reviewed and physically checked by the inspector at the next regular inspection. Exceptions to this policy are made in consultation with the chief of the unit.

7. a. Does the RCP inspect out-of-state firms working in the State under reciprocity or under State licensure?

      Yes

   b. How many reciprocity notices were received?

      16 (February 1, 1985 to May 1, 1985)

   c. How many were inspected?

      1

VI.B Reviewer Assessment: During the last review, it was noted that the inspection backlog had grown to 231. It was recommended that the Department modify, on an interim basis, the inspection priority system. Inspections at that time were for the most part being conducted at intervals more frequent than recommended by NRC. The Department has modified its priority system and the backlog has been reduced to 95.

C. Inspector's Performance and Capability (Category I)

NRC Guidelines: Inspectors should be competent to evaluate health and safety problems and to determine compliance with State regulations. Inspectors must demonstrate to supervision an understanding of regulations, inspection guides, and policies prior to independently conducting inspections.

The compliance supervisor (may be RCP manager) should conduct annual field evaluations of each inspector to assess performance and assure application of appropriate and consistent policies and guides.

Questions:

1. a. Does the senior inspector or supervisor periodically accompany the inspectors?

   Due to the shortage of staff and the present backlog, supervisory accompaniments are conducted only occasionally.

   b. Are these accompaniments documented?

   Yes

2. Give the number of supervisory accompaniments of inspectors since the last review meeting and identify the persons accompanied and the supervisors.

   One. Mr. Awai, Senior Radiophysicist was accompanied by Mr. Kasyk, Associate Radiophysicist.

VI.C Reviewer Assessment: When additional staff are brought on board and a permanent inspection supervisor is selected, an annual accompaniment schedule will be implemented. An accompaniment was performed by J. Lubenau of Mr. L. Cabasino during inspections of an industrial radiographer, nuclear pharmacy and a manufacturer. The results of the accompaniment were discussed with Mr. Cabasino and Dr. Bradley.

D. Responses to Incidents and Alleged Incidents (Category I)

NRC Guidelines: Inquiries should be promptly made to evaluate the need for onsite investigations. Onsite investigations should be promptly made of incidents requiring reporting to the Agency in less than 30 days (10 CFR 20.403 types). For those incidents not requiring reporting to the Agency in less than 30 days, investigations should be made during the next scheduled inspection. Onsite investigations should be promptly made of non-reportable incidents which may be of significant public interest and concern, e.g. transportation accidents. Investigations should include indepth reviews of circumstances and should be completed on a high priority basis. When appropriate, investigations should include reenactments and time-study measurements (normally within a few days). Investigation (or inspection) results should be documented and enforcement action taken when appropriate. State licensees and the NRC should be notified of pertinent information about any incident which could be relevant to other licensed operations (e.g., equipment failure, improper operating procedures). Information on incidents involving failure of equipment should be provided to the agency responsible for evaluation of the device for an assessment of possible generic design deficiency. The RCP should have access to medical consultants when needed to diagnose or treat radiation injuries. The RCP should use other technical consultants for special problems when needed.

Questions:

1. How does the RCP respond to incidents and alleged incidents?

   All information on incidents is taken down on an "Incident Report Form: and forwarded to the supervisor who evaluates and makes a determination regarding the need for an on-site inspection.

2. Are major incidents (10 CFR 20.403 types requiring reporting in less than 30 days) investigated on a priority basis?

   Yes

3. Are other incidents followed up in the next scheduled inspection?

   In most cases where a follow-up inspection is deemed necessary, this is done immediately rather than wait for a cyclical inspection.

4. Are non-reportable incidents that may be of significant public interest and concern promptly investigated?

   Yes

5. How many incident investigations were conducted during the review period?

   One

6. Attach as an appendix a summary of each incident investigated. Include documentation of investigation results, enforcement action when appropriate, any reenactment and time motion studies, as well as notification of the NRC and state licensees of incident information that may have been relevant to other licensed operations.

   A summary of incidents is available in Region I files.

7. Were any incidents attributed to generic-type equipment failure?

   No

8. What action was or would be taken by the RCP pertaining to incidents attributable to generic equipment failures in regard to notification of the NRC, other licensees and the regulatory agency which approved the device?

   NRC and states would be notified immediately.

9. If a failure should occur in equipment manufactured by a RCP licensee, what action would be taken to:

   a. stop the manufacture or force changes in design?

Depending on the type and consequence of the failure, appropriate action would be taken. Normally the licensee would be required to halt production, take corrective action to correct the cause of failure, notify customers of the failure and correct the failure in customers device (retrofit) and request a license amendment to correct the fault. The RHU would inspect and issue a Notice of Inspection Findings or Order to Comply as appropriate to assure the above course of action would be followed.

b. assure retrofit of existing devices?

See response to a. above

10. When are other RCP licensees and the NRC notified of pertinent information about an incident?

Immediately

11. a. Are medical consultants available and used when necessary?

Yes

b. Is the State aware of the availability of medical consultants from NRC?

Yes. Information was provided during the review.

12. Explain any use of other technical consultants for special problems encountered in incident investigations.

None

13. Were there any incidents since the last review meeting that met Abnormal Occurrence Report (AOR) criteria?

No

VI.D Reviewer Assessment: The Department meets these indicator guidelines.

E. Enforcement Procedures (Category I)

NRC Guidelines: Enforcement Procedures should be sufficient to provide a substantial deterrent to licensee noncompliance with regulatory requirements. Provisions for the levying of monetary penalties are recommended. Enforcement letters should be issued within 30 days following inspections and should employ appropriate regulatory language clearly specifying all items of noncompliance and health and safety matters identified during the inspection and referencing the appropriate regulation or license condition being violated. Enforcement letters should specify the time period for the

licensee to respond indicating corrective actions and actions taken to prevent re-occurrence (normally 20-30 days). The inspector and compliance supervisor should review licensee responses. Licensee responses to enforcement letters should be promptly acknowledged as to adequacy and resolution of previously unresolved items. Written procedures should exist for handling escalated enforcement cases of varying degrees. Impounding of material should be in accordance with State administrative procedures. Opportunity for hearings should be provided to assure impartial administration of the radiation control program.

