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

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE NATIONAL PARK SERVICE FOR COORDINATION OF RESPONSE ACTIONS INVOLVING RADIOACTIVE MATERIALS AT THE GREAT KILLS PARK SITE AND THE SPRING CREEK PARK SITE

August 21, 2018

ARTICLE I – PURPOSE, AUTHORITY, AND SCOPE

Purpose

1. This Memorandum of Understanding (MOU) is entered into by and between the U.S. Nuclear Regulatory Commission (NRC) and the National Park Service (NPS), for the purpose of minimizing dual regulation and duplicative regulatory requirements while ensuring consideration of necessary standards for health, safety and the environment.

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended (CERCLA), and CERCLA's implementing regulations, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, impose site remediation obligations on the NPS that may duplicate, to some degree, the obligations established by the Atomic Energy Act of 1954, Public Law 83-703, 68 Stat, 919, as amended (AEA) and NRC regulations for decommissioning and remediation of sites containing licensable levels of radioactive material, resulting in the potential imposition of duplicate regulatory requirements at the environmental response site subject to this MOU. Duplicative regulatory requirements and processes could add cost and delay to completion of the NPS CERCLA response actions without an added public health, environmental, or safety benefit.

To avoid unnecessary duplication of regulatory requirements and effort, this MOU documents the roles, responsibilities, and relationship between the NPS and the NRC in regard to environmental response actions at the Great Kills Park Site in Staten Island, New York and the Spring Creek Park Site in Queens, NY (individually or collectively referred to as "Site").

The Great Kills Park Site is approximately 280 acres with 47 acres owned by the City of New York and the remaining 233 acres owned by the United States and managed by the NPS. Spring Creek Park Site is approximately 237 acres. The entire Spring Creek Park Site is owned by the United States, managed by the NPS.

2. The NRC and the NPS will cooperate fully with each other to carry out this MOU and its intent of ensuring protection of public health, safety, and the environment in accordance with all

governing laws and regulations. Both the NRC and the NPS share a commitment to the enhanced security of certain quantities of radioactive materials.

Authority

3. This MOU is authorized pursuant to §§ 53 (42 USC 2073), 57 (42 USC 2077), 62 (42 USC 2092), 63 (42 USC 2093), and 81 (42 USC 2111) of the AEA. Under the AEA, except as provided in § 91.b (42 USC 2121(b)), the NRC has the authority to regulate the use, possession, ownership, transfer, receipt, acquisition, distribution, production, or manufacture of byproduct material, source material, and special nuclear material. The AEA prohibits any person, including government agencies, from receiving, transferring, owning, possessing, or using byproduct material, source material, or special nuclear material unless authorized by a general or specific license from the NRC, or otherwise exempt from the licensing requirements by statute or Title 10 of the *Code of Federal Regulations* (10 CFR), Chapter 1. The NRC relinquishes portions of its regulatory authority to Agreement States—States with which the Commission has entered into an effective agreement under § 274(b) (42 USC 2021(b)) of the AEA to license and regulate byproduct materials, source materials, and certain quantities of special nuclear materials.

The NRC has the statutory responsibility to protect public health and safety, promote the common defense and security, and protect the environment related to the possession and use of source, byproduct, and special nuclear material under the AEA. This responsibility includes overseeing the decommissioning and radiological cleanup of facilities or sites that are subject to the NRC's authority under the AEA, to levels that are protective of the public health and safety and the environment as set forth in 10 CFR Part 20, Subpart E. This responsibility also includes, through the Integrated Materials Performance Evaluation Program, periodic reviews of an Agreement State's programs established under § 274 of the AEA (42 USC § 2021) to ensure continued adequacy and compatibility.

4. The State of New York is an Agreement State under § 274 (42 USC 2021) of the AEA and thereby has authority over the radiological cleanup of certain facilities or sites in the state that would otherwise be within the NRC's jurisdiction. Although the NRC retains jurisdiction over said material on Federal land, a portion of the Site is under the jurisdiction of the State of New York and therefore the NRC does not have or claim authority over the radiological cleanup under the AEA in that portion of the Site.

