



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
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**SUBJECT: NEW YORK FINAL FOLLOW-UP IMPEP REPORT**

Dear Charles Burns, Christanna Kendrot, and Kevin Wood:

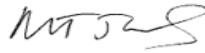
On January 14, 2025, the Management Review Board (MRB), which consisted of the U.S. Nuclear Regulatory Commission (NRC) senior managers and an Organization of Agreement States member, met to consider the results of the follow-up Integrated Materials Performance Evaluation Program (IMPEP) review of the New York Agreement State Program. The MRB Chair, in consultation with the MRB, found the New York Agreement State Program adequate to protect public health and safety, but needs improvement, and not compatible with the NRC's program. Because of the significance of these findings, the MRB Chair determined that the New York Agreement State Program should remain on a period of Heightened Oversight. Heightened Oversight is an increased monitoring process the NRC uses to follow the progress of improvement needed in an Agreement State Program. It involves preparation of a Program Improvement Plan (PIP), bimonthly conference calls, and submission of status reports prior to each call with the appropriate New York and NRC managers and staff members.

In response to the MRB Chair's decision, the New York Agreement State Program is requested to submit a PIP within 30 days of receipt of this letter as part of your response to the review team's recommendations and to further support the responses New York provided during the January 14, 2025, MRB meeting. I ask that you have your staff discuss the required elements of this PIP with Ms. Tamara Bloomer, Acting Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, before submitting the PIP to ensure that the planned actions and measures of success are clearly identified. Upon review of the PIP, the NRC staff will acknowledge receipt and approval of the PIP and schedule the first conference call.

The enclosed final report documents the IMPEP team's findings and summarizes the results of the MRB meeting. Based on the results of this follow-up IMPEP review, the MRB Chair found the New York Agreement State Program's performance unsatisfactory for the Legislation, Regulations, and Other Program Elements (LROPE) performance indicator and satisfactory but needs improvement for the Low-Level Radioactive Waste (LLRW) Disposal Program performance indicator. The MRB Chair kept two of the nine 2022 IMPEP review recommendations open, closed four of the 2022 IMPEP review recommendations, and modified the remaining three of the 2022 IMPEP review recommendations. The MRB Chair also determined that the next periodic meeting should be conducted in approximately 1 year for the LROPE and LLRW Disposal Program performance indicators, and the next full IMPEP review be conducted in approximately 2 years.

I appreciate the courtesy and cooperation extended to the IMPEP team during the review. I also wish to acknowledge your continued support for the Agreement State Program. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,



Signed by Lewis, Robert  
on 02/20/25

Robert J. Lewis  
Deputy Executive Director for Nuclear Materials,  
Administrative, and Corporate Programs  
Office of the Executive Director for Operations

Enclosures:

1. Final FY2024 New York Follow-Up  
IMPEP Report
2. 2024 New York MRB Meeting Participants



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

REVIEW OF THE NEW YORK AGREEMENT STATE PROGRAM

September 23-26, 2024

**FINAL FOLLOW-UP REPORT**

## EXECUTIVE SUMMARY

The results of the follow-up Integrated Materials Performance Evaluation Program (IMPEP) review of the New York Agreement State Program (New York) are discussed in this report. The review was conducted from September 23-26, 2024. Inspector accompaniments were conducted during the week of August 26, 2024.

Based on the results of the 2022 IMPEP review, New York's performance was found satisfactory but needs improvement for the performance indicators Sealed Source and Device (SS&D) Evaluation Program and Low-Level Radioactive Waste (LLRW) Disposal Program. In addition, New York's performance was found unsatisfactory for the performance indicator Legislation, Regulations, and Other Program Elements (LROPE). As a result, the Management Review Board (MRB) directed that New York remain on heightened oversight and that a follow-up IMPEP review be conducted for the less than satisfactory indicators, with a periodic meeting for the satisfactory indicators in approximately 2 years.

During the 2024 follow-up IMPEP review, the team reviewed the LLRW Disposal Program and LROPE performance indicators. However, the team did not review the SS&D Evaluation Program because the State of New York requested, and the Commission approved, the discontinuation of the State's SS&D Evaluation Program and approval authority, and for the reassumption of this authority by the NRC ([ML23138A033](#)) early in the review period. Concurrent with the follow-up IMPEP a periodic meeting was also held. The summary of the periodic meeting can be found in Attachment C.

The MRB Chair agreed with the 2024 follow-up IMPEP review team's proposal that New York's performance be found unsatisfactory for the LROPE performance indicator and satisfactory but needs improvement for the LLRW Disposal Program performance indicator.

The MRB Chair agreed with the 2024 follow-up IMPEP review team's proposal to keep two of the nine 2022 IMPEP review recommendation open.

- New York Department of Health (DOH) and Department of Environmental Conservation (DEC) establish processes, with appropriate milestones, to expedite the review and adoption of the U.S. Nuclear Regulatory Commission (NRC) regulations in accordance with the current NRC policy on adequacy and compatibility with the goal of adopting all overdue regulations by the next IMPEP review.
- Recommendation: New York should update its incident and allegation procedures, ensure that they are appropriately consistent for their activities, and train staff on the updated procedures.

The MRB Chair agreed with the 2024 follow-up IMPEP review team's proposal to close four of the 2022 IMPEP review recommendations.

The MRB Chair agreed with the 2024 follow-up IMPEP review team's proposal to modify three of the 2022 IMPEP review recommendations as follows.

- New York DEC should update LLRW Disposal Program training and qualification procedures to adopt the essential objectives in NRC Inspection Manual Chapter (IMC) [IMC 1248](#), "Formal Qualifications Program for Federal and State Material and Environmental

Management Programs,” Appendix E including initial qualification requirements for independent self-study, on-the-job training, specialized training, and refresher training.

- New York DEC should develop, train staff on, and implement procedures for the generation, approval, distribution, management, and retention of the LLRW Disposal Program licensing, permitting, and inspection documentation. Additionally, New York DOH’s inspection procedure should clearly specify inspection of the LLRW site.
- The New York DEC should update incident and allegation procedures to describe protection of the identities of concerned individuals, as allowed by law.

Accordingly, the MRB Chair found the New York radiation control program adequate to protect public health and safety but needs improvement and not compatible with the NRC’s program. Based on the results of the 2024 follow-up IMPEP review, the MRB Chair agreed that a periodic meeting take place in approximately 1 year for LROPE and LLRW Disposal Program performance indicators with the next full IMPEP review taking place in approximately 2 years. The MRB Chair also determined that the New York Agreement State Program should remain on heightened oversight, consistent with the criteria in Management Directive 5.6, “Integrated Materials Performance Evaluation Program (IMPEP).”

## 1.0 INTRODUCTION

The New York Agreement State Program (New York) follow-up Integrated Materials Performance Evaluation Program (IMPEP) review was conducted on September 23-26, 2024, by a team of technical staff members from the U.S. Nuclear Regulatory Commission (NRC). Team members are identified in Appendix A. Inspector accompaniments were conducted on August 27-28, 2024. The inspector accompaniments are identified in Appendix B. The review was conducted in accordance with the "Agreement State Program Policy Statement," published in the *Federal Register* on October 18, 2017 (82 FR 48535), and NRC Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated July 24, 2019. Preliminary results of the review, which covered the period of July 30, 2022, to September 26, 2024, were discussed with New York directors and senior managers on the last day of the review.

In preparation for the review, a questionnaire addressing applicable non-common performance indicators was sent to New York on July 29, 2024. The three agencies: New York City Department of Health and Mental Hygiene (NYC), Department of Environmental Conservation (DEC), and Department of Health (DOH) provided separate questionnaire responses on September 3, 16, and 27, 2024, respectively. Copies of the questionnaire responses are available in the NRC's Agencywide Documents Access and Management System Accession Numbers [ML24249A200](#), [ML24299A154](#), and [ML24263A278](#), respectively.

New York is administered by three agencies: (1) the NYC which has jurisdiction over medical, academic, and research uses of radioactive materials within the five boroughs of New York City; (2) the DEC which has jurisdiction over discharges of radioactive material to the environment, including releases to the air and water, and the land disposal of radioactive wastes; and (3) the DOH which has jurisdiction over industrial uses of radioactive materials throughout the State, as well as medical, academic, and research uses outside of New York City. Organization charts for the NYC, the DEC, and the DOH are available in [ML24249A203](#), [ML24263A182](#), and [ML24297A530](#), respectively.

The team issued a draft report to New York on November 12, 2024, for factual comment available in [ML24304B038](#). New York responded with comments to the draft report by email dated December 12, 2024, from Charles J. Burns, Assistant Director, Bureau of Environmental Radiation Protection, New York State Department of Health, and available in [ML24352A245](#). The team addressed New York's comments, as appropriate, in the proposed final IMPEP report dated December 31, 2024, and available in [ML24353A229](#).

At the time of the review, New York regulated 1270 specific licenses authorizing possession and use of radioactive materials. The review focused on the radiation control program as it is carried out under Section 274b. (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of New York.

The team evaluated the information gathered against the established criteria for each applicable non-common performance indicators and made a preliminary assessment of the New York performance.

