

MEMORANDUM OF UNDERSTANDING
BETWEEN REGION 6 OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY
AND REGION IV OF THE U.S. NUCLEAR REGULATORY COMMISSION
FOR REMEDIAL ACTION AT THE HOMESTAKE MINING COMPANY URANIUM MILL
IN CIBOLA COUNTY, NEW MEXICO

I. PURPOSE

This document establishes the roles, responsibilities, and relationships between Region 6 of the U.S. Environmental Protection Agency (EPA) and Region IV of the U.S. Nuclear Regulatory Commission (NRC), hereinafter collectively referred to as the "Parties," regarding remedial action at the Homestake Mining Company (HMC) uranium mill in Cibola County, New Mexico. The Parties have overlapping authority in connection with this site and, consistent with the purposes of the March 16, 1992, interagency Memorandum of Understanding between EPA and NRC entitled "Guiding Principles for EPA/NRC Cooperation and Decision Making," this Memorandum of Understanding (MOU) will help assure that remedial actions occur in a timely and effective manner.

II. BASIS FOR AGREEMENT

NRC will assume the role of lead regulatory agency for the byproduct material disposal area reclamation and closure activities and EPA will monitor all such activities and provide review comments directly to NRC. The objective of EPA's review and comment will be to assure that activities to be conducted under NRC's regulatory authority will allow attainment of applicable or relevant and appropriate requirements under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"). 42 U.S.C. Section 9601 et seq., outside of the byproduct material disposal site. NRC will require the Licensee to implement an approved disposal site reclamation plan which meets the requirements of 10 CFR Part 40, Appendix A, as amended at 52 Fed. Reg. 43553 through 43568 (November 1987), "Uranium Mill Tailings Regulations; Ground Water Protection and other Issues," which conforms with the EPA 40 CFR Part 192, Subpart D. EPA and NRC agree that the requirements of 10 CFR Part 40, Appendix A, are the Federal environmental and public health requirements applicable or relevant and appropriate to the

disposal site. EPA and NRC believe that conformance with 10 CFR Part 40, Appendix A, will generally assure conformance with CERCLA requirements. However, each party will be responsible for assuring compliance with its specific regulatory requirements as discussed in this section. The parties believe that the U.S. Department of Energy or another responsible State or Federal authority will assume responsibility for long-term care of the byproduct material disposal site following remediation of the site.

III. BACKGROUND

The State of New Mexico was responsible as an "Agreement State" for licensing and regulating uranium mills within the State until June 1, 1986, at which time, NRC reassumed this authority at the request of the Governor of New Mexico. Prior to this change, EPA had placed the HMC site on the National Priority List (NPL) of sites for response action under CERCLA. EPA's policy is to list only those uranium mills meeting criteria for placement on the NPL which are located in Agreement States, i.e., States which have entered into agreements with NRC pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, to regulate certain nuclear activities in a manner compatible with NRC's program. Mills in States where NRC has direct licensing authority have not been placed on the list. Although New Mexico is no longer an Agreement State insofar as uranium recovery operations are concerned and NRC has reassumed primary jurisdiction, the site was properly placed on the NPL and the physical conditions resulting in that placement are still present. After completion of the closure of the disposal area and other remedial measures undertaken in full compliance with 10 CFR Part 40, Appendix A (the applicable Federal standards for disposal site reclamation), EPA, pursuant to 40 CFR Parts 425(e) and 515(c)(3) and in consultation with the State of New Mexico, shall determine whether all required response actions with respect to the site have been implemented. Following such a determination, the site may be considered for deletion from the NPL.

