Options for the Nuclear Regulatory Commission's Involvement with U.S. Department of Defense's Remediation

Option 1: Licensing

- Description:

  In SECY-11-0023 the staff recommended a licensing approach that would be coordinated with the Comprehensive Environmental Response, Compensation and Liability (CERCLA) process for the U.S. Nuclear Regulatory Commission's (NRC) involvement at U.S. Department of Defense (DoD) sites being remediated under that process, but without U.S. Environmental Protection Agency (EPA) regulatory oversight. In SRM-SECY-11-0023, the Commission approved including this approach in the draft Regulatory Issue Summary for public comment. Development of the specific method of coordinating the licensing approach with the CERCLA process was listed in SECY-11-0023 as one of the implementation challenges. As part of the discussions in the NRC-DoD working group, the staff developed and proposed a possession-only license (POL). The proposed POL could be implemented under the Air Force and Navy Master Materials Licenses (MMLs) or be site specific with respect to the Army. This approach would only license the possession of the radioactive material and not the remedy under the CERCLA process. Thus, the proposed POL would acknowledge the existing DoD remediation under the CERCLA process and not require adherence to NRC's decommissioning process or documents. The staff considers that this approach would avoid dual regulation and the CERCLA permit waiver issues. The NRC would, however, only terminate the POL for the material at a specific site if NRC had no unresolved concerns regarding protection of public health and safety and the environment. This option could apply to sites with plans for either unrestricted or restricted release. The DoD members of the working group did not agree with this option.

- Pros:
  - Greater authority to resolve difficult disputes, either by taking an enforcement action or not approving the termination of the POL for the specific site under an MML.
  - Difficult disputes might be avoided because of the pressure on DoD to have NRC terminate the POL so that DoD could transfer the site to a new owner who would likely not want to be licensed.
- Cons:
  - The DoD would likely continue to oppose any form of licensing based on the CERCLA permit waiver and concerns about impacts to remediation cost and schedules as well as potential delays in the transfer of land for redevelopment.
  - The DoD opposition could lead to lengthy DoD and the NRC disputes preventing NRC technical activities that would be beneficial to remediation by adding confidence in the protection of public health and safety and the environment.
  - Disputes with DoD would preclude the NRC involvement and benefits to the remediation process, especially at high visibility sites planning transfer and redevelopment of the land after remediation.
  - The use of a POL under the Air Force and Navy MMLs has not been implemented by either the NRC or DoD and, therefore, could be confusing and/or have unforeseen complications.

- A Memorandum of Understanding (MOU) or individual POLs for each site would be necessary for the Army because there is no Army MML.
- Using different processes for the services is more complicated and possibly confusing to implement than using one consistent process for all three services.
- EPA noted that it had not previously encountered this approach and that it could prove problematic.

Option 2: Memorandum of Understanding

- Description:

  The MOU would be a written agreement, signed by the NRC and DoD senior-level official, that establishes a consultation process, exchange of information, and NRC involvement with DoD's remediation under the CERCLA process. The MOU would be comprehensive and apply to all confirmed Atomic Energy Act of 1954, as amended material subject to NRC authority, including radium, which would be remediated by any of the military services. Therefore, the MOU would apply to all types of remedial actions, including unrestricted and restricted use sites or portions of sites. Remediation of buildings and closed firing ranges would also be included under the MOU. The NRC would determine its involvement at each site, including staying informed or monitoring as described in Enclosure 6. Monitoring oversight is intended to add confidence that the outcome of DoD's remediation would be protective. Disputes would be addressed through discussions between senior management representatives at NRC and DoD, but if disputes cannot be resolved NRC could provide a letter of safety concern to DoD, EPA, state officials, and future owners or take a regulatory action.

- Pros:
  - The MOU option is consistent with the Statement of Considerations for the Naturally Occurring and Accelerator Produced Radioactive Material rule which notes that NRC does not intend to require unlicensed owners of properties that may be contaminated with radium-226 to obtain licenses. Instead, the NRC will work with the facility owner to decommission the site. The NRC may order the owner to obtain a license and to perform site decommissioning if the site presents a significant threat to the public health and safety and the environment (72 FR 55902).
  - Based on Commission policy decisions, the NRC has previously implemented written agreements or MOUs for the remediation of other sites where the CERCLA process is being used (e.g., the Navy's Hunters Point site; Formerly Utilized Sites Remedial Action Program sites, the Army's Lake City site, and the Homestake and Church Rock uranium mill tailings sites). The Commission's decision not to license Hunters Point included both unrestricted and restricted release areas of the site.
  - The DoD's August 1, 2013, letter supports moving forward with an MOU and notes that it would establish a cooperative NRC and DoD process (Enclosure 1).
  - The DoD letter notes that the MOU would avoid challenging topics such as the CERCLA permit waiver, radium jurisdictional issues, and project delays and increased costs resulting from duplicative regulatory procedures.

  - The DoD letter notes that an MOU "maximizes efficiencies by leveraging regulatory and DoD processes already in place, while incorporating the NRC monitoring into the existing CERCLA program…"
  - One consistent process for all three services would be less complicated and less confusing to implement by both agencies.
  - The NRC would avoid unnecessary dual regulation by conducting its monitoring within the CERCLA process and therefore not require DoD to use the NRC decommissioning process, requirements, and documents.
  - The NRC's monitoring activities (e.g., technical reviews and comments, site observations, and confirmatory surveys) would not be different than its typical technical activities for licensing or the staff's activities conducted for DOE's Waste Incidental to Reprocessing program.
  - The EPA indicated that the MOU approach would be generally beneficial.

- Cons:
  - An MOU may not provide sufficient regulatory oversight needed to resolve conflicts given the cost, schedule, and redevelopment pressures on DoD's remediation at certain Base Realignment and Closure sites.
  - Challenging conflicts important to protection of public health and safety and the environment could arise that cannot be resolved by the provision in the MOU for conflict resolution. The NRC could only rely on either a letter expressing a significant safety concern to all affected parties or an enforcement action, that DoD could legally challenge based on the CERCLA permit waiver.
  - The EPA noted that dispute resolution may be difficult under an MOU compared to licensing.