## 2.0 PREVIOUS IMPEP REVIEW AND STATUS OF RECOMMENDATIONS

The 2022 IMPEP review concluded on July 29, 2022. The final report is available in [ML22353A062](#). The results of the review and the status of the associated recommendations are as follows:

Technical Staffing and Training: Satisfactory  
Recommendation: None

Status of Materials Inspection Program: Satisfactory  
Recommendation: None

Technical Quality of Inspections: Satisfactory

Recommendation: New York DOH implement a plan to assure all inspectors have calibrated instruments and that all instruments would be calibrated by the summer of 2023.

Status: During the 2024 follow-up IMPEP, the review team found that DOH and DEC had calibrated instruments. Therefore, the review team is recommending that this recommendation be closed.

Technical Quality of Licensing Actions: Satisfactory  
Recommendation: None

Technical Quality of Incident and Allegation Activities: Satisfactory

Recommendation: The New York DEC should develop and implement incident and allegation procedures, and New York DOH should ensure their incident and allegation procedures include the level of detail needed to properly close incidents and allegations.

Status: The 2024 follow-up IMPEP review team proposes that this recommendation be modified to address protecting the identity of the alleged. This recommendation is discussed in further detail in the Low-Level Radioactive Waste (LLRW) Disposal Program performance indicator section below.

Recommendation: New York should update its incident and allegation procedures, ensure that they are appropriately consistent for their activities, and train staff on the updated procedures.

Status: This recommendation was applicable to NYC and therefore the 2024 follow-up IMPEP review team did not review this recommendation as it was outside the scope of the follow-up IMPEP review.

Sealed Source and Device (SS&D) Program: Satisfactory, But Needs Improvement

Recommendations:

- The New York DOH review, revise, and update the SS&D training and qualification procedures to ensure the essential objectives of Appendix D, of the NRC Inspection Manual Chapter (IMC) [IMC 1248](#), "Formal Qualifications Program for Federal and State Material and Environmental Management Programs," including training on the appropriate industry codes and standards.

- The New York DOH develop a mechanism to ensure SS&D reviewers follow the applicable guidance in NUREG-1556, Volume 3, when developing new or amending existing registrations.
- The New York DOH close inactive SS&D registrations and identify them as inactive in the National SS&D Registry.

Status: The 2024 follow-up IMPEP review team proposes closing these recommendations because the State of New York requested, and the Commission approved, the discontinuation of the State's SS&D evaluation and approval authority and for the reassumption of this authority by the NRC ([ML23138A033](#)) early in the review period.

Legislation, Regulations, and Other Program Elements: Unsatisfactory

Recommendation: The New York DOH and the DEC establish processes, with appropriate milestones, to expedite the review and adoption of NRC regulations in accordance with the current NRC policy on adequacy and compatibility with the goal of adopting all overdue regulations by the next IMPEP review.

Status: The 2024 follow-up IMPEP review team found that although the DOH and the DEC established processes with appropriate milestones, they have a total of 30 overdue regulations.

The DOH had not adopted a total of 22 overdue regulations; 10 overdue regulations from the 2018 IMPEP, 5 overdue regulations identified during the 2022 IMPEP review, and had not adopted 7 regulations that are overdue for this review period.

The DEC had not adopted a total of eight overdue regulations; two overdue regulations from the 2018 IMPEP, two overdue regulations identified during the 2022 IMPEP review, and had not adopted four regulations that are overdue for this review period.

The NYC overdue regulation amendments were submitted in final and approved by the NRC on August 30, 2022, which resulted in NYC having no overdue regulations at the time of the review.

The 2024 follow-up IMPEP review team proposes this recommendation remain open.

LLRW Disposal Program: Satisfactory, But Needs Improvement

Recommendation: The New York DEC should develop and implement incident and allegation procedures, and the New York DOH should ensure their incident and allegation procedures include the level of detail needed to properly close incidents and allegations.

Status: The 2024 follow-up IMPEP review team found that the DOH and the DEC developed incident and allegation procedures and found them consistent with State Agreements Procedure (SA) [SA-300](#), "Reporting Material Events." However, the team found the DEC procedures do not describe the New York LLRW Disposal Program's policy for protection of the identity of allegers and is not consistent with [SA-109](#), "Reviewing the Non-Common Performance Indicator, Low-Level Radioactive Waste Disposal Program." Therefore, the 2024 follow-up IMPEP review team proposes this recommendation be modified as follows:

- The New York DEC should update incident and allegation procedures to describe protection of the identities of concerned individuals, as allowed by law.

Recommendation: The New York review and update the LLRW Disposal Program training and qualifications to adopt the essential objectives in IMC 1248, Appendix E, including initial



qualification and refresher training requirements, adjusted for the status of the LLRW disposal facilities.

Status: The 2024 follow-up IMPEP review team found that the DOH training and qualification program meets the essential objectives of NRC's IMC 1248, Appendix E. However, the DEC training and qualification program continues to not meet the essential objectives of the NRC's IMC 1248, Appendix E. Therefore, the review team is recommending that this recommendation be modified as follows:

- The New York DEC should update LLRW Disposal Program training and qualification procedures to adopt the essential objectives in IMC 1248, Appendix E, including initial qualification requirements for independent self-study, on-the-job training, specialized training, and refresher training.

Recommendation: New York develop, train staff, and implement procedures for the generation, approval, distribution, management, and retention of the LLRW Disposal Program licensing, inspection, and incident and allegation documentation.

Status: The 2024 follow-up IMPEP review team found that the DOH written licensing procedures addressed the previous recommendation for licensing documentation. However, the team found the DEC has not developed similar written procedures for permit documentation. The team learned that the DEC permitting process is governed by procedures specified in Title 6 New York Codes, Rules, and Regulations (NYCCR) 621, "Uniform Procedures." Additionally, the review team determined that the DEC program did not complete the inspections in accordance with the frequencies specified in [IMC 2401](#), "Near-Surface Low-Level Radioactive Waste Disposal Facility Inspection Program," and the DEC inspection procedure was not clear when the procedure was developed or updated. While the DOH inspection procedure was dated December 31, 2021, it was not clear where the procedure addressed the inspection of the LLRW sites. Therefore, the 2024 follow-up IMPEP review team proposes modifying the recommendation as follows:

- The New York DEC should develop, train staff, and implement procedures for the generation, approval, distribution, management, and retention of the LLRW Disposal Program licensing, permitting, and inspection documentation. Additionally, the New York DOH inspection procedure should clearly specify inspection of the LLRW site.

Overall finding: Adequate to protect public health and safety but needs improvement and not compatible with the NRC's program. Based on the results of the 2022 New York IMPEP review, the team recommended, and the Management Review Board (MRB) agreed, that NRC initiate a period of heightened oversight. The team further recommended, and the MRB agreed, that a follow-up IMPEP review for the less than satisfactory indicators and a periodic meeting for the satisfactory indicators be conducted in approximately 2 years. Based on the results of this follow-up IMPEP review, the team recommends that a periodic meeting take place in approximately 1 year for the non-common performance indicators LROPE and LLRW Disposal Program with the next full IMPEP review taking place in approximately 2 years. The MRB Chair will determine the timing of the next full IMPEP review.

### **3.0 NON-COMMON PERFORMANCE INDICATORS**

Four non-common performance indicators are used to review Agreement State programs: (1) LROPE; (2) SS&D Evaluation Program; (3) LLRW Disposal Program; and (4) Uranium Recovery (UR) Program. The NRC retains regulatory authority for SS&D Evaluation Program

(returned to NRC in August 2023), and UR Programs; therefore, non-common performance indicators LROPE and LLRW Disposal Program applied to this review.

### 3.1 Legislation, Regulations, and Other Program Elements

State statutes should authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under the State's agreement with the NRC. The statutes must authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of adequate protection of public health, safety, and security. The State must be authorized through its legal authority to license, inspect, and enforce legally binding requirements, such as regulations and licenses. The NRC regulations that should be adopted by an Agreement State for purposes of compatibility or health and safety should be adopted in a time frame so that the effective date of the State requirement is not later than 3 years after the effective date of the NRC's final rule. Other program elements that have been designated as necessary for maintenance of an adequate and compatible program should be adopted and implemented by an Agreement State within 6 months following NRC designation. A Program Element Table indicating the Compatibility Categories for those program elements other than regulations can be found on the NRC website at the following address: <https://scp.nrc.gov/regtoolbox.html>.

#### a. Scope

The team used the guidance in [SA-107](#), "Reviewing the Non-Common Performance Indicator: Legislation, Regulations, and Other Program Elements," and evaluated New York's performance with respect to the following performance indicator objectives. A complete list of regulation amendments can be found on the NRC website at the following address: <https://scp.nrc.gov/regtoolbox.html>.

- The Agreement State program does not create conflicts, duplications, gaps, or other conditions that jeopardize an orderly pattern in the regulation of radioactive materials under the Atomic Energy Act of 1954, as amended.
- Regulations adopted by the Agreement State for purposes of compatibility or health and safety were adopted no later than 3 years after the effective date of the NRC regulation.
- Other program elements, as defined in [SA-200](#) that have been designated as necessary for maintenance of an adequate and compatible program, have been adopted and implemented within 6 months of NRC designation.
- The State statutes authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under the agreement.
- The State is authorized through its legal authority to license, inspect, and enforce legally binding requirements such as regulations and licenses.
- Sunset requirements, if any, do not negatively impact the effectiveness of the State's regulations.

