Comment Response to Draft Regulatory Issue Summary Dated July 8, 2011

This enclosure provides a summary of public comments on the draft Regulatory Issue Summary (RIS) and the U.S Nuclear Regulatory Commission (NRC) responses. Table 1 provides a list of the public comments and access to them using their accession numbers in the NRC's Agencywide Documents Access and Management System (ADAMS).

U.S. Department of Defense Comments

The U.S. Department of Defense (DoD) provided several comments on the draft RIS. The areas of DoD concern were:

- remediation
- legal issues
- licensing
- operational firing ranges
- items and equipment
- implementation

DoD's primary concern was that it opposed the licensing approach to DoD radium contamination remediation that the NRC presented in the draft RIS.

It should be noted that the NRC and DoD established a joint working group to discuss resolution of DoD's comments. The working group consisted of NRC technical and legal staff and environmental restoration program managers and legal staff from the Office of the Under Secretary of Defense, U.S. Department of the Air Force, U.S. Department of the Army, and U.S. Department of the Navy. The group conducted seven formal interactions between February 2012 and July 2013 and numerous informal discussions for planning, coordination, and clarification purposes. The working group also discussed additional issues that were related to DoD's comments on the RIS, including remediation of unlicensed AEA byproduct, source, and special nuclear material using the CERCLA process. DoD stated, in its August 1, 2013, letter (available in ADAMS at Accession No. ML13277A566), that the development of a Memorandum of Understanding (MOU) would address its concerns regarding the draft RIS, including the risk of dual regulation and adverse cost and schedule impacts under a licensing approach. The additional issues that the working group discussed are described on pages 4-5 of Enclosure 3 to SECY-14-0082 (ML14098A356). These issues that DoD raised during the working group interactions but did not specifically provide on the draft RIS are not discussed further in this comment and response document. Ultimately, the NRC and DoD agreed to negotiate an MOU that would govern NRC's involvement in DoD's remediation rather than the licensing approach. The NRC staff believes that the MOU approach substantially reduces unnecessary dual regulation and the potential for cost and schedule impacts raised by DoD in its comments on the RIS.

1. Remediation of radium contamination and licensing

   Comment: The DoD commented that it is statutorily required by the Defense Environmental Restoration Program (DERP) to remediate using the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) process for sites either listed or not listed on the National Priority List (NPL). The DoD opposed the licensing approach in the draft RIS and cited as a basis for this opposition the permit exemption under Section 121(e)(1) of CERCLA. DoD also raised concerns about the potential for NRC licensing to impact the cost and schedule of its remediation and agreements for the transfer of property under the base realignment and closure (BRAC) process.

   Response: The NRC recognizes the overlap of the NRC's regulatory requirements for radioactive materials decommissioning and the DERP and CERCLA cleanup requirements. The NRC understands that DoD is statutorily required under DERP to remediate its properties using the CERCLA process, and that radioactive materials are defined as hazardous substances under CERCLA. DoD acknowledged that, under the AEA, the NRC has regulatory authority over certain radioactive material. Therefore, the NRC and DoD discussed the need for a process to manage this "overlap" in statutory and regulatory requirements. The NRC noted that it has encountered this "overlap" before and has often established MOUs to define a process to coordinate and cooperate. The NRC and DoD entered into an MOU governing the roles, responsibilities, and relationship between DoD and the NRC regarding CERCLA environmental response actions at DoD sites containing AEA byproduct, source, and special nuclear material. This MOU minimizes the potential for dual regulation and duplicative regulatory requirements. The NRC believes that this MOU, as opposed to the licensing approach that the NRC proposed in the draft RIS, also addresses DoD's concerns about impacts on the cost and schedule of its remediation and agreements for transfer of property under the BRAC process.

