



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

June 24, 2015

ALL AGREEMENT STATES, WYOMING

POTENTIAL AGREEMENT STATE ROLE REGARDING THE U.S. NUCLEAR REGULATORY COMMISSION'S JURISDICTION FOR MILITARY RADIUM AND OVERSIGHT OF THE U.S. DEPARTMENT OF DEFENSE REMEDIATION OF RADIOACTIVE MATERIAL (STC-15-046)

Purpose: To inform the Agreement States of the Nuclear Regulatory Commission's (NRC's) planned implementation of its jurisdiction for the U.S. Department of Defense's (DoD's) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remediation of radium and other unlicensed Atomic Energy Act of 1954, as amended (AEA), material and potential Agreement State role.

Background: On February 16, 2011, the NRC staff provided the Commission with a notation vote paper (SECY-11-0023) that informed the Commission of regulatory issues related to military radium and recommended approaches to resolve those issues. In a March 24, 2011, Staff Requirements Memorandum (SRM), the Commission approved the NRC staff's recommendation to prepare a guidance document and *Federal Register* notice clarifying the types of radium-226 in the military's possession subject to NRC regulation, and describing regulatory approaches to be used to implement NRC authority for radium contamination and radium in items and equipment in the military's possession. On July 8, 2011, the NRC staff's proposed guidance, in the form of a draft Regulatory Issue Summary (RIS), was published in the *Federal Register* (76 FR 40282) for a 60-day public comment period. Within the draft RIS, the NRC staff had proposed a possession-only license (POL) that acknowledged the use of the CERCLA process instead of the NRC AEA-based decommissioning process as a specific way to coordinate the licensing approach that was directed by the Commission. Subsequently, DoD submitted its formal comments on the draft RIS, and opposed any form of NRC licensing. A joint NRC-DoD working group was established to discuss resolution of DoD's comments. As a result, DoD proposed a Memorandum of Understanding (MOU) option to document the extent of the NRC's involvement with DoD's remediation of AEA material, including radium, at unlicensed sites. Both the NRC staff and DoD agree that the MOU option would be an acceptable implementation approach for the NRC's involvement with the remediation of radium and other unlicensed AEA material. On August 1, 2014, the NRC staff proposed this MOU approach to the Commission in SECY-14-0082, with Enclosure 4 to SECY-14-0082 providing an outline for an MOU between the NRC and DoD. In a December 22, 2014 SRM, the Commission agreed that the NRC staff should pursue finalizing an MOU with the DoD and should finalize a RIS that clarifies NRC's regulation of radium-226 in the military's possession.

Discussion:**NRC Role Under a Future MOU**

The following is a discussion of the NRC's likely role under a finalized MOU on the implementation of NRC's jurisdiction with regard to radium. The implementation of the NRC's jurisdiction will not be initiated until the MOU is finalized and a Final RIS is published.

Two types of NRC involvement will likely be implemented under an MOU: "stay informed" and "monitoring." It is expected that NRC will only use one particular approach at each site. Consistent with SECY-11-0023 and the draft RIS, for sites where the U.S. Environmental Protection Agency (EPA) has regulatory authority (e.g., sites listed on the National Priority List (NPL)), the NRC staff would take a limited involvement approach to stay informed and would rely on the CERCLA process and EPA regulatory oversight. This **stay informed approach** was approved by the Commission for the Navy's Hunters Point site (SRM-SECY-08-0077), and the NRC staff is also using this approach for the Navy's Alameda site and the Air Force's McClellan site. The staff's use of this approach for the past 7 years has been successful. All three of these sites are planning remedial actions with unrestricted or restricted release. Typically, the NRC staff stays informed about remedial actions at these sites by a combination of selected document reviews and annual site visits that involve meetings with the Air Force, Navy, EPA Region 9, and the State agencies involved with the remediation of these sites. Through these discussions, the NRC staff maintains an understanding of the progress and views on important radiological remediation issues as well as the completed and planned activities of each organization. This approach does not involve licensing, and the staff does not conduct licensing reviews. The NRC reserves the option of providing comments to EPA on the military remediation, if necessary, to justify continued reliance on the CERCLA process and EPA oversight.

The second approach for the NRC's involvement would be the new approach of **monitoring** of sites where there is no federal oversight conducted by EPA (e.g., sites not listed on the NPL). The NRC would prioritize these sites and conduct the appropriate type and amount of monitoring activities for each site based on its priority. Monitoring activities could include document and data reviews, site observations, and confirmatory radiological surveys. The purpose of this monitoring would be to provide consistent federal oversight to confirm that DoD's remediation of radioactive material using the CERCLA process would result in an outcome that is protective of public health and safety and the environment. To accomplish this, NRC monitoring would determine that the NRC's 25 mrem/yr dose criterion is not exceeded for sites planning for unrestricted release, or for sites with restrictions on future land use and/or engineered controls.

