

February 13, 2012

The Honorable Andrew M. Cuomo
Governor of New York
Albany, New York 12224

Dear Governor Cuomo:

I am writing to bring to your attention significant concerns that were identified during a recent evaluation of the New York Agreement State program. I am also requesting your support in the program's efforts to address these concerns.

On October 15, 1962, the State of New York entered into an Agreement with the NRC, pursuant to Section 274b. of the Atomic Energy Act. Under this agreement, the State of New York committed to establish a radiation control program that is adequate and compatible to protect the health and safety of New York citizens from the potential hazards associated with the use of radioactive materials. Agreement States must provide supporting legislative authority, implement an organizational structure and procedures, and apply financial and human resources to effectively administer a radiation control program that ensures adequate protection and that is compatible with NRC's program. The New York State Department of Health, New York State Department of Environmental Conservation, and the New York City Office of Radiological Health, execute New York's responsibilities under the agreement with the NRC.

NRC maintains oversight of all Agreement State programs and NRC's own radioactive materials program through the Integrated Materials Performance Evaluation Program (IMPEP). IMPEP teams, consisting of Agreement State and NRC personnel, conduct periodic reviews of Agreement States and NRC programs to ensure that public health and safety are adequately protected and that the programs are compatible. During the 2006 IMPEP evaluation of the New York Agreement State Program, a review team found New York's program adequate to protect public health and safety but not compatible with NRC's program. During the 2011 IMPEP evaluation, a review team found that the program's performance had downgraded in several additional areas since the 2006 IMPEP review and that the program had made little improvement with adoption of compatible regulations. The IMPEP Management Review Board reviewed and deliberated on the findings made during the 2011 IMPEP evaluation and determined that the New York program is adequate but needs improvement, and it is not compatible with NRC's program.

During the period between evaluations, the New York State Department of Health lost 10 staff members, representing approximately one-third (6.2 Full Time Equivalents) of the staff who conduct activities to protect public health and safety under the agreement. These staff members were not replaced, and seven of the positions were permanently eliminated. The Department of Health recently received approval to fill three of the vacant positions. However, as discussed at the Management Review Board meeting, it appears that the permanent staff losses have begun to impact the overall effectiveness of the safety program. As mentioned

above, the reduced staff levels have also contributed to the continued lack of progress in the adoption of NRC compatible regulations.

I believe that the New York Agreement State Program has served and benefitted the people of New York well these past 49 years. New York State has historically been a leader in ensuring the safe use of nuclear material to the benefit of society. I support the continuation of these regulatory programs at the State level when there is adequate protection of public health and safety, and compatibility in areas of national interest. These programs have the flexibility to accommodate State needs while serving the intent of the Atomic Energy Act. Your continued support for the program will help ensure that the necessary resources to maintain a fully satisfactory program are available.

I appreciate the opportunity to bring this matter to your attention. The NRC is committed to work with the State of New York to ensure public health and safety and program compatibility.

Sincerely,

/RA/

Gregory B. Jaczko