#### b. Discussion

New York became an Agreement State on October 15, 1962. There are three agencies regulating ionizing radiation in the State of New York: DEC, DOH, and NYC. The DEC's regulations are found in Title 6 NYCRR Chapter IV, Subchapter C, Parts 380-384 and are applicable to environmental releases and disposal of radioactive material. During the MRB, DEC indicated that Part 381 (certain portions of 49 Code of Federal Regulations (CFR) 173, Subpart I are incorporated by reference) became effective November 2024 and we are awaiting submission of the final rule for our review and approval. Part 384 (10 of CFR

Part 20, Subpart E) is undergoing modifications to maintain consistency with all required elements under Title 10 CFR where appropriate and are not yet effective. Part 384 is awaiting finalization. The only part for which the DEC has an equivalent is in 10 CFR Parts 20 where certain portions of Subpart K and 71 are compatible. Most of 10 CFR Part 20 is captured in the DOH's 10 NYCRR 16 (hereafter referred to as Part 16). The DOH legislative authority to administer its portion of the agreement is granted in Part 16. Part 16 is undergoing a comprehensive "repeal and replace" which is awaiting finalization after being republished in the New York State Register for a 45-day comment period. Depending on the number of comments received, Part 16 will be finalized in the New York State Register in 2025 and forwarded to us for review and approval. The NYC's regulations are found in NYC Health Code Article 175.

Each of the agencies have administrative rulemaking processes, which vary in length from drafting to finalizing a rule. The DEC and the DOH have similar regulation adoption processes which can take approximately 2 to 3 years depending on the urgency and workload of the units involved. The NYC process takes approximately 6 months to 1 year. The public, the NRC, other agencies, and impacted licensees and registrants are offered an opportunity to comment during the New York State Register public comment period. DOH also (informally) shared some of the proposed regulations with the NRC prior to the public comment period in which we reviewed them and provided comments accordingly. The review team noted that none of the agencies have rules and regulations that are subject to "sunset" laws.

The DEC rules are developed in conjunction with a program attorney. This process can take 3 months up to a year for more complex rules. Once the rules are developed, the DEC Office of General Counsel performs a review which can take 1-2 months. The proposed rules go to the DEC Executive Commissioner for review. Afterwards, they go to the Governor's Office for review. The proposed rules go out for a 30-to-90-day public comment period during which time a public hearing is held. After the public comment period and the comments are resolved, the DEC has 1 year from the public hearing date to file the final rules with the New York Department of State.

After the proposed regulations are developed within the Bureau, the DOH takes approximately 1 year to complete internal reviews; then they are transmitted to the Governor's office for review and approval which can take up to 2 years to complete. Once the proposed rules are reviewed by the Public Health Council, they are published in the New York State Register for a mandatory 60-day comment period. If there are substantive changes needed, the proposed rules are republished in the New York State Register for an additional 45-day public comment period. If there are no substantive changes needed, the proposed rules and resolution of comments are reviewed by the Public Health Council and published in the State Register as final rules with an effective date.

The NYC develops a regulation package and sends it to the NYC mayor's office and the City Law Department for review and approval. Once the rules are approved by them, they are placed on the Department's Board of Health agenda which meets quarterly starting in March of each year. The first time the regulation package is presented with proposed rules, the Board of Health determines whether to approve them for publication on the City's proposed rules website and in the City Record (a newspaper which publishes City agencies proposed and adopted rules). At this point, the rules are open for public comment. Once approved for publication by the Board, the proposed rule is also disseminated to various stakeholders, the media, and City officials. The agency also holds a public hearing on the proposed rule, about 30 days after the Board has approved it for publication.

At the time of the review, the DEC and DOH have a total of 30 overdue regulations. Most of which had been identified during previous IMPEP reviews.

- The DEC had not adopted two overdue regulations from the 2018 IMPEP; two overdue regulations were identified during the 2022 IMPEP review and had not been adopted; and four regulations were due for adoption during this review period.
- The DOH had not adopted 10 overdue regulations from the 2018 IMPEP, 5 overdue regulations were identified during the 2022 IMPEP review, and 7 regulations were due for adoption during this review period. Neither the DEC nor the DOH has submitted their regulation amendments for this review period, the 2022 IMPEP review, nor from the 2018 IMPEP review.
- The NYC had two overdue regulations from the 2018 IMPEP, two overdue regulations were identified from the 2022 IMPEP review, and one regulation amendment was overdue for adoption by 1 month during this review period. The NYC overdue final regulation amendments were submitted and approved by the NRC on August 30, 2022. At the time of the review, the NYC had no overdue regulations.

The following 30 amendments are all overdue as well as specifying the respective IMPEP reviews in which they were identified:

For DEC (2018 IMPEP)

- “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste,” 10 CFR Part 71, that was due for Agreement State adoption by August 10, 2015 (9 years and 1 month overdue).
- “Technical Corrections,” 10 CFR Parts 30, 34, 40, and 71, that was due for Agreement State adoption by August 6, 2015 (9 years and 1 month overdue).

For DEC (2020 IMPEP)

- “Revisions to Transportation Safety Requirements and Harmonization with International Atomic Energy Agency Transportation Requirements,” 10 CFR Part 71, that was due for Agreement State adoption by August 15, 2020 (4 years and 1 month overdue).
- “Miscellaneous Corrections – Organizational Changes,” 10 CFR Parts 37, 40, 70, and 71 that was due for Agreement State adoption by December 21, 2021 (2 years and 9 months overdue).

For DEC (this review period)

- “Miscellaneous Corrections,” 10 CFR Parts 1, 2, 34, 37, 50, 71, 73, and 140, that was due for Agreement State adoption by July 30, 2022 (2 years and 2 months overdue).
- “Organizational Changes and Conforming Amendments,” 10 CFR Parts 1, 2, 37, 40, 50, 51, 52, 55, 71, 72, 73, 74, 100, 140, and 150, that was due for Agreement State adoption by December 30, 2022 (1 year and 9 months overdue).
- “Miscellaneous Corrections,” 10 CFR Parts 1, 2, 19, 20, 21, 30, 34, 35, 40, 50, 51, 52, 60, 61, 62, 63, 70, 71, 72, 73, 74, 75, 76, 110, and 140, that was due for Agreement State adoption by November 16, 2023 (10 months overdue).
- “Miscellaneous Corrections,” 10 CFR Parts 2, 11, 20, 25, 32, 35, 37, 50, 52, 55, 70, 72, 73, 95, and 110, that was due for Agreement State adoption by September 8, 2024 (18 days overdue).

Consistent with SA-107, the review team differentiated overdue regulation amendments that are considered minor versus significant. Under SA-107, significant or essential regulations

are those that are designated as compatibility category A or B (not including minor corrections) as defined in SA-200. The team found that six of the eight overdue DEC regulation amendments were minor. The team also found that the remaining two overdue regulations were significant. The remaining two regulations include: “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste”, and “Revisions to Transportation Safety Requirements and Harmonization with International Atomic Energy Agency Transportation Requirements.” The review team found that none of the overdue amendments (either minor or significant) adversely affected public health and safety.

#### For DOH (2018 IMPEP)

- “Decommissioning Planning,” 10 CFR Parts 20, 30, 40, and 70, that was due for Agreement State adoption by December 17, 2015 (8 years and 9 months overdue).
- “Licenses, Certifications, and Approvals for Materials Licensees,” 10 CFR Parts 30, 36, 39, 40, 70, and 150 that was due for Agreement State adoption by November 14, 2014 (9 years and 10 months overdue).
- “Change of Compatibility of 10 CFR 31.5 and 31.6 (See RATS ID: 2001-1 for Rule text),” that was due for Agreement State adoption by January 25, 2015 (9 years and 8 months overdue).
- “Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste,” 10 CFR Part 71, due for Agreement State adoption by August 10, 2015 (9 years and 1 month overdue).
- “Technical Corrections,” 10 CFR Parts 30, 34, 40, and 71, due for Agreement State adoption by August 6, 2015 (9 years and 1 month overdue).
- “Requirements for Distribution of Byproduct Material,” 10 CFR Parts 30, 31, 32, 40, and 70, due for Agreement State adoption by October 23, 2015 (8 years and 11 months overdue).
- “Physical Protection of Byproduct Material,” 10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, and 71, due for Agreement State adoption by March 19, 2016 (8 years and 6 months overdue).
- “Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions,” 10 CFR Parts 30, 40, and 70, due for Agreement State adoption by August 27, 2016 (8 years and 1 month overdue).
- “Domestic Licensing of Special Nuclear Material – Written Reports and Clarifying Amendments,” 10 CFR Part 70, due for Agreement State adoption by January 26, 2018 (6 years and 8 months overdue).
- “Safeguards Information – Modified Handling Categorization, Change for Materials Facilities,” 10 CFR Parts 30, 37, 73, and 150, due for Agreement State adoption by January 28, 2018 (6 years and 8 months overdue).

#### For DOH (2022 IMPEP)

- “Revisions to Transportation Safety Requirements and Harmonization with International Atomic Energy Agency Transportation Requirements,” 10 CFR Part 71, due for Agreement State adoption by August 15, 2020 (4 years and 1 month overdue).
- “Miscellaneous Corrections,” 10 CFR Parts 37 and 40, due for Agreement State adoption by September 2, 2018 (6 years and 24 days overdue).
- “Miscellaneous Corrections,” 10 CFR Parts 19, 20, 30, 32, 37, 40, 61, 70, 71, and 150, due for Agreement State adoption by December 31, 2018 (5 years and 9 months overdue).