Questions:

1. Describe the State's enforcement procedures.

   A Notice of Inspection Findings listing all violations of Code Rule 38 and license conditions is written up based upon inspection data. In case of a Priority No. 1 licensee, the Notice is sent out with a cover letter from this Office. The radiophysicist will normally discuss findings before sending a Notice. In case of Priority No. 2 and 3 licensees, the Notice is given to the RSO at the end of the inspection.

2. If the RCP can apply civil penalties, explain the procedures for keying monetary penalties to violations.

   N/A

3. Describe the RCP's provisions for criminal penalties.

   Following procedures the radiophysicist fills out a referral form which is sent by the Division Director to the Department's Counsel. Counsel reviews the information and if deemed appropriate the case is referred to the Attorney General for prosecution. Once this occurs it is basically out of the hands of the RHU except to advise the Attorney General on technical matters.

4. Describe the policies in effect for issuing field forms equivalent to NRC form 591 or letters for enforcement action.

   Procedures for issuing Notices of Inspection Findings are in the Inspection Procedures Manual. This manual is currently undergoing revision.

5. Are there written procedures for handling escalated enforcement cases? Please provide for review.

   Yes. These procedures are currently undergoing revision.

6. Can the State issue Orders, including Emergency Orders?

   Yes

7. Can the RCP impound radioactive material?

   Only in extraordinary cases, e.g. radioactive material left in a public area.

8. Do RCP administrative procedures permit the opportunity for hearings in major enforcement cases?

   Yes

9. If during the review period the RCP has issued orders, applied civil penalties, sought criminal penalties, impounded sources, or held a formal enforcement hearing, identify these cases and enclose copies of the pertinent State enforcement correspondence or orders.

Name of Licensee	License Number	Type of Enforcement Action
EAD Metallurgical,	2149-2274	Compliance Conference (first step in Escalated Enforcement Action)

10. Are enforcement letters issued within 30 days of the inspection?

    Yes

11. Are enforcement letters written in regulatory language and reference regulations and license conditions?

    RHU uses a standard form

12. Do the enforcement letters clearly differentiate between noncompliance items and health and safety recommendations?

    Yes

13. If applicable, do the letters separate actions subject to the State radiation control act and State OSHA regulations?

    N/A

14. a. Are enforcement letters issued by inspectors or supervisors?

       By the radiophysicist conducting the inspection.

    b. If issued by inspectors do they undergo supervisory review prior to dispatch?

       Yes

15. Do enforcement letters require the licensee to respond within a stated time period? Note the period.

    Yes. Typically 30 days, but it depends on the nature of the violations.

16. a. Are licensee's responses to enforcement letters reviewed by the inspector and the supervisor?

    Yes

    b. Are they acknowledged properly?

    Yes

17. Has the RCP taken escalated enforcement action against licensees who operate in multiple jurisdictions?

    No

VI.E Reviewer Assessment: During the previous review it was recommended that the Department document its enforcement procedures. Such procedures are contained in the Inspection Procedures Manual which is currently in the final stages of being revised. In reviewing a number of Notices of Violation issued by the Department, a number of cases were found where citations were inappropriate, i.e., no actual violation existed, the wrong section of the code was cited, or the citation addressed an area not under the Department's jurisdiction. For example, one licensee was cited for performing instrument calibration when not authorized to do so. The licensee responded pointing out that the Department had approved their procedures to do so. One licensee was cited against 38.22 radiation levels in uncontrolled areas when in fact the deficiency concerned inadequate records of surveys to determine radiation levels in unrestricted areas. As an example of the third type of inappropriate citation, a licensee was cited for performing radiography in Ohio. Such activity is clearly not under the jurisdiction of the Department and the licensee in his response pointed out that such work was done under reciprocity.

F. Inspection Procedures (Category II)

NRC Guidelines: Inspection guides, consistent with current NRC guidance, should be used by inspectors to assure uniform and complete inspection practices and provide technical guidance in the inspection of licensed programs. The NRC Agreement States Guides may be used if properly supplemented by policy memoranda, agency interpretations, etc. Written inspection policies should be issued to establish a policy for conducting unannounced inspections, obtaining corrective action, following up and closing out previous violations, assuring exit interviews with management, and issuing appropriate notification of violations of health and safety problems. Procedures should be established for maintaining licensees' compliance histories. Oral

briefing of supervision or the senior inspector should be performed upon return from nonroutine inspections. For States with separate licensing and inspection staffs, procedures should be established for feedback of information to license reviewers.

Questions:

1. Has the RCP developed its own inspection guides or does it use NRC guides?

   The RHU has an Inspection Procedures Manual which is now being updated.

2. Are current copies of the internal inspection forms and guides on file in the RCP office and with NRC? Attach any changes or guides developed since the last review.

   Yes

3. Are inspectors furnished copies of inspection guides?

   Yes

4. Discuss the use or non-use of inspection policy memoranda, interpretations, etc., to supplement inspection guides.

   The RHU issues Enforcement Guides to clarify or amplify Code Rule requirements.

5. Are there written procedures establishing policy for:

   a. unannounced inspections?

      Yes

   b. obtaining corrective action?

      Yes

   c. following-up and closing out previous citations of violations?

      Yes

   d. exit interviews with management?

      Yes

   e. issuing notices of violations and findings of health and safety problems?

      Yes

f. categorizing the seriousness of violations?

