

NEW YORK HEIGHTENED OVERSIGHT  
CONFERENCE CALL  
November 14, 2013

<b>NRC Attendees</b>	<b>New York Attendees</b>
Donna Janda, RSAO, Region I	Adela Salame-Alfie, Ph.D., Acting Director, Division of Environmental Health Investigations (NYSDOH)
James Clifford, Director, DNMS, Region I	Robert Dansereau, Assistant Director, Bureau of Environmental Radiation Protection (NYSDOH)
Pamela Henderson, Acting Director, DMSSA, FSME	Christopher Boyd, Assistant Commissioner, Bureau of Environmental Sciences and Engineering (NYC)
Joe O'Hara, Technical Assistant, DMSSA, FSME	Sandra Hinkel, Chief, Radiation Control Permits Section (NYSDEC)
Duncan White, Branch Chief, ASPB, FSME	Timothy Rice, Chief, Radiological Sites Section (NYSDEC)
Lisa Dimmick, Health Physicist, ASPB, FSME	Jessie Owens, Environmental Program Specialist, Radiological Sites Section (NYSDEC)
Michelle Beardsley, Health Physicist, ASPB, FSME	

## **SUMMARY**

In June 2011 an Integrated Materials Performance Evaluation Program (IMPEP) review of the New York Agreement State Program was conducted. The agencies which comprise the Agreement State program are the New York State Department of Health (NYSDOH), New York State Department of Environmental Conservation (NYSDEC), and New York City Department of Health and Mental Hygiene (NYC). On October 11, 2011, the Management Review Board (MRB) determined that the New York Agreement State Program should remain on heightened oversight, which was initiated in November 2005. The MRB found the NY Agreement State Program to be satisfactory, but needs improvement, for the indicators, Technical Staffing and Training and Technical Quality of Licensing; unsatisfactory for the indicators, Technical Quality of Incident and Allegation Activities and Compatibility Requirements; and satisfactory for the remaining indicators. The MRB found the Program to be adequate to protect public health and safety, but needs improvement, and not compatible with NRC's program. The MRB directed each of the agencies that comprise the Agreement State program to revise their Program Improvement Plan (PIP) as part of their response to the final IMPEP report. The NRC reviewed the agencies' PIPs and concluded that each PIP contained a reasonable and realistic approach to addressing the recommendations made in the final IMPEP report. The MRB also directed that bimonthly calls be conducted between the New York and NRC staffs.

On September 25 – 27, 2012, periodic meetings were held with the agencies that comprise the New York Agreement State program. The Special MRB to discuss the periodic meetings was held on March 5, 2013. Based on the results of the discussion of the periodic meetings, the MRB determined that the next IMPEP review should be held in September 2013. In a letter dated August 27, 2013, the New York Agreement State Program managers requested a postponement of the IMPEP until early 2014 due to the loss of three NYC program staff that would normally manage the preparation of the IMPEP review. The NRC accepted this request and the IMPEP review is now scheduled for March 18-28, 2014.

As part of the heightened oversight process, each agency submits an updated PIP prior to each call. The revised PIPs were submitted on October 1, 2013 and November 14, 2013.

## **DISCUSSION OF PROGRAM STATUS**

### Technical Staffing and Training

The agencies provided the following update on the status of staffing and training since the May 2013 conference call:

NYC currently has four vacancies in the radioactive materials program, including the Program Director's position. NYC is conducting interviews for the Program Director's position and one other position. The other two vacant positions can be filled once given approval by human resources. The approval process is slow but the positions are not frozen. NYC is developing a blended program in which technical staff will be trained in both radiological materials and radiation machine-based activities. Currently NYC has three staff members who have been cross-trained to perform both functions.

NYSDOH has one new staff member training in radioactive materials and has also hired two new staff members, one of whom transferred from NYSDEC, to train in X-ray activities. When a staff member leaves NYSDOH, a replacement can only be hired on a case-by-case basis. No staff members have left the radioactive materials program since the last conference call.

NYSDEC reported that one technical staff member left their program to work at NYSDOH. The most recently hired individual is undergoing qualification training.

All three agencies send technical staff to the NRC-funded training as well as using other means (i.e., in house training and inspector accompaniments) to train current staff. State staff members need approval from the Governor's office for out-of-state travel which at times impacts State employees' attendance at the NRC-funded courses.