5. The NPS enters into this MOU under the authority of 54 U.S.C. § 100101 and Section 104 of CERCLA, 42 U.S.C. § 9604. The NPS is investigating and responding to the Site pursuant to CERCLA and the NCP. Congress enacted CERCLA, also known as Superfund, in 1980 to address releases and threatened releases of hazardous substances into the environment. CERCLA gives the President of the United States broad powers to respond to hazardous substance releases and threatened releases as the president deems necessary to protect the public health or welfare or the environment, including enforcement authority with respect to parties responsible for the releases. The president has delegated this authority to a number of Federal departments and agencies, including the United States Department of the Interior (DOI). The NPS, an agency within the DOI, is the CERCLA lead agency for the Site. This CERCLA response authority with respect to the NPS managed land is the same as the Environmental Protection Agency (EPA) CERCLA Section 104 response authority to investigate and respond to hazardous substances released on private property.

6. As identified above, the NRC and the NPS have statutory authorities that overlap for addressing AEA radioactive material. Therefore, this MOU describes the intent and plan of the NRC and the NPS to work together to meet their overlapping responsibilities. It neither creates nor removes any agency responsibility or authority. This MOU is not an admission of responsibility or liability on the part of the United States with regard to any hazardous substances or operations at any site, and does not create any rights in any third party against the NRC, the NPS, or the United States.

7. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within its jurisdiction. Nothing in this MOU shall require either Agency to act beyond its authority. The roles, responsibilities, terms and conditions of this MOU will not supersede or be interpreted in a manner inconsistent with applicable Federal laws and regulations.

Scope

8. This MOU applies to response actions conducted by the NPS under CERCLA to investigate and respond to a release or threatened release of a radioactive material that is subject to regulation under the AEA at the Site.

9. Terms used in this MOU that are defined in CERCLA, the AEA, or their respective implementing regulations, shall have the definitions and meaning provided by those laws and regulations.

ARTICLE II – INTERAGENCY COMMUNICATION

10. The NRC and the NPS shall designate Principal Representatives to serve as primary points of contact on matters relating to this MOU. The principal representatives shall designate a primary point of contact for day-to-day communications (i.e., holding coordination discussions and other typical project management activities). All notices and requests required by this MOU shall be made in writing and sent, using e-mail, facsimile, or postal mail, by or to the principal representatives identified herein.

11. The principal representatives at Great Kills Park are:

For the NRC:
Kenneth Kalman
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Mailstop T-8F05
Rockville, MD 20852-2738

For the NPS:
Kathleen Cuzzolino
Gateway National Recreation Area
210 New York Avenue
Staten Island, NY 10305

The Principal Representatives at Spring Creek Park are:

For the NRC: Kenneth Kalman
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Mailstop T-8F05
Rockville, MD 20852-2738

For the NPS: Kathleen Cuzzolino
Gateway National Recreation Area
210 New York Avenue
Staten Island, NY 10305

ARTICLE III – NRC INVOLVEMENT WITH THE NPS RESPONSE ACTIONS WITH RADIOLOGICAL MATERIALS

Identification of Areas with Radioactive Material

12. The NPS will inform the NRC when the NPS anticipates or determines that any planned excavations would lead to the accumulation of excavated material that would potentially contain, or would aggregate for disposal, Category 1 or Category 2 quantities of radioactive material as defined in 10 CFR Part 37. If any planned excavations would lead to the accumulation of excavated material with the likely potential to contain, or aggregate for disposal, Category 1 or Category 2 quantities of material, NPS will not commence such excavations until the NRC and the NPS have discussions regarding the implementation of appropriate site-specific security measures.

NRC and NPS Coordination and Planning

13. The NRC and the NPS will coordinate, at least annually, on Site-specific NRC monitoring activities.

NRC Access to Information and Site

14. The NPS will furnish to the NRC on an ongoing basis information concerning all CERCLA work relating to investigations, removal actions, and remedial actions, such as plans, reports, and comments and responses to comments from any other Federal or State agency or other person or entity concerning the radiological material.

15. The NPS also will provide to the NRC for review and comment draft documents related to the radiological material, as referenced above in Paragraph 14. These documents will provide the technical basis for meeting relevant and appropriate dose criteria.

