

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES NUCLEAR REGULATORY COMMISSION  
AND  
THE UNITED STATES DEPARTMENT OF DEFENSE  
FOR COORDINATION ON CERCLA RESPONSE ACTIONS AT  
DoD SITES WITH RADIOACTIVE MATERIALS**

**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 U.S. Department of Defense, including the Military Departments (hereafter referred to as DoD), 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 the Defense Environmental Restoration Program, 10 U.S.C. 2700 et seq., as amended (DERP) impose site remediation obligations on the DoD 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 environmental response sites subject to this MOU. Duplicative regulatory requirements and processes could add cost and delay completion of DoD environmental 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 DoD and the NRC in regard to environmental response actions on DoD sites containing radioactive materials.

2. The NRC and DoD 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 NRC and the DoD 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 10 CFR, Chapter 1.

4. 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 remediation 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.

5. The DoD enters into this MOU under its authority and responsibility for the protection of public health, safety and the environment in the conduct of environmental response actions at sites under its jurisdiction pursuant to DERP, implementing DoD Directives, Instructions and Manuals, and CERCLA and its implementing regulations, the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP). DERP covers response actions at active DoD installations, properties being transferred out of DoD, such as those under the Base Realignment and Closure (BRAC) laws, and Formerly Used Defense Sites (FUDS).

6. As identified above, the NRC and DoD have statutory authorities that overlap for AEA radioactive material. Therefore, this MOU describes the intent and plan of NRC and DoD 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, DoD, 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 Party 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.

8. It is DoD's position that pursuant to the permit exemption set forth at §121(e) of CERCLA, 42 USC 9621(e), DERP sites with response actions that are consistent with CERCLA are not subject to NRC licensing. It is NRC's position that the permit waiver set forth at §121(e) is only applicable to that specific portion of any removal or remedial action, as these terms are defined in CERCLA, conducted entirely onsite and that § 121(e) does not waive the AEA or NRC requirement that Federal agencies obtain an NRC license to possess or own certain radioactive material. It is also NRC's position that the permit waiver is only applicable to CERCLA-specific actions. Although the parties do not agree with each other's position regarding the permit exemption, the parties agree to this MOU for monitoring of DoD's remediation under the DERP process instead of licensing while this MOU is in place, for sites within the scope of this MOU.

## **Scope**

9. This MOU applies to response actions conducted by DoD under CERCLA/DERP, to address a confirmed release of a radioactive material that is or may be subject to regulation under the AEA. While not a CERCLA response action, the MOU also applies to DoD's remediation of buildings with confirmed radiological contamination provided the building is not being addressed under an existing NRC license.

10. The MOU applies to active DoD installations, BRAC properties, and FUDS where DoD is conducting response actions under DERP for a confirmed release of radioactive materials. This MOU is intended to be a comprehensive remediation MOU to address confirmed releases of

radioactive materials at DoD sites that are not presently under an NRC license, although the material is licensable under the AEA. This MOU also covers confirmed releases of radioactive materials at DoD sites under an existing NRC license, as effectuated through the NRC licensing process described further in this provision, where response actions by DoD are proceeding under DERP (e.g., sites with commingled AEA and chemical contamination). For any DoD DERP site with DoD radioactive material included under a specific NRC license, the agencies agree that such license for that site should be suspended (or amended, as appropriate, in the case of a Master Materials license) at the request of the DoD licensee, to allow the site to proceed under DERP for the response action. NRC will consider any such request and effectuate a license suspension or amendment, as appropriate, in accordance with its rules of practice and procedure. In these instances, a suspended (or amended) license for a site should be reinstated only after the response action is completed. Specific implementation of the license amendment and suspension process will be detailed in a future agreed-upon process.

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

## **ARTICLE II – INTERAGENCY COMMUNICATION**

12. The NRC and DoD 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.

13. The Principal Representatives are:

For the NRC: John R. Tappert, Director  
Division of Decommissioning, Uranium Recovery, and Waste Programs  
Office of Nuclear Material Safety and Safeguards  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

For the DoD: Ms. Deborah Morefield  
Office of the Assistant Secretary of Defense (Energy, Installations &  
Environment)(Environment, Safety & Occupational Health)  
3400 Defense Pentagon, room 5C646  
Washington, D.C. 20310

For the Army: Mr. Bryan Frey  
Headquarters, Department of the Army  
Office of the Assistant Chief of Staff for Installation Management  
Installation Services Directorate, Environmental Division  
600 Army Pentagon, Room 5C121A-1  
Washington, D.C. 20310

For the Navy: Mr. Lino Fragoso  
Radiological Controls and Health (N455A)  
Energy & Environmental Readiness Division  
Office of the Chief of Naval Operations  
2000 Navy Pentagon, Room 2D253  
Washington, DC 20350

For the Air Force: LtCol Anthony Cagle  
Office of the Surgeon General  
Headquarters, United States Air Force  
7700 Arlington Blvd, Suite 5151  
Falls Church, VA. 22042

### **ARTICLE III – INVENTORY & NRC INVOLVEMENT WITH DOD RESPONSE ACTIONS WITH RADIOLOGICAL MATERIALS**

#### **Annual Inventory of Sites**

14. On the effective date of this MOU, and annually thereafter, no later than sixty (60) calendar days after the beginning of each Federal Fiscal Year, DoD will provide the NRC a complete inventory of all DoD sites at which DoD is conducting DERP response actions to address confirmed releases of radioactive materials that are potentially subject to regulation under the AEA and that are within the scope of this MOU. The information included in this inventory will be determined by representatives of the NRC and DoD in preparation for the first report. Thereafter, the same types of information will be provided by DoD to the NRC, updated to reflect current status and knowledge in each annual inventory. If either agency wishes to change the type of information included in this inventory, it may propose the change to the other agency no later than six (6) months prior to the date the next inventory is due. If both agencies agree to the change, the inventory report for the next Fiscal Year will be submitted with the changes incorporated. If the proposal to change the inventory is submitted later than six (6) months before its due date, and if the changes are agreed to by the agencies, the request will apply to the following Fiscal Year's inventory. In the annual inventory, DoD will inform the NRC of any sites which potentially contain Category 1 or Category 2 quantities of radioactive material possessed by DoD, as defined in 10 CFR Part 37. If a site is identified with the potential for aggregated quantities of Category 2 material (or greater quantities), NRC and DoD will have further site-specific discussions regarding security. If a new site is confirmed after delivery of the inventory and response actions will begin before the next scheduled inventory update, DoD will notify the NRC in a timely manner.

#### **NRC and DoD Coordination and Planning**

15. The NRC will complete its review of the inventory within sixty (60) calendar days of receipt of the inventory and will notify DoD of all sites it has selected for either: 1) staying informed and relying on U.S. Environmental Protection Agency (EPA) regulatory oversight (e.g., National Priority List (NPL) sites); or 2) conducting monitoring activities. NRC will state, with specificity, any information or circumstances of special interest to the NRC. NRC and DoD will coordinate, at least annually, on site-specific NRC monitoring activities.

## **NRC Access to Information and Sites**

16. For sites identified by the DoD per paragraph 14, DoD will furnish to the NRC on an ongoing basis information concerning all significant DERP phase work relating to investigations, removal actions, and remedial actions, such as plans, reports, and regulatory or public comments and responses to comments from any other Federal or State agency or other person or entity concerning the radiological material. Any of these documents that are already available for regulatory and public review will be furnished to the NRC within thirty (30) calendar days of receipt of the list of sites from the NRC. Reports that are completed thereafter will be furnished to the NRC as they are completed and available for regulatory and public review. If, upon review of the available reports, the NRC is satisfied that it does not need to continue to receive said information on an ongoing basis for any specific site(s), the NRC will notify DoD, and DoD will revert to providing only the status information in the annual inventory report.

17. For sites identified for monitoring by NRC, DoD will also provide NRC draft DERP documents related to the radiological material, as described in paragraph 16, for NRC review and comment. The DERP remediation documents will provide the technical basis for meeting relevant and appropriate dose criteria.

18. DoD will facilitate any NRC visits/meetings and NRC confirmatory surveys or sampling at the sites identified for either staying informed or monitoring. DoD will also facilitate any NRC discussions with DoD radiological reviewers on their final DoD reports.

## **NRC Involvement Activities**

19. Based on the information and discussions per paragraph 15, 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.

20. 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. In addition, for sites subject to a five-year review under §121(c) of CERCLA, 42 U.S.C. 9621(c), NRC will be given the opportunity to review the status of the radiological remedy during the five-year review to ensure that the radiological remedy remains protective.

21. The NRC will prepare monitoring reports with the results of its reviews and other monitoring activities and provide these reports to DoD. The monitoring reports will be included in 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. NRC agrees to provide DoD with any written comments on the DERP documents in accordance with established site regulatory review schedules (typically thirty (30) to sixty (60) days). NRC may request an extension to this timeframe. DoD will review and resolve all comments it receives from NRC related to the radiological material. DoD will provide responses to NRC comments upon request. Written DoD and NRC communications on these specific sites will be publicly available.

22. If the NRC at any time determines that it needs to review additional data, documents, or information for a specific site's environmental response to radiological material, it may request the specific additional data, documents, or information from DoD. The DoD will make reasonable efforts to provide all available data, documents, or information that has been requested by the NRC within sixty (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 DoD if necessary due to the size, complexity, or difficulty of providing the requested materials.

23. Upon completion of DoD's response action at any site covered by this MOU, the NRC will prepare a final letter or report regarding DoD's radiological remediation to document NRC activities and conclusions regarding the DERP remediation.

#### **NRC Decommissioning Dose Criteria**

24. NRC decommissioning dose criteria contained in 10 CFR 20.1402 or 10 CFR 20.1403(b) may be Applicable or Relevant and Appropriate Requirements (ARARs) under §121(d) of CERCLA, 42 U.S.C. 9621(d), for remedial actions at specific DERP sites.

#### **NRC Technical Assistance or Regulatory Advice**

25. If DoD needs technical assistance or regulatory advice or records from the NRC to assist actions at a specific site environmental response to radiological material, it may submit a request for assistance, advice or records to the NRC. As part of its request, DoD 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 publically available guidance documents (and clarifications on those documents), within ninety (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 DoD, if necessary, due to the complexity or difficulty of responding to the request.

#### **Records**

26. NRC monitoring reports and any written correspondence with DoD under this MOU will be publically available in NRC's ADAMS.

27. DoD will maintain a written record of all submissions of information or documents, or requests for documents or assistance between the NRC and the DoD, for all affected sites in the site project files held by the DoD.

28. 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.

29. If any of the information or records held by NRC or DoD is 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 Parties recognize that Federal law may require the release of this data.

### **Service Provider Licenses**

30. Where DoD's radiological remediation activities are conducted by service providers, DoD will verify that its service providers use 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, DoD will provide appropriate land jurisdiction documentation. DoD agrees that when they are utilizing NRC or Agreement State licensed service providers, DoD 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**

31. There will be no transfer of funds or other obligations between NRC and DoD in connection with this MOU. Each 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**

32. NRC and DoD agree to assume liability for their own risks arising from or related to activities under this MOU.

### **ARTICLE VI – DISPUTE RESOLUTION**

33. The NRC and DoD 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 two 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 detailed written statement of position by the disputing agency, and the other agency will respond in writing detailing its position. The officials at each level of elevation will confer in a timely and cooperative manner to attempt to resolve the dispute.

34. 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 DoD with regard to an unresolved dispute. DoD reserves any authority and defenses available to them to respond to any assertion of authority by the NRC. In the event of an unresolved dispute, NRC will provide written notification to EPA, the appropriate State organizations, and potential future owners of the property of NRC's concerns regarding the remediation of the site or the sites impact on the public health and safety or the environment.

### **ARTICLE VII – APPLICABLE LAW**

35. U.S. 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 Parties.

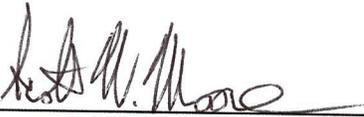
**ARTICLE VIII – AMENDMENT AND TERMINATION**

36. This MOU may be modified or amended in writing by the mutual agreement of NRC and DoD. Modifications must be signed by the original signatories to the MOU or their designees or successors. Either agency may terminate its participation in the MOU by providing thirty (30) calendar days written notice to the other party. 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**

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

**On Behalf of the  
U.S. NUCLEAR REGULATORY COMMISSION**



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**Scott W. Moore, Acting Director  
Office of Nuclear Material Safety and  
Safeguards**

Date 4/28/2016

**On Behalf of the  
U.S. DEPARTMENT OF DEFENSE AND MILITARY DEPARTMENTS**



\_\_\_\_\_  
**Maureen Sullivan  
Deputy Assistant Secretary of Defense  
(Environment, Safety and Occupational Health)**

Date 4/21/2016

**ARTICLE VIII – AMENDMENT AND TERMINATION**

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\_\_\_\_\_  
**Scott W. Moore, Acting Director  
Office of Nuclear Material Safety and  
Safeguards**

Date\_\_\_\_\_

**On Behalf of the  
U.S. DEPARTMENT OF DEFENSE AND MILITARY DEPARTMENTS**

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**Maureen Sullivan  
Deputy Assistant Secretary of Defense  
(Environment, Safety and Occupational Health)**

Date\_\_\_\_\_