### Status of the Materials Inspection Program

All three agencies stated that their Programs are on track with their inspections and have had no issues since the June 2011 IMPEP. The 2011 IMPEP team generated one recommendation for NYSDOH for this performance indicator. This recommendation is listed below along with its status.

**Recommendation 1:** The review team recommends that DOH develop and implement a process to track reciprocity inspections to ensure at least 20 percent of candidate licensees for reciprocity are inspected.

**Status:** NYSDOH continues to use their tracking system which allows for tracking and completion of reciprocity inspections. NYSDOH continues to work toward its goal of inspecting at least 20 percent of candidate reciprocity licensees.

### Technical Quality of Inspections

All three agencies stated that they have had no issues arise in this area since the June 2011 IMPEP. Annual supervisory inspection accompaniments are ongoing.

### Technical Quality of Licensing

NYC reported no changes to the licensing area and continues to use pre-licensing checklists, conduct pre-licensing site visits, and document the site visits.

NYSDOH continues to address their backlog of licensing renewal actions in an attempt to bring the actions up to date. Mr. Dansereau stated that the Program is considering a 10-year renewal period for materials licenses and possibly extending the period beyond 10 years for some types of licenses. The Program is currently transitioning to new Part 35 license conditions.

During the June 2011 IMPEP, the review team found no issues with NYSDEC in this indicator. Ms. Hinkel stated that as of this call NYSDEC had no backlog with regards to permitting actions.

### Technical Quality of Incidents and Allegations

The 2011 IMPEP review team generated four recommendations for this performance indicator. These recommendations are listed below along with their status.

**Recommendation 2:** The review team recommends that NYC respond to each incident received in accordance with its established Incident Response Procedure.

**Status:** NYC continues to respond to incidents within 2-3 weeks of notification. Mr. Boyd stated that the staff responds to all incidents regardless of the safety significance of the event.

**Recommendation 3:** The review team recommends that NYC modify the Incident Response Procedure to add timely notifications to the NRC Operations Center in accordance with the timelines identified in SA-300.

**Status:** NYC has reported 8 events to NRC since the 2011 IMPEP review of which two were not reported to NRC within the required timeframe. Neither of these events involved significant health and safety or security issues.

**Recommendation 4:** The review team recommends that NYC evaluate all incident statistical information received from licensees, both retrospectively and prospectively, and follow-up in a manner to ensure that each incident is properly evaluated for health, safety, and security implications.

**Status:** NYC had no updates for this recommendation.

**Recommendation 5:** The review team recommends that DOH develop comprehensive incident response and allegation procedures, and ensure that reportable incidents are reported to the NRC Operations Center in accordance with the timelines identified in SA-300.

**Status:** NYSDOH has reported 20 events to NRC since the 2011 IMPEP review. Nine of these events occurred prior to the 2011 IMPEP review and were reported to NRC as part of NYSDOH's follow up actions to address items identified during the 2011 review. All of the other 11 events were reported to NRC in a timely manner.

New York is aware of the need to maintain an effective response to incidents and allegations. During the June 2011 IMPEP the review team found no issues with NYSDEC under the indicator Technical Quality of Incidents and Allegations.

## Compatibility Requirements

New York continues to work on addressing this indicator. All three agencies continue to focus attention on bringing New York up to date with compatible regulations.

Since the September 2012 periodic meeting, NYC submitted proposed regulations to NRC for review for the following amendments:

- “Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 35, and 36 amendments (63 FR 39477; 63 FR 45393), that became effective on October 26, 1998 and was due for Agreement State adoption by October 26, 2001.
- “Transfer for Disposal and Manifests: Minor Technical Conforming Amendment,” 10 CFR Part 20 amendment (63 FR 50127), that became effective on November 20, 1998 and was due for Agreement State adoption by November 20, 2001.
- “Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements,” 10 CFR Parts 30, 31, 32, and 150 amendments (72 FR 58473), that became effective on December 17, 2007 and was due for Agreement State adoption by December 17, 2010.
- “Requirements for Expanded Definition of Byproduct Material,” 10 CFR Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendments (72 FR 55864), that became effective on November 30, 2007 and was due for Agreement State adoption by November 30, 2010.
- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendments (72 FR 68043), that became effective February 15, 2008 and was due for Agreement State adoption by February 15, 2011.

