



SECRETARY

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

December 22, 2014

COMMISSION VOTING RECORD

DECISION ITEM: SECY-14-0082

TITLE: JURISDICTION FOR MILITARY RADIUM AND U.S.  
NUCLEAR REGULATORY COMMISSION OVERSIGHT OF  
U.S. DEPARTMENT OF DEFENSE REMEDIATION OF  
RADIOACTIVE MATERIAL

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of December 22, 2014.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

  
\_\_\_\_\_  
Rochelle C. Bavol  
Acting Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Macfarlane  
Commissioner Svinicki  
Commissioner Ostendorff  
Commissioner Baran  
Commissioner Burns  
OGC  
EDO

VOTING SUMMARY - SECY-14-0082

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MACFARLANE	X				X	11/4/14
COMR. SVINICKI	X				X	12/16/14
COMR. OSTENDORFF	X				X	10/9/14
COMR. BARAN	X				X	12/11/14
COMR. BURNS	X				X	12/11/14

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: Chairman Allison M. Macfarlane  
SUBJECT: SECY-14-0082: Jurisdiction for Military Radium and U.S. Nuclear Regulatory Commission Oversight of U.S. Department of Defense Remediation of Radioactive Material

Approved  Disapproved  Abstain

Not Participating

COMMENTS: Below  Attached  None



\_\_\_\_\_  
SIGNATURE

11/4/14

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

**Chairman's vote on SECY-14-0082: Jurisdiction for Military Radium and U.S. Nuclear Regulatory Commission Oversight of U.S. Department of Defense Remediation of Radioactive Material**

I approve the staff's recommendation to finalize and implement the key provisions of a Memorandum of Understanding (MOU) with the Department of Defense (DOD) for remediation of DOD sites containing radioactive materials subject the NRC's regulatory authority. As described by staff in SECY-14-0082, the MOU should be a written agreement that establishes a consultation process, exchange of information, and NRC involvement with DOD's remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. For awareness, staff should provide the Commission the Final Draft of the MOU before it is signed.

While I approve the staff's recommendation, I do have some concerns with the MOU approach. I am concerned with the staff's ability to address dispute resolution related to the MOU. Specifically, staff noted the possibility that challenging conflicts important to protection of public health and safety and the environment could arise between NRC and DOD that could not be resolved by the provision in the MOU for conflict resolution. Thus, I approve the staff's recommendation to periodically evaluate the effectiveness of the MOU, particularly for dispute resolution. Staff should report the outcome of this evaluation to the Commission on a biennial basis. If the MOU is found to be ineffective in resolving disputes, staff should recommend appropriate actions, including regulatory actions, to the Commission.

Furthermore, I approve including the regulatory costs associated with the MOU in the 10 percent of the NRC's budget that is not recovered through fees (i.e. off fee base and recovered through Congressional appropriations). As such, I approve development of a new fee relief category for the regulatory activities under the MOU. However, I note that I am concerned about the precedence that this establishes in terms of the budgetary burden to the NRC in the future. The determination as to whether the NRC should include sites in addition to those initially stipulated by the MOU should be handled on a case-by-case basis.

Lastly, I approve completion and publication of the Regulatory Information Summary (RIS), entitled 2011-XX, "NRC Regulation of Military Operational Radium-226." Staff should work with DOD while developing the planned "Radium [and other radiological materials] Implementation Plan" as requested by DOD in their submitted comments to the RIS. The timeline for developing this plan should coincide with the finalization of the Regulatory Information Summary associated with these activities.

