

7/08/2011

76 FR 40282

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AUG 17 PM 2:22

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August 10, 2011

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Announcements, and Directives Branch (RADB)

Office of Administration, Mail Stop: TWB-05-B01M

U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

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Re: Docket ID NRC-2011-0146

This public comment letter is intended to encourage the NRC to fully exercise its jurisdiction at former DOD sites in California. The NRC RIS with the subject docket identifier discusses jurisdictional issues in part as follows:

"...*Jurisdictional Issues* As previously noted, the NRC expanded the category of radium-226 excluded from NRC jurisdiction by defining the term "military operational" material to include "material still under control of the military, i.e., in storage, or material that may be subject to decontamination or disposal" (72 FR 55867). This expanded definition led to questions from the military and the State of California about NRC's jurisdiction over some of the military's ongoing and planned remediation activities. In particular, new issues emerged from the staff's discussions about the military's ongoing remediation activities at the Navy's Hunters Point Shipyard (HPS) site and the Air Force's McClellan site in California. After remediation, these sites or portions of these sites are planned to be released to the public for redevelopment, similar to other Base Realignment and Closure (BRAC) sites. The following key issues have been identified by the staff based on interactions with the military and the State of California.

- Potential for unnecessary dual regulation under the AEA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and lack of finality of the military remediation if NRC is not involved during military remediation and before the transfer of remediated property to non-military owners;
- Potential for significant impacts to community redevelopment and reuse of remediated military property unless NRC is involved during remediation;
- Regulatory uncertainty and inconsistent understanding regarding NRC's jurisdiction unnecessarily complicates military remediation;
- Regulatory uncertainty regarding jurisdiction over storage and decontamination of equipment and items containing radium-226; and
- Potential implications for health and safety from the unregulated sites being remediated and the uncharacterized sites with suspected radium-226..."

One problem with the above discussion is that it treats these former DOD sites as if they are only being intended for unrestricted release and development and reuse. In fact, there are numerous sites at former McClellan Air Force Base, Hunters Point and other former DOD sites in California, where the intent is to leave buried radioactive waste in place via the CERCLA process, avoiding the NRC's more stringent restricted release process. Apparently, whenever the NRC had these discussions with the

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State of California in the past, DOD entities had not clearly identified their intent to cap or bury radioactive waste containing radium at these sites. It is hard to imagine that the State of California would be supportive of the NRC abdicating its regulatory role in favor of the CERCLA process at these sites. Also, those discussions with the State of California likely occurred under the previous administration and perhaps our new Governor will have different feedback for the NRC. We suggest that the NRC speak again with the State of California regarding jurisdiction.

The State of California Department of Public Health (CDPH), the NRC Agreement State Agency in California, has no regulations that allow it to grant restricted release of sites. Furthermore, there is an existing executive order (Governor's 2002 Executive Order D-62-02) that bans burial or transfer of Class 3 landfills or unclassified waste management units containing radioactive waste or decommissioning waste. The lack of a California regulatory process allowing restricted release along with an executive order prohibiting burial of radioactive waste at landfill types equivalent to the sites where DOD plans to cap in place or bury radioactive waste at these sites in California will clearly make it impossible for DOD to transfer these capped sites to State jurisdiction for reuse or development.

Despite the lack of restricted release processes, the Navy has already capped one or more sites at Hunters Point that are confirmed to contain radium waste in the form of contaminated soil and discrete sources. They are apparently planning to use the CERCLA process and NRC's hesitancy to retain jurisdiction to attempt to transfer these sites to State jurisdiction. In addition, it appears that many waste shipments from the former Navy site at Treasure Island have not been properly characterized and may have resulted in shipment of soils with radium to landfills where such shipments are prohibited by Governor's 2002 Executive Order D-62-02. These situations argue for the need for more NRC involvement, not less involvement.

So, while the wording put forth in this RIS by the NRC brings up possible problems with the NRC jurisdiction over radium, it does not address or deal with the problems of sites aimed at restricted release in California. This is letter is intended to encourage the NRC to retain full jurisdiction over any sites planned for restricted release. The CERCLA process also does not deal with unrestricted release and final status surveys of buildings classified as impacted with radioactive materials.