Yes

Please provide copies of these procedures for review.

6. What procedures have been established for maintaining licensee's compliance histories?

All information on Compliance history is placed on a summary card for easy review during the next inspection.

7. Does the senior inspector or supervisor orally debrief the inspector upon return from inspections?

For all Priority #1 inspections the Notice of Inspections are written up in the office, discussed with senior staff before sending out the Notice of Inspection Findings.

8. What procedures are there for providing feedback from inspectors to licensing?

Before license renewals or license amendments are issued the last inspection report is reviewed. In addition, following the inspection the inspector will discuss directly with licensing staff regarding the need for such items as additional training of users or adding license restrictions, but there are Code Rule restrictions on unilateral amendment of licenses.

VI.F Reviewer Assessment: As indicated earlier the Department is currently finalizing revisions to the Inspection Procedures Manual. A draft was reviewed by NRC and comments provided.

G. Inspection Reports (Category II)

NRC Guidelines: Findings of inspections should be documented in a report describing the scope of inspections, substantiating all items of noncompliance and health and safety matters, describing the scope of licensees' programs, and indicating the substance of discussions with licensee management and licensee's response. Reports should uniformly and adequately document the results of inspections and identify areas of the licensee's program which should receive special attention at the next inspection. Reports should show the status of previous noncompliance and the independent physical measurements made by the inspector.

Questions:

1. How do inspection reports document the inspection that was conducted and the inspection findings? Explain how the reports substantiate noncompliance and health and safety matters and describe the scope of the licensee's program.

   Inspection staff use an Inspection Data Form to record compliance noncompliance with Code Rule requirements. In addition, space is allocated to give a brief summary of conditions at the facility, compliance with Code Rules and results of the management interview. In addition, an objective survey is conducted and documented which will objectively substantiate compliance/noncompliance with Code Rule requirements.

2. Do the reports

   a. relate the discussions held with license management and interviews with workers?

      Yes

   b. include independent measurements conducted by the inspector?

      Yes

   c. document follow-up of previous citations of violations made by the inspector?

      No, not explicitly, but this item is to be added to an updated form now under development.

   d. identify areas of the licensee's program needing special attention at the next inspection?

      It is RHU policy that each inspection will be complete in itself, however, in the narrative summary a statement might be included to check certain items during future inspections.

3. Are inspectors routinely inspecting radwaste package preparation and shipping practices and do the reports document the results?

   Yes; and these requirements will be amplified in new Code Rule requirements which will be incorporated into the Inspection Data Form upon promulgation.

VI.G Reviewer Assessment: In a number of cases, inspection reports did not provide adequate justification or support for items of noncompliance. For example, one licensee was cited for exceeding water effluent limits, however, the calculation supporting this violation was unclear as to the

quantity of material released and the volume of water discharged to determine whether the daily, monthly or yearly limit was being exceeded. Documented support for a citation should be in sufficient detail such that management, or any other party, reviewing the report would come to the same conclusion as the inspector with regard to the item cited. Adequate support is important from a number of perspectives not the least of which is the possibility of future escalated enforcement action which may involve the presentation of inspection reports as evidence in hearings or trials.

H. Independent Measurements (Category II)

NRC Guidelines:

Independent measurements should be sufficient in number and type to ensure the licensee's control of materials and to validate the licensee's measurements. RCP instrumentation should be adequate for surveying license operations (e.g., survey meters, air samplers, lab counting equipment for smears, identification of isotopes, etc.).

GM Survey Meter: 0-20 mr/hr
Ion Chamber Survey Meter: several r/hr
Neutron Survey Meter: Fast & Thermal
Alpha Survey Meter: 0-100,000 c/m
Air Samplers: Hi and Low Volume
Lab Counters: Detect 0.001 uc/wipe
Velometers
Smoke tubes
Lapel Air Samplers

Instrument calibration services or facilities should be readily available and appropriate for instrumentation used. Licensee equipment and facilities should not be used unless under a service contract. Exceptions for other State Agencies, e.g. a State University, may be made. Agency instruments should be calibrated at intervals not greater than that required to licensees being inspected.

Questions:

1. Discuss the RCP's policy for conducting independent measurements as a part of each inspection (e.g., air samples, wipe samples, air flows, dose rates). Are these measurements documented in the inspection report?

   Where appropriate all inspections are backed-up by an appropriate radiation survey which becomes part of the inspection record.

2. List the instrumentation that is readily available to the RCP for surveying licensed operations and conducting appropriate independent measurements.

   A list of instrumentation is available in Region I files.

3. Describe the method used for calibrating survey instruments and the frequency of calibration.

   Survey instruments are calibrated annually with a calibrated source and at least quarterly with a check source.

VI.H Reviewer Assessment: The Department meets these indicator guidelines.

VII. OTHER ASPECTS OF THE STATE'S RADIATION CONTROL PROGRAM

A. Non-Agreement Sources of Radiation

Questions:

1. Are the licensing and inspection procedures for NARM the same as for agreement materials?

   Yes

2. Give the number of X-ray machine (or tube) and accelerator registrants by category, e.g., dental, medical, industrial, etc.

   X-ray and accelerator registrants: 323

3. How many machine and accelerator inspections were made in the last year (or other appropriate interval)?

   N.Y.S. is pre-empted by Federal OSHA program. We conduct such inspections upon request and X-ray/accelerator inspections under the State Public Employee Safety and Health (PESH) Program. Approximately 5 such inspections were conducted in CY '84.

4. Does the RCP license X-ray or nuclear medicine technologists?

   The State Department of Health licenses X-ray technologists.