   With regards to DoD's position on the permit exemption, as stated in the MOU, the NRC maintains its position that the permit exemption is only applicable to the specific portion of any removal or remedial action, as these terms are defined in CERCLA, conducted entirely onsite and that Section 121(e)(1) does not waive the AEA licensing requirement. Although the NRC and DoD do not agree on this issue, they agreed to the MOU approach rather than NRC licensing for environmental response actions at DoD sites containing AEA radioactive material.

2. Radium on firing ranges

   Comment: DoD stated that training and testing on *operational* military ranges are "military operations" and should continue to be clearly excluded from the scope of the NRC jurisdiction over radium. The DoD also commented that NRC involvement on operational ranges could conflict with the DoD's training mission.

Response: In the RIS, the NRC clarifies that the radium contamination on ***operational*** firing ranges is not subject to the NRC regulation because radium is used in traditional military operations on these firing ranges, e.g., the use of targets that contain radium.

As stated in the statements of consideration (SOC) for the NARM rule, NRC's jurisdiction does not include military use of radium in "…training for battlefield missions" (72 FR 55901). As discussed in SECY-14-0082, NRC staff has concluded that doses will be low for targets on firing ranges. The NRC recognizes that the DoD's controls of operational ranges for unexploded ordnance will limit the likelihood of an exposure to radium. Furthermore, NRC conducted independent dose estimates for targets on firing ranges. The results for typical radium items on targets (approximately in the range of ~0.01 to 10 millirem (mrem)), agree with the DoD's comment that the dose consequence will be low if there were an exposure. These results are well below NRC's public dose limit in 10 CFR 20.1301, of 100 mrem per year. Specifically, NRC staff calculated doses to both workers and members of the public using IAEA Code of Conduct calculations. These calculations assumed a range of typical radium items on targets and that DoD controls would fail and allow access to the firing range.

For ***closed*** firing ranges, the DoD noted that the CERCLA process will be used for remediation. Therefore, as stated in the MOU, the NRC will be involved with the DoD's remediation of closed firing ranges.

3. Radium items and equipment with no future military operational use

   Comment: DoD stated that the procedural costs of the NRC licensing could be over $20 million because, without an Army Master Materials License (MML), the Army would need to obtain nearly 100 different licenses for radium.

   Response: In discussions with the NRC staff on this comment area, the Army explained that, after further assessment of the inventory, it had found that most of its items were already disposed of, and those remaining are scheduled for disposal. Additional radium items and equipment have also been added to Army museum licenses. The Army controls the number of museum items below the 100 items limit allowed under the NRC general license for museums. Therefore, DoD concluded that its comment on the draft RIS is no longer an issue. The NRC also confirmed that the Air Force and Navy radium items and equipment in storage or used for calibration or research and development are currently covered by permits issued pursuant to the Air Force and Navy MMLs.

4. Clarification of the NRC's jurisdiction for military radium and other legal comments

   Comment: The DoD commented that the draft RIS is not consistent with the Energy Policy Act of 2005 (EPAct) statutory requirement and is a significant change to the NRC's interpretation in the SOC for the 2007 NARM Rule for regulatory authority over military operational radium.

Response: The NRC disagrees with the comment. The draft RIS is consistent with the regulatory framework established by the NRC in the NARM Rule. In the SOC for the NARM rule, the NRC acknowledged that Section 651(e)(3) of the EPAct did provide the NRC with regulatory authority over some but not all military uses of radium. The NRC stated that the "exclusion from the coverage of the EPAct only applies to a certain type of military use, i.e., NARM used for 'military operation'" (72 FR 55867). The draft RIS and final RIS preserve the distinction between military operational uses and other uses of radium by merely clarifying that radium that is used in military operations or is intended for future use in military operations is not subject to the NRC's jurisdiction.

