



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

ALL AGREEMENT STATES, WYOMING

U.S. NUCLEAR REGULATORY COMMISSION (NRC) AND POTENTIAL AGREEMENT STATE ROLES REGARDING THE NRC'S OVERSIGHT OF THE U.S. DEPARTMENT OF DEFENSE REMEDIATION OF UNLICENSED RADIOACTIVE MATERIAL (STC-16-XXX)

**Purpose:** To inform the Agreement States of the Nuclear Regulatory Commission's (NRC's) implementation of its jurisdiction for the U.S. Department of Defense's (DoD's) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remediation of radium and other unlicensed Atomic Energy Act of 1954, as amended (AEA), material and potential Agreement State role.

**Background:** On July 8, 2011, the NRC staff published proposed guidance, in the form of a draft Regulatory Issue Summary (RIS), in the *Federal Register* (76 FR 40282) for public comment, that clarified the types of radium-226 in the military's possession that are subject to NRC regulation, and described regulatory approaches to implement NRC authority. Within the draft RIS, the NRC staff had proposed a possession-only license (POL) approach that acknowledged the use of the CERCLA process instead of the NRC AEA-based decommissioning process as a specific way to coordinate the Commission-directed licensing approach. Subsequently, DoD submitted its formal comments on the draft RIS, and opposed any form of NRC licensing. A joint NRC-DoD working group was established to discuss resolution of DoD's comments. As a result, DoD proposed a Memorandum of Understanding (MOU) option to document the NRC's involvement with DoD's remediation under the CERCLA process of AEA material, including radium, at unlicensed sites. Both the NRC staff and DoD agree that the MOU option would be an acceptable implementation approach for the NRC's involvement with the remediation of radium and other unlicensed AEA material. The MOU approach avoids dual regulation while ensuring protection of public health, safety, and the environment. The MOU addresses the following topics: points of contact; DoD's annual inventory of sites; NRC notification, coordination, and planning of NRC involvement with DoD; types of NRC involvement activities; dose criteria; NRC access to sites and information; DoD resolution of NRC comments and dispute resolution process; NRC documentation and records of its involvement; management of restricted records; and DoD requests for NRC technical advice.

The Commission directed the NRC staff to pursue finalizing an MOU with the DoD and to finalize a RIS that clarifies NRC's jurisdiction of radium-226 in the military's possession (SRM-SECY-14-0082) On April 28, 2016, NRC staff finalized the MOU with the DoD. The MOU is

available within the Agencywide Documents Access and Management System at accession number ML16092A294. A final RIS will be published in the *Federal Register* in the future.

**Discussion:**

**NRC Role Under a MOU**

The following is a discussion of the NRC's role under the finalized MOU. The implementation of the NRC's jurisdiction will be initiated by NRC "piloting" its efforts under the MOU at 1-2 sites for the first year, before full implementation.

Two types of NRC involvement will likely be implemented under an MOU: "stay informed" and "monitoring." It is expected that NRC will only use one particular approach at each site. Consistent with SECY-14-0082 and, for sites where the U.S. Environmental Protection Agency (EPA) has regulatory authority (e.g., sites listed on the National Priority List (NPL)), the NRC staff would take a limited involvement approach to stay informed and would rely on the CERCLA process and EPA regulatory oversight. Initially, this stay informed approach was approved by the Commission for the Navy's Hunters Point site (SRM-SECY-08-0077), and the staff has successfully used this approach for the past 8 years at the Navy's Hunters Point and Alameda sites and the Air Force's McClellan site in California. All three of these sites are planning remedial actions with unrestricted or restricted release. Typically, the NRC staff stays informed about remedial actions at these sites by a combination of selected document reviews and annual site visits that involve meetings with the Air Force, Navy, EPA Region 9, and the State agencies involved with the remediation of these sites. Through these discussions, the NRC staff maintains an understanding of the progress and views on important radiological remediation issues as well as the completed and planned activities of each organization. This approach does not involve licensing, and the staff does not conduct licensing reviews. The NRC reserves the option of providing comments to EPA on the military remediation, if necessary, to justify continued reliance on the CERCLA process and EPA oversight.

The second approach for the NRC's involvement would be the new approach of monitoring of sites where there is no federal oversight conducted by EPA (e.g., sites not listed on the NPL). The NRC would prioritize these sites and conduct the appropriate type and amount of monitoring activities for each site based on its priority. Monitoring activities could include document and data reviews, site observations (similar to inspections), and confirmatory radiological surveys. The purpose of this monitoring would be to provide consistent federal oversight to confirm that DoD's remediation of radioactive material using the CERCLA process would result in an outcome that is protective of public health and safety and the environment. To accomplish this, NRC monitoring would determine that the NRC's 25 mrem/yr dose criterion is not exceeded for sites planning for unrestricted release, or for sites with restrictions on future land use and/or engineered controls. For those sites with restrictions on future use, NRC would continue its monitoring of the Five-Year Reviews required by CERCLA to ensure that the remedies remain protective.

**Potential Agreement State Role Under the MOU**

Section 274b. of the AEA provides a statutory basis under which the NRC relinquishes portions of its regulatory authority to States that enter into Agreements with the NRC to assume this authority. To the extent that a State has become an Agreement State, and the Agreement covers the material in question, the Agreement State then has the authority to regulate the use

of such material within its borders, subject to some limitations. One such limitation is that an Agreement State does not have the authority to regulate a federal entity. As a result, Agreement States were not included in the MOU. However, the NRC will reach out to individual Agreement States to discuss the potential for future coordination and voluntary assistance to NRC.

As a first step of the MOU process and to support NRC planning, DoD will provide the NRC staff with an inventory of sites under the MOU. This inventory will list the sites with confirmed unlicensed AEA materials, the CERCLA stage of remediation, and other site information. Once the NRC has received an updated site inventory from the DoD, the NRC will reach out to individual Agreement States to begin the coordination process. The intent of this future coordination effort is to understand the State's involvement with DoD's remediation and obtain the State's knowledge of the site and its remediation. The NRC also will be interested in the State's comments on (1) areas for the NRC to consider as part of its monitoring approach, and (2) issues that the State might have with DoD's CERCLA remediation actions. In particular, NRC will be interested in learning about the State's oversight of DoD service providers where contractors have a State license. For further discussion on the State's jurisdiction over service providers on Federal property, please see FSME-14-039, "Clarification on the Determination of Regulatory Jurisdiction of Nonfederal Entities Conducting Cleanup Activities on Federal Property in Agreement States."

If you have any questions regarding the correspondence, please contact me at (301) 415-3340 or the individuals named below:

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<sup>1</sup> This information request has been approved by OMB 3150-0029 expiration 1/31/2019. The estimated burden per response to comply with this voluntary collection is approximately 1 hour. Send comments regarding the burden estimate to the FOIA, Privacy, and Information Collections Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to [infocollects.resource@nrc.gov](mailto:infocollects.resource@nrc.gov), and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.