- “Medical Use of Byproduct Material – Medical Event Definitions, Training and Experience, and Clarifying Amendments,” 10 CFR Parts 30, 32, and 35, due for Agreement State adoption by January 14, 2022 (2 years and 8 months overdue).
- “Miscellaneous Corrections – Organizational Changes,” 10 CFR Parts 37, 40, 70, and 71, due for Agreement State adoption by December 21, 2021 (2 years and 9 months overdue).

For DOH (this review period)

- “Miscellaneous Corrections,” 10 CFR Parts 1, 2, 34, 37, 50, 71, 73, and 140, that was due for Agreement State adoption by July 30, 2022 (2 years and 2 months overdue).
- “Miscellaneous Corrections,” 10 CFR Parts 2, 21, 37, 50, 52, 73, and 110, that was due for Agreement State adoption by December 18, 2022 (1 year and 9 months overdue).
- “Organizational Changes and Conforming Amendments,” 10 CFR Parts 1, 2, 37, 40, 50, 51, 52, 55, 71, 72, 73, 74, 100, 140, and 150, that was due for Agreement State adoption by December 30, 2022 (1 year and 9 months overdue).
- “Individual Monitoring Devices,” 10 CFR Parts 34, 36, and 39 that was due for Agreement State adoption by June 16, 2023 (1 year and 3 months overdue).
- “Social Security Number Fraud Prevention,” 10 CFR Parts 9 and 35 that was due for Agreement State adoption by August 17, 2023 (1 year and 1 month overdue).
- “Miscellaneous Corrections,” 10 CFR Parts 1, 2, 19, 20, 21, 30, 34, 35, 40, 50, 51, 52, 60, 61, 62, 63, 70, 71, 72, 73, 74, 75, 76, 110, and 140, that was due for Agreement State adoption by November 16, 2023 (10 months overdue).
- Miscellaneous Corrections,” 10 CFR Parts 2, 11, 20, 25, 32, 35, 37, 50, 52, 55, 70, 72, 73, 95, and 110, that was due for Agreement State adoption by September 8, 2024 (18 days overdue).

As stated above, the review team differentiated overdue regulation amendments that are considered minor versus significant, consistent with SA-107. Under SA-107, significant or essential regulations are those that are designated as compatibility category A or B (not including minor corrections) as defined in SA-200. The team found that 9 of the 22 overdue DOH regulation amendments were minor. The team also found that 13 of the 22 overdue DOH regulation amendments were significant. Examples include: “Decommissioning Planning”, “Physical Protection of Byproduct Material”, “Medical Use of Byproduct Material – Medical Event Definitions, Training and Experience, and Clarifying Amendments”, and “Individual Monitoring Devices.” The review team found that none of the overdue amendments (either minor or significant) adversely affected public health and safety.

Based on the previous IMPEP review and discussions during the periodic meeting, the team has confidence that enforceable license conditions have been implemented for all NRC regulations, with compatibility requirements, not adopted by New York State regulations. Further, during the MRB meeting the DOH confirmed that they have enforceable license conditions for any NRC regulations, with compatibility requirements, not adopted by New York State regulations. This is a temporary measure and the DOH anticipates fully incorporating and being current on their regulations including regulation amendments by 2025. Proposed regulations submitted in September 2018, adopted 10 CFR Parts 30, 31, 32, 34, 35, 36, 37, 39, 40, 70, and 71 by reference.

### c. Evaluation

The team determined that, during the review period, New York met the performance indicator objectives listed in Section 3.1.a, except for:

- Regulations adopted by the Agreement State for purposes of compatibility or health and safety were adopted no later than 3 years after the effective date of the NRC regulation.

The team noted overdue regulations from the 2018, 2022, and this review period for both the DEC and the DOH, although the DOH is in the process of adopting the NRC regulations by reference to address the overdue regulations. Any NRC regulations with required compatibility requirements not adopted in the New York State regulations, the DOH fully enforces by license conditions.

The 2024 follow-up IMPEP team found that although the New York DOH and the DEC established processes with appropriate milestones, they have not adopted all overdue regulations from the 2018, 2022, nor this review period. Therefore, the review team is recommending that the recommendation remain open.

- The New York DOH and the DEC establish processes with appropriate milestones, to expedite the review and adoption of NRC regulations in accordance with the current NRC policy on adequacy and compatibility with the goal of adopting all overdue regulations by the next IMPEP review.

NRC will continue monitoring New York's progress on the adoption of overdue regulations as part of the next periodic meeting and through the oversight process.

Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that the New York performance with respect to the indicator, Legislation, Regulations, and Other Program Elements, be found unsatisfactory.

### d. MRB Discussion and Chair's Determination

The MRB Chair agreed with the team's recommendation and found New York's performance with respect to this indicator unsatisfactory.

## 3.2 SS&D Evaluation Program

This performance indicator was not reviewed as part of this follow-up IMPEP review because the State of New York requested, and the Commission approved, the discontinuation of the State's SS&D evaluation and approval authority and for the reassumption of this authority by the NRC ([ML23138A033](#)) early in the review period.

In a letter dated May 9, 2023, New York Governor Kathy Hochul requested discontinuation of the State's SS&D evaluation and approval authority and for the reassumption of this authority by the NRC ([ML23131A254](#)). The NRC staff evaluated New York's request in SECY-23-0058 and recommended the Commission approve the State's request ([ML23137A284](#)). On July 28, 2023, the Commission approved New York's request ([ML23209A824](#)). On August 2, 2023, the NRC Chair notified Governor Hochul that the Commission approved the State's request ([ML23138A033](#)) and reassumed authority to evaluate and approve SS&D applications within New York effective August 9, 2023 (88 FR 54354).

During this review period, the State of New York transferred all 15 SS&D registrations and associated files to the NRC. The NRC staff reviewed all registrations and files to ensure they were complete and issued new NRC registrations by August 29, 2024. The transfer has been completed.

The 2024 follow-up IMPEP review team proposes closing the three 2022 SS&D recommendations because the State of New York requested, and the Commission approved, the discontinuation of the State's SS&D evaluation and approval authority and for the reassumption of this authority by the NRC.

### 3.3 LLRW Disposal Program

The objective is to determine if the New York LLRW Disposal Program is adequate to protect public health and safety, and the environment. Five sub-elements are used to make this determination: (1) Technical Staffing and Training; (2) Status of LLRW Disposal Inspection Program; (3) Technical Quality of Inspections; (4) Technical Quality of Licensing Actions; and (5) Technical Quality of Incident and Allegation Activities.

#### a. Scope

The team used the guidance in [SA-109](#), "Reviewing the Non-Common Performance Indicator: Low-Level Radioactive Waste Disposal Program," and evaluated the New York performance with respect to the following performance indicator objectives:

##### Technical Staffing and Training

- Qualified and trained technical staff are available to license, regulate, control, inspect, and assess the operation and performance of the LLRW disposal facility.
- Qualification criteria for new LLRW technical staff are established and are followed or qualification criteria will be established if new staff members are hired.
- Any vacancies, especially senior-level positions, are filled in a timely manner.
- There is a balance in staffing the LLRW licensing and inspection programs.
- Management is committed to training and staff qualification.
- Individuals performing LLRW licensing and inspection activities are adequately qualified and trained to perform their duties.
- LLRW license reviewers and inspectors are trained and qualified in a reasonable period.

##### Status of LLRW Inspection Program

- The LLRW facility is inspected at prescribed frequencies.
- Statistical data on the status of the inspection program are maintained and can be retrieved.
- Deviations from inspection schedules are coordinated between LLRW technical staff and management.
- There is a plan to perform any overdue inspections and reschedule any missed or deferred inspections; or a basis has been established for not performing any overdue inspections or rescheduling any missed or deferred inspections.
- Inspection findings are communicated to licensees in a timely manner.

##### Technical Quality of Inspections

- Inspections of LLRW licensed activities focus on health, safety, and security.
- Inspection findings are well-founded and properly documented in reports.



- Management promptly reviews inspection results.
- Procedures are in place and used to help identify root causes and poor licensee performance.
- Inspections address previously identified open items, non-compliances, and violations.
- Inspection findings lead to appropriate and prompt regulatory action.
- Supervisors, or senior staff as appropriate, conduct annual accompaniments of each LLRW inspector to assess performance and assure consistent application of inspection policies.
- Inspection guides are consistent with the NRC guidance.
- An adequate supply of calibrated survey instruments is available to support the inspection program.

#### Technical Quality of Licensing Actions

- Licensing action reviews are thorough, complete, consistent, and of acceptable technical quality with health, safety, and security issues properly addressed.
- Applicable LLRW guidance documents are available to reviewers and are followed.
- Essential elements of license applications have been submitted and elements are consistent with current NRC or Agreement State regulatory guidance for describing the isotopes and quantities used, qualifications of authorized users, facilities, equipment, locations of use, operating and emergency procedures, and any other requirements necessary to ensure an adequate basis for the licensing action.
- LLRW license reviewers, if applicable, have the proper signature authority for the cases they review independently.
- License tie-down conditions are stated clearly and can be inspected.
- Deficiency letters clearly state regulatory positions and are used at the proper time.
- Reviews of renewal applications demonstrate a thorough analysis of a licensee's inspection and enforcement history.
- Licensing practices for risk-significant radioactive materials are appropriately implemented including fingerprinting orders (10 CFR Part 37 equivalent).
- Documents containing sensitive security information are properly marked, handled, controlled, and secured.

