

5P01

August 26, 1985

Lillian Roberts
Commissioner of Labor
New York State Department
of Labor
State Office Campus Building
Albany, New York 12240

Dear Commissioner Roberts:

During the week of July 22-26, 1985, we completed our review and evaluation of the Department's Radiation Control Program. The review covered the principal administrative and technical aspects of this program and included an examination of the program's legislation and regulations, organization, management and administration, personnel, licensing and compliance. Particular emphasis was placed on the significant problem areas noted during our previous review and the Department's comprehensive plan to address the problem areas.

We are pleased to report that the Department has made significant progress in addressing program deficiencies. The approval of two additional professional staff positions is an especially important step in achieving continued program strength. Additional improvements noted include the adoption in June 1985 of revised regulations, a reduction in the inspection backlog, and the drafting of administrative procedures for managing the licensing and inspection programs.

As a consequence of these improvements we are now able to offer a finding that the Department's program for regulating agreement materials is adequate to protect the public health and safety and compatible with the Commission's program for regulation of like materials.

Even though significant improvements in the Department's program were noted, there are areas where continued effort is needed. The inspection backlog, although reduced from the time of our last review, remains higher than it should be. In addition, our review of enforcement actions taken by the Department revealed a number of deficiencies regarding the appropriateness of certain citations. "Enforcement Procedures" is a Category I indicator in NRC's Guidance for NRC Review of Agreement State Radiation Control Programs. A description of the categories used by NRC and how they relate to our findings is contained in Enclosure 1. Additional details on these deficiencies are provided in Enclosure 2.

With respect to the licensing backlog, it is essentially unchanged from the time of our last review. This backlog problem could, at least in part, be ameliorated through the availability and utilization of automatic typing capability by the clerical staff. Dr. Bradley has requested appropriate equipment be obtained for use by the clerical staff. We feel that the availability of this equipment will be of significant assistance in reducing the licensing backlog and in keeping it at a manageable level.

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The additional staff is, however, the most important factor in reducing the licensing backlog and in this regard training for the new staff is an important consideration. The NRC has a number of training courses available for Agreement State personnel and we would be happy to assist the Department in providing training for its new staff whenever it is convenient. Also, Mr. Awai is the only member of the current staff who has not attended the NRC's industrial radiography course. We recommend that he attend this course the next time it is offered. We will forward an announcement to Dr. Bradley when the course is scheduled. "Training" is a Category II indicator in the NRC Guidelines.

Additional comments regarding the Department's program are provided in Enclosure 2. These comments were discussed with Dr. Bradley during our review. You may wish to have him address these comments.

In accordance with NRC practice, I am providing a second copy of this letter for placement in the State's Public Document Room or otherwise made available for public review.

The expeditious actions you and your staff have taken to address program deficiencies is commendable. We will assist you and your staff in any way we can to assure our mutual goal of protecting the public health and safety.

Sincerely,

Original signed by
Thomas E. Murley

Thomas E. Murley
Regional Administrator

Enclosures:
As Stated

cc: (w/Encls.)
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D. Sencer, NYCH
H. Williams, NYDEC
NRC Public Document Room
State Public Document Room
G. Wayne Kerr, OSP
F. Bradley, NYSDOL

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COMMENTS AND RECOMMENDATIONS ON THE
NEW YORK STATE DEPARTMENT OF LABOR
RADIATION CONTROL PROGRAM

I. COMPLIANCE

1. Enforcement Procedures is a Category I indicator. The following comment is of major significance.

Comment

In reviewing a number of Notices of Violation issued by the Department, we found a number of cases where citations were inappropriate, i.e., no actual violation existed, the wrong section of the code was cited, or the citation addressed an area not under the Department's jurisdiction. For example, one licensee was cited for performing instrument calibration when not authorized to do so. The licensee responded pointing out that the Department had approved their procedures to do so. One licensee was cited against 38.22 radiation levels in uncontrolled areas when in fact the deficiency concerned inadequate records of surveys to determine radiation levels in unrestricted areas. As an example of the third type of inappropriate citation, a licensee was cited for performing radiography in Ohio. Such activity is clearly not under the jurisdiction of the Department and the licensee in his response pointed out that such work was done under reciprocity.

Recommendation

It is apparent that more careful preparation of Notices of Violation is required. We recommend that such notices be given careful scrutiny by program management and that this subject be discussed at the next staff meeting held for all inspectors. New staff members should be provided instruction on the proper preparation of citations for Notices of Violations.

2. Inspection Reports is a Category II indicator.

Comment

In a number of cases, inspection reports did not provide adequate justification or support for items of noncompliance. For example, one licensee was cited for exceeding water effluent limits, however,

the calculation supporting this violation was unclear as to the quantity of material released and the volume of water discharged to determine whether the daily, monthly or yearly limit was being exceeded. Documented support for a citation should be in sufficient detail such that management, or any other party, reviewing the report would come to the same conclusion as the inspector with regard to the item cited. Adequate support is important from a number of perspective not the least of which is the possibility of future escalated enforcement action which may involve the presentation of inspection reports as evidence in hearings or trials.

Recommendation

We recommend that program management selectively review inspection reports to assure that they provide adequate support for enforcement actions. This should also be a subject of a staff meeting with the inspection staff. We also feel that this is an important area in which new staff should be properly instructed.

3. Investigation of Incidents is a Category I indicator. The following comment is, however, of minor significance.

Comment

The Department's investigation of the Auburn Steel incident has been essentially completed, however the Department's final report has not been completed.

Recommendation

We recommend that the Department's draft report be completed and a copy forwarded to NRC.