The Agreement State Agency in California, CDPH, has apparently become very involved in these DOD sites apparently contributing to their existing large backlog of work. As Agreement State Licensees, we are aware of the workload being caused by these DOD sites and we are aware that they are not licensed by California and do not pay fees into the special fund that we pay our fees to for licensing and inspection services.

It generally seems like our requests for license renewal and amendments have been processed more slowly in the last couple of years by the State of California. This is probably in part due to state budget issues and related furlough of state employees. But we are concerned that CDPH's work with DOD sites that should be handled by the NRC is using up the services that we are paying for via licensing fees or it is using state general fund monies. In short, we are paying full licensing and registration fees to CDPH for part-time services, apparently in part due to their unfunded work at former DOD sites, which apparently may rightly fall under NRC jurisdiction. It has taken the NRC several years to get to the point

of this RIS from the Energy Policy Act of 2005 giving them jurisdiction. How long will it take to implement this NRC jurisdiction? Perhaps the apparent rush to cap in place disposal pits at former DOD sites under the CERCLA process is aimed at getting them capped before NRC implements jurisdiction. Fortunately, those sites apparently cannot be legally transferred to California jurisdiction for reuse under current California regulations. The NRC's concern about delaying reuse of those restricted release DOD properties is unfounded. DOD will have to keep them. What the NRC should be concerned about is that their lack of regulatory action on these DOD sites is causing Agreement State licensees to receive less service for their fees. This results in slowing innovation and business expansion in California. And with our high unemployment rate, we could certainly use some business innovation and expansion.

We know that as Agreement State licensees, we could never get by with leaving shallow buried radioactive waste in place in disposal pits and landfills and walk away from them like DOD is apparently trying to do in California. We want these DOD sites treated like any other private business with an NRC or Agreement State license. We are tired of watching DOD use the CERCLA process to attempt get around State and NRC regulations. And the EPA seems to be allowing that process to move forward under the CERCLA process without taking into account State requirements and regulations, while the NRC is taking a hands-off approach at CERCLA sites.

Our position is that all restricted release of former DOD sites with radioactive materials and all unrestricted release of buildings impacted by radionuclides should occur via NRC processes regardless of any CERCLA processes being used at those sites to deal with chemical contamination and soil contamination by radionuclides that is being cleaned up for unrestricted release.

At this point we also wish to express a minority point of view that differs from the above arguments significantly. About a third of our group believes that the NRC has no jurisdiction or at most dual jurisdiction role with Agreement States at the former DOD sites. The reasoning behind this viewpoint is that most of these sites are open to public entry and do not have Federal police or fire authorities providing services to them. With that in mind, it appears that virtually none of these sites meets the tightly defined California definition for sole federal jurisdiction. Other Agreement States may have similar issues related to sole federal jurisdiction.

We are concerned that the NRC may take a closer look at these sites and then realize that the NRC does not have jurisdiction or only has dual jurisdiction with an Agreement State. This will, of course, put even more pressure on Agreement State programs.

If the State has jurisdiction, it seems that the Air Force and Navy entities with physical control (keys to the sites) and administrative control of these sites may be required to obtain a license from the California Agreement State Program at CDPH. Agreement State Programs granting reciprocity with the Navy or Air Force NRC master materials licenses is a temporary possibility. But work at these sites will exceed the time frame allowed for reciprocity. The State of California does not issue master materials licenses, so presumably the DOD entities would be applying for Type A broad scope licenses from the State of California under this scenario.

Another related issue at some of these DOD sites is that the DOD entities seem to be claiming that remediation work is not be performed under their NRC master materials licenses but rather it is occurring under their contractor's NRC license. This situation needs to be clarified for all involved.

Please take our concerns into consideration. Some of our group has worked at these former DOD sites in California as contractors and have seen the actual practices being implemented. We obviously cannot sign this letter individually for fear of retaliation via our NRC or Agreement State Licenses but we do understand based on the RIS wording that these comments will be included in the public comments on this RIS.

Sincerely,

Concerned California Agreement State Licensees

cc:

Governor Jerry Brown

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