#### Technical Quality of Incident and Allegation Activities

- LLRW incident response, and allegation procedures are in place and followed.
- Response actions are appropriate, well-coordinated, and timely.
- On-site responses are performed when incidents have potential health, safety or security significance.
- Appropriate follow-up actions are taken to ensure prompt compliance by licensees.
- Follow-up inspections are scheduled and completed, as necessary.
- Notifications are made to the NRC Headquarters Operations Center for incidents requiring a 24-hour or immediate notification to the Agreement State or the NRC.
- Incidents are reported to the Nuclear Material Events Database and closed when required information is obtained.
- Allegations are investigated in a prompt, appropriate manner.
- Concerned individuals are notified of investigation conclusions.
- Concerned individuals' identities are protected, as allowed by law.

## b. Discussion

New York State has two disposal areas that received low-level waste prior to the 1980s; Cornell Radiation Disposal Site (RDS) located in Lansing, New York, and the West Valley State Disposal Area (SDA), located in western New York. The Cornell RDS, which occupies approximately 2 acres, received very small amounts of laboratory waste from 1956 to 1978. The Cornell RDS is managed under a Consent Order (A7-0333-95-08) and Permit Number 755001 by the DEC to meet the requirements of Title 6 NYCCR Part 380. A groundwater pump and treat system is used to remediate chemical contaminants. Concentrations of certain radionuclides are monitored in the groundwater treatment system's discharge to surface water.

The West Valley SDA occupies approximately 61,000 m<sup>2</sup> (15 acres). From 1963 to 1975 approximately 68,000 m<sup>3</sup> (2,400,000 ft<sup>3</sup>) of radioactive waste was disposed in near-surface trenches. Though the facility has not received waste in over 40 years, extensive monitoring is performed, and actions are necessary to prevent buildup of leachate in trenches and release of radioactivity to the environment. Small amounts of radioactive waste are generated and stored at the site because of monitoring and maintenance activities. The West Valley SDA is managed by both DOH Radioactive Materials License Number C0382 and DEC 6 NYCCR 380 Permit Number 9-0422-00011. Specifically, the DOH provides regulatory oversight of the possession of emplaced radioactive waste; management and maintenance of the West Valley SDA; and possession and treatment of radioactive solid and liquids generated because of management and maintenance activities. The DEC provides oversight of the monitoring and maintenance for the purpose of maintaining site integrity to control discharges and minimize the potential for release of radioactive materials to the environment. The regulatory oversight of the West Valley SDA by the DOH and the DEC is provided by staff based in Albany as well as DOH's Western Region, located in Buffalo, and DEC's Region 9, located in Buffalo and Albany.

### Technical Staffing and Training

The New York LLRW Disposal Program has 3 technical staff and 2 managerial staff in the DOH and 3 technical staff and 2 managerial staff in the DEC. Currently, there are no vacancies in either the DOH or the DEC. During the review period, one staff member left the New York LLRW Disposal Program, and one staff member was hired. The position was vacant less than one year. One of the managerial staff in DOH is qualified as an inspector and one of the managerial staff in DOH is qualified as a license reviewer. The DOH is working to qualify three additional inspectors and one additional license reviewer. The DEC has no qualified inspectors or permit reviewers. DEC is working to qualify an inspector and permit reviewer and has sent qualified inspectors out with inspectors to facilitate qualifications.

In the previous IMPEP, the review team recommended the New York LLRW Disposal Program review and update the training and qualifications to adopt the essential objectives in IMC 1248, Appendix E, including initial qualification and refresher training requirements, adjusted for the status of the LLRW disposal facilities. During the current follow-up IMPEP, the team reviewed the New York LLRW Disposal Program training and qualification programs. The team determined that the DOH training and qualification program meets the essential objectives of NRC's IMC 1248, Appendix E. However, the team determined that the DEC training and qualification program continues to not meet the essential objectives of the NRC's IMC 1248, Appendix E. Specifically, the team found that the DEC's qualification program does not indicate independent self-study, on-the-job training, specialized training, or refresher training documentation at the DEC. Additionally, the DEC does not have written

qualification requirements for permit reviewers as part of their qualification program, but the review team noted that the DEC relies on informal training on issues affecting LLRW Disposal Program permits, in general, and the West Valley SDA, specifically, as well as 6 NYCCR Part 380 permit processing and requirements. The lack of qualified staff has affected the performance of the New York LLRW Disposal Program as further detailed in the inspection sub indicators below. DEC acknowledged the team's concerns regarding LLRW Disposal Program inspector qualification and training, and committed to meeting the LLRW Disposal Program inspector qualification training requirements in IMC 1248, Appendix E. Further, DEC committed to accompanying the DOH qualified inspector during inspections of the West Valley SDA and conducting supervisory accompaniments of DEC staff. Based on the findings during this review, the 2024 follow-up IMPEP review team proposes modifying the previous recommendation to reflect the improvements made during this review period by the New York LLRW Disposal Program.

- The New York DEC should update LLRW Disposal Program training and qualification procedures to adopt the essential objectives in IMC 1248, Appendix E, including initial qualification requirements for independent self-study, on-the-job training, specialized training, and refresher training.

#### Status of LLRW Inspection Program

During the IMPEP review period, the DEC Region 9 staff performed two inspections of the West Valley SDA. The first inspection was conducted in November 2022, with a qualified DEC inspector. The second inspection was conducted in August 2024, as part of the inspector accompaniments associated with the 2024 IMPEP review, with a qualified DOH inspector and qualifying DEC inspector. Additionally, the DEC Albany and Region 9 staff performed two inspections of the Cornell RDS. These four inspections were completed in accordance with the inspection frequencies specified in the NRC's IMC 2401, "Near Surface Low-Level Radioactive Waste Disposal Facility Inspection Program." It should be noted that the DEC did not conduct any inspections of the West Valley SDA during the year 2023 and the early part of 2024, due to the retirement of their qualified inspector. However, DEC commits to conducting inspection of the West Valley SDA on a semi-annual basis moving forward. The DEC inspectors communicated inspection findings by formal correspondence to the licensee within 30 days following completion of the inspection. The DOH oversees the radiation protection aspects of the West Valley SDA via Radioactive Materials License Number C0382. During this review period DOH conducted one inspection. It should also be noted that DOH increased the inspection frequency from 5 years to 3 years. The DOH last inspected the West Valley SDA in 2022, during the 2022 IMPEP inspector accompaniments. The DOH included the priority level in the training procedure rather than the inspection procedures. After the follow-up review team discussed this matter with them, the DOH submitted a memorandum titled "Prioritization of West Valley State-Licensed Disposal Area (RML C0382)" to support their prioritization decision and to adjust the inspection the West Valley SDA.

Inspection findings were communicated by formal correspondence to the licensee within 30 days following the inspection.

#### Technical Quality of Inspections

On August 27-28, 2024, the team accompanied an unqualified DEC Region 9, and one qualified DOH inspector at the West Valley SDA. Under the DEC Part 380 permit, numerous disposal cell engineering and stabilization elements were observed. The team evaluated five inspections conducted during the review period - two at Cornell RDS and three at

West Valley SDA site; these included a variety of LLRW Disposal Program inspection activities. The review team found that the DEC's records indicated that supervisor accompaniments of the inspector were not performed during the review period.

During the follow-up IMPEP inspector accompaniments, the team found each of the inspectors prepared for their inspections and were thorough in their reviews. The documentation that was reviewed was found to be thorough and complete.

The supervisor is required to accompany each inspector annually and evaluate the inspector's knowledge, skills, and capabilities. The DEC management did not perform any inspector accompaniments or inspector evaluations during the review period. The inspection reports indicated who attended the inspection with the inspector. Review of the two completed inspection reports show a supervisor was present on one inspection, however, the DEC unqualified inspector signed the report.

During the previous IMPEP review, the review team recommended that the New York DOH implement a plan to assure all inspectors have calibrated instruments and that all instruments would be calibrated by the summer of 2023. The team found that the DOH and the DEC have calibrated instruments. Therefore, the review team is recommending that this recommendation be closed.

Additionally, during the previous IMPEP review, the review team recommended that New York develop, train staff, and implement procedures for the generation, approval, distribution, management, and retention of the LLRW Disposal Program licensing, inspection, and incident and allegation documentation. The team found that the DEC inspection procedure was not clear when the procedure was developed or updated. While the DOH inspection procedure was dated December 31, 2021, it was not clear where the procedure addressed the inspection of the LLRW sites. Therefore, the review team is proposing the modification of this recommendation as discussed in the evaluation below.

#### Technical Quality of Licensing Actions

The New York LLRW Disposal Program completed one licensing action - a license renewal and performed an acceptance review for a permit renewal during the review period, both of which the follow-up IMPEP team reviewed. The follow-up IMPEP team found that the New York LLRW Disposal Program's evaluation of the completed licensing actions has been thorough, complete, consistent, and of acceptable technical quality with health, safety, and security issues properly addressed. The reviews demonstrated a thorough analysis of the licensee's inspection and enforcement history. Essential elements of license renewal applications were submitted and were consistent with current regulatory guidance. License tie-down conditions were stated clearly and can be inspected.

