

## **Summary of Public Comments on the Draft Regulatory Issue Summary for Military Radium**

Ten public comment letters were received during the public comment period. The commenters include: Concerned California Agreement State Licensees<sup>1</sup>, Jared Washburn, the U.S. Environmental Protection Agency (EPA) Region 9, the California Department of Toxic Substances Control (CDTSC), the California Department of Public Health (CDPH)<sup>2</sup>, the U.S. Department of Defense (DoD), and four anonymous submitters.

Five commenters support the proposed clarifications in the draft Regulatory Issue Summary (RIS). The CDPH supports the U.S. Nuclear Regulatory Commission (NRC) jurisdiction. The CDTSC requests that the NRC's jurisdiction be broadened to also include military landfills with "suspected" contamination. Individual commenters, claiming detailed knowledge of the ongoing military remediation work in California, provided many comments suggesting that the proposed clarifications in the draft RIS do not go far enough, including comments such as: the draft RIS has a "backseat role" at sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process; more NRC involvement is needed; NRC should regulate restricted release sites with burials; and DoD is avoiding NRC's more stringent decommissioning requirements for restricted release. Concerns also were expressed about the Navy's cleanup practices at the Treasure Island site in California and that NRC's master materials licenses (MMLs) with the Air Force and Navy should include military remediation.

Four commenters are neutral, but raise implementation challenges. The EPA Region 9 believes that the NRC licensing proposed in the draft RIS could complicate military cleanup, and that the Agreement State role after completion of military remediation and property transfer (i.e., ability to impose licensing requirements on subsequent property owners) could have a potential impact on the finality of military remediation. The remaining three individual commenters identified implementation challenges such as: explaining the application of NRC regulations for capping buried landfills and waste consolidation units, and explaining how to address state regulations that are more restrictive than NRC regulations.

The DoD comments opposed the proposed clarification of NRC's jurisdiction over military radium-226 and identified several implementation challenges, particularly concerns about licensing. Despite its opposition, DoD expressed support for further joint discussions on how NRC can be appropriately involved during the military's remediation activities so as to avoid duplication of regulatory requirements and effort. The DoD concerns were discussed with the staff during the November 1, 2011, public meeting and then documented in the DoD comment letter. The principal concerns raised by DoD are: the clarifications in the draft RIS are inconsistent with the Energy Policy Act of 2005, and NRC's proposed licensing of non-National Priorities List (NPL) sites would result in dual regulation with the CERCLA process that would duplicate military cleanup efforts and cause additional cleanup costs and delays. The staff proposed licensing/permitting of the military's possession of the licensable material under an MML, coordinating the CERCLA process with NRC's decommissioning process, and providing NRC oversight at those sites where EPA does not provide regulatory oversight. The DoD states

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<sup>1</sup> The Concerned California Agreement State Licensees is **not** an affiliate of the Organization of Agreement States.

<sup>2</sup> CDPH is the designated organization in California to implement the Agreement State program.

that it has a statutory requirement to conduct all remediation under the CERCLA process and that the CERCLA permit waiver prevents NRC licensing/permitting of military remediation conducted under CERCLA. The DoD also believes there is independent oversight of remediation at non-NPL sites where states are involved; such as when states provide review and comment.

**List of Public Comments and Agencywide Document Access and Management System  
(ADAMS) Accession Numbers**

(Also, search ADAMS using the case reference no. NRC-2011-0146)

<b>Comment number</b>	<b>Date</b>	<b>Author/Organization</b>	<b>ADAMS number</b>
Comment 1	August 5, 2011	Anonymous	ML11220A262
Comment 2	August 4, 2011	Anonymous	ML11224A018
Comment 3	July 31, 2011	Anonymous	ML11227A266
Comment 4	August 10, 2011	Concerned California Agreement State Licensees	ML11231A252
Comment 5	August 12, 2011	Jared Washburn	ML112370043
Comment 6	August 14, 2011	Anonymous	ML112370044
Comment 7	August 16, 2011	Deborah Morefield, DoD (request for 75-day extension of public comment period)	ML11243A147
Comment 8	September 6, 2011	Robert Carr, EPA Region 9	ML11252B049
Comment 9	November 9, 2011	Stewart Black, CDTSC	ML11325A241
Comment 10	November 28, 2011	Maureen Sullivan, DoD	ML11334A056
Comment 11	November 29, 2011	John Fassell, CDPH	ML12019A118