

**Key Provisions of a
Memorandum of Understanding
Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Defense
for Remediation of U.S. Department of Defense sites with Radioactive Materials subject
to U.S. Nuclear Regulatory Commission Regulatory Authority**

The key provisions of this Memorandum of Understanding (MOU) are