IV. AGREEMENT

In order to achieve satisfactory cleanup of the HMC site, NRC and EPA agree to do the following:

1. The Parties shall cooperate with each other in the oversight of reclamation and remedial activity at the HMC site.
2. EPA will review the amendments to the site reclamation plan ("the plan") and will provide comments to NRC. NRC will review and, if necessary, require revisions to the plan to assure conformance to 10 CFR Part 40, Appendix A, as amended, prior to approving the plan via license amendments. NRC will provide EPA with copies of all license amendments which affect the site closure plan prior to issuance for comment. If no comments are received within 30 calendar days, NRC will issue the amendment.
3. If EPA determines that remedial actions are deficient or unsatisfactory, then EPA shall provide notice to NRC of the deficiency. NRC shall assume the lead role for notification to HMC, except for such notification as EPA might statutorily be required to provide in certain events. The notification shall specify a time period within which regulatory compliance is expected to be achieved. Should compliance not be achieved in this time period, EPA will assume the lead for taking or seeking any enforcement action within its area of regulatory responsibility and NRC will assume the lead for any enforcement actions necessary within its area of regulatory responsibility. Both Parties reserve all rights under this MOU to take whatever actions are determined to be necessary, including the conduct of remedial actions within and outside the disposal area, in order to fulfill their regulatory requirements. In any event, no actions affecting site remediation will be taken by either Party without prior consultation with the other Party.

4. Both Parties shall appoint a facility coordinator who shall be responsible for oversight of the implementation of this MOU and the activities required herein. The facility coordinators shall be appointed by each Party within seven (7) days of the effective date of this MOU. Each Party has the right to appoint a new facility coordinator at any time. Such a change shall be accomplished by notifying the other Party, in writing, at least five (5) days prior to the appointment, of the name, telephone number, and mailing address of said facility coordinator.
5. The Parties will meet periodically at the request of either Party and at least semiannually insofar as it is necessary to accomplish the objectives of this MOU. The facility coordinators should communicate with each other on a routine basis by telephone.
6. The Parties will provide technical advice and any necessary regulatory consultation to one another upon request.
7. The Parties will generally provide each other with copies of all official correspondence and documents related to remedial actions at the site. The Parties will also normally provide copies of other information upon request. In the event that one of the Parties does not wish to furnish certain specific information, documents, or correspondence to the other, then said material shall be identified to the other Party along with the reasons for withholding it.
8. Whenever notice or information is required to be forwarded by one party to another under the terms of this MOU, it shall be given by and directed to the individuals at the addresses specified as follows:

EPA: Director
Hazardous Waste Management Division (6H)
U.S. EPA, Region 6, 1445 Ross Avenue,
Suite 1200
Dallas, Texas 75202-2733

NRC: Director
Uranium Recovery Field Office
Region IV, U.S. Nuclear Regulatory Commission
P.O. Box 25325
Denver, Colorado 80225

9. Routine communications may be exchanged verbally, in person, or by telephone between the Parties to facilitate the orderly conduct of work contemplated by this MOU.
10. EPA enforcement documentation provided under this MOU will be kept as exempt material by EPA and NRC, to the extent legally possible, according to the policies and procedures under 40 CFR Part 2 and 10 CFR Part 2.790, respectively.
11. The Parties shall notify each other of any pending visits to the HMC property which relate to the site closure plan. To the extent that they are otherwise authorized to do so, either party and their consultants may, at their option, accompany the other party on such visits.

V. AGENCY RESPONSIBILITIES

A. NRC Responsibilities

1. NRC will ensure that the owners/operators of the HMC uranium mill implement an approved reclamation plan that meets all relevant NRC requirements, including 10 CFR Part 40, Appendix A, as amended. The reclamation plan will require HMC to assure long-term stability of the tailings, reduce gamma radiation to background levels, and diminish radon exhalation to appropriate regulatory

standards. If any part of such plan is not complied with by HMC, NRC will take whatever actions it deems appropriate to ensure compliance.

2. NRC will ensure that the owners/operators of the HMC uranium mill implement a compliance monitoring program for hazardous constituents that meets all relevant NRC requirements, including 10 CFR Part 40, Appendix A, for the establishment of ground water protection standards and points of compliance. NRC will verify implementation by HMC of any required compliance monitoring and/or ground water corrective action at the HMC uranium mill site resulting from the establishment of ground water protection standards as soon as such is reviewed and accepted by NRC. If any ground water requirements are not complied with by HMC, NRC will take appropriate action to ensure compliance.
3. NRC will direct HMC to provide both Parties with copies of major work product submittals as they become available. Such work products will include a reclamation plan and any other plans and specifications for assessment, remediation, and monitoring, including all analytical data.
4. NRC agrees to provide EPA with progress reports on HMC's remediation, semiannually.
5. NRC will assist in the development of information to support EPA's deletion of the site from the NPL upon completion of the remedial action, if appropriate.