16. After reasonable notice provided, the NPS will facilitate, as appropriate, the NRC visits and meetings and NRC confirmatory surveys or sampling at the Site.

NRC Involvement Activities

17. Based on the information and discussions per Paragraphs 14 and 15, the NRC will determine the appropriate monitoring activities, which could include, but are not limited to,

document and data reviews, site observations, and confirmatory radiological surveys or sampling.

18. The purpose of the NRC monitoring is to ensure the NPS's remedy at the Site meets the NRC 25 millirem per year dose criterion in 10 CFR 20.1402 for sites or portions of sites that will be released for unrestricted use or is consistent with the requirements in 10 CFR 20.1403(b) for sites or portions of sites that will be released for restricted use. In addition, for any 5 year review the NPS conducts under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), the NRC will be given the opportunity to review the status of the radiological remedy to ensure that the radiological remedy remains protective.

19. The NRC will prepare monitoring reports with the results of its reviews and other monitoring activities. The NRC will provide the NPS a meaningful opportunity to review all draft monitoring reports before they are issued as final. The monitoring reports will be included in the NRC's Agency wide Documents Access and Management System (ADAMS) as public documents that may be accessed by interested persons through the NRC's website. The NRC agrees to provide the NPS with any written comments on the NPS CERCLA planning documents (e.g. Sampling and Analysis Plans, Field Sampling Plans, Health and Safety Plans) within 30 days, the NPS CERCLA reports (e.g. Remedial Investigation Report, Feasibility Study Report) within 45 days, and the NPS CERCLA decision documents (e.g. Record of Decision) within 60 days. If necessary, the agencies can discuss alternate review times on the NPS CERCLA documents. The NPS will respond to all comments it receives from the NRC related to the radiological material. Written NPS and NRC correspondence on the Site will be publicly available provided no restrictions apply in accordance with Item 27.

20. If the NRC at any time determines that it needs to review additional available data, documents, or information for the Site's environmental response to radiological material, it may request the specific additional data, documents, or information from the NPS. The NPS will make reasonable efforts to provide all available data, documents, or information that has been requested by the NRC within 60 calendar days of the request, subject to legal limitations that are otherwise applicable to the information or documents, or within a longer period as determined by agreement of the NRC and the NPS if necessary due to the size, complexity, or difficulty of providing the requested materials.

21. Upon completion of the NPS's response action at the Site, the NRC will prepare a final letter or report regarding the NPS's radiological remediation to document NRC activities and conclusions regarding the remediation. The NRC will provide the NPS a meaningful opportunity to review this document before it is issued as final letter or report.

NRC Decommissioning Dose Criteria

22. The NRC decommissioning dose criteria contained in 10 CFR 20.1402 or 10 CFR 20.1403(b) may be an Applicable or Relevant and Appropriate Requirement under Section 121(d) of CERCLA, 42 U.S.C. § 9621(d), for remedial actions at the Site.

NRC Technical Assistance or Regulatory Advice

23. If the NPS needs technical assistance or regulatory advice or records from the NRC to assist actions at the Site, it may submit a request for assistance, advice or records to the NRC. As part of its request, the NPS will also provide all information that is relevant and necessary to allow the NRC to respond to the request. The NRC will provide the requested technical

assistance, regulatory advice, or records, in the form of publicly available guidance documents (and clarifications on those documents), within 90 calendar days of the request, subject to legal limitations that are otherwise applicable to the information or documents, or within a longer period as jointly determined by the NRC and the NPS, if necessary, due to the complexity or difficulty of responding to the request.

Records

24. The NRC monitoring reports and any written correspondence with the NPS under this MOU will be publicly available in the NRC's ADAMS.

25. The NPS will maintain a record of all submissions of information or documents, or requests for documents or assistance between the NRC and the NPS, for the Site.

26. All documents and information subject to exchange under this MOU may be furnished in electronic form, and providing access through links to websites from which a complete document can be downloaded will satisfy the submittal requirements of this MOU.

