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Memorandum of Understanding

Between

The U.S. Environmental Protection Agency

and

The U.S. Nuclear Regulatory Commission

for Ground-Water Cleanup at the UNC-Churchrock Uranium Mill

in McKinley County, New Mexico

I. PURPOSE

This document establishes the roles, responsibilities, and relationship between the Environmental Protection Agency (EPA) and the U.S. Nuclear Regulatory Commission (NRC), hereinafter the "Parties," regarding ground-water cleanup actions at the UNC-Churchrock uranium mill in McKinley County, New Mexico. The Parties have overlapping jurisdiction on this site, and this Memorandum of Understanding (MOU) will help assure that ground-water cleanup occurs in a timely and adequate manner.

II. BASIS FOR AGREEMENT

NRC will assume the role of lead regulatory agency, and EPA will monitor all activities and provide review and comments. The NRC approval of ground-water cleanup actions at the Churchrock site will be contingent upon the proposed plan meeting the requirements of the EPA 40 CFR 192 standard, Subpart D, entitled "Standards for Management of Uranium Byproduct Materials Pursuant to Section 84 of the Atomic Energy Act, As Amended," or Appendix A to 10 CFR 40 in the event that rulemaking to bring Appendix A into conformance with the ground-water requirements of 40 CFR 192 is completed. EPA review and comments will be directed to ensuring that specific EPA requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA) are met. The EPA and NRC believe that conformance to 40 CFR 192 will generally assure conformance with CERCLA requirements. However, each Party will be responsible for ensuring conformance to its specific regulatory mandates as discussed in this section.

III. BACKGROUND

The State of New Mexico was responsible for licensing and regulating uranium mills within the State until June 1, 1986, at which time the NRC

assumed this authority at the request of the Governor of New Mexico. Prior to this change, EPA placed the UNC-Churchrock site on the National Priority List (NPL) of sites for response action under CERCLA. It was EPA's decision to list only those uranium mills meeting criteria for placement on the NPL which were located in Agreement states; that is, states which have entered into agreements with the NRC pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, to regulate certain nuclear activities in a manner compatible with the NRC's program. Mills in nonagreement states, where NRC has licensing authority, are not placed on the list. The site was properly placed on the NPL, and the conditions resulting in that placement are still present. Therefore, the site will remain on the NPL during the course of this project. Following appropriate ground-water cleanup, the UNC-Churchrock site will be considered for deletion from the NPL in accordance with deletion criteria applicable at the time ground-water cleanup is completed.

IV. AGREEMENT

In order to achieve ground-water cleanup of the UNC site, the NRC and the EPA agree to do the following:

1. Both Parties will cooperate with each other in overseeing final ground-water cleanup at the UNC site.

2. Upon submittal by UNC of a draft proposed plan, NRC and EPA will begin concurrent reviews of the proposed plan. NRC will review and, if necessary, require revisions to the plan to assure conformance to 40 CFR 192 and/or 10 CFR 40. EPA will review the plan to assure conformance to CERCLA and will provide comments to the NRC. NRC will approve the plan via license amendment upon concluding that the plan, as revised, meets the requirements of 40 CFR 192 and/or 10 CFR 40. If EPA is able to conclude that the revised plan also meets CERCLA requirements, UNC shall be required to begin implementation of the plan. If EPA cannot totally conclude that the plan approved by NRC meets all the specific CERCLA requirements, then EPA may initiate spearate actions as may be necessary to ensure conformance with these separate CERCLA requirements. In all cases, the NRC will be responsible to implement requirements to ensure conformance to 10 CFR 40 and 40 CFR 192.

3. Upon NRC approval of the revised cleanup plan and an EPA determination that the approved plan meets CERCLA requirements, UNC shall begin implementation of the plan. NRC will monitor the implementation of the plan to ensure conformance by requiring the submittal of periodic reports updating the status of cleanup actions. The reports will be provided to EPA.

If either Party determines the ground water cleanup actions are deficient or unsatisfactory, then that Party may provide notice to the other Party of the deficiency. The NRC shall assume the lead role for notification to UNC. The notification shall specify a time period in which regulatory compliance is expected to be achieved. If compliance is not achieved within the specific timeframe, NRC may take appropriate enforcement action. If NRC is not able to take action because it is not within the scope of its regulatory authority, then EPA may initiate a separate action under CERCLA to remedy the situation. In any event, no actions will be taken by either party without prior consultation with the other party.

4 Both Parties shall appoint a facility coordinator who shall be responsible for oversight of the implementation of this MOU and the activities required herein. The facility coordinators shall be appointed by each agency within seven (7) days of the effective date of this MOU. The Parties each have the right to appoint a new facility coordinator at any time. Such change shall be accomplished by notifying the other Party, in writing, at least five (5) days prior to the appointment of the name, telephone number, and mailing address of said facility coordinator.

