

## **March 21, 2014, Conference Call Summary with the U.S. Navy Regarding Service Provider Jurisdiction**

**U.S. Nuclear Regulatory Commission (NRC) Attendees:** Richard Chang, Robert L. Johnson, Orysia Masnyk Baily, and Stephen Poy

**U.S. Navy Attendees:** Steven Doremus (Radiological Affairs Support Office), Commander Gregory Fairchild (Naval Dosimetry Center), Catherine Haran (Naval Facilities Engineering Command), Lawrence Lansdale (Defense Base Closure and Realignment Commission), and Thomas Macchiarella (Defense Base Closure and Realignment Commission)

### **Discussion**

The NRC staff discussed that the scope of this call should be limited to service provider jurisdictional determinations at the Hunters Point Shipyard (HPS) and the staff's plan to coordinate service provider oversight with the California Department of Public Health (NRC Agreement State) personnel at HPS.

The NRC staff discussed the background for the jurisdictional determination, by reviewing the following points:

- The NRC staff was previously asked by The Shaw Group (Shaw) if they needed a State of California license for the work they are conducting at the HPS.
- The NRC staff began reviewing this request using the following information: Two maps on land jurisdiction (one from Tetra Tech dated April 2012 and a map that was provided by the U.S. Navy dated March 1977). The NRC staff also informed its decision making process by relying on the information within Chapter 26 of the "Real Estate Procedure Manual Regarding the Federal Legislative Jurisdiction over Naval and Marine Corps Areas Within States."

The NRC staff walked through a series of questions in order to help determine the regulatory jurisdiction of the service providers at this site. Specifically:

- One of the first questions considered, is whether or not the service providers were considered extensions of Federal government staff. In Shaw's case it appears that they were not considered an extension of Federal government staff (based on the review of their earlier contract).
- The second question the NRC staff considered was the type of land jurisdiction at this site. According to the 1977 map the Navy provided, the land jurisdiction is both proprietorial and partial.

The NRC staff explained that the northeast portion of the site is under partial land jurisdiction, according to Chapter 26 of the Real Estate Procedure Manual "[a]dministration of the Federal area is the same as if it were under exclusive federal jurisdiction for those state powers granted to the Federal Government without reservation." At HPS, it also appears that the health and

Enclosure

safety legislative and regulatory responsibilities have been granted to the Federal government, based on the fact that the Navy provides fire and police services to this area through contracts the Navy has with the adjoining local jurisdictions. Based on this information, the staff concludes that this area of the site would be treated as exclusive federal jurisdiction and service providers working in this area would be under NRC jurisdiction.

The NRC staff also discussed that for the proprietorial portion of the site (i.e., the southwest portion), the Navy's guidance states that a State would retain "all of the civil and criminal legislative jurisdiction over the Federal area that it would have if a private individual rather than the United States owned the land." Proprietorial jurisdiction would give way to Federal authority "to perform the functions delegated to it by the Constitution without interference from any source." Where the Federal government has preempted the State's ability to regulate in an area, such as the AEA did with respect to radioactive materials, the designation of the Federal government's interest in land as proprietorial does not open the area to duplicative state regulation, rather that pathway would be open under the Agreement State program of the AEA. Accordingly, where the Navy has proprietorial jurisdiction, the Agreement State would have regulatory jurisdiction over the public's health and safety. Based on this information, the staff concludes that service providers working in this area would be under State of California jurisdiction.

The NRC staff told the U.S. Navy staff that the NRC and the State of California, as an NRC Agreement State, have agreed to work cooperatively regarding the oversight of the radiological contractors working at the HPS site. The NRC and the State will keep each other informed about their respective activities and are considering the possibility of joint site inspections. Given the complexities of this jurisdictional determination, these planned collaborative efforts are undertaken in order to ease the transition of oversight for the service providers at the HPS and avoid delaying the Navy's remediation.

The NRC staff made the clarification that this determination is only for service providers, and the NRC is still relying on its "stay-informed approach" in regards to the Navy's cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act process.

The NRC staff discussed that they intended to send formal letters to the State and Navy regarding service provider jurisdiction. The staff asked the Navy to provide the addressee for the letter. The Navy requested that the U.S. Environmental Protection Agency be provided a copy of NRC's final jurisdictional determination letter.

The Navy staff asked if the NRC would work with the State by dividing the oversight of the service providers based on the location of a service provider's site headquarters (NRC jurisdiction or State jurisdiction). The NRC staff replied that it could only regulate the service provider based on the location of their activities.

The U.S. Navy staff asked if NRC and State of California regulations are comparable. The NRC staff replied that, since California is an NRC Agreement State, the State's standards need to be at least as strict as NRC's requirements, but may be stricter.