Far from amending the scope of the NRC's jurisdiction over military radium, the RIS preserves the distinction by clarifying the exceptions alluded to in the NARM Rule. Specifically, the NARM Rule affirmed that if "[radium-226] is ***intended*** for use in military operation, it is excluded from coverage of this rule…" The RIS merely clarifies the converse, which is if radium in the military's possession is ***not*** intended for use in or used in military operations, then it is subject to NRC regulations. The RIS also ***clarifies*** what is meant by material in storage or that may be subject to decontamination and disposal. To be excluded from the NRC's regulatory authority, the radium in the military's control will have to be used, or intended for future use, in military operations. Items and equipment in storage that are not being used and which are not intended for future use are subject to the NRC's regulations. The RIS does not change the NRC's previously adopted regulatory framework. While NRC and DoD disagree on this point, the DoD has stated in their August 1, 2013, letter, that an MOU approach would address their concerns with the draft RIS.

Comment: For a number of reasons, DoD stated that NRC's proposed jurisdiction over radium-226 is not retroactive and does not include radium-226 contamination. Radium contamination has resulted from the military's use, possession, or disposal of radium-226 approximately 40 years ago and prior to the 2005 EPAct and the effective date of NRC's NARM Rule in 2007. DoD also stated that, typically, NRC's regulations are only applied prospectively and references a 2000 NRC Director's decision that considered the retroactivity of Title II of the Uranium Mill Tailings Reclamation Control Act of 1978, as amended (UMTRCA). Finally, the military appears to be treated differently from private parties. DoD claimed that NRC is not seeking jurisdiction over ongoing or future private party cleanups involving historic disposals of radium or municipal landfills that likely contain radium.

Response: The NRC disagrees with DoD's comments regarding retroactive jurisdiction. Section 651(e)(3) of the EPAct 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" (emphasis added). Thus, Congress expressly provided the NRC with authority over radium-226 that was produced, extracted, or converted at any time. As the NRC affirmed in the NARM Rule, it "has jurisdiction over old landfills or disposal sites contaminated with radium-226 due to past operations or disposal of discrete sources of radium-226" (72 FR 55886; October 1, 2007).

The NRC also disagrees with DoD's comment that it is treating private radium contamination differently than the military radium contamination. The NRC's NARM Rule SOC states that "[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). Therefore, discovering contamination at a non-licensed facility is equivalent to identifying contamination at a military facility, such as during CERCLA investigations of old military landfills. The NRC has the flexibility to either license a discovered facility with radium contamination or work with the owner to remediate the site. Thus, the NRC is treating private and military historic sites in a similar manner. It should also be noted that, in parallel with the development of a process for regulating military radium, the NRC staff is developing a process for dealing with non-military sites found to contain radium contamination, such as at Great Kills Park located on Staten Island, New York.

Comment: DoD stated that the NRC is proposing to change its statutory interpretation of the EPAct through a non-regulatory process that appears to be inconsistent with Congress's requirement that the NRC issue final regulations necessary to carry out § 651(4) of the EPAct and that may be inconsistent with the Administrative Procedures Act (APA).

Response: The NRC disagrees with the comment. The NARM Rule that the NRC issued pursuant to the EPAct satisfies Congress's requirement that the NRC issue final regulations effectuating Section 651(4) of the EPAct. The RIS does not in any way negate or modify these regulations. As is discussed above, the intent of the document is to clarify a point of confusion regarding the NRC's stated policy in the NARM rule that "military operational" material is not subject to NRC jurisdiction, and this includes "material still under the control of the military, i.e., in storage, or that may be subject to decontamination or disposal," if it is intended for future military operational use. The RIS merely clarifies this issue, and the RIS was provided through notice and comment, thus the requirements of the APA have been satisfied.

5. Implementation

Comment: DoD identified several concerns with the proposed licensing approach for implementing NRC's jurisdiction over radium. DoD stated that these concerns should be addressed prior to NRC finalizing any policy and recommended developing interagency guidance instead of the implementation plan proposed in the draft RIS. Other implementation comments centered on how the proposed licensing approach would affect the Agreement States, the Air Force and Navy MMLs, the Army without an MML, the Memorandum of Understanding between NRC and EPA, and the existing decontamination processes.

