



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

September 21, 2015

Mr. Bryan Werner
Radiation Protection Program Supervisor
Decommissioning Section
400 Market Street
Harrisburg, PA 17101

Dear Mr. Werner:

This letter is in response to your email dated May 20, 2014, regarding the jurisdictional issues related to the Willow Grove former Naval Air Station (NAS) (Willow Grove site) in Pennsylvania.

Current Status:

The Commonwealth of Pennsylvania's Department of Environmental Protection (DEP) inquired about the Commonwealth's role in the remediation of the Willow Grove site. The Willow Grove site is being remediated using the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process but is not a listed site on the National Priority List. The Commonwealth does not have regulatory jurisdiction over the U.S. Department of the Navy (Navy) with respect to byproduct, source and special nuclear materials covered by the Atomic Energy Act of 1954, as amended (AEA) that may be on the site due to the Federal government's sovereign immunity.

The Commonwealth of Pennsylvania does have a role in the CERCLA process, which is outside the AEA roles and responsibilities. The DEP should work with the Commonwealth's lead agency in the CERCLA process to ensure that its interests are addressed in that process.

The Commonwealth of Pennsylvania could have a role in regulatory oversight of private contractors (service providers) that may be used to accomplish remediation as outlined in NMSS Procedure SA-500, *Jurisdictional Determinations*. Additional guidance was developed and sent to the Agreement States in a FSME letter dated April 22, 2014, FSME-14-039, *Clarification on The Determination of Regulatory Jurisdiction of Nonfederal Entities Conducting Cleanup Activities on Federal Property In Agreement States*.

Using this guidance, the U.S. Nuclear Regulatory Commission (NRC) staff evaluated the specific situation at the Willow Grove site. The following information was obtained from the Navy.

The property that currently constitutes the Willow Grove site was purchased as parcels over time, with the land status at the time of individual purchases being determined to be either exclusive Federal jurisdiction or proprietary jurisdiction. The land that was purchased under exclusive Federal jurisdiction was later changed to concurrent jurisdiction (Enclosure 1). The later land purchases were made under proprietary jurisdiction. The current land status is presented in the attached annotated map which also shows the contaminated areas (Enclosure 2).

Based on this information and using the FSME-14-039 guidance including the attached jurisdictional flowchart, the NRC staff has determined that the Commonwealth would likely have regulatory jurisdiction over any service providers the Navy may use at Willow Grove site. The summary of the evaluation is presented below.

Jurisdictional Evaluation:

The NRC's regulatory authority over a service provider licensee performing work under a contract with a Federal entity is determined using the following decision process. This process involves three determinations: 1) the regulatory jurisdiction for the radioactive material; 2) the contractor's relationship with the Federal entity; and 3) the regulatory jurisdiction of the land where the activity will be conducted.

The decision process is used by the NRC staff to determine the regulatory jurisdiction for the service provider contractor and does not change the regulatory jurisdiction over the radioactive material or the remediation process.

1) Regulatory Jurisdiction for the Radioactive Material – Is it AEA material?

The radioactive materials identified in the Historical Radiological Assessment are AEA materials. Therefore, proceed to the next step.

2) Contractor Relationship with the Federal entity.

Any contractor relationship the Navy may have for remediation service providers has not been evaluated. However, the other Navy contractor relationships have specifically identified that contractors should have an NRC or Agreement State service provider license to enter into the contract. The service providers are responsible for their own health and safety programs while conducting remedial actions for the Navy. Therefore, these service providers are independent of the Navy and are not considered to be extensions of Navy staff, and whether the NRC or the Commonwealth has jurisdiction over these service providers depends on jurisdiction over the land at the Willow Grove site. For the purpose of this analysis, the NRC staff assumes that any selected contractor for the Willow Grove site will follow the same contractual relationship with the service provider's health and safety program being independent of the Navy. Therefore, under this assumption, any selected contractors for the Willow Grove site would be independent of the Navy and jurisdiction over their activities would turn on land jurisdiction.

3) Jurisdiction Based on Land Status.

As discussed above, the land that makes up the Willow Grove site was purchased as individual parcels over time with different jurisdictional status at the time of their purchase. The Navy has provided the jurisdictional status of the land with the contaminated areas at the time of purchase and the current land status. The parcel that was purchased as exclusive Federal jurisdiction was converted to concurrent jurisdiction in 1984. Because the land in question is currently under concurrent jurisdiction, any service providers the Navy uses at the Willow Grove site would be under the Commonwealth's jurisdiction, not the NRC's, assuming that these service providers are independent of the Navy.

If you have any questions with regard to the information provided in this letter, feel free to contact me or Stephen Poy on (301) 415-7135 or e-mail at Stephen.Poy@nrc.gov.

Sincerely,

/RA/

Chris Einberg, Branch Chief
Agreement State Programs Branch
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Letter from Dept. of Navy to Governor Thornburgh dated March 17, 1980 (ML15020A671)
2. Legal Jurisdiction Diagram/Map Overlooking Willow Grove Site (ML15020A344)

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