VII.A Reviewer Comment: None

B. Environmental Monitoring Program

Questions:

1. To indicate the scope of the environmental monitoring program, describe:

   a. types of media sampled
   b. the number and location of stations sampled
   c. the frequency of sample collection
   d. the analyses run on each type of sample

   No environmental monitoring is conducted. As part of standard surveys during inspections air, water, soil, vegetation samples

may be collected but within the site boundary of the facility. These are collected at facilities which have permits from the Department of Environmental Conservation.

2. Is a copy of the latest environmental surveillance report available for review?

N/A

VII.B Reviewer Comment: None

C. Other Areas

This section of the review is for the use of either the reviewer or the RCP to address issues pertaining only to the individual State, to new areas of concern, or to generic or State-specific issues raised by NRC staff.

1. Other Generic Issues

Questions:

a. For radiography inspections, to what extent do you make inspections at temporary job sites?

Approximately 20-25 inspections per year are conducted at temporary field radiography sites.

b. Are you finding Ir-192 contamination on radiographic equipment?

One incident of contamination on a radiography camera was detected in the last several years and it was alpha radiation, leading us to believe that the cladding on the uranium shielding was wearing thin.

c. What are the State's plans to adopt the low-level waste (LLW) manifest rule (if not already adopted)?

In proposed Code Rule update.

d. For States with LLW disposal sites, what are the State's plans to implement 10 CFR 61?

NYS site is presently inactive and closed, but a DOE funded study is presently addressing the problem.

e. Will your State have access to a LLW disposal site after January, 1986. If not, what contingency plans are there for after January, 1986?

Unknown. Licensees have been advised to have contingency plans.

f. Have copies of 10 CFR 61 and NRC technical positions on waste form and classification been distributed to State licensees? If there has been feedback please provide documentation.

Yes. There has been very little feedback since requirements do not directly impact their operations since they use either sealed sources or turn waste over to a broker.

g. Have there been any applications or approvals for incineration, compacting or disposal?

Yes, in discussion phase.

h. What use is being made of IE information notices?

All pertinent Notices are distributed to RHU staff.

i. Identify any group of materials licenses for which the RCP has increased frequency of inspection due to problems with that general category. Please discuss the nature of those problems.

We are making special efforts to ensure that all discharges to sewers are monitored.

j. With respect to medical licensees, is the RCP making any effort during inspections of nuclear pharmacies to determine whether the licensee is actually conducting the required molybdenum breakthrough tests, i.e., what is the RCP doing in addition to record reviews to establish compliance or noncompliance with the requirement?

Observations during routine inspections.

k. Is the RCP mounting any special effort to look at the possibility of reconcentration of radionuclides in sanitary sewers and sewage treatment plants as part of the regular inspection program? If so, please describe.

Yes, see item (i)