NYC updated the PIP submitted for this conference call to indicate that all of the proposed regulations noted above have been published in the City record as final regulations.

Since the September 2012 periodic meeting, NYC submitted final regulations to NRC for review for the following amendment:

- “Medical Use of Byproduct Material – Authorized User Clarification,” 10 CFR Part 35 amendment (74 FR 33901), that became effective on September 28, 2009 and was due for Agreement State adoption by September 28, 2012.

NYC has included as part of their updated PIP a plan to adopt future regulation amendments that are coming due.

NYSDOH has the following 16 NRC amendments overdue for adoption:

- “Quality Management Program and Misadministrations,” 10 CFR Part 35 amendment (56 FR 34104), that became effective on January 27, 1992 and was due for Agreement State adoption by January 27, 1995.
- “Medical Administration of Radiation and Radioactive Materials,” 10 CFR Parts 20 and 35 amendments (60 FR 48623), that became effective on October 20, 1995, and was due for Agreement State adoption by October 20, 1998.

- “Termination or Transfer of Licensed Activities: Recordkeeping Requirements,” 10 CFR Parts 20, 30, 40, 61, and 70 amendments (61 FR 24669), that became effective on June 17, 1996 and was due for Agreement State adoption by June 17, 1999.
- “Radiological Criteria for License Termination,” 10 CFR Parts 20, 30, 40, and 70 amendments (62 FR 39057), that became effective August 20, 1997 and was due for Agreement State adoption on August 20, 2000.
- “Deliberate Misconduct by Unlicensed Persons,” 10 CFR Parts 30, 40, and 70 amendments (63 FR 1890, 63 FR 13773), that became effective on February 12, 1998, and was due for Agreement State adoption by February 12, 2001.
- “Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 30, 40, and 70 amendments (63 FR 39477, 63 FR 45393), that became effective on October 26, 1998, and was due for Agreement State adoption by October 26, 2001.
- “Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material,” 10 CFR Parts 30, 31, and 32 amendments (65 FR 79162), that became effective on February 16, 2001 and was due for Agreement State adoption on February 16, 2004.
- “Revision of the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298), that became effective on April 5, 2002, and was due for Agreement State adoption by April 5, 2005.
- “Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 amendments (67 FR 20249), that became effective on April 24, 2002, and was due for Agreement State adoption by October 24, 2005.
- “Financial Assurance for Materials Licensees,” 10 CFR Parts 30, 40, and 70 amendments (68 FR 57327), that became effective on December 3, 2003, and was due for Agreement State adoption by December 3, 2006.
- “Medical Use of Byproduct Material,” 10 CFR Parts 20, 32, and 35 amendments (67 FR 20249), that became effective on April 24, 2002, and was due for Agreement State adoption by April 24, 2005.
- “Minor Amendments,” 10 CFR Parts 20, 30, 32, 35, 40, and 70 amendments (71 FR 15005), that became effective on March 27, 2006, and is due for Agreement State adoption by March 27, 2009.
- “Medical Use of Byproduct Material – Minor Corrections and Clarifications,” 10 CFR Parts 32 and 35 amendments (72 FR 45147, 72 FR 54207), that became effective on October 29, 2007 and were due for Agreement State adoption on October 29, 2010.
- “Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements,” 10 CFR Parts 30, 31, 32, and 150 amendments (72 FR 58473), that became effective on December 17, 2007 and was due for Agreement State adoption by December 17, 2010.

- “Requirements for Expanded Definition of Byproduct Material,” Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendments (72 FR 55864), that became effective on November 30, 2007 and was due for Agreement State adoption by November 30, 2010.
- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendments (72 FR 68043), that became effective February 15, 2008 and was due for Agreement State adoption by February 15, 2011.

Since the 2012 periodic meeting, NYSDOH has submitted the 10 CFR Part 35 portion of their final rule to NRC for review. This submission encompassed 5 regulation amendments. In addition, NYSDOH submitted one legally binding requirement for one regulation amendment.

NYSDOH has included as part of their updated PIP a plan to adopt currently overdue regulation amendments. NYSDOH may implement the use of license conditions as legally binding requirements as an interim measure until regulations for the overdue amendments are finalized. NYSDOH expects to submit their outstanding amendments to NRC for review in the near future.

