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March 29, 2001

Paul J. Merges, Ph.D.
Director
New York State Department of Environmental Conservation
Division of Solid & Hazardous Waste
Bureau of Radiation & Hazardous Site Management
50 Wolf Road, Room 460
Albany, NY 12233-7255

SUBJECT: PERIODIC MEETING SUMMARY FOR NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Dear Dr. Merges:

A periodic meeting with the New York State Department of Environmental Conservation (NYDEC) was held on February 28, 2001. The purpose of the meeting was to review and discuss the status of NYDEC's Agreement State program. The NRC was represented by Kathleen Schneider from the NRC's Office of State and Tribal Programs and me. Specific topics and issues of importance discussed at the meeting included the impact on the Bureau's resources due to the Formerly Utilized Site Remedial Action Program (FUSRAP) as implemented by the U.S. Army Corp of Engineers.

I have completed and enclosed a general meeting summary, included any specific actions that will be taken as a result of the meeting.

If you feel that our conclusions do not accurately summarize the meeting discussions, or have any additional remarks about the meeting in general, please contact me at (610) 337-5042 or by e-mail at adw@nrc.gov to discuss your concerns.

Thank you for your cooperation.

Sincerely,

Original signed by Duncan White

Duncan White
Regional State Agreements Officer
Division of Nuclear Materials Safety

Enclosure: As stated

cc: R. Bores, RI
K. Schneider, STP
J. Spath, NYSERDA

P. Merges
New York State Department of Environmental Conservation

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AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (NYDEC)

DATE OF MEETING: February 28, 2001

ATTENDEES:	<u>NRC</u>	<u>DEC</u>
	Duncan White, RSAO	Paul Merges, Program Director
	Kathleen Schneider, ASPO	Barbara Youngberg, Chief, Radiation Section
		Tim Rice
		Sandra Hinkle

DISCUSSION:

At the previous periodic meeting in September 1999, the proposed status of each of the recommendations in Section 5.0 of the 1998 revised final Integrated Materials Performance Evaluation Program (IMPEP) was discussed. As a result of the discussions at that meeting, two of the three recommendations remained opened. The proposed status of these two recommendations is summarized below:

1. Recommendation: The review team recommends that NYDEC document its training program to include overall policy and minimum training requirements for both the permitting and compliance staff. (Section 3.3.4)

Status: NYDEC has not completed documentation of its training program due to higher priority issues. This recommendation remains open.
2. Recommendation: The review team recommends that NYDEC incorporates the handling of incidents and allegations into their inspection procedures. (Section 3.5.4)

Status: NYDEC has not incorporated the handling of incidents and allegations into their inspection procedures due to higher priority issues. This recommendation remains open.

A significant portion of the meeting discussed the impact of the Formerly Utilized Sites Remedial Action Program (FUSRAP) on NYDEC. The Program Director indicated that NYDEC expends approximately 6 FTE on FUSRAP including: 1.5 FTE management, 3 FTE technical staff, all legal assistance (approximately 1 FTE) to the Radiation Program and upper management time focused on this issue. The amount funded for FUSRAP is 2 FTE and an administrative position. NYDEC resources expended on FUSRAP and the U.S. Army Corps of Engineers (CORP) have been diverted from other portions of the program, resulting in a backlog in permitting, inspection, and rule making. In addition, corrective actions for the recommendations from the last IMPEP have not been completed.

The Program Director indicated that the CORP is essentially operating without any radiation regulatory oversight. Consequently, the failure of the NRC (or any other federal agency) to address FUSRAP and CORP has left the State with a great deal of work. The CORP has used or has proposed to use different classification and cleanup levels for the same type of residual contamination. According to NYDEC, this has placed the Department in the difficult position of potentially permitting a site after the CORP has completed remediation.

NYDEC is also concerned about the disposal of pre-1978 waste material from the Port Hope facility in Canada into New York landfills. Since the Hanford facility has permitted the disposal of radium from Spain, NYDEC is concerned that this will have wide reaching implications. Another NORM issue that may impact NYDEC (and other NY agencies) in the future is the discovery of natural gas in the Finger Lakes and western regions of the State.

Another resource intensive activity impacting the program is the issuance of DOT exemptions to waste haulers that trigger radiation monitors at solid waste and recycling facilities. Each exemption takes three hours of staff time. NYDEC indicated that about 100 exemptions were issued in New York State in 2000.

Additional responsibilities for the program include the handling of regulated medical waste as a result of the increased use of Sm-153 and the presence of a long-lived impurity Eu-154 in the product. The Radiation Program has also had protracted interaction and an enforcement conference with Radiocat regarding the I-131 emissions from their facilities.

The radiation program current staffing includes 12 FTE staff, two frozen positions, one attorney and the Program Director. From a budget standpoint, the Program Director is concerned about the Low Level Radioactive Waste funds that the NYDEC receives via charge back to nuclear NY utilities. With the trend towards more out-of-state ownership of the nuclear power plants, the future of the funding source is uncertain. The program is looking at alternative funding sources such as NESHAPS, startup fees for federal labs, and DOT.

The NYDEC Commissioner, John Cahill, has recently left to take a Senior Policy Advisor position in the Governor's office. The Program Director indicated that Mr. Cahill was supportive of the radiation program and understood the FUSRAP and CORP issues. Mr. Cahill's presence in the Governor's office is seen as positive by the Radiation Program. Erin M. Crotty has been confirmed as the new NYDEC Commissioner.

NYDEC will be moving from their Wolf Road facility during this summer for a new building at 625 Broadway along the river in downtown Albany. The radiation program is scheduled to move in June 2001.

There has been no legislative changes that have affected the program. The program has not adopted any new NRC amendments since the last IMPEP. The program did implement emergency rules in July 2000 regarding 11.e.(2) material that NRC does not regulate. The emergency rule was extended again in March 2001. NYDEC plans to finalize the rule this year. As previously indicated, NYDEC has not pursued other NRC amendments due to the expenditure of resources on FUSRAP related matters. NRC staff indicated that during the next IMPEP review, there will be a greater emphasis placed on determining if a program's regulations or other legally binding requirements are compatible with NRC's regulations, largely in part due to the expiration of the grace period for the adopting regulations in the NRC's policy on adequacy and compatibility issued in 1997.

The NRC staff discussed recent management changes at the Commission and the impact of a new President and Administration. A copy of the recently approved STP procedure for obtaining grant money for the Agreement State evaluation of formerly terminated NRC/AEC sites within their jurisdiction was provided to the Program Manager.

There were no allegation referrals to the NYDEC by NRC Region I since the last IMPEP.

The NRC staff indicated that the NRC is placing greater emphasis on the monthly reporting of incidents and the need to provide complete information on the follow up and resolution. It was further noted that this was a matter of compatibility and will be examined closely at the next IMPEP.

The NRC staff indicated that next full IMPEP of the New York program has been tentatively scheduled for spring 2002. The NRC staff also indicated there was an initiative to restructure the review to decrease the amount of NRC resources used on the review and reduce the overall length of the review. This initiative is currently under review by NRC management and if approved, the NRC will present the plan to the four New York radiation programs that implement the Agreement for their input and comments.

At the conclusion of the meeting, the NRC staff was introduced to David O'Toole, Assistant Director of Solid and Hazardous Material.