VII.C. Reviewer Comment: None

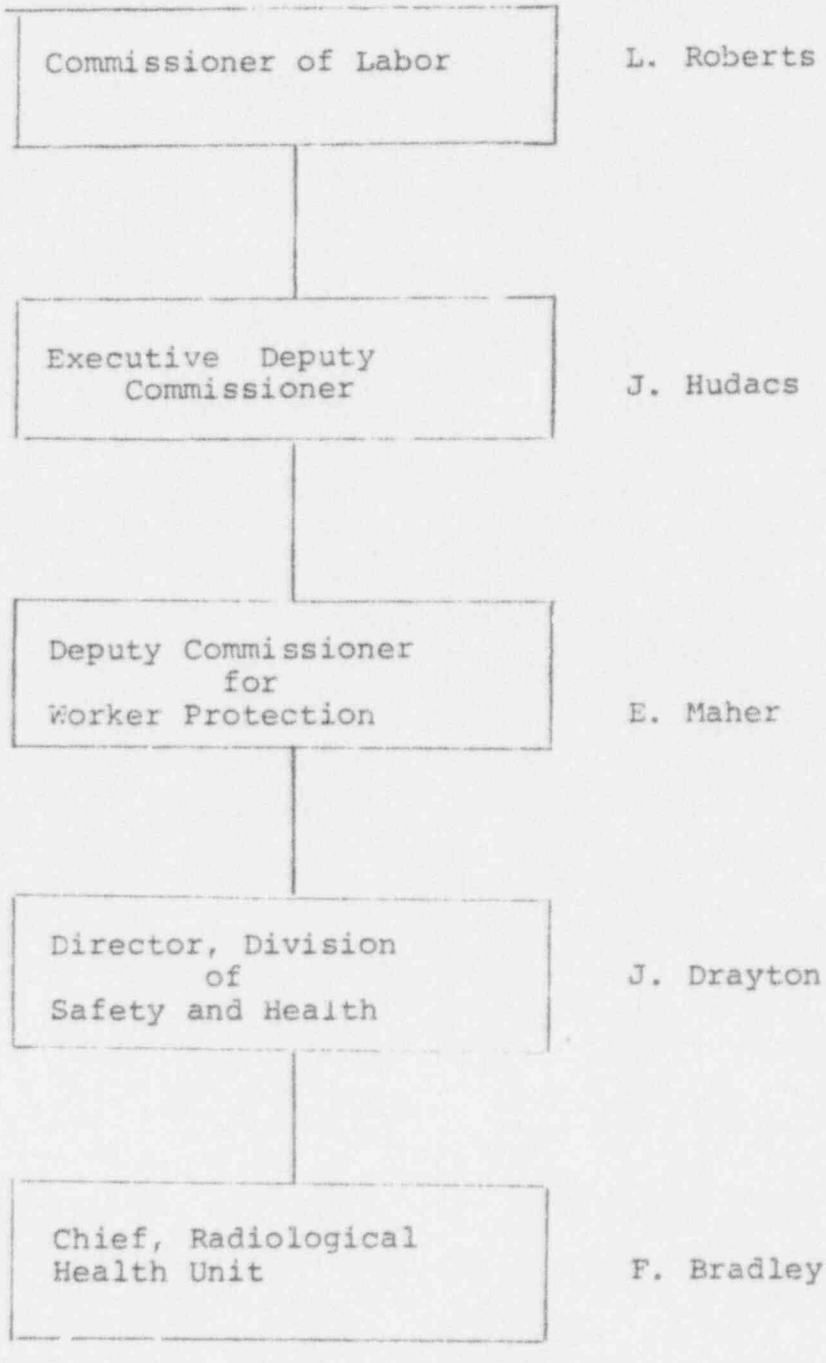
APPENDICES

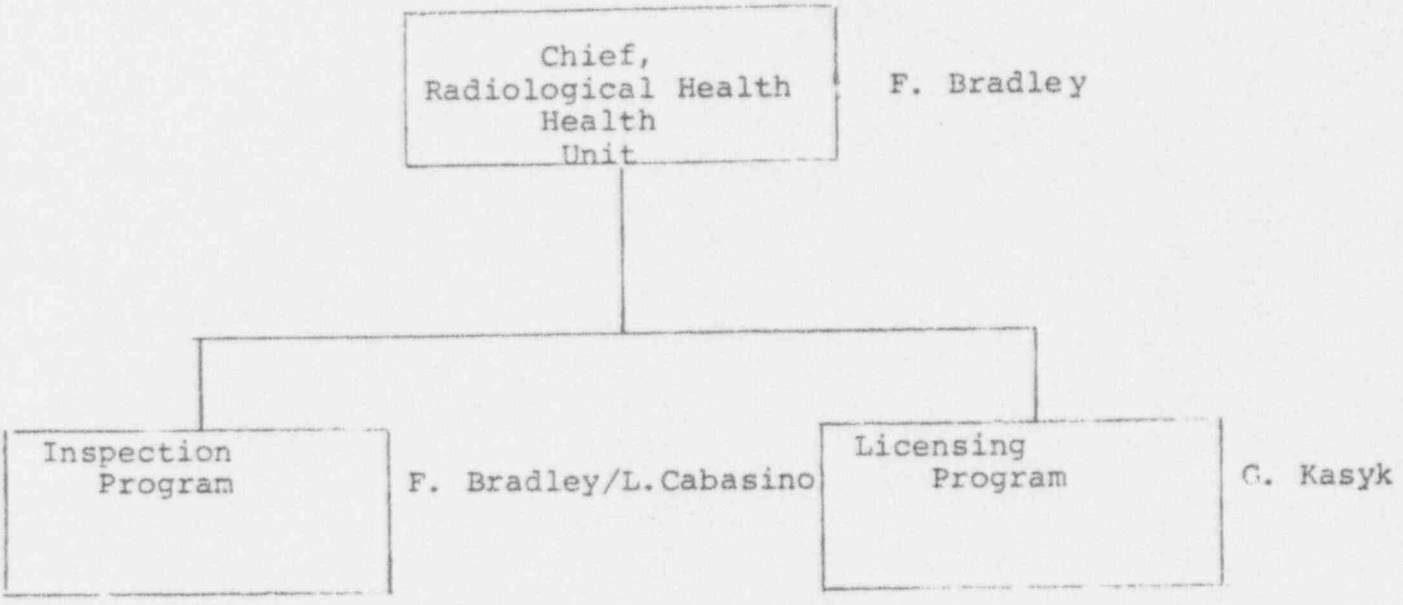
A - Department of Labor Organization Chart

B - RCP Organization Chart

C - Review of Selected License Files

D - Review of Selected Inspections Files


Commissioner of Labor
L. Roberts
Executive Deputy Commissioner
J. Hudacs
Deputy Commissioner for Worker Protection
E. Maher
Director, Division of Safety and Health
J. Drayton
Chief, Radiological Health Unit
F. Bradley


Chief,
Radiological Health
Health
Unit
F. Bradley
Inspection
Program
F. Bradley/L. Cabasino
Licensing
Program
G. Kasyk

APPENDIX C

REVIEW OF SELECTED LICENSING FILES

1. Northeast Inspection Services, Inc.
Schenectady, New York
License Number: 2360-3239
Issued: 5/4/84
Expiration Date: 7/31/87

This license authorizes a limited scope industrial radiography program including temporary job sites. The original application requested use at the applicant's address in an industrial park. The State informed the applicant that use of material at that facility was unacceptable. The license authorizes temporary job sites only. The application included information of equipment, personnel monitoring, training, surveys, posting, inspection and maintenance of equipment, leak testing calibration of instruments transportation and emergency procedures.

There was a statement regarding transportation that "If the radiation level at the surface of the storage container is less than 50 mr/hr and is less than 1 mr/hr at a distance of 1 meter, the Radioactive - Yellow III must be used." No other deficiencies were noted.

2. Universal Testing Laboratories, Inc.
Cedar Grove, New Jersey
License Number: 2326-3166
Issued: 6/15/83
Expiration Date: 11/30/85

This license authorizes industrial radiography at temporary job sites only. The applicant submitted a copy of their procedures from their NRC license with appropriate references to New York State Department of Labor requirements. The applicant's manual addressed instrumentation, personnel

monitoring, training, leak testing, transportation, internal audits, and operating and emergency procedures. No specific deficiencies were noted.

3. General Circuits, Inc.
Rochester, New York
License Number: 2369-3259
Issued: 7/3/84
Expiration Date: 4/30/87

This license authorizes 500 mCi sources in a Lixiscope for examination of printed circuit boards. The device is enclosed in a housing fixed to a work table. The applicant addressed security, source changing and disposal, leak testing, personnel monitoring (ring badges), emergency procedures and training of operators. Training certificates which had been submitted in a previous application were not included in the final package of material referenced in the tie-down condition.

