

March 24, 2006

Mr. Ronald Tramontano, Director  
Center for Environmental Health  
New York State Department of Health  
547 River Street  
Troy, NY 12180-2216

Dear Mr. Tramontano:

We have reviewed your Program Improvement Plan (Plan) submitted to this office as required by the heightened oversight process. In addition, we have taken into consideration information provided during the first heightened oversight call on March 16, 2006. The minutes from this call are enclosed. We believe your Plan meets the requirements of the heightened oversight process.

The NRC Regional State Agreements Officers, Sheri Minnick and Duncan White of the Region I Office, will continue to schedule bi-monthly calls with your staff. We request that you submit an updated status of the corrective actions associated with the Plan, two weeks prior to next bi-monthly call.

Although your Program has been placed on heightened oversight due to overdue adoption of NRC rules, this action does not affect our finding that your Program is adequate to protect public health and safety. We appreciate the effort and the cooperation that you and your staff have shown during this process. I thank you for your continuing support of the New York Agreement State radiation control program. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

**/RA/**

Janet R. Schlueter, Director  
Office of State and Tribal Programs

Enclosure:  
As stated

cc: Adela Salame-Alfie  
New York State Department of Health

John P. Spath  
New York State Energy Research  
and Development Authority

R. Tramontano

March 24, 2006

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**Minutes from the March 16, 2006 Heightened Oversight Call with  
New York State Department of Health**

March 16, 2006, 1:30 p.m.

Attendees:

Richard Spenson, New York State Department of Health (NYDOH)  
Steve Gavitt, NYDOH  
Robert Dansereau, NYDOH  
George Pangburn , U.S. Nuclear Regulatory Commission (NRC), Region I  
Duncan White, NRC, Region I  
Sheri Minnick, NRC, Region I  
Janet Schlueter, NRC, Office of State and Tribal Programs (STP)  
Kevin Hsueh, NRC, STP  
John Zabko, NRC, STP  
Aaron McCraw, NRC, STP

Mr. George Pangburn acknowledged NYDOH's belief that they do not agree with being placed on heightened oversight for overdue regulations. Mr. Pangburn indicated that while the State believes they can protect public health and safety, the NRC is concerned about the compatibility of NYDOH's program. Mr. Richard Spenson indicated that NYDOH was covering some of the overdue NRC rules by existing NYDOH rules or by alternate means. In addition, Mr. Spenson indicated that NYDOH did not have any licensee that would fall under the requirements of some of the overdue regulations. Mr. Pangburn explained that NYDOH had the option of not adopting the rule since the State had no licensees effected by the rule.

Mr. Pangburn requested clarification of NYDOH's statement that some of the overdue NRC rules were being covered by alternate means. Mr. Spenson indicated that they had reviewed the requirements of some of the overdue NRC rules and determined that the essential objectives had been implemented by existing NYDOH rules or license conditions. Mr. John Zabko discussed the NRC's regulation review process and the options available to NYDOH to get "credit" for having compatible rules in place. Mr. Zabko indicated that if NYDOH is using alternate means to cover NRC regulations, they need to send in the rules, legally binding requirements or license conditions for NRC review. Mr. Zabko indicated that these alternate means need to undergo an NRC compatibility review to ensure they meet the compatibility requirements of the associated NRC rule and also ensure there are not gaps or conflicts created. Mr. Zabko also explained that NYDOH does not need to adopt the NRC rules if they can show compatible methods to cover all of the requirements of the amendments. Mr. Zabko offered the assistance of the STP Agreement State regulation project manager, if NYDOH needed help with regard to what they need to submit.

Mr. Spenson indicated that NYDOH may want to use adoption by reference in the future, but NYDOH needs to investigate the feasibility of this approach. Mr. Spenson indicated that NYDOH is looking for ways to shorten the rulemaking process.

Mr. Pangburn requested clarification on the length of time it would take to complete the rulemaking action as stated in the Program Improvement Plan (Plan). Mr. Pangburn indicated that the NRC understands that the legislation process is outside of NYDOL's control and may

take time to complete, however, the NRC will be looking for any of the work that NYDOL has control over, to be completed as quickly as possible. Mr. Spenson described the State's rulemaking process and indicated that they would do their part to move the rules along as expeditiously as possible. Mr. Spenson indicated that they may be able to shorten the time required for completion of the rulemaking as stated on the Plan. Mr. Spenson indicated that the rulemaking process requires a large amount of staff time, and they must prioritize their workload as best they can.

Mr. Spenson inquired about the perceived connection between being placed on heightened oversight and NYDOH's ability to protect public health and safety. Mr. Pangburn indicated that although NYDOH has been placed on heightened oversight due to overdue adoption of NRC rules, this action does not affect the NRC finding that NYDOH is adequate to protect public health and safety. Mr. Spenson requested that language to that effect be placed in the NRC response letter. Mr. Pangburn agreed.

Mr. Spenson inquired about when NYDOH could be removed from heightened oversight. Mr. Pangburn summarized the NRC heightened oversight process and discussed the various outcomes of the New York Integrated Materials Performance Evaluation Program (IMPEP) review scheduled for July 2006. Mr. Pangburn indicated that the outcome of the July IMPEP and the decision of the Management Review Board (MRB), subsequent to the IMPEP, would determine if the State could be removed from heightened oversight. In addition, Mr. Pangburn indicated that the NYDOH Agency is only one Agency that makes up one part of the New York Agreement State Program, and the Program is on heightened oversight, not just NYDOH.

Mr. Spenson questioned the need for final rules to be in place by the time of the July IMPEP, and how the status of final rules could effect the decision of the MRB. Ms. Janet Schlueter indicated that the MRB would take into consideration all factors when making their decision concerning heightened oversight and as stated, NRC understands that the legislation process is outside of NYDOH's control and may take time to complete. Ms. Schlueter indicated that NYDOH should strive to complete any of the rulemaking work that NYDOH has control over, as quickly as possible.

A brief discussion about the IMPEP findings of adequacy and compatibility was held in regard to NYDOH's ability to protect public health and safety. Mr. Spenson reiterated NYDOH's request that the NRC letter reflect that NYDOH is adequate to protect public health and safety and on heightened oversight solely due to overdue regulations.

The call ended at 2:10 p.m.