## **Attachment 2: MOU Questions and Answers**

Why was the MOU developed?

The MOU was developed in response to congressional direction to EPA and NRC. It is an agreement between two federal agencies to clarify each agency's role under the AEA and CERCLA for decommissioning of NRC licensed sites. The intent of the MOU is to enhance predictability of each agency's decision in this area.

Why was the MOU developed without public comment?

The MOU is an understanding between two federal agencies to assist in cooperative efforts to ensure decommissioning of NRC licensed sites that are protective of the public health and safety and the environment.

How will this MOU apply to Agreement States?

The Commission believes the Agreement States can adopt a similar agreement if they find it necessary for its licensees. EPA staff indicates that they would apply the MOU to Agreement States upon request. The Agreement States must have regulations adequate and compatible with NRC requirements.

What is the difference between the 1992 MOU and the 2002 MOU?

The 1992 MOU is very general and the 2002 MOU is specific with regards to decommissioning and when NRC will request EPA's assistance. The 2002 MOU provides for consultation when restricted release, alternate use, and soil concentrations above those provided in Table will be exceeded after a site has been decommissioned.

States are concerned that the MOU will be an ARAR at many sites such as West Valley. Without the States being able to comment on this document (especially if they are a delegated State from EPA), the States are being left out of the process.

The MOU is not an Alternate Requirements and Regulations (ARARs) because the MOU is not a standard nor proposes a change in any regulation. The MOU is in response to the House Subcommittee on Veterans Affairs and Housing and Urban Development, and the Independent Agencies Committee on Appropriations, August 1999 [House Report (HR) 106-286]. Through July 2001 the House Subcommittee reports (HRs 106-674 and 107-159) requested that NRC and EPA develop an MOU that would clarify the circumstances regarding EPA involvement at NRC- licensed sites and report quarterly on progress in this area. The MOU is relevant only to NRC-licensed sites. It is an agreement between Federal agencies concerning these sites in order to promote more efficient decommissioning when various statutes are applicable. For example, NRC will consult with EPA for NRC-licensed sites decommissioning that have radioactive ground-water contamination in excess of EPA's MCLs, propose restricted release or alternate criteria for license termination, or when there is radioactive soil contamination in excess of specified soil concentration levels. EPA uses some flexibility for levels under EPA's phased approach for addressing ground-water contamination and the States may become involved in discussions on the approach used at a site. NRC recognizes that EPA has authority under CERCLA and uses methods and analyses

different than those used by NRC. ARARs are specific standards and requirements that would need to be met regardless of an MOU. Some of the soil concentrations are also ARARs as well as those specified in 10 CFR. However, as noted, the MOU does not establish any new requirements.

Has NRC accepted the EPA CERCLA risk range for clean-up?

No, NRC requirements under the License Termination Rule (LTR) apply for decommissioning of NRC licensed sites. The MOU establishes a framework when NRC will consult with EPA during the NRC license termination process. For example, NRC will consult with EPA for NRC-licensed sites decommissioning that have radioactive ground-water contamination in excess of EPA's MCLs, propose restricted release or alternate criteria for license termination, or when there is radioactive soil contamination in excess of specified soil concentration levels. NRC recognizes that EPA has authority under CERCLA and uses methods and analyses different than those used by NRC. Various statutes provide authority to NRC and EPA that will require a site ensure compliance with various federal regulations for clean-up. The risk management practices for NRC include the LTR with its ALARA provision, along with risk policies that will result in similar levels of protection that would be derived by EPA using EPA's regulations and policies. NRC is not proposing to make any changes to the LTR. By using the concentration-based approach in this MOU, it enables the agencies to identify trigger levels upon which consultation is needed. NRC continues to use a dose-based approach to regulating that includes all pathways.

Has EPA accepted the NRC LTR as meeting the CERCLA risk range?

Under the MOU, EPA recognizes NRC AEA authority and agrees that the NRC methods and analyses for calculating exposures and demonstrating compliance with the LTR will result in concentrations that would meet the CERCLA risk range if using EPA's methods for calculating exposure. Based on this general understanding, NRC and EPA have been able to develop a mutual working framework that would provide confidence to NRC licensees that there is agreement on the decommissioning levels when its decommissioning plan is submitted for review.

Has NRC agreed to meet the EPA ground water standard in 40 CFR 141?

No. NRC's regulations will not change nor will EPA's regulations. These federal regulations apply to an NRC licensee to the extent it is subject to a CERCLA clean up.

How will the allocation of risk range be accomplished for sites with radiological and chemical contamination so that the overall CERCLA risk range is met?