4. Syncor International Corp.
Colonie, New York
License Number: 2364-3250
Issued: 6/19/84
Expiration Date: 10/31/87

This license authorizes the preparation and distribution of radiopharmaceuticals in medical Groups I-IV plus xenon, and other pharmaceuticals. The original application was dated August 3, 1983. After numerous deficiency letters and responses, the applicant submitted an entire application on March 14, 1984 which included an operating and emergency manual addressing Syncor's organization, RSO duties, and ALARA commitment, training, lab safety rules, personnel monitoring, survey procedures, instrumentation and calibration, shipping and transportation, waste disposal, and emergency procedures. The application also included an air emission permit issued by NYDEC. No deficiencies were noted.

5. Dredge Technology Corp.
New York, New York
SS&D Nos. NY-259-D-001-S and NY-259-D-002-S

This review concerns the Department's evaluation of density gauges. The two draft device sheet designate 5 model numbers, 110, 150, 180, 195 and 210. The model 110 device contains a 6 curie Cs-137 source. The model 150 contains either 6 curies of Cs-137 or 3 curies of Co-60. The models 180, 195 and 210 all contain 3 curies of Co-60. The difference between the models is the pipe diameter that can be accommodated by the gauge. One device sheet currently discussed by Cs-137 gauges (110 and 150), while the other covers the Co-60 gauges (150, 180, 195 and 210). It was felt that with the model 150 appearing on two separate sheets, this may cause some confusion. Two different cesium sources are utilized. The difference being the dimensions of the source capsule. It could not be determined, however, if one source was meant for the model 110 gauge and the other for the model 150 or if both sources could be used in both gauges. Since the company recently requested authorization for the use of Cs-137 in the model 150, there are a number of points that need to be clarified. During the review process the applicant has revised information on the gauges frequently. The State has had a difficult time finalizing the sheets. Prototype testing and quality assurance appear to be adequately addressed.

APPENDIX D

REVIEW OF SELECTED COMPLIANCE FILES

1. Self-Powered Lighting, Inc.
Elmsford, NY
License No.: 1308-1611, 1424-1611(GL), 1406-1611(GL), 1427-1611(GL)
License Type: Manufacturer of tritium light sources
Inspection Date: 3/4, 5, 6, 7, 8/85
Type: Regular
Inspector: Michael
Enforcement Letter: 4/17/85
Licensee Response: 5/6/85
State Acknowledgement: 5/15/85

Eleven items of noncompliance were noted regarding the manufacturing license. Two violations were noted regarding the GL licenses. Citation regarding inadequate hood velocities and failure to post and follow emergency procedure were repeat violations. Other significant violations included surface contamination exceeding State limits, lack of adequate security, failure to respond to tritium alarm per procedures and eating, drinking and smoking in controlled areas. The licensee accepted all items of noncompliance and provided an adequate description of corrective actions. The inspection appeared to be quite thorough addressing all important health and safety areas for this type of licensed operation.

2. Consolidated Testing Labs
New Hyde Park, NY
License No.: 329-0047
License Type: Industrial Radiography
Inspection Date: 3/11 12/85
Type: Regular
Inspector: Cabasino
Enforcement Letter: 3/18/85
Licensee Response: 4/10/85
State Acknowledgement: 5/6/85

Three items of noncompliance were noted. (1) Survey meter not functioning, (2) 2mR/hr line not defined in some surveys, and (3) survey records not available. With regard to the first item, it was not clear that the survey meter was being used. The second item is not clear. The handwritten part of the report that provided most of the inspection detail was for the most part illegible.

3. Neometrics, Inc.
Syosset, NY
License No.: 2331-3176
License Type: Manufacturer and Distributor of radioimmunoassay kits
Inspection Date: 12/13/84
Type: Regular
Inspector: Cabasino
Enforcement Letter: 12/20/84
Licensee Response: 1/7/85
State Acknowledgement: 5/7/85

Seven items of noncompliance were noted. These include no thyroid scans being documented for all employees working with iodine, discharge into sewage above limits, and inadequate shipping procedures. The citation regarding the sewage limits did not appear to be adequately supported by the information in the inspector's field notes.

4. General Electric Co.
Niskayuna, NY
License No.: 794-0220
License Type: Broad Industrial R&D
Inspection Date: 12/6, 7, 12/84
Type: Regular
Inspection: Michael
Enforcement Letter: Notice of Inspection Findings left by inspector
Licensee Response: 1/31/85 & 5/10/85
State Acknowledgement: 2/26/85 & 5/15/85

15 items of noncompliance were noted. One item concerned the lack of an Operating and Emergency Procedures Manual. This was a report item. Actually, a Radiation Safety Manual was issued 10/25/84 but was not submitted to the State for approval. Other citations included (1) inadequate radiation safety training, (2) inadequate survey records, (3) full Radiation Safety Committee not meeting, (4) shipping material without verifying customer license, (5) use of uncalibrated survey meter, (6) overdue leak tests, (7) inadequate surveys, (8) a shipment of liquid waste was certified to be solid, (9) RSO not conducting sufficient audits, and (1) inadequate records of effluent releases.

In the response of January 31, 1985, the licensee takes issue with a number of the inspector's findings, but agrees to make certain changes to the radiation safety program. For example, the licensee contends that a subgroup of their Radiation Advisory Group has held regular meetings and that a previous DOL inspector found this acceptable. Ultimately, the licensee agreed to reconstitute the committee and revise its charter. Some violations were apparently unwarranted. For example, the licensee presents evidence that calibration sources were leak tested. The State did not pursue this further.