5. The Parties will meet periodically at the request of either Party and at least semiannually. The facility coordinators should communicate with each other on a routine basis by telephone.

6. The Parties will provide each other with copies of all internal and external correspondence related to ground-water cleanup actions at the site. The Parties will also provide copies of other information upon request.

7. Whenever notice or information is required to be forwarded by one Party to another under the terms of this MOU, it shall be directed to the individuals at the addresses specified below:

EPA: Allyn M. Davis, Director
Hazardous Waste Management Division
Region VI, U.S. EPA
1201 Elm Street
Dallas, Texas 75270

NRC: Robert D. Martin, Regional Administrative
U.S. Nuclear Regulatory Commission
711 Ryan Plaza Dr.
Arlington, Texas 76011

cc: Harry Pettengill, Chief
Licensing Branch II
URFO
P.O. Box 25325
Denver, Colorado 80225

8. Routine communications may be exchanged verbally, in person, or by telephone between the Parties to facilitate the orderly conduct of work contemplated by this MOU.

9. Enforcement documentation provided under this MOU will be kept as exempt material by EPA and NRC, to the extent legally possible, according to the procedures under 40 CFR Part 2 and 10 CFR Part 2.790, respectively.

V. AGENCY RESPONSIBLITIES

A. NRC's Responsibilities

1. The NRC will require the owners/operators of the UNC Churchrock mill (UNC) to prepare and implement a reclamation plan that meets NRC requirements for ground-water cleanup. If any such plan is not complied with by UNC, NRC will take necessary actions to achieve compliance, as discussed in Section IV of this agreement.

2. The NRC will direct UNC to provide both parties with copies of major work product submittals as they become available. Such work products will include an adequate overall reclamation workplan, and plans and specifications for ground-water assessment, remediation, and monitoring.

3. The NRC agrees to complete/update progress reports on UNC remediation on a semiannual basis.

4. The NRC will assist in the development of information to support EPA's deletion of the site from the NPL upon completion of the remedial action to the extent practicable.

5. The NRC shall arrange for mutual access to the Churchrock property for EPA employees and their consultants at all reasonable times that permits such persons to be present and move freely in the areas in which any work is being conducted pursuant to this MOU.

B. EPA RESPONSIBILITIES

1. The U.S. Environmental Protection Agency will maintain a role of formalized review and consultation throughout the entire ground-water project review to assure conformance with EPA requirements.

2. EPA will review and provide comments on the ground-water cleanup portions of the site reclamation plan, and other associated deliverables, within timeframes as agreed to between NRC and EPA.

3. EPA will routinely furnish available written guidance regarding CERCLA requirements that may apply to this specific site.

4. EPA will provide any other needed regulatory consultation upon request by the NRC

VI. DISPUTE RESOLUTION

In the event of dispute between EPA and the NRC concerning site activities, the persons designated by each Agency as primary or, in their absence, alternate contact points will attempt to promptly resolve such disputes. If disputes cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further consultation. This supervisory referral and resolution process will continue, if necessary to resolve the dispute, to the level of the Nuclear Regulatory Commission and EPA Administrator. Both Parties will continue to maintain their respective rights or responsibilities under the MOU during the dispute resolution process.

VII. EXECUTION AND MODIFICATION

This agreement shall take effect upon execution by EPA and the NRC. It shall remain in effect for the duration of the program addressed herein unless terminated by mutual agreement by the two (2) Agencies; or, the MOU may be terminated unilaterally if any of the conditions set forth below are present.

1. The planning or conduct of ground-water cleanup actions fail to meet standards or schedules set forth in the Basis for Agreement (Section II) of this MOU.

2. The site is deleted from the NPL.

3. The site is turned over to the Department of Energy or other responsible State or Federal authority for long term care.

4. Regulatory changes occur which make this MOU unnecessary, illegal, or otherwise inappropriate.

The Parties may modify this MOU from time to time in order to simplify and/or refine the procedures contained herein. Each Party shall keep the other informed of any relevant proposed modifications to its basic statutory or regulatory authority, forms, procedures, or priorities. This MOU shall be revised, as necessary, by the adoption of such modifications. The MOU should be reviewed on an annual basis by both the Director-URFO, NRC, and the Director-Hazardous Waste Management Division, Region VI, EPA, or their designated representatives.

Executed and agreed to on _____.

_____
U.S. Nuclear Regulatory Commission, Region IV
Arlington, Texas

_____
U.S. Environmental Protection Agency
Region VI, Dallas, Texas

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