



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

April 7, 2015

Ms. Kathleen Cuzzolino
Environmental Protection Specialist
Gateway National Recreation Area
210 New York Avenue
Staten Island, NY 10305

SUBJECT: ROLE OF THE U.S. NUCLEAR REGULATORY COMMISSION AT THE
GATEWAY NATIONAL RECREATION AREA ON STATEN ISLAND,
NEW YORK

Dear Ms. Cuzzolino:

In a letter to you, dated March 24, 2014, (Agencywide Document Access and Management System (ADAMS) Accession Number ML13346A428) the U.S. Nuclear Regulatory Commission (NRC) discussed our plans to engage the National Park Service (NPS) on determining whether an NRC license will be required for the radioactive material located at Great Kills Park, a park unit within the Gateway National Recreation Area on Staten Island, New York. The Gateway National Recreation Area is under the authority of the NPS, a Bureau of the U.S. Department of the Interior. Since March 2014, the NPS has completed a time critical removal action for historical radium contamination (pending a final report) and is preparing for a remedial action using the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) process for Great Kills Park. The purpose of this letter is to provide the NRC position on its jurisdiction over discrete sources of radium-226 located at Great Kills Park, inform you of potential approaches the NRC is considering in exercising this jurisdiction over NPS possession of the radium-226, and give NPS an opportunity to provide input in order to assist the NRC in determining the most appropriate path forward.

The Energy Policy Act of 2005 (EPAAct) expanded the definition of "byproduct material" to include certain discrete sources of radium-226, other discrete sources of naturally occurring radioactive material, and certain accelerator-produced radioactive material under NRC jurisdiction (collectively, these materials are referred to as NARM). Specifically, Section 651(e)(3)(A) of the EPAAct amended the definition of byproduct material to include "any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after [August 8, 2005] for use for a commercial, medical, or research activity." On November 30, 2007, the NRC implemented this provision of the EPAAct by amending the definition of byproduct material in 10 CFR Parts 20, 30, 50, 72, 150, 170, and 171 to be consistent with the EPAAct (i.e., the NARM Rule). Additionally, the NRC established a definition for the term "discrete source" to be used in conjunction with the new definition of byproduct material, as this term was not specifically defined by the EPAAct. Accordingly, NRC's regulations in 10 CFR Parts 20, 30, 110, and 150 define a discrete source as "a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities." The Statements of Consideration (SOCs) for the NARM rule noted that "once a discrete source meets the definition of *Byproduct material*, any contamination

resulting from the use of such discrete sources of this byproduct material will also be considered byproduct material” (72 FR at 55871, October 1, 2007).

Within the SOCs for the NARM rule, there is a discussion about NRC’s authority at landfills with radium-226 contamination. The SOCs state that NRC has jurisdiction over old landfills or disposal sites contaminated with radium-226 (72 FR at 55886, October 1, 2007). The SOCs also state, “If contamination is discovered at a non-licensed person’s facility, such as contaminated buildings or grounds, the NRC will work with the facility owner to perform decommissioning of the site. If the site presents a significant threat to the public health and safety, the NRC may order the owner to obtain a license and to perform decommissioning of the site” (72 FR at 55902, October 1, 2007).

The NRC staff recently received approval from the Commission to utilize a Memorandum of Understanding approach for the implementation of NRC’s jurisdiction over the military’s remediation of unlicensed radium (see SRM-SECY-14-0082, ADAMS Accession No. ML14356A070, for additional details). NRC staff believes that many parallels can be drawn between the activities at Great Kills Park and the Commission’s recent direction for the implementation of NRC’s jurisdiction over military radium. Specifically, these sites are Federally-owned, without a current NRC license, and are required to clean up using the CERCLA process.

The NRC staff is currently considering if the Commission’s recent direction associated with the oversight of military radium through the use of a Memorandum of Understanding could also be effectively utilized to implement NRC’s jurisdiction and oversight of the possession of radium-226 at Great Kills Park, or if a licensing approach would be more appropriate. Some important factors that can influence the NRC’s decision to utilize a letter of agreement between the two agencies or the issuance of an NRC license would be if: 1) the EPA has or will have a formal regulatory role (similar to its role for sites listed on the National Priorities List); 2) AEA licensed service providers^[1] will be used in the future at Great Kills Park; and 3) an acceptable reimbursable agreement for NRC activities can be reached. Please note that if an appropriate demonstration can be made that NRC’s unrestricted use criteria is currently met, then NRC may have less involvement than discussed earlier.

To help us determine what would be the best option associated with the oversight of the possession of radium-226 at Great Kills Park, we are requesting that the NPS provide the NRC with its preference to have a letter of agreement with the NRC, or to be issued an NRC license. Please respond to the NRC within sixty (60) calendar days of the date of this letter with your preference. Individual issues regarding a potential future letter of agreement could be addressed by further staff discussions on this topic if NRC determines this to be an appropriate path forward.

^[1] At military radium sites, NRC has a policy of ensuring that service providers handling Atomic Energy Act of 1954, as amended, material perform their work under an NRC service provider license. Please see the discussion in SECY-14-0082 and SECY-08-0077, for more details.

K. Cuzzolino

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In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of the NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Please contact Richard Chang of my staff if you have any questions concerning the above at (301) 415-5563 or via email at Richard.Chang@nrc.gov.

Sincerely,

/RA/

Larry W. Camper, Director
Division of Decommissioning, Uranium Recovery,
and Waste Programs
Office of Nuclear Material Safety
and Safeguards

cc:

New York State Department of Health
New York State Department
of Environmental Conservation
New York City Department
of Health and Mental Hygiene
U.S. Department of the Interior

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Sincerely,

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Larry W. Camper, Director
Division of Decommissioning, Uranium Recovery,
and Waste Programs
Office of Nuclear Material Safety
and Safeguards

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New York State Department
of Environmental Conservation
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of Health and Mental Hygiene
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