

Description of The U.S. Nuclear Regulatory Commission Involvement under a Potential Memorandum of Understanding with the U.S. Department of Defense

The proposed Memorandum of Understanding (MOU) would establish a general process for consultations between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Defense (DoD). Consultations include DoD's preparing an inventory of all DoD sites with confirmed radioactive material, exchanging information about these sites, and agreeing to work cooperatively and support the NRC's involvement activities. The MOU would not prescribe how the NRC would determine its priorities or monitoring activities. The key provisions given in Enclosure 4 summarize this general process for consultations.

Two types of NRC involvement could be implemented under an MOU: "stay informed" and "monitoring." Consistent with SECY-11-0023 and the draft Regulatory Issue Summary (RIS), for sites where the U.S. Environmental Protection Agency (EPA) has regulatory authority (e.g., sites listed on the National Priority List (NPL)) the staff would take a limited involvement approach to stay informed and would rely on the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) process and EPA regulatory oversight. This **stay informed approach** was approved by the Commission for the Navy's Hunters Point site (SRM-SECY-08-0077), and the staff has also used this approach for the Navy's Alameda site and the Air Force's McClellan site. The staff's use of this approach for the past 5 years has been successful. All three of these sites are planning both unrestricted and restricted remedial actions. Typically, the staff stays informed about these remedial actions by a combination of selected document reviews and annual site visits that involve meetings with the Air Force, Navy, EPA Region 9, and the state agencies involved with the remediation of these sites. Through these discussions, the staff maintains a general understanding of the progress and views on important radiological remediation issues as well as the completed and planned activities of each organization. This approach does not involve licensing and accordingly the staff does not conduct licensing reviews. However, the NRC reserves the option of providing comments to EPA on the military remediation, if necessary, to justify continued reliance on the CERCLA process and EPA oversight. Finally, the staff would continue its regulatory oversight of military contractors conducting remediation activities under an NRC service provider license.

The second approach for NRC's involvement is **monitoring** of sites where there is no federal oversight conducted by EPA (e.g., sites not listed on the NPL). This monitoring approach would replace the licensing approach described in SECY-11-0023 and the draft RIS if approved by the Commission. The NRC would use a graded approach to prioritize these sites and conduct the appropriate type and amount of monitoring activities for each site based on its priority. Monitoring activities could include document and data reviews, site observations, and confirmatory radiological surveys. The purpose of this monitoring would be to provide consistent federal oversight to confirm that DoD's remediation of radioactive material using the CERCLA process would result in an outcome that is protective of public health and safety and the environment. To accomplish this, NRC monitoring would determine that NRC's 25 mrem/yr dose criterion in 20.1402 is not exceeded for sites planning for unrestricted release. For sites planning to leave contamination onsite with restrictions on future land use and/or engineered controls, NRC monitoring would determine that the 25 mrem/yr dose criterion in 20.1403 (b) with institutional controls in place is not exceeded and that the plans for 5-year reviews required by CERCLA and their implementation are acceptable to ensure long-term protection. Monitoring for these sites might include reviewing the plans for institutional controls, engineered barriers

and DoD's analyses of those nine CERCLA criteria that parallel NRC's restricted release criteria, including: a cost benefit analysis of the remedy, acceptance by the state and the public, and short and long term protection. These reviews would be intended to ensure that the remedy remains effective so the 25 mrem/yr dose criterion in 20.1403 would not be exceeded in the long-term. This illustrates how the NRC monitoring can rely on the CERCLA process but provide independent federal oversight to make certain that the process is effectively implemented to ensure protection.

Monitoring under the MOU would be supplemented as needed by the NRC's regulatory oversight of DoD contractors with NRC service provider licenses to ensure contractors are conducting remediation activities safely and consistent with their license conditions.

The NRC monitoring might also consider relying on state oversight on a case-by-case basis depending on the authority of the state organizations involved and level of expertise and involvement with radiological oversight. Agreement States do not have authority to regulate Atomic Energy Act material possessed by federal entities under their Section 274 agreements. However, Agreement States can assist other agencies in the CERCLA remediation process.