5. The NDL Organization
Peekskill, New York
License Nos.: 1226-1422, 1959-1422, 7095-1422
License Type: Waste Broker
Inspection Date: 3/18-19/85
Type: Regular
Inspector: Cabasino
Enforcement Letter: 4/1/85
Licensee Response: 4/16/85
State Acknowledgement: 5/6/85

Three items of noncompliance were noted: (1) waste barrels were being stored longer than the authorized 12 months, (2) no bioassays performed, and (3) no leak tests on sealed sources. The licensee's response to this first item concerned the Hanford site no longer accepting scintillation vials. They intend to ship these vials to Quadrex when they obtain authorization.

The inspector performed surveys of the drums on hand, wipes and radiation levels, but little other information regarding transportation was provided, such as labeling, shipping papers, etc.

6. Pittsburgh Testing Laboratories
Tonawanda, New York
License No.: 2101-0712
License Type: Industrial Radiography
Inspection Date: 3/29/85
Type: Regular
Inspector: Cabasino
Enforcement Letter: 4/5/85
Licensee Response: 4/26/85
State Acknowledgement: 5/6/85

Eight items of noncompliance were noted: (1) performance of radiography without a second individual present, (2) no record of surveys of storage area, (3) untrained users of Troxler gauge, (4) inadequate instruction to female employee, (5) no documentation concerning license authorization for other PTL offices receiving Troxler gauge, (6) radiography performed in Ohio not authorized on New York license, (7) PTL not authorized to do instrument calibrations, (8) no record of license authorization regarding transfer of Ir-192 source.

The citation concerning use of material in Ohio is not an appropriate citation. This should have been referred to NRC for possible enforcement action (the licensee claims they had reciprocity authorization). The item concerning inadequate instruction of a female employee did not appear to be supported by information in the inspection report. In addition, "Section 38.21(1)(i) Note" was cited, which requires female employees to notify her employer of pregnancy. This has nothing to do with instructions which is addressed in Section 38.34(a). There did not appear to be anything in the report concerning a pregnant employee. Citation 3, 6, 7, and 8 were all denied by the licensee. The licensee's arguments appear to have merit in each of these cases.

August 26, 1985

Lillian Roberts
Commissioner of Labor
New York State Department
of Labor
State Office Campus Building
Albany, New York 12240

Dear Commissioner Roberts:

During the week of July 22-26, 1985, we completed our review and evaluation of the Department's Radiation Control Program. The review covered the principal administrative and technical aspects of this program and included an examination of the program's legislation and regulations, organization, management and administration, personnel, licensing and compliance. Particular emphasis was placed on the significant problem areas noted during our previous review and the Department's comprehensive plan to address the problem areas.

We are pleased to report that the Department has made significant progress in addressing program deficiencies. The approval of two additional professional staff positions is an especially important step in achieving continued program strength. Additional improvements noted include the adoption in June 1985 of revised regulations, a reduction in the inspection backlog, and the drafting of administrative procedures for managing the licensing and inspection programs.

As a consequence of these improvements we are now able to offer a finding that the Department's program for regulating agreement materials is adequate to protect the public health and safety and compatible with the Commission's program for regulation of like materials.

Even though significant improvements in the Department's program were noted, there are areas where continued effort is needed. The inspection backlog, although reduced from the time of our last review, remains higher than it should be. In addition, our review of enforcement actions taken by the Department revealed a number of deficiencies regarding the appropriateness of certain citations. "Enforcement Procedures" is a Category I indicator in NRC's Guidance for NRC Review of Agreement State Radiation Control Programs. A description of the categories used by NRC and how they relate to our findings is contained in Enclosure 1. Additional details on these deficiencies are provided in Enclosure 2.

With respect to the licensing backlog, it is essentially unchanged from the time of our last review. This backlog problem could, at least in part, be ameliorated through the availability and utilization of automatic typing capability by the clerical staff. Dr. Bradley has requested appropriate equipment be obtained for use by the clerical staff. We feel that the availability of this equipment will be of significant assistance in reducing the licensing backlog and in keeping it at a manageable level.

The additional staff is, however, the most important factor in reducing the licensing backlog and in this regard training for the new staff is an important consideration. The NRC has a number of training courses available for Agreement State personnel and we would be happy to assist the Department in providing training for its new staff whenever it is convenient. Also, Mr. Awai is the only member of the current staff who has not attended the NRC's industrial radiography course. We recommend that he attend this course the next time it is offered. We will forward an announcement to Dr. Bradley when the course is scheduled. "Training" is a Category II indicator in the NRC Guidelines.

Additional comments regarding the Department's program are provided in Enclosure 2. These comments were discussed with Dr. Bradley during our review. You may wish to have him address these comments.

In accordance with NRC practice, I am providing a second copy of this letter for placement in the State's Public Document Room or otherwise made available for public review.

The expeditious actions you and your staff have taken to address program deficiencies is commendable. We will assist you and your staff in any way we can to assure our mutual goal of protecting the public health and safety.

Sincerely,

Original signed by
Thomas E. Murley

Thomas E. Murley
Regional Administrator

Enclosures:
As Stated

cc: (w/Encls.)
D. Axelrod, NYSH
D. Sencer, NYCH
H. Williams, NYDEC
NRC Public Document Room
State Public Document Room
G. Wayne Kerr, OSP
F. Bradley, NYSDOL

Distribution:
TMurley
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McGrath by phone 8/12/85	8/12/85	8/13/85		8/26/85

Enclosure 2

COMMENTS AND RECOMMENDATIONS ON THE
NEW YORK STATE DEPARTMENT OF LABOR
RADIATION CONTROL PROGRAM

I. COMPLIANCE

1. Enforcement Procedures is a Category I indicator. The following comment is of major significance.

Comment

In reviewing a number of Notices of Violation issued by the Department, we found a number of cases where citations were inappropriate, i.e., no actual violation existed, the wrong section of the code was cited, or the citation addressed an area not under the Department's jurisdiction. For example, one licensee was cited for performing instrument calibration when not authorized to do so. The licensee responded pointing out that the Department had approved their procedures to do so. One licensee was cited against 38.22 radiation levels in uncontrolled areas when in fact the deficiency concerned inadequate records of surveys to determine radiation levels in unrestricted areas. As an example of the third type of inappropriate citation, a licensee was cited for performing radiography in Ohio. Such activity is clearly not under the jurisdiction of the Department and the licensee in his response pointed out that such work was done under reciprocity.