Response: The NRC entered into an MOU to govern its involvement in DoD's remediation of AEA byproduct, source, and special nuclear material rather than move forward with the licensing approach described in the draft RIS. Additionally, DoD stated in its August 1, 2013, letter that the MOU "between the agencies would address the concerns regarding the draft RIS and establish a cooperative NRC and DoD process." Therefore, the NRC believes that the MOU approach resolves this comment. With respect to implementation, the MOU describes the implementation process. Specifically, the MOU describes the following elements of implementation: points of contact; annual inventory of sites; coordination and planning; access to sites and information; dose criteria; NRC involvement activities; documentation and records; management of restricted records; DoD requests for NRC technical advice; and a dispute resolution processes. As discussed in the final RIS, the specifics of an implementation plan for NRC's involvement at DoD sites are given in the MOU provisions but will be jointly refined based on future experience, if necessary. The staff and DoD have discussed the potential for clarifications of the MOU in the future based on joint experience using the MOU at a number of sites, as well as the NRC staff's periodic effectiveness evaluation.

Other implementation comments related to the effects of the licensing approach also are no longer relevant because the MOU approach does not involve the MMLs, unless there is a specific request for license suspension, as indicated in the MOU. Furthermore, the MOU approach is an agreement between the NRC and DoD. Thus, it does not apply to the Agreement States, does not typically involve the MMLs, and does not apply to the NRC EPA MOU for cleanup of NRC licensed sites.

Comment Areas From Other Commenters

6. NRC involvement with military remediation under CERCLA

Comment: California's Department of Public Health **(**CDPH) supported NRC's goal of providing adequate protection of public health and safety through independent NRC oversight at federal sites. CDPH stated that coordination of the CERCLA remediation process with NRC decommissioning requirements will better protect public health and the environment.

Comment: California's Department of Toxic Substances Control (DTSC) requested that NRC broaden the scope of NRC's regulatory jurisdiction to include, on a case-by-case basis, *suspected* military radium-226 contamination in landfills for which the military has agreed, or been ordered, to remediate pursuant to CERCLA or state hazardous substance cleanup laws.

Comment: The Concerned California Agreement State Licensees,[1] who remained anonymous, encouraged the NRC to fully exercise its jurisdiction at former DoD sites in California and expressed concern about NRC's lack of regulatory action at the DoD sites

[1] This organization is not a recognized affiliate of the Organization of Agreement States or the Government of the State of California.

in California. This commenter, noting their concern about the Navy's remediation practices at Former Naval Station Treasure Island, argued for more NRC involvement, not less. Other anonymous commenters, demonstrating detailed knowledge of the ongoing military remediation work in California, also commented that the proposed clarification in the draft RIS does not go far enough. These commenters stated that instead of assuming a "backseat role" at sites under CERCLA process, the NRC should be more involved.

Comment: EPA Region 9 comments indicated that the NRC licensing approach proposed in the draft RIS may potentially complicate decision-making by the military and delay cleanup at BRAC bases with little observable benefit for the environment or the surrounding community seeking to reuse the closing facility. EPA Region 9 also commented that, absent clarification, the licensing approach advocated by the NRC in the draft RIS creates the dual regulation that NRC seeks to avoid.

Response: The NRC notes the CDPH support for NRC independent oversight. The MOU approach will provide for NRC oversight by monitoring the DoD remediation at those sites where EPA is not providing regulatory oversight (e.g. non-NPL sites). The MOU also allows the NRC to stay informed of the remediation of sites where EPA is conducting regulatory oversight. The NRC recognizes that some commenters stated that the NRC is taking a "backseat role" at sites under CERCLA, and more NRC involvement is needed. However, DoD's remediation of radioactive material at sites under the CERCLA process represents an example of overlapping jurisdiction with the NRC's regulatory authority under the AEA and the NRC's decommissioning process. The NRC's policy of relying on the CERCLA process and EPA's regulatory oversight facilitates remediation that is protective of public health and safety and avoids unnecessary dual regulation. The NRC staff has used this approach over the past eight years for the Navy's Hunters Point Shipyard (San Francisco, CA) and Alameda Naval Air Station (Alameda, CA) sites and the Air Force's McClellan Air Force Base site (Sacramento, CA), and it believes that it has been effective.