NOTATION VOTE

RESPONSE SHEET

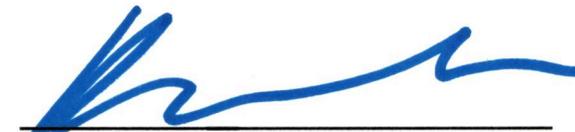
TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-14-0082: Jurisdiction for Military Radium and U.S. Nuclear Regulatory Commission Oversight of U.S. Department of Defense Remediation of Radioactive Material

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below XX Attached \_\_\_\_\_ None \_\_\_\_\_

I approve the staff's recommended course of action, to complete and execute a memorandum of understanding with the U.S. Department of Defense (DoD) addressing the terms of NRC involvement with DoD remediation of radium and other Atomic Energy Act of 1954, as amended, material subject to NRC regulatory authorities. This approach is sound and reasonable given the complexities governing the interplay of statutory authorities between our two Federal agencies and impinging, also, on those of the U.S. Environmental Protection Agency. Use of such memoranda, with a graded approach, is proven and, as the staff reports, "has been successful" at existing military sites undergoing remediation. I further approve the establishment of a new fee relief category for this activity. This is both necessary and appropriate. The staff should modify the draft Regulatory Issue Summary (RIS) consistent with the Commission's decision in this matter and publish the RIS in a *Federal Register* notice.

  
\_\_\_\_\_  
SIGNATURE

12/16/14  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER OSTENDORFF  
**SUBJECT:** SECY-14-0082: Jurisdiction for Military Radium and U.S. Nuclear Regulatory Commission Oversight of U.S. Department of Defense Remediation of Radioactive Material

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

**COMMENTS:** Below  X  Attached \_\_\_\_\_ None \_\_\_\_\_

I approve the staff's recommended approach for overseeing the Department of Defense's remediation of historical radium-226 contamination with the understanding that monitoring and oversight under the memorandum of understanding (MOU) will be supplemented by oversight of licensed service providers. If the staff encounters challenges in implementing the MOU, it should not hesitate to come back to the Commission for further direction.

  
\_\_\_\_\_  
**SIGNATURE**

10/9/14  
\_\_\_\_\_  
**DATE**

Entered on "STARS" Yes  X  No \_\_\_\_\_

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: Commissioner Baran  
SUBJECT: SECY-14-0082: Jurisdiction for Military Radium and U.S. Nuclear Regulatory Commission Oversight of U.S. Department of Defense Remediation of Radioactive Material

Approved X Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached X None \_\_\_\_\_

Jeff Baran  
\_\_\_\_\_  
SIGNATURE

12/11/14  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes X No \_\_\_\_\_

## **Commissioner Baran's Comments on SECY-14-0082**

I approve the staff's recommended approach for NRC oversight of Department of Defense (DOD) remediation of radioactive material. As described in the SECY paper, the staff should complete the memorandum of understanding (MOU) with DOD, use the graded approach described in enclosure 6 to implement NRC's involvement under the MOU, establish a new fee relief category for the monitoring of DOD unlicensed sites, and complete the Regulatory Issue Summary. I agree with the staff that NRC's role in DOD remediation should be more robust in cases where EPA is not conducting oversight under CERCLA. The staff should provide the final draft of the MOU to the Commission for its information.

I share the concerns of Chairman Macfarlane and the staff regarding the effectiveness of dispute resolution under an MOU. However, I am satisfied that NRC has adequate enforcement options available if a dispute between DOD and NRC cannot be resolved through the MOU's dispute resolution process. Staff should periodically evaluate the effectiveness of the MOU, particularly with respect to dispute resolution, and report the results to the Commission on a biennial basis.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Commissioner Burns  
**SUBJECT:** SECY-14-0082: Jurisdiction for Military Radium and U.S. Nuclear Regulatory Commission Oversight of U.S. Department of Defense Remediation of Radioactive Material

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

**COMMENTS:** Below  X  Attached \_\_\_\_\_ None \_\_\_\_\_

While reliance on the Memorandum of Understanding for NRC oversight of U.S. Department of Defense (DOD) remediation of radium at unlicensed sites may not be the most predictable way to implement our regulations, staff has proposed a workable approach given the circumstances. Staff's approach has been used successfully in the past with certain DOD activities and facilities. I approve the staff's recommended approach. Such an approach is only workable if the parties collaborate in good faith to ensure that remediation is carried out effectively and in conformance with the governing safety standards. Should this not be case, staff should provide the Commission with recommendations to implement a more formal licensing and oversight approach consistent with the Atomic Energy Act of 1954, as amended.



**SIGNATURE**

**11 December 2014**

**DATE**

Entered on "STARS" Yes  x  No \_\_\_\_\_