Potential Agreement State Role Under an MOU

Section 274b. of the AEA provides a statutory basis under which the NRC relinquishes portions of its regulatory authority to States that enter into Agreements with the NRC to assume this authority. To the extent that a State has become an Agreement State, and the Agreement covers the material in question, the Agreement State then has the authority to regulate the use of such material within its borders, subject to some limitations. One such limitation is that an Agreement State does not have the authority to regulate a federal entity.

As part of this MOU effort, the NRC staff will obtain an annual site inventory from the DoD. This inventory will list the sites with confirmed unlicensed AEA materials and the CERCLA stage of remediation. Once the NRC has finalized an MOU with the DoD, the NRC will reach out to individual Agreement States with ongoing DoD remediation of unlicensed AEA material. The NRC will be seeking the State's voluntary comments to the NRC on (1) site focus areas for the NRC to consider as part of its monitoring approach, and (2) the DoD's CERCLA remediation actions. The intent of this future effort to coordinate with individual Agreement States is to obtain current state knowledge of and comments with respect to the site within each State's jurisdiction. In addition, current State involvement at these sites under the AEA could be through State oversight of service providers. For further discussion on the State's jurisdiction over service providers on Federal property, please see FSME-14-039, "Clarification on the Determination of Regulatory Jurisdiction of Nonfederal Entities Conducting Cleanup Activities on Federal Property in Agreement States."

In summary, as the NRC staff begins its involvement with the DoD's remedial activities of unlicensed AEA material under CERCLA, the NRC will reach out to individual Agreement States to discuss the potential for future voluntary involvement of States to assist the NRC in these efforts.

If you have any questions regarding the correspondence, please contact me at (301) 415-3340 or the individuals named below:

POINT OF CONTACT: Richard Chang E-MAIL: Richard.Chang@nrc.gov
TELEPHONE: (301) 415-5563

POINT OF CONTACT: David Misenhimer E-MAIL: David.Misenhimer@nrc.gov
TELEPHONE: (301) 415-6590

***/RA/
PHenderson for JPiccone***

Josephine Piccone, Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

As part of this MOU effort, the NRC staff will obtain an annual site inventory from the DoD. This inventory will list the sites with confirmed unlicensed AEA materials and the CERCLA stage of remediation. Once the NRC has finalized an MOU with the DoD, the NRC will reach out to individual Agreement States with ongoing DoD remediation of unlicensed AEA material. The NRC will be seeking the State's voluntary comments to the NRC on (1) site focus areas for the NRC to consider as part of its monitoring approach, and (2) the DoD's CERCLA remediation actions. The intent of this future effort to coordinate with individual Agreement States is to obtain current state knowledge of and comments with respect to the site within each State's jurisdiction. In addition, current State involvement at these sites under the AEA could be through State oversight of service providers. For further discussion on the State's jurisdiction over service providers on Federal property, please see FSME-14-039, "Clarification on the Determination of Regulatory Jurisdiction of Nonfederal Entities Conducting Cleanup Activities on Federal Property in Agreement States."

In summary, as the NRC staff begins its involvement with the DoD's remedial activities of unlicensed AEA material under CERCLA, the NRC will reach out to individual Agreement States to discuss the potential for future voluntary involvement of States to assist the NRC in these efforts.

If you have any questions regarding the correspondence, please contact me at 301-415-3340 or the individuals named below:

POINT OF CONTACT: Richard Chang E-MAIL: Richard.Chang@nrc.gov
TELEPHONE: (301) 415-5563

POINT OF CONTACT: David Misenhimer E-MAIL: David.Misenhimer@nrc.gov
TELEPHONE: (301) 415-6590

**/RA/
PHenderson for JPiccone**

Josephine Piccone, Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguard

DISTRIBUTION:
MSTR R/F

ML15044A437

OFC	NMSS/DUWP	NMSS/MSTR	NMSS/DUWP	NMSS/ASPB	NMSS/DUWP	OGC	NMSS/MSTR
NAME	RChang	SPoy	CHolston	LD for CEinberg	MNorato	EHouseman	PHenderson for JPiccone
DATE	2/19/15	4/2/15	4/2/15	4/8/15	5/14/15	5/14/15	6/24/15

OFFICIAL RECORD COPY