The MOU approach resolves the EPA Region 9 comment that the licensing approach proposed in the draft RIS could complicate the ongoing remediation process. The MOU avoids the military's use of two separate remediation processes and preparation of two separate sets of documents, which would lead to dual regulation. The NRC's involvement during DoD remediation is also intended to avoid an NRC action to "reopen" completed DoD remediation activities after transfer of property to a non-military owner. Such "reopening" and additional remediation is a form of unnecessary dual regulation that the MOU is designed to avoid.

7. Concerns about ongoing military remediation practices

Comment: One anonymous commenter and the Concerned California Agreement State Licensees expressed concern that the military is avoiding NRC regulation, Navy's Radiological Affairs Support Office (RASO) reviews under the Navy MML, and NRC's

more stringent restricted release process. Another commenter states the Navy is engaged in unsafe remediation practices at its Treasure Island site.

Response: DoD has agreed to NRC's involvement under the MOU approach. NRC will determine its level of involvement at each site, including staying informed or monitoring as described in the RIS. Monitoring oversight is intended to ensure that the outcome of DoD's remediation will be protective. The purpose of NRC monitoring is to ensure that DoD's remedy at sites covered by this MOU meets the NRC 25 millirem per year dose criterion in 10 CFR 20.1402 for sites that will be released for unrestricted use or is consistent with the requirements in 10 CFR 20.1403(b) for sites that will be released for restricted use. Disputes will 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.

Finally, the NRC has referred the concerns in one comment about the Navy's unsafe remediation practices at Treasure Island to the Navy Inspector General for appropriate action.

8. Restricted release sites with buried radium

Comment: Many commenters provided comments concerning military sites with planned land use restrictions and engineered barriers such as caps. Specifically, one commenter suggests that NRC should regulate restricted release sites with burials and that DoD is avoiding NRC's more stringent decommissioning requirements for restricted release. Another commenter asked how the proposed changes to regulation of radium at military sites will impact the planned burials of soil contaminated with radium and other radionuclides at the former McClellan Air Force Base. This commenter also asked if the proposed waste burials will be licensed and asked whether the Air Force Radioisotope Committee will be authorized to permit such a site under the existing NRC MML. Another commenter made a similar comment regarding the capping of landfills at the Navy's Hunters Point site and asked NRC to explain its involvement with the recent capping in place at sites IR 7 and 18. One commenter asked that information be added to the RIS describing the restricted release process provided under NRC regulations and how they apply to military sites with capping buried radium in landfills. This commenter suggested that the NRC should not defer to the less restrictive CERCLA process because of the long half-life of radium. One commenter also stated that NRC and EPA should declare a moratorium on any record of decision or release of sites containing radioactive materials that have been buried or capped in place where previously buried.

Response: The NRC has not licensed, and does not plan to license, the DoD restricted release sites at McClellan, Alameda, or Hunters Point. Instead, the Commission decided in 2008 on the policy of relying on DoD remediation under the CERCLA process and EPA's regulatory oversight at Hunters Point and McClellan, while staying informed about the ongoing remediation activities (SRM-SECY-08-0077). The NRC also applied this policy to the similar circumstances at the Navy's Alameda site. This policy was

