

June 21, 2001

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers/**RA**/
Executive Director for Operations

SUBJECT: INTENT TO SIGN A MEMORANDUM OF UNDERSTANDING
BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION
AND U.S. ARMY CORPS OF ENGINEERS FOR
DECOMMISSIONING NRC LICENSED FORMERLY UTILIZED
SITES

In the Staff Requirements Memorandum (SRM) on SECY-01-0010, "Coordination With U.S. Army Corps of Engineers on Certain Decommissioning Sites," dated February 21, 2001, Commission directed the staff to develop a Memorandum of Understanding (MOU) with the U.S. Army Corps of Engineers (USACE) concerning USACE remediation of Formerly Utilized Sites Remedial Action Program (FUSRAP) sites licensed by the Nuclear Regulatory Commission (NRC). The staff has completed negotiations with USACE and has developed the attached MOU.

The purpose of the MOU is to avoid unnecessary duplication of regulatory requirements and effort by setting out the conditions, consistent with the protection of the public health and safety, that will permit the NRC to exercise its discretion to suspend NRC-issued licenses, or portions thereof, at FUSRAP sites so that NRC requirements do not hinder USACE in its remediation of sites under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The MOU only addresses unrestricted releases under 10 CFR 20.1402. The staff is satisfied that the criteria of the License Termination Rule will be met, because USACE will be using 10 CFR 20.1402 or a more stringent requirement as the "applicable or relevant and appropriate requirement" in the Record of Decision (ROD) required by CERCLA.

CONTACT: Amir Kouhestani, DWM
415-0023

James Lieberman, OGC
415-2746

The MOU provides that USACE, after completion of its ROD under CERCLA, may request that NRC initiate license suspension for an NRC-licensed FUSRAP site, if USACE notifies NRC, in writing, that USACE:

- 1) is prepared to take physical possession of all or part of the licensed site for purposes of control of radiation from FUSRAP materials subject to NRC jurisdiction and to be responsible for the protection of the public health and safety from those materials, consistent with 10 CFR Part 20 "Standards For Protection Against Radiation" and other requirements consistent with CERCLA;
- 2) will conduct a response action at the licensed site under its FUSRAP and CERCLA authority, with regard to FUSRAP materials subject to NRC jurisdiction, to meet at least the standards required under 10 CFR 20.1402; and
- 3) has no objection to, and will facilitate, NRC observing USACE in the process of remediation activities.

Depending on the extent of FUSRAP materials and their separability from other hazardous substances on the site, USACE's responsibility may encompass the entire site, portions of the site, all the radioactive materials, or just the FUSRAP materials, as specified in the final ROD. USACE will notify NRC of its findings regarding the type and extent of hazardous substances on a licensed site prior to requesting license suspension. Prior to USACE submitting a request for license suspension on a site where the NRC license suspension will not encompass the entire site, USACE and NRC will meet to agree on the scope of the suspension. The licensee may be involved in these discussions.

The license suspension will be effective, subject to:

- 1) written notification from USACE to the NRC that USACE has taken physical possession of the licensed site for purposes of radiation control and is now responsible for the protection of the public health and safety consistent with 10 CFR Part 20, and
- 2) the NRC hearing process pursuant to 10 CFR Part 2, "Rules Of Practice For Domestic Licensing Proceedings And Issuance Of Orders."

The MOU provides that the NRC will reinstate the license when USACE:

- 1) is no longer controlling the FUSRAP-related portion of the licensed site for radiation protection purposes,
- 2) is no longer proceeding with a response action at the licensed site under CERCLA, or
- 3) has otherwise completed its response action.

The MOU also includes standard terms for further assistance, dispute resolution, amendment, and termination. The staff believes that the MOU will help the agency reduce dual and unnecessary regulatory burden on the licensee, increase public confidence in Federal agencies' cooperation in facility decommissioning and site cleanup, assure that health and safety aspects of the decommissioning are fully addressed, and make NRC and USACE's actions more efficient and effective.

The staff and USACE intend to sign the MOU during the week of July 2, 2001. The MOU has been prepared with the assistance of the Office of General Counsel for signature by the Director of the Office of Nuclear Material Safety and Safeguards and the USACE's Director of Civil Works.

Attachment: MOU between U.S. NRC and USACE for Coordination on Cleanup & Decommissioning of the FUSRAP Sites with NRC-Licensed Facilities

cc:
OGC
OPA
OCFO
OCA
SECY
OCIO

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*See previous concurrence

OFC	DCB	DCB	OGC	DCB	DWM
NAME	AKouhestani*	*SMoore	*JLieberman	LCamper	JGreeves
DATE	06/07/01	06/7 /01	06/ 8 /01	06/8 /01	06/11/01

OFC	NMSS	DEDMRS	EDO
NAME	MVirgillio	CPaperiello	WTravers
DATE	06/13/01	06/13/01	0621/01

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