B. EPA Responsibilities

1. EPA will provide formalized review, consultation, and comment throughout the entire project.

2. EPA will review and provide comments on the various components of the reclamation plan, ground water monitoring, and corrective action submittals, and other related documentation, within timeframes as agreed to between NRC and EPA. In the event that EPA determines that the implementation of the site reclamation plan, closure activities, and/or ground water corrective action has not resulted in, or may not result in, cleanup conditions that meet applicable or relevant and appropriate requirements under CERCLA, then EPA may take whatever action it deems appropriate.

VI. DISPUTE RESOLUTION

In the event of a dispute between EPA and NRC concerning site activities, the persons designated by each Agency as facility coordinators, or in their absence, alternate contact points will attempt to promptly resolve such disputes. If disputes cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further consultation. The supervisory referral and resolution process will continue, if necessary to resolve the dispute, to the level of the Regional Administrators of NRC and EPA. Both Parties shall continue to maintain their respective rights or responsibilities under this MOU during the dispute resolution process.

VII. EXECUTION AND TERMINATION

This agreement shall take effect upon execution by EPA and the NRC. It shall remain in effect for the duration of the program addressed herein unless terminated by mutual agreement by the two Agencies; or this MOU may be terminated unilaterally if any of the conditions set forth below are present:

1. The planning or conduct of reclamation plan, closure activities, and/or ground water cleanup actions fail to meet standards set forth in the Basis for Agreement (Section II) of this MOU.
2. The site is deleted from the NPL.

3. The site is turned over to the Department of Energy or other responsible State or Federal authority for long-term care.
4. Regulatory, statutory, or other events occur which make this MOU unnecessary, illegal, or otherwise inappropriate.

VIII. MODIFICATION

The Parties may modify this MOU from time to time in order to simplify and/or define the procedures contained herein. Each Party shall keep the other informed of any relevant proposed modifications to its basic statutory or regulatory authority, forms, procedures, or priorities. This MOU shall be revised, as necessary, by the adoption of such modifications. The MOU should be reviewed on an annual basis by both the Director, Uranium Recovery Field Office, Region IV, NRC, and the Director, Hazardous Waste Management Division, Region 6, EPA, or their designated representatives.

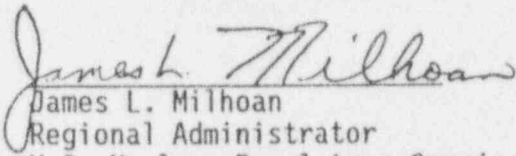
IX. RESERVATION OF RIGHTS

The Parties reserve any and all rights or authority that they may have, including but not limited to legal, equitable, or administrative rights. This specifically includes EPA's and NRC's authority to conduct, direct, oversee, and/or require environmental response in connection with the site, as well as the authority to enter the site and require the production of information, within each of their own areas of responsibility.

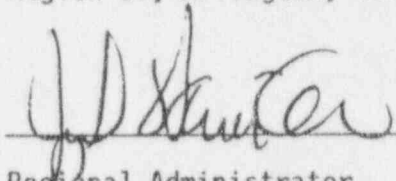
X. SEVERABILITY

The nullification of any one or more sections or provisions of a section of this MOU, either by Agreement of the Parties or by Administrative or Judicial Action, shall not affect the other sections/provisions of this MOU.

Executed and agreed to:


James L. Milhoan
Regional Administrator
U.S. Nuclear Regulatory Commission
Region IV, Arlington, Texas

December 14, 1993
Date


Regional Administrator
U. S. Environmental Protection Agency
Region 6, Dallas, Texas

December 14, 1993
Date

JAN 11 1994

bcc:
Docket No. 40-8903
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DDChamberlain, RIV
DBSpitzberg, RIV
LLUR Branch, LLWM, 5E2
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PJGarcia/iv	EFHawkins	REHall		
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