intended to avoid unnecessary duplicative regulation. Thus, for the past eight years, the NRC has been staying informed about DoD's ongoing remediation activities under the CERCLA process, including restricted release sites with burials located on the Navy's Alameda and Hunters Point sites and the Air Force's McClellan site. The NRC stays informed about these burial sites primarily through its annual site visits and meetings with the Air Force, Navy, EPA Region 9, the State of California, and local governments involved with these remediation activities. This includes maintaining awareness of the various issues and the progress for their resolution, including those at the Hunters Point site IR 7 and 18. Based on these interactions and an understanding of the remedies identified or being planned, the NRC will continue to rely on the ongoing CERCLA process and EPA oversight at these sites, especially the future 5-year reviews, to evaluate the effectiveness of remedies after closure. This same approach will continue under the MOU between the NRC and DoD and is described in the RIS. Therefore, the NRC's involvement under the RIS and MOU will not impact planned burials at McClellan, Hunters Point, or Alameda.

The NRC does not have authority to declare a moratorium on any record of decision or release of a site under the CERCLA process, as one commenter recommended. However, at sites that are not subject to EPA's CERCLA oversight, the NRC will monitor DoD's remedial actions per the terms of the MOU. The NRC will ensure that these monitored sites meet the 25 mrem/yr dose criterion in 10 CFR 20.1402 for sites released for unrestricted use, or the requirements in 10 CFR 20.1403(b) for sites that will be released for restricted use. As part of its monitoring efforts, the NRC would also review five-year review reports required by Section 121 of CERCLA. These five-year reviews provide an opportunity to evaluate the implementation and performance of a remedy to determine whether it remains protective of human health and the environment. NRC's approach is protective of public health and safety, avoids duplicative regulation, and allows for independent Federal oversight.

9. Agreement State role and potential impacts on finality of military remediation

Comment: A number of commenters raised issues concerning the Agreement States' roles and the potential impacts of NRC's regulatory approach on the finality of DoD remediation. EPA Region 9 commented that finality of DoD remediation cannot be achieved unless Agreement States lack the ability to call into question or revisit remedial actions taken under CERCLA after DoD transfers the property to a non-federal party. California's DTSC asked the NRC to clarify whether Agreement States are prohibited from exercising their authority derived from Section 274 of the AEA or State law jurisdiction over any post-remediation residual radium-226 contamination after transfer of the site from the military to a non-Federal owner. Another commenter asked about impacts on redevelopment due to different NRC and Agreement State regulations because some Agreement State regulations are more stringent than NRC regulations. Another commenter asked how the draft RIS jurisdictional clarification for radium-226 will affect Agreement State authority granted by NRC in "Approval of Agreement State Governor Certifications" (FSME-07-107, ML073230793) for military sites without

exclusive federal jurisdiction. This commenter also asked how the draft RIS would affect Agreement States desiring not to be involved with regulation of military remediation.

Response: The NRC plans to keep Agreement States informed of NRC activities with respect to sites that the NRC monitors under the MOU. Such coordination might result in an Agreement State deciding not to take subsequent regulatory action and "reopen" a completed remediation after DoD transfers the property to a non-Federal owner. The NRC will encourage this outcome. However, the NRC cannot prohibit Agreement States from exercising their AEA or applicable State law jurisdiction with respect to DoD's post-remediated sites. Therefore, the RIS does not affect Agreement States' jurisdiction pursuant to Section 274 of the AEA or any applicable State laws, and the RIS does not affect the NRC's determinations in FSME-07-107. With respect to Agreement State involvement in DoD remediation activities, Agreement States should determine whether and to what degree they desire to be involved in the CERCLA process, and provide input to the NRC.

It should be noted that in respect to NRC and Agreement State jurisdiction for DoD contractors with either NRC or Agreement State service provider licenses, the RIS clarifies what types of military radium are AEA byproduct material. When working with this material, DoD contractors are required to have either an NRC or Agreement State service provider license.