27. If any of the information or records held by the NRC or the NPS is confidential, privileged, classified, proprietary, or Safeguards Information, or subject to the Privacy Act, restrictions under procurement integrity laws or regulations, or any other legal restriction on its dissemination, the Agency with primary responsibility for the information or record (usually the originating Agency) will identify these restrictions either in response to a request by the other for the records or by marking on the records themselves, if they can lawfully be furnished to the other Agency subject to the restriction. The Agency receiving the information or records will manage any such restricted information or records in compliance with all limitations applicable to them, and will not further release or disseminate any such information or records without the written permission of the originating or responsible agency. If the Agency receiving the information is served with a request or demand for the release of the information or record, the request will be referred to the originating agency for decision and response to the requester. Freedom of Information Act (FOIA) requests or other requests for documents will be handled in accordance with applicable statutes (e.g., FOIA), rules, regulations, policies, and procedures. The Agencies recognize that Federal law may require the release of this information or record.

Service Provider Licenses

28. When the NPS's radiological remediation activities are conducted by service providers, the NPS will verify that its service providers use the NRC's guidance to determine whether an NRC or Agreement State license is required in order to conduct its activities. When requested by service providers, the NPS will provide appropriate land jurisdiction documentation. The NPS agrees that when it is utilizing the NRC or Agreement State licensed service providers, the NPS will clarify which activities will be the responsibility of the service provider under their license (e.g., worker safety and source security).

ARTICLE IV – FUNDING

29. There will be no transfer of funds or other obligations between the NRC and the NPS in connection with this MOU. Each Agency will fund its own participation. All activities under or pursuant to this MOU are subject to the availability of appropriated funds and the Agencies' respective funding procedures.

ARTICLE V – LIABILITY

30. The NRC and the NPS agree to assume liability for their own risks arising from or related to activities under this MOU.

ARTICLE VI – DISPUTE RESOLUTION

31. The NRC and the NPS will make every effort to resolve any disputes that arise related to the subject matter of this MOU at the project or program manager level through informal consultation. If they are unable to resolve the dispute at that level, either agency may elevate the dispute in writing to successively higher and generally equivalent levels of management in each of the Agencies, up to the level of the officials who are signatories to this MOU. Any issue that is elevated will be the subject of a written statement of position by the disputing Agency, and the other Agency will respond in writing its position. The Agency officials at each level of elevation will confer with one another in a timely and cooperative manner to attempt to resolve the dispute.

32. If the Agencies cannot resolve the dispute, each Agency reserves any and all rights it may have to take any and all action available to it under any law, regulation, Executive Order, or interagency agreement to seek review and resolution of the matter. The NRC specifically reserves any authority it has to take administrative or regulatory action against the NPS with regard to an unresolved dispute. The NPS reserves any authority and defenses available to it to respond to any assertion, including authority, by the NRC. In the event of an unresolved dispute, the NRC will provide written notification to the EPA and the appropriate State of New York organizations of the NRC's concerns regarding the radiological remediation of the Site or the Site's impact on the public health and safety or the environment.

ARTICLE VII – APPLICABLE LAW

33. Federal law governs this MOU for all purposes including, but not limited to, determining the validity of the Agreement, the meaning of its provisions, and the rights, obligations and remedies of the Agencies.

ARTICLE VIII – AMENDMENT AND TERMINATION

34. This MOU may be modified or amended in writing by the mutual agreement of the NRC and the NPS. Either Agency may terminate its participation in the MOU by providing 30 calendar days written notice to the other Agency. Upon termination, the responsibilities of all the Agencies under this MOU shall cease. Termination will not relieve any Agency of its obligation to comply with applicable laws and regulations, and to take necessary actions that are its responsibility under the law for the protection of the public health and safety and the environment.

ARTICLE IX – EFFECTIVE DATE

35. This MOU will be effective upon the last date of signature below of officials of the NRC and the NPS.

On Behalf of the
U.S. NUCLEAR REGULATORY COMMISSION

_____ **Date** 8/21/18

John Tappert, Director
Division of Decommissioning, Uranium Recovery, and Waste Programs

On Behalf of the
NATIONAL PARK SERVICE

_____ **Date** 8.6.18

Joshua Laird, Commissioner
National Parks of New York Harbor