

Memorandum of Understanding  
Between Region VI of  
The U.S. Environmental Protection Agency and Region IV of  
The U.S. Nuclear Regulatory Commission  
for Remedial Action at the UNC-Churchrock Uranium Mill  
In McKinley County, New Mexico

I. PURPOSE

This document establishes the roles, responsibilities, and relationship between Region VI 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 UNC-Churchrock uranium mill in McKinley County, New Mexico. The Parties have overlapping authority in connection with this site, and 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 and 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 allow attainment of applicable or relevant and appropriate requirements under the Comprehensive Environmental Response Compensation

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and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 59601 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 433553 through 43568, "Uranium Mill Tailings Regulations; Groundwater Protection and other Issues," which conforms with the EPA 40 CFR 192, Subpart D. EPA development and implementation of its own site action requirements for groundwater contamination outside of the disposal area will be conducted in accordance with CERCLA and the National Oil and Hazardous Substances Contingency Plan ("NCP") 40 CFR Section 300 including any revisions thereto. The EPA and NRC agree that the groundwater protection 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. The EPA and NRC believe that conformance with 10 CFR Part 40, Appendix A (with the possible exception of nitrate), 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

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the NRC resumed this authority at the request of the Governor of New Mexico. Prior to this change, EPA had placed the UNC-Churchrock 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, that is States which have entered into agreements with the NRC pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, to regulate certain nuclear activities in a manner compatible with the 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 the NRC has reassumed primary jurisdiction, the site was properly placed on the NPL and the physical conditions resulting in that placement are still present. Therefore, EPA has no intention of recommending delisting the site from the NPL until all authorized EPA and NRC controlled remedial activities, addressing releases or threats thereof, at this facility are completed.

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#### IV. AGREEMENT

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

1. The Parties shall cooperate with each other in the oversight of reclamation and remedial activity at the UNC site.
2. Upon submittal by UNC of a proposed site reclamation plan ("the plan"), NRC and EPA will begin concurrent reviews of the

proposed plan. EPA will review the plan and will provide comments to the 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 and license amendments. If EPA cannot conclude that the plan approved by NRC meets CERCLA requirements, then EPA may initiate separate actions as may be necessary to ensure conformance with CERCLA requirements outside of the disposal area site. NRC will not approve any specific components of the groundwater protection and recovery aspects of JNC's proposed reclamation plan until EPA has determined, in a Record of Decision or by review of the JNC plan and statement to NRC, that it is consistent with CERCLA requirements and/or remedial actions required under CERCLA. NRC does not intend to approve any specific aspects of JNC's groundwater protection and recovery actions contained in JNC's proposed reclamation plan until such time as any inconsistencies have been resolved. If remedial action is determined in a Record of Decision to be necessary, EPA intends to either enter into a Consent Decree with JNC under which JNC will conduct, with EPA oversight, remedial actions equal to or exceeding those outlined in an EPA Record of Decision, to take appropriate enforcement action, or perform remedial action itself pursuant to Section 104 of CERCLA, reserving all rights to seek cost recovery under Section 107 of CERCLA. Such actions may be conducted

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as part of the NRC's approval of the UNC plan or separately; but in any event EPA intends to coordinate its actions first with the NRC.

3. If either Party determines that remedial actions are deficient or unsatisfactory, then that Party shall provide notice to the other Party of the deficiency. The NRC shall assume the lead role for notification to UNC, except for such notification as EPA might statutorily be required to provide in certain events. The notification shall specify a time period in 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 necessary for off-site groundwater and NRC will assume the lead for any other 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 on and off-site in order to fulfill their regulatory requirements. In any event no action 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 the 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.

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The Parties each have the right to appoint a new facility coordinator at any time. Such change shall be accomplished by notifying the 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 the MOU. The facility coordinators should communicate with each other on a routine basis by telephone.
5. 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

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and directed to the individuals at the addresses specified below:

EPA: Allyn M. Davis, Director  
Hazardous Waste Management Division  
Region VI, U.S. EPA  
1445 Ross Ave.  
Dallas, Texas 75202

NRC: Dale Smith, Director  
Uranium Recovery Field Office  
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. 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.

#### V. AGENCY RESPONSIBILITIES

##### A. NRC responsibilities

1. The NRC will require the owners/operators of the UNC Churchrock mill (UNC) to implement an approved on-site reclamation plan that meets all relevant NRC requirements, including 10 CFR Part 40, Appendix A, as amended. If any such plan is not complied with by UNC, NRC will take whatever actions it deems appropriate to ensure compliance.

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2. The NRC will direct UNC to provide both parties with copies of major work product submittals as they become available. Such work products will include, but not be limited to, an adequate overall reclamation plan, and any other plans and specifications for assessment, remediation, and monitoring, including all analytical data.
3. The NRC agrees to provide progress reports on UNC remediation on a quarterly basis.
4. The 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.
5. The NRC shall notify EPA of all pending visits to the Churchrock property which relate to the site closure plan and shall afford EPA and its consultants opportunity to accompany NRC personnel on such visits.

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#### 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 site reclamation plan, and other associated deliverables, within timeframes as agreed to between NRC and EPA. In the event that EPA determines that the implementation of the site reclamation plan 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.

3. EPA intends to pursue and complete a Remedial Investigation and Feasibility Study, public comment and agency response process, and Record of Decision (ROD) directed at off-site groundwater contamination, with the intention of completing this process by to October 1, 1988. EPA intends to implement, or require UNC or other potentially responsible parties to implement, any EPA selected remedial actions set forth in a ROD. Any remedial actions conducted by UNC or other potentially responsible parties to implement an EPA selected remedy will be done under EPA oversight and in accordance with the terms of any Consent Decree entered into with EPA. EPA intends that any such Consent Decree would cover actions outside the byproduct material disposal site needed to implement the ROD remedy.

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#### VI. DISPUTE RESOLUTION

In the event of dispute between EPA and the NRC concerning site activities, the persons designated by each Agency as primary 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 the NRC and EPA.

Both Parties shall continue to maintain their respective rights or responsibilities under the MOU during the dispute resolution process.

#### VII. EXECUTION AND MODIFICATION

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, the MOU may be terminated unilaterally if any of the conditions set forth below are present.

1. The planning or conduct of groundwater 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-URFO, Region IV, NRC, and the Director-Hazardous Waste Management Division, Region VI, EPA or their designated representatives.

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IV. 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.

Executed and agreed to:

*Robert J. Martin*  
Robert J. Martin  
Regional Administrator  
U.S. Nuclear Regulatory Commission,  
Region IV, Arlington, Texas

*August 26, 1988*  
Date

*Robert E. Layton Jr.*  
Robert E. Layton Jr., P.E.  
Regional Administrator  
U.S. Environmental Protection Agency  
Region VI, Dallas, Texas

*August 26, 1988*  
Date

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