NYSDEC has the following eight NRC amendments overdue for adoption:

- “Notification of Incidents,” 10 CFR Parts 20, 30, 31, 34, 39, 40, and 70 amendments (58 FR 64980), that became effective on October 15, 1991, and was due for Agreement State adoption by August 15, 1994.
- “Timeliness in Decommissioning Material Facilities,” 10 CFR Parts 30, 40, and 70 amendments (59 FR 36026), that became effective on August 15, 1994 and was due for Agreement State adoption by August 15, 1997.
- “Radiation Protection Requirements: Amended Definitions and Criteria,” 10 CFR Parts 19 and 20 amendments (60 FR 36038), that became effective on August 14, 1995, and was due for Agreement State adoption by August 14, 1998.
- “Radiological Criteria for License Termination,” 10 CFR Parts 20, 30, 40, and 70 amendments (62 FR 39057), that became effective on August 20, 1997, and was due for Agreement State adoption by August 20, 2000.
- “Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 30, 40, and 70 amendments (63 FR 39477, 63 FR 45393), that became effective on October 26, 1998, and was due for Agreement State adoption by October 26, 2001.
- “Revision of the Skin Dose Limit,” 10 CFR Part 20 amendment (67 FR 16298), that became effective on April 5, 2002, and was due for Agreement State adoption by April 5, 2005.
- “Requirements for Expanded Definition of Byproduct Material,” Parts 20, 30, 31, 32, 33, 35, 61, and 150 amendments (72 FR 55864), that became effective on November 30, 2007 and was due for Agreement State adoption by November 30, 2010.
- “Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent,” 10 CFR Parts 19 and 20 amendments (72 FR 68043), that became effective February 15, 2008 and was due for Agreement State adoption by February 15, 2011.

NYSDEC has included as part of their updated PIP a plan to adopt currently overdue regulation amendments. NYSDEC is making progress on the amendment to Part 380 and the new Part 384; however, the schedule for adopting these amendments has slipped several months since the September 2012 periodic meeting due to managing other priorities.

#### Sealed Source and Device (SS&D) Evaluation Program

There have been no changes in the SS&D program since the June 2011 IMPEP. New York currently has two qualified SS&D reviewers and one individual serving as a backup. Both reviewers are considered by NYSDOH to be fully qualified. During the June 2011 IMPEP, the review team found that SS&D reviews performed by NYSDOH adequately addressed health and safety issues and were of sufficient technical quality.

#### Low-Level Radioactive Waste Disposal (LLRW) Program

During the 2011 IMPEP, the review team found that the oversight of the two former radioactive waste disposal sites was suitable and thorough. The LLRW Program currently has one vacancy in the inspection area. The duties for this position have been assigned to experienced personnel until the vacancy is filled and the new staff member is trained.

#### Other Discussion Items

NYSDOH noted their concern regarding oversight of radioactive material that is imported into the United States and misplaced/lost during transit. NYSDOH is not informed of these shipments and would like to discuss their concerns with the NRC Office of International Programs. All parties agreed that a conference call with NRC and NYSDOH should be arranged to discuss the matter.

Mr. White noted that the NRC Office of General Counsel has responded to the technical assistance request on the jurisdiction issue related to the Gateway National Park. FSME plans to issue a letter to NYSDOH which discusses the decision. All parties agreed that a conference call should be held between FSME, Region I and all three NY agencies to discuss questions related to this matter.

Mr. White also noted that NRC is close to finalizing its response to Mr. Gavitt's letter dated September 13, 2013, which described all three NY agencies' concerns with the IMPEP process. Subsequent to this call, the NRC response was provided to all three NY agencies in a letter dated November 18, 2013.

Ms. Dimmick noted that the inspection accompaniments for the upcoming IMPEP review went very well and no performance concerns were identified during the accompaniments. She also noted that she would be providing the plan for the upcoming IMPEP review. Subsequent to this call, Mr. White provided this plan to all three NY agencies in an email dated November 27, 2013.

#### Conclusion

The three agencies that make up the New York Agreement State Program are addressing the recommendations that were made during the 2011 IMPEP review. The next IMPEP review is scheduled to be held in March 2014.