During the previous IMPEP review, the review team recommended that the New York LLRW Disposal Program develop, train staff, and implement procedures for the generation, approval, distribution, management, and retention of the LLRW Disposal Program licensing, inspection, and incident and allegation documentation. During the current follow-up IMPEP review, the team reviewed the DOH written licensing procedures and found they addressed the previous recommendation for licensing documentation. However, the team also found the DEC has not developed similar written procedures for permit documentation. During this follow-up review, the team also learned that the DEC permitting process is governed by procedures specified in 6 NYCCR 621, "Uniform Procedures." The review team also learned that the DEC implements an internal electronic permit tracking system to maintain permit records. Although the DEC has not developed written procedures for permit documentation,

the review team did not identify any performance issues in the DEC's acceptance review conducted during this review period. Based on the findings of this review, the 2024 follow-up review team proposes modifying the recommendation to reflect improvements made during this review period by the New York LLRW Disposal Program.

- The New York DEC should develop, train staff, and implement procedures for the generation, approval, distribution, management, and retention of the LLRW Disposal Program licensing, permitting, and inspection documentation. Additionally, the New York DOH's inspection procedure should clearly specify inspection of the LLRW site.

#### Technical Quality of Incident and Allegation Activities

During the review period, the New York LLRW Disposal Program received no incidents over the review period. There was one potential allegation forwarded to the program by the NRC that was determined to not pertain to the West Valley radioactive waste disposal program. As part of the permitting process, the licensee is required to report to the LLRW Disposal Program staff if certain conditions occur (e.g., radioactivity in environmental media exceeds certain thresholds). Therefore, follow-up and on-site response actions and notifications were not evaluated by the review team because there were no reportable incidents.

During the previous IMPEP review, the review team recommended the New York LLRW Disposal Program develop, train staff, and implement procedures for the generation, approval, distribution, management, and retention of the LLRW Disposal Program licensing, inspection and incident and allegation documentation. During this follow-up IMPEP, the team reviewed the DOH and the DEC written licensing procedures and found them consistent with State Agreements Procedure SA-300, "Reporting Material Events." However, the team found the DEC procedures do not describe the New York LLRW Disposal Program's policy for protection of the identity of alleged and is not consistent with NRC's MD 8.8, "Management of Allegations." Because there have been no allegations during the review period, the review team considered this as an administrative issue at this time rather than a performance issue. Therefore, the follow-up review team believed that the New York LLRW Disposal Program has addressed the previous recommendation for developing incident and allegation documentation.

To ensure the protection of the alleged identity as allowed by law, the 2024 follow-up IMPEP review team proposes modifying the previous New York DEC LLRW Disposal Program allegation recommendation as follows to reflect the improvement made during the review period:

- The New York DEC should update the allegation procedures to describe protection of the identities of concerned individuals, as allowed by law.

### c. Evaluation

The team determined that, during the review period, the New York LLRW Disposal Program met the performance indicator objectives listed in Section 4.3.a, except for:

#### Technical Staffing and Training

The team determined that, during the review period, New York met the performance indicator objectives listed in Section 3.3.a, except for:

- Qualification criteria for new LLRW Disposal Program technical staff are established and are followed or qualification criteria will be established if new staff members are hired.
- Individuals performing LLRW Disposal Program licensing and inspection activities are adequately qualified and trained to perform their duties.

#### Status of the LLRW Inspection Program

The team determined that, during the review period, New York met the performance indicator objectives listed in Section 3.3.a, except for:

- The LLRW facility is inspected at prescribed frequencies.

#### Technical Quality of Inspections

The team determined that, during the review period, New York met the performance indicator objectives listed in Section 3.3.a, except for:

- Supervisors, or senior staff as appropriate, conduct annual accompaniments of each LLRW Disposal Program inspector to assess performance and assure consistent application of inspection policies.

#### Technical Quality of Incidents and Allegation Activities

The team determined that, during the review period, New York met the performance indicator objectives listed in Section 3.3.a, except for:

- Concerned individuals' identities are protected, as allowed by law.

The team found the DEC procedures do not describe the New York LLRW Disposal Program's policy for protection of the identity of alleged and is not consistent with NRC's Management Directive 8.8, "Management of Allegations." Because there have been no allegations during the review period, the review team considers this as an administrative issue rather than a performance issue.

To ensure the New York LLRW Disposal Program training and qualifications meets the essential objectives of NRC's IMC 1248, Appendix E, qualified individuals are available to perform inspections at prescribed frequencies, quality inspections and licensing actions, the 2024 follow-up IMPEP review team proposes modifying the previous recommendation as follows to reflect the improvements made during the review period:

- The New York DEC should update LLRW Disposal Program training and qualification procedures to adopt the essential objectives in IMC 1248, Appendix E, including initial

qualification requirements for independent self-study, on-the-job training, specialized training, and refresher training.

Likewise, to ensure quality of inspections, licensing actions, and incident and allegation documentation, the 2024 follow-up IMPEP review team proposes modifying the previous recommendation as follows to reflect the improvements made during the review period:

- The New York DEC should develop, train staff, and implement procedures for the generation, approval, distribution, management, and retention of the LLRW Disposal Program licensing and inspection documentation.

Similarly, to ensure the protection of the alleged identity as allowed by law, the 2024, follow-up IMPEP review team proposes modifying the previous New York DEC LLRW Disposal Program allegation recommendation as follows to reflect the improvement made during the review period:

- The New York DEC should update the allegation procedures to describe protection of the identities of concerned individuals, as allowed by law.

Based on the criteria in MD 5.6, the team recommends that the New York LLRW Disposal Program's performance with respect to the indicator, LLRW Disposal Program, be found satisfactory, but needs improvement.

#### d. MRB Discussion and Chair's Determination

The MRB Chair agreed with the team's recommendation and found New York's performance with respect to this indicator satisfactory, but needs improvement.

## 4.0 SUMMARY

The MRB Chair agreed with the 2024 follow-up IMPEP review team's proposal that New York's performance be found unsatisfactory for the LROPE performance indicator and satisfactory but needs improvement for the LLRW Disposal Program performance indicator.

The MRB Chair agreed with the 2024 follow-up IMPEP review team's proposal to keep two of the nine 2022 IMPEP review recommendations open.

- The New York DOH and the DEC establish processes, with appropriate milestones, to expedite the review and adoption of the NRC regulations in accordance with the current NRC policy on adequacy and compatibility with the goal of adopting all overdue regulations by the next IMPEP review.
- New York should update its incident and allegation procedures, ensure that they are appropriately consistent for their activities, and train staff on the updated procedures.

The MRB Chair agreed with the 2024 follow-up IMPEP review team's proposal to close the following four 2022 IMPEP review recommendations:

- The New York DOH implement a plan to assure all inspectors have calibrated instruments and that all instruments would be calibrated by the summer of 2023.

- The New York DOH review, revise, and update the SS&D training and qualification procedures to ensure the essential objectives of Appendix D, of IMC 1248, including training on the appropriate industry codes and standards.
- The New York DOH develop a mechanism to ensure SS&D reviewers follow the applicable guidance in NUREG-1556, Volume 3, when developing new or amending existing registrations.
- The New York DOH close inactive SS&D registrations and identify them as inactive in the National SS&D Registry.

The MRB Chair agreed with the 2024 follow-up IMPEP review team's proposal to modify three of the 2022 IMPEP review recommendations as follows:

- The New York DEC should update LLRW Disposal Program training and qualification procedures to adopt the essential objectives in IMC 1248, Appendix E, including initial qualification requirements for independent self-study, on-the-job training, specialized training and refresher training.
- The New York DEC should develop, train staff, and implement procedures for the generation, approval, distribution, management, and retention of the LLRW Disposal Program licensing, permitting, and inspection documentation. Additionally, the New York DOH's inspection procedure should clearly specify inspection of the LLRW site.
- The New York DEC should update incident and allegation procedures to describe protection of the identities of concerned individuals, as allowed by law.

Accordingly, the MRB Chair found the New York radiation control program adequate to protect public health and safety but needs improvement and not compatible with the NRC's program. Based on the results of the 2024 follow-up IMPEP review, the MRB Chair agreed that a periodic meeting take place in approximately 1 year for the LROPE and LLRW Disposal Program performance indicators with the next full IMPEP review taking place in approximately 2 years. The MRB Chair also determined that the New York Agreement State Program should remain on heightened oversight, consistent with the criteria in MD 5.6.