This topic is not covered by the MOU other than to note that NRC will defer to EPA regarding matters involving hazardous materials not under NRC's jurisdiction.

Can you explain further the 1983 amendment to CERCLA?

In 1983, the EPA amended the National Oil and Hazardous Substances Contingency Plan (NCP), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This amendment (48 FR 40658) supplemented the NCP with the National Priorities List (NPL). In this final rule, a deferral policy noted that Section 101(22) of CERCLA excluded several types of releases of radioactive materials from the statutory definition of "release." These releases, therefore, were not eligible for CERCLA response actions or inclusion on the NPL. The exclusions apply to: 1) releases of source, byproduct, or special nuclear materials from a nuclear incident, if these releases are subject to financial protection requirements under Section 170 of the Atomic Energy Act; and 2) any release of source, byproduct, or special nuclear material, from any processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978. As a policy matter, EPA chose not to list releases of source, by-product, or special nuclear material, from any facility with a current license issued by the NRC on the grounds that the NRC has full authority to require cleanup of releases from such facilities. (Formerly licensed facilities whose licenses no longer are in effect, however, could be considered for listing.) EPA decided that its policy of excluding licensed facilities from the list should extend only to those facilities over which the Federal agency, the NRC, had direct control.

How does the 1983 amendment apply to States?

When a facility is licensed by a State pursuant to NRC's relinquishment of authority and agreement under AEA Section 274, EPA noted that the NRC has no authority, short of withdrawing the agreement to enforce conditions of the license or determine that new conditions are necessary. Since listing on the NPL in no way determines whether actual cleanup actions will be taken, EPA also stated, in its 1983 deferral policy, that it would be able to defer to the licensing State whenever the EPA determined that State efforts were adequate to address the problem. It should be noted that, at this time, the staff has not discussed this Agreement State issue with EPA.

Does this MOU respond to the GAO recommendations in 2000?

Yes, in part. In the GAO report entitled, "RADIATION STANDARDS: Scientific Basis Inconclusive, and EPA and NRC Disagreement Continues," it recommended that the agencies provide a common response to resolve stakeholder concerns. The MOU provides a coordinated response to licensees and stakeholders.

Are there any next steps now that the agencies have signed an MOU?

Yes. Staff will inform congressional representatives and stakeholders to ensure understanding of the MOU and how it will be implemented. In addition, because the NRC believes that dual regulation drives up the cost of decommissioning without providing a commensurate increase in the level of protection to the public and environment, and because the MOU does not fully meet the intent of the House Appropriations Subcommittee on Veterans Affairs, NRC will continue to seek legislation that would eliminate the possibility of dual regulation of AEA contaminants for all decommissioning licensees (except in rare cases in which the NRC or the cognizant Agreement State invokes the application of CERCLA as necessary to effect adequate cleanup. If you will seek legislation, what is the benefit of the MOU?

The MOU provides assistance to most NRC licensees decommissioning. The costs for those that are not able to use the MOU will be significantly higher. EPA states it continues to retain the authority which will increase the costs even more and confusion to stakeholders as it has for several years. There is no need for dual regulation and it should be sought as a measure to improve efficiency and effectiveness in government programs.

Does the MOU allow NRC licensees to treat Radium or thorium differently than other radionuclides?

No NRC licensees are required to comply with the 25 millirem in Part 20.1402. A 5 pCi/g level for Radium-226 equates to approximately 60 to 80 millirem depending on the specific parameters used in the calculation of the dose. The value listed is a value that will be used to require consultation between agencies and does not mean NRC will allow NRC licensees to decommission to that level unless they can demonstrate compliance with Part 20.

How should an NRC licensee treat the progeny of Radium?

If the progeny is listed then the progeny is compared against the value listed for consultation between the NRC and EPA. As a matter of compliance with Part 20.1402, the doses from both the radium parent and progeny except for radon are included in the dose assessment.

What is meant by total uranium?

The mass of the uranium isotopes. It does not consider the mass of any progeny.

Does NRC expect to request information from former or current licensees for the purpose of fulfilling NRC's obligations under the MOU?

No. The MOU is an agreement between NRC and EPA, and it is NRC's responsibility to fulfill the requirements of the MOU. NRC is responsible for determining which sites exceed the MOU triggers, and NRC is the party that will consult with EPA under the MOU. In making the determination of which sites require consultation under the MOU, NRC will rely on site data provided to NRC as part of NRC 's licensing and decommissioning process. In response to the MOU, NRC does not intend to solicit additional information from former or current licensees. The MOU does not create any new reporting or recordkeeping requirements for licensees.