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Comment On: NRC-2011-0146-0001

Proposed Generic Communications; Draft NRC Regulatory Issue Summary 2011-XX; NRC Regulation of Military Operational Radium-226

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RULES AND PROCEDURES

General Comment

See attached file(s)

Attachments

nrc comments

SONSI Review Complete
 Template = ADM-013

E-RIDS = ADM-03
 Add = R. Johnson (1252)

Comments from EPA Region 9 staff

While EPA Region 9 appreciates the cooperative working relationship we have developed with NRC at Hunter's Point and McClellan AFB, we are concerned that the proposal may potentially complicate decision-making by the military and delay cleanups at other BRAC bases with little observable benefit for the environment or the surrounding community seeking to reuse the closing facility.

According to the draft RIS, the NRC is taking this action to address a number of concerns:

- Potential for unnecessary dual regulation under the AEA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and lack of finality of the military remediation if NRC is not involved during military remediation and before the transfer of remediated property to non-military owners;

- Potential for significant impacts to community redevelopment and reuse of remediated military property unless NRC is involved during remediation

- Regulatory uncertainty and inconsistent understanding regarding NRC's jurisdiction unnecessarily complicates military remediation;

- Regulatory uncertainty regarding jurisdiction over storage and decontamination of equipment and items containing radium-226; and

- Potential implications for health and safety from the unregulated sites being remediated and the uncharacterized sites with suspected radium-226.

Without some significant clarification of the RIS, it does not appear that these concerns will be adequately addressed.

The proposal to change the point where NRC jurisdiction attaches to military Ra 226, from the point of transfer by the military -- to the point when a 'suspect' site is "confirmed", creates the dual regulation that the proposal seeks to avoid. At military facilities, the NRC typically exercises its authority through a Master Materials License so the effects of the proposal will depend to a large extent on the manner in which the military is able to integrate its cleanup program with its MML license procedures.

EPA Region 9 is not aware of any instances where the selection of a CERCLA remedial action has been integrated into a decommissioning or license termination decision. At a minimum it would be helpful to defer the effective date of this proposal until a clearly understood process/crosswalk has been established.

Until the MML process has been expanded to include traditional CERCLA cleanup activities e.g. capping landfills where Ra 226 has been “confirmed”, the proposal would seem to increase uncertainty rather than simplify remediation.

The second objective, to provide finality with respect to decision making, cannot be achieved unless the NRC clearly defines its relationship with Agreement States who will acquire jurisdiction when the property transfers to a non-federal party. Where the NRC has been involved in the CERCLA response action, directly or through the MML process, there should be no opportunity for the Agreement State regulator to revisit the decision or impose additional requirements e.g. additional characterization to support a license exemption.

Reuse will only be facilitated if the transferee is provided some level of assurance that it does not face an undefined “license exemption” process when property transfers from the military.

Finally without some quantifiable measure or definition of the distinction between “suspected” and “confirmed” Ra226 contamination there can be little certainty in the appropriate process for the military to follow. If the jurisdictional determination is based on a single observation of measured radiation exceeding background, the result would be quite different than a jurisdictional determination is based on evidence that Ra226 is a CERCLA contaminant of concern (e.g., contamination requiring a remedial action).

If you have questions concerning these comments, please contact Robert Carr at carr.robert@epa.gov 415 972 3913.