## LIST OF APPENDICES

Appendix A	IMPEP Review Team Members
Appendix B	Inspector Accompaniments
Appendix C	Periodic Meeting Summary

## APPENDIX A

### IMPEP REVIEW TEAM MEMBERS

<b>Name</b>	<b>Areas of Responsibility</b>
Jackie Cook, NRC Region IV	Team Leader Legislation, Regulations, and Other Program Elements
Gehan Flanders, NMSS	Team Leader in Training Low-Level Radioactive Waste (LLRW) Disposal Program Technical Staffing and Training Status of LLRW Disposal Inspection Program Technical Quality of Inspections
Farrah Gaskins, Region I	Regional State Agreement Officer
Christopher Grossman, NMSS	LLRW Disposal Program Technical Staffing and Training Technical Quality of Licensing Actions Technical Quality of Incidents and Allegation Activities

## APPENDIX B

### INSPECTOR ACCOMPANIMENTS

The following inspector accompaniments were performed prior to the on-site IMPEP review:

Accompaniment No.: 1	Permit No.: 9-0422-00011/00011
License Type: LLRW/DEC Part 380 Permit	Priority: 1
Inspection Date: 08/27/2024	Inspector's initials: DD

Accompaniment No.: 2	License No.: RML C0382
License Type: LLRW	Priority: 3
Inspection Date: 08/28/2024	Inspector's initials: SH

APPENDIX C



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

PERIODIC MEETING WITH THE STATE OF NEW YORK

TYPE OF OVERSIGHT: HEIGHTENED OVERSIGHT

September 25, 2024

## PERIODIC MEETING PARTICIPANTS

### **Nuclear Regulatory Commission (NRC)**

- Jacob Zimmerman, Deputy Director, Division of Radiological Safety and Security, Region I
- Farrah Gaskins, Regional State Agreements Officer, Region I

### **New York City Department of Health and Mental Hygiene**

- Diane Fung, Assistant Commissioner of Health
- Christanna Kendrot, Director, Office of Radiological Health
- Erik Finkelstein, Office of Radiological Health

### **New York State Department of Health**

- Alex Damiani, Director, Bureau of Environmental Radiation Protection
- Charles Burns, Assistant Director Bureau of Environmental Radiation Protection
- Nathaniel Kishbaugh, Chief, Radioactive Materials Section
- Emily Brower, Associate Radiological Specialist, Bureau of Environmental Radiation Protection
- Sara Heim, Inspection Manager, Bureau of Environmental Radiation Protection

### **New York Department of Environmental Conservation**

- Kevin Wood, Director, Bureau of Hazardous Waste and Radiation Management
- Richard Clarkson, Assistant Director, Division of Materials Management
- Thomas Papura, Supervisor, Radioactive Materials Management Section, Division of Materials Management
- John Frisone, Supervisor, Radiation Control Permits

## **1.0 INTRODUCTION**

This report presents the results of the periodic meeting held between the U.S. Nuclear Regulatory Commission (NRC) and the State of New York (NY). The meeting was conducted in accordance with the Office of Nuclear Material Safety and Safeguards State Agreements procedure (SA) [SA-116](#), "Periodic Meetings Between Integrated Materials Performance Evaluation Program Review (IMPEP)" dated October 29, 2021.

New York is currently administered by three agencies: (1) the New York State Department of Environmental Conservation (DEC), which has jurisdiction over discharges of radioactive material to the environment, including releases to the air and water, and the land disposal of radioactive wastes; (2) the New York City Department of Health and Mental Hygiene (NYC), which has jurisdiction over medical, academic, and research uses of radioactive materials within the five boroughs of New York City; and (3) the New York State Department of Health (DOH), which has jurisdiction over industrial uses of radioactive materials throughout the State, as well as medical, academic, and research uses outside of New York City. There have been no changes to the organizational structure since the May 2022 Integrated Materials Performance Evaluation Program (IMPEP). Combined, New York regulates approximately 1270 specific licenses authorizing possession and use of radioactive materials. The DOH regulates 996 licensees and the NYC regulates approximately 274 licensees. Additionally, the DEC also regulates 27 materials permit holders for radioactive effluent discharges and radioactive waste disposal from all state-regulated radioactive materials licensees.

NY underwent a full IMPEP review July 18-29, 2022. A Management Review Board (MRB) meeting to discuss the outcome of the IMPEP was held on December 13, 2022. The team recommended and the MRB agreed that New York's performance for the five common performance indicators be found satisfactory. There were also three non-common performance indicators reviewed: Legislation, Regulations and Other Program Elements (LROPE), the Sealed Source and Device (SS&D) evaluation program, and the Low-Level Radioactive Waste (LLRW) program. The team recommended, and the MRB agreed, that New York's performance for LROPE be found Unsatisfactory. The team recommended and the MRB agreed that New York's performance for the SS&D evaluation program and LLRW program be found satisfactory but needs improvement. In June 2023, New York subsequently relinquished its authority of the SS&D evaluation program and returned all active files to NRC. Overall, New York was found adequate to protect public health and safety but needs improvement and not compatible with the NRC's program. The MRB determined that a follow-up IMPEP, focusing on the indicators that were rated less than satisfactory, take place in two years (September 2024) and that a periodic meeting should take place at the same time. This meeting summary reflects the directed periodic meeting and focuses on the radioactive materials program as it is conducted under the Section 274b (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of New York.

## **2.0 COMMON PERFORMANCE INDICATORS**

Five common performance indicators are used to review the NRC regional and Agreement State radioactive materials programs during an IMPEP review. These indicators are: (1) Technical Staffing and Training, (2) Status of Materials Inspection Program, (3) Technical Quality of Inspections, (4) Technical Quality of Licensing Actions, and (5) Technical Quality of Incident and Allegation Activities.

## 2.1 Technical Staffing and Training (2022 IMPEP review: Satisfactory)

For the NYC, Office of Radiological Health, program staff serve as either inspectors or license reviewers. Currently, there are two fully qualified license reviewers and three fully qualified inspectors, with the chief of the radioactive materials section also performing licensing reviews. One license reviewer is nearing full qualification, having completed 90 percent of the required training activities. The NYC regulates medical and research licenses within the city, and at the time of the meeting there were no vacancies in the radioactive materials section. Recently, a new director was appointed to lead the radioactive materials section, who also oversees the X-ray program.

The Bureau of Environment Radiation Protection oversees both radioactive materials and X-Ray programs. Since the last IMPEP, the bureau experienced turnover with nine staff departures and five new hires, primarily in the X-ray program. The DOH has separate sections for licensing and inspection, with some cross-trained staff to perform both functions. Currently, five staff members perform licensing duties, while nine regional inspectors work remotely across the state. At the time of this meeting, one vacancy remained in the radioactive materials licensing section, and two staff have left the program since the 2022 IMPEP. The DOH has received approval to hire additional staff to address areas of vulnerability and strengthen coverage.

The DEC currently has six staff members and one vacancy. Four of these staff members have been with the agency for one year or less and are still completing the qualification process. When a staff member leaves the program, the agency must follow a “critical fill” process, competing with other sections within the agency to fill vacancies, with selectees being placed where they are most needed. Despite these challenges, the DEC stated they currently have adequate staffing levels to fulfill agency’s responsibilities.

Since the last full IMPEP in 2022, all agencies have experienced staff turnover. To address training needs, NY will host the NRC G-108, Inspection Procedures course in November, offering it to their own staff as well as other states. All the agencies have training programs compatible with NRC Inspection Manual Chapter (IMC) [IMC 1248](#), ensuring consistency. Qualified inspectors and license reviewers are required to complete 24 hours of refresher training every 24 months.

## 2.2 Status of the Materials Inspection Program (2022 IMPEP review: Satisfactory)

Since the last IMPEP, the NYC performed 295 inspections, including 32 initial inspections. Two inspections were performed overdue. One initial inspection was delayed by a year due to an incorrect license issuance date. At the time of this meeting, there were no overdue inspections.

The DOH performed 409 total inspections, including 7 routine inspections and 6 initial inspections that were performed overdue. At the time of the meeting, nine inspections remained overdue, and the DOH was prioritizing work to address them. In accordance with [IMC 2800](#), “Materials Inspection Program,” the DOH has implemented an extension of inspection frequencies for good compliance. The DOH maintains a database and makes a note of these extensions within it. The criteria for the extensions were discussed during the meeting.

The DOH is the only agency in the state performing reciprocity inspections. Using criteria from the prior version of IMC 2800, the DOH inspected 20 percent of candidate licensees entering New York’s jurisdiction. The number of reciprocity inspections performed since the last IMPEP

includes: 7 out of 19 candidates in 2022, 2 out of 28 candidates in 2023, and 3 out of 23 candidates at the time of the meeting for 2024.

### 2.3 Technical Quality of Inspections (2022 IMPEP review: Satisfactory)

The NYC has shorter inspection frequencies compared to the NRC. For example, the NYC performs nuclear medicine inspections where no written directive is required approximately 2 years, compared to the NRC's 5-year interval. The NYC stated that supervisory accompaniments were performed in 2022 and 2023. Inspection reports are typically signed out and issued to licensees within 30 days. The NYC reported no instances where reports were issued greater than 30 days for inspections or 45 days for team inspections.

The DOH maintains a spreadsheet to keep track of inspections, with inspectors working remotely from across the state. The DOH stated that supervisory accompaniments were performed for all staff conducting radioactive materials inspections. The DOH also supported the DEC by performing an inspection accompaniment for an LLRW inspector. Generally, the DOH issues inspection reports within 30 days, with only a small number of instances where additional information delayed the process. Inspection results are communicated to the licensee during the on-site inspection.

During the 2022 IMPEP, the team recommended and the MRB agreed, that the DOH should ensure all inspectors have calibrated instruments, with a goal of achieving full compliance by summer 2023. The DOH reported that approximately 77 percent of the meters are currently within calibration. All inspection staff have access to a calibrated and operable meter, supported by a SharePoint site to track survey equipment and provide email reminders for calibrations. The DOH assigned a designated person to manage the database and contact individuals, as needed, to ensure timely meter calibrations.