Recommendation

It is apparent that more careful preparation of Notices of Violation is required. We recommend that such notices be given careful scrutiny by program management and that this subject be discussed at the next staff meeting held for all inspectors. New staff members should be provided instruction on the proper preparation of citations for Notices of Violations.

2. Inspection Reports is a Category II indicator.

Comment

In a number of cases, inspection reports did not provide adequate justification or support for items of noncompliance. For example, one licensee was cited for exceeding water effluent limits, however,

the calculation supporting this violation was unclear as to the quantity of material released and the volume of water discharged to determine whether the daily, monthly or yearly limit was being exceeded. Documented support for a citation should be in sufficient detail such that management, or any other party, reviewing the report would come to the same conclusion as the inspector with regard to the item cited. Adequate support is important from a number of perspective not the least of which is the possibility of future escalated enforcement action which may involve the presentation of inspection reports as evidence in hearings or trials.

Recommendation

We recommend that program management selectively review inspection reports to assure that they provide adequate support for enforcement actions. This should also be a subject of a staff meeting with the inspection staff. We also feel that this is an important area in which new staff should be properly instructed.

3. Investigation of Incidents is a Category I indicator. The following comment is, however, of minor significance.

Comment

The Department's investigation of the Auburn Steel incident has been essentially completed, however the Department's final report has not been completed.

Recommendation

We recommend that the Department's draft report be completed and a copy forwarded to NRC.

For Distribution
SP01

STATE OF NEW YORK
DEPARTMENT OF LABOR
STATE OFFICE BUILDING CAMPUS
ALBANY, N.Y. 12240-0002

LILLIAN ROBERTS
COMMISSIONER OF LABOR

NYDL

September 30, 1985

Mr. Thomas E. Murley
Regional Administrator
United States Nuclear Regulatory
Commission -- Region 1
631 Park Avenue
King of Prussia, Pennsylvania 19406

Dear Mr. Murley:

I would like to thank you for your letter of August 26, 1985, indicating that the Department's Radiation Program is adequate and compatible with the Commission's criteria. The Department has invested considerable time and effort in assuring that the Radiological Health Unit has adequate staff and back-up assistance to meet its obligations. Your acknowledgment of this effort is appreciated. Many of the steps undertaken will take additional time to implement fully but I can assure you that the intiated steps will be followed through to completion.

Your offer of specialized training courses will be very helpful in initiating the new staff members into the Radiation Program.

Regarding your Enclosure #2 comments, Dr. Francis Bradley, the Department's Principal Radiophysicist, will reply directly to you and your staff. The report will be forwarded to you on or about October 15, 1985.

The efforts of you and your staff over the past 12 months in this audit and last year's audit are appreciated and I believe have resulted in a revitalized Radiation Program.

Sincerely,

Lillian Roberts

Lillian Roberts
Commissioner of Labor

1/1 SP01

STATE OF NEW YORK
DEPARTMENT OF LABOR
Division of Safety and Health
TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047

Radiological Health Unit
Room 6989

(tel: 212 - 488-7790)

October 24, 1985

Mr. Thomas E. Murley
Regional Administrator
U.S. Nuclear Regulatory Commission
Region 1
631 Park Avenue
King of Prussia, Pennsylvania, 19406

Dear Mr. Murley:

I have reviewed with our staff the Comments and Recommendations resulting from your 1985 Program Audit. Specific actions and observations based on these recommendations are attached, and procedures are in place through training and new procedures to reduce the incidence of inappropriate citations. These measures together with our augmented staff should be sufficient to meet our commitments.

The Auburn Steel Report is also enclosed. In the training area, it would aid our program immeasureably if the two new radiophysicists could attend the next 5 week Health Physics Course in Oak Ridge.

I would like to thank you, Mr. Allen, J.Lubenau and J. McGrath for their fine efforts on our behalf. Their efforts have aided our program greatly.

Sincerely,

F. J. Bradley

Francis J. Bradley
Principal Radiophysicist

FJB:tp
Encls.

cc: J. McGrath
S. Schrank

New York State Response to Nuclear Regulatory Commission Comments and Recommendations based on May 6 and 7 and July 22-26, 1985 Program Audit.

I. Compliance

1. Enforcement Procedures is a Category I indicator.

Action. Part of the problem resulted from the concerted Unit effort to reduce inspection backlog especially in the Buffalo Area. This involved considerable travel and inspection of licensees by all field staff in a short time frame. Sometimes when this is attempted the inspection results can be spotty, as your review noted. With two new radiophysicists now in training we will be able to get back to a normal scheduling and review cycle with more careful preparation and review of citations.

NOTE: Attendance by two new radiophysicists at the next 5 week Health Physics Course would help greatly in their training. Also, not all of the inspections upon which these observations were made had undergone our internal Unit review.

2. Inspection Reports is a Category II indicator.

Action. The effluent citation noted is an area where we have taken more stringent compliance action over the past year. An Internal Enforcement Memo was issued and is being enforced by our field staff. Additional instructions to staff and additional clarity in substantiating the citation are necessary. This will be on the agenda for our next Staff Meeting.

3. Investigation of Incidents is a Category I indicator.

Action. A copy of the Auburn Steel Report is attached in draft form for your staff's comment. We will issue a final report in about 4 weeks when we have received everyones comments.