Comment: EPA Region 9, CDPH, and other commenters identified various implementation concerns such as: 1) clarification of the coordination and crosswalk between the CERCLA process and NRC's decommissioning process; 2) clarification of the terms "confirmed" and "suspected" contamination; 3) clarification of NRC, Air Force, and Navy responsibilities under the MML licenses; and 4) clarification of jurisdiction for military contractors with an NRC or Agreement State service provider license.

Response: Most of the implementation comments were associated with the licensing approach proposed in the draft RIS. Because the NRC has agreed to the MOU approach instead of the licensing approach proposed in the draft RIS, the coordination of the two processes is no longer needed. Under the MOU approach, the NRC has agreed to oversee DoD's remediation using the CERCLA process by staying informed or monitoring remediation activities. The NRC will not require DoD to follow the NRC's decommissioning process. As discussed previously, the MOU approach does not involve the MMLs, unless there is a specific request for license suspension, as indicated in the MOU.

Regarding the comment from EPA and CDTSC on the need for clarification of the terms "confirmed" and "suspected," as discussed in the RIS, NRC's jurisdiction applies to radium-226 contamination that has been confirmed based on survey data or records documenting the actual existence of the contamination. As explained in detail in the RIS, a wide range of data can be used to support the determination that contamination is confirmed. Sites where contamination is only suspected, based on historical activities

conducted on a military base, should be tracked and appropriately controlled by the military. If suspected contamination is later confirmed, then this contamination is subject to NRC jurisdiction.

As one commenter suggested, the staff has clarified the jurisdiction for military contractors with an NRC or Agreement State service provider license. The staff has developed supplemental guidance to its existing FSME Procedure SA-500, "Jurisdictional Determinations," to assist in the resolution of jurisdictional issues over private service providers operating on federally owned property that may arise between the NRC and Agreement States. An April 22, 2014, Agreement States letter (FSME-14-039) provided this supplement to all Agreement States and the Navy. The supplemental guidance provides a decision process for determining the appropriate jurisdiction for military contractors that require an NRC or Agreement State license. The first question in this decision process asks if AEA material under the NRC's authority is involved. For military radium, the final RIS has clarified that certain types of military radium are within the scope of the AEA definition of byproduct material and thus are subject to the NRC's regulatory authority. Thus, if military contractors' activities pertain to military radium that *is* subject to NRC's regulatory authority, then their service activities are subject to the NRC's or Agreement States' regulatory authority. If military contractors' activities pertain to radium that *is not* subject to NRC's regulatory authority (e.g., targets that contain radium that are used on operational firing ranges), then their service activities are not subject to the NRC's or Agreement States' regulatory authority. The NRC's policy decision to use an MOU instead of licensing to implement its jurisdiction over AEA byproduct, source, and special nuclear material that DoD is remediating pursuant to the CERCLA process does not affect the NRC or Agreement States' jurisdiction over military service contractors.

Table 1: List of Public Comments and Agencywide Document Access and Management System (ADAMS) Accession Numbers
(Also, search ADAMS using the case reference no. NRC-2011-0146)

Comment number	Date	Author/Organization	ADAMS number
Comment 1	August 5, 2011	Anonymous	ML11220A262
Comment 2	August 4, 2011	Anonymous	ML11224A018
Comment 3	July 31, 2011	Anonymous	ML11227A266
Comment 4	August 10, 2011	Concerned California Agreement State Licensees	ML11231A252
Comment 5	August 12, 2011	Jared Washburn	ML112370043
Comment 6	August 14, 2011	Anonymous	ML112370044
Comment 7	August 16, 2011	Deborah Morefield, DoD (request for 75-day extension of public comment period)	ML11243A147
Comment 8	September 6, 2011	Robert Carr, EPA Region 9	ML11252B049
Comment 9	November 9, 2011	Stewart Black, CDTSC	ML11325A241
Comment 10	November 28, 2011	Maureen Sullivan, DoD	ML11334A056
Comment 11	November 29, 2011	John Fassell, CDPH	ML12019A118