The DEC performs inspections focused on effluent releases at licensees' facilities in New York. Since the previous IMPEP, the DEC has performed 21 inspections. These inspections do not follow the same inspection priority as the NRC. The priority of the inspection is based on the amount of material possessed by the licensee and the quantities allowed to be emitted in accordance with the permit issued by the DEC.

All agencies reported that they have a sufficient number and types of survey meters to perform their respective inspection duties.

### 2.4 Technical Quality of Licensing Actions (2022 IMPEP Review: Satisfactory)

The NYC reported completing 340 licensing actions since the last IMPEP. At the time of the meeting, 25 licensing actions were under review with 15 awaiting a response from the licensee. The NYC had three terminations and two renewal actions under review for more than a year. Every licensing action has a second reviewer and is signed by the qualified reviewer.

In DOH, the radioactive materials section chief retired a few months prior to the meeting, and a license reviewer was promoted to the position. The section chief signs all licenses. The DOH adopts NRC's NUREG series as guidance for licensing actions and reported completing approximately 800 licensing actions since the 2022 IMPEP. A few renewals have been open for over a year due to pending additional information from licensees. Timely renewal letters have been issued, and inspections have confirmed these licensees remain in compliance. Most actions are processed within 30-60 days.



The DEC reported having approximately 26 permitting actions, including renewals, modifications, and variances (temporary permit changes). For variances, the DEC typically allows two weeks. At the time of the meeting, no permitting actions were pending. The main DEC office in Albany performs technical reviews, while regional permit administrators sign and issue final actions. Each regional office has an assigned permit administrator, and final approvals are delegated based on central office recommendation.

## 2.5 Technical Quality of Incident and Allegation Activities (2022 IMPEP review: Satisfactory)

Since the last IMPEP, NYC had 10 reportable incidents. While all were appropriately reported to Nuclear Material Events Database (NMED), five incidents were not reported to the NRC as required. The NYC stated that they believed the NRC tracked events that were in NMED and that reporting to NMED satisfied the reporting requirement. The requirement to report incidents in accordance with State Agreement Procedure (SA) [SA-300](#), "Reporting Material Events," was clarified during the meeting. The NYC also received six allegations directly from concerned individuals and none were referred by the NRC. The NYC indicated that their procedure involves following up on all substantiated allegations. They performed follow-up activities for some of the six allegations and closed the cases with the concerned individuals.

The DOH reported 21 events, all of which were reported to NMED, but not all events were reported to the NRC in accordance with SA-300. The reporting requirements were discussed with the DOH. In most cases, the DOH dispatched inspectors within a few days or addressed events during the next scheduled inspection. Since the 2022 IMPEP, the DOH received three allegations, all referred by NRC. The DOH has a process in place to follow-up on all referred allegations.

The DEC, which typically does not have incidents rising to the level of reportable events, reported no events since the last IMPEP. While the DEC handles complaints and concerns, none were received since the last IMPEP.

During the 2022 IMPEP, the team recommended that the DEC develop and implement incident and allegation procedures, and that the DOH revise their procedures to include the necessary level of detail to properly close incidents and allegations. Both agencies have since developed or revised their procedures accordingly.

## 3.0 **NON-COMMON PERFORMANCE INDICATORS**

Four non-common performance indicators are used to review Agreement State programs: (1) LROPE, (2) SS&D Evaluation Program, (3) LLRW Disposal Program, and (4) Uranium Recovery Program. The NRC's Agreement with New York only includes the non-common performance indicators LROPE and LLRW.

By direction from the MRB, this periodic meeting was held concurrently with a follow-up IMPEP review. The follow-up IMPEP was limited in scope and therefore the periodic meeting was also limited in scope. The indicators LROPE and LLRW were reviewed as part of the follow-up IMPEP review; therefore, were not discussed during the periodic meeting.

## 4.0 **SUMMARY**

The New York Agreement State Program is comprised of three agencies: NYC, DOH, and DEC. During the 2022 IMPEP review, the team made several recommendations for both the DOH and

the DEC, and while both agencies have made progress in their approved performance improvement plan, there are still pending tasks that required completion. These details are elaborated further in the IMPEP report.

Since the 2022 IMPEP review, all three agencies have experienced staff turnover. The NYC and the DOH addressed overdue inspections since the IMPEP, though the DOH had overdue inspections at the time of the meeting. A plan to address overdue inspections was discussed with all agencies. The NYC and the DOH had ongoing licensing actions and were working to complete and issue them in a timely manner. All agencies have a process for responding to events and allegations.

During the meeting, a discussion on the benefits of conducting self-assessments highlighted their value in proactively identifying potential program concerns, even though they are not required. Emphasis was also placed on the importance of completing the tasks the agencies committed to in their performance improvement plan and was also discussed.

Since this meeting was held concurrently with a follow-up IMPEP, the scheduling of the next full IMPEP and periodic meeting will be determined.

**New York Agreement State Program Management Review Board Meeting Participants  
January 14, 2025, 1:00 p.m. – 4:30 p.m. (ET), via Microsoft Teams**

**Management Review Board:**

- Rob Lewis, Deputy Executive Director for Nuclear Materials, Administrative, and Corporate Programs, the Office of the Executive Director for Operations, and MRB Chair;
- Jen Scro, Deputy Assistant General Counsel for Rulemaking, Agreement States and Fee Policy;
- John Lubinski, Director, Office of Nuclear Material Safety and Safeguards (NMSS);
- Mohammed Shuaibi, Deputy Regional Administrator, NRC Region III; and
- Nancy Stanley, OAS representative to the MRB, State of New Jersey.

**New York Program Management:**

- Diane Fung, Assistant Commissioner, Bureau of Environmental Sciences and Engineering, New York City Department of Health and Mental Hygiene;
- Christanna Kendrot, Chief of Field Operations, Bureau of Environmental Sciences and Engineering, New York City Department of Health and Mental Hygiene;
- Christine Westerman, Director, Division of Environmental Health Protection, New York State Department of Health;
- Charles Burns, Assistant Director, Bureau of Environmental and Radiation Protection, New York Department of Health;
- Sara Heim, Chief, Inspection and Enforcement, Bureau of Environmental and Radiation Protection, New York Department of Health;
- Kevin Wood, Director, Bureau of Hazardous Waste and Radiation Management, New York State Department of Environmental Conservation;
- Richard Clarkson, Assistant Director, Division of Materials Management; New York State Department of Environmental Conservation; and
- Alyse Peterson, Senior Advisor for Nuclear Coordination and Radioactive Waste Policy, New York State Liaison Officer Designee.

**IMPEP Team:**

- Jackie Cook, Team Leader, and Region IV Regional Agreement State Officer;
- Gehan Flanders, Team Leader in Training, NMSS;
- Farrah Gaskins, Region I Regional Agreement State Officer; and
- Chris Grossman, NMSS.

**NRC, State of New York, and Other Members of the Public:**

- |                                 |  |
|---------------------------------|--|
| • Tammy Bloomer, NMSS           | • Solomon Sahle, NMSS                    |
| • Dafna Silberfeld, NMSS        | • Lymari Sepulveda, NMSS                 |
| • Paul Krohn, NRC Region I      | • Duncan White, NMSS                     |
| • Jacob Zimmerman, NRC Region I | • Reuben Siegman, OGC                    |
| • Adelaide Giantelli, NMSS      | • Lisa London, OGC                       |
| • Monica Ford, NRC Region I     | • Shawn Seeley, NRC Region I             |
| • Jackson Barth, NMSS           | • Darren Piccirillo, NRC Region III      |
| • Allyce Bolger, NMSS           | • Randy Erickson, NRC Region IV          |
| • Sherrie Flaherty, NMSS        | • Robert Evans, NRC Region IV            |
| • Jazmin Flores, NMSS           | • Emily Brower, State of New York        |
| • Lisa Forney, NMSS             | • Christine Dobert, State of New York    |
| • Robert Johnson, NMSS          | • John Frisone, State of New York        |
| • Lee Smith, NMSS               | • Nathaniel Kishbaugh, State of New York |

**New York Agreement State Program Management Review Board Meeting Participants  
January 14, 2025, 1:00 p.m. – 4:30 p.m. (ET), via Microsoft Teams**

- Kayla Szefel, State of New York
- Thomas Papura, State of New York
- Kevin Wood, State of New York
- Courtney Eckstein, State of Indiana
- Patrick Turner, State of Indiana
- Brenda Tubbs, State of Indiana
- Keisha Cornelius, State of Oklahoma
- Sarah Sanderlin, State New Jersey

The meeting began at approximately 1:00 p.m. and was adjourned at approximately 3:02 p.m.

NEW YORK FINAL FOLLOW-UP IMPEP REPORT DATE February 21, 2025

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DATE	Jan 17, 2025	Jan 21, 2025	Jan 17, 2025	Jan 17, 2025
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NAME	AGiantelli <i>AG</i>	TBloomer <i>TB</i>	JLubinski <i>JL</i>	RLewis <i>RL</i>
DATE	Jan 24, 2025	Jan 30, 2025	Feb 1, 2025	Feb 20, 2025

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