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Office of Administration, Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Subject: Docket ID NRC-2011-0146: **Proposed Generic Communications; Draft NRC Regulatory Issue Summary 2011-XX; NRC Regulation of Military Operational Radium-226**

The proposed RIS appears to indicate that most former military sites containing radium waste or contamination fall under NRC jurisdiction. It also points out that the NRC's jurisdiction was provided or clarified by the Energy Policy Act of 2005. The draft RIS also documents some potential issues that have arisen with respect to jurisdictional issues.

However, it also seems to indicate that the NRC is likely to take a backseat role at sites that fall under the CERCLA process. This seems potentially inconsistent with the Energy Policy Act giving NRC jurisdiction. It sounds as though the NRC decided the complexity of dual jurisdiction or regulation could be avoided and made a determination that the CERCLA regulation were equivalent or more stringent than NRC regulations and, therefore, the NRC could back off on regulating these sites.

While that approach might make sense for some sites where unrestricted release is the goal, it is much less clear that the backseat role approach is appropriate for sites where buried radium waste is to be capped in place or where waste consolidation units are proposed.

Wouldn't the NRC need to publish any determination about equivalency of the CERCLA process to NRC regulations as a basis for not enforcing their jurisdiction under the Energy Policy Act? Without such a documented determination, how do we know that the intent of the Energy Policy Act is being followed by the proposed approach? In addition, the draft RIS does not deal with the fact that many of these sites may not be under sole federal jurisdiction currently.

If the NRC is using some of the noted sites such as Hunters Point Shipyard as test cases to sort out jurisdictional issues, then it would be helpful to explain the NRC's involvement in the recent capping in place of radium sources and contaminated soil at Sites 7 and 18. For example, was the NRC involved in the CERCLA process as a stakeholder and did they provide analysis indicating how the actions taken under the CERCLA process would be equivalent to or comply with NRC regulations and requirements for restricted release?

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Add = R. Johnson (R52)

Without such involvement and documentation, one might construe that the outcome or purpose of this draft RIS is to document that the status quo will be maintained and the NRC will keep out of the process whenever it can find an excuse to avoid its jurisdictional role under the Energy Policy Act.

Another point of view might assert that the NRC has apparently made determinations about when they will or will not defer to the CERCLA process and that these determinations have not been clearly stated or perhaps even clearly written down anywhere. This might give the impression that the NRC has really developed hidden regulations.

At any rate it seems that NRC should have jurisdiction over sites where restricted releases of radioactive materials are being planned and where EPA's less stringent approach under the CERCLA process treats these sites like municipal landfills.

The NRC and EPA should probably declare a moratorium or stand-down on any record of decision or release of sites containing radioactive materials that have been buried or capped in place where previously buried. This moratorium would also apply to waste consolidation units and would remain in place until the jurisdiction issues are clarified.

The States do need full NRC involvement in these sites. The CERCLA process is not working at least with respect to restricted releases of sites with buried radium. CERCLA regulators and processes are largely not geared to deal with contaminants that remain for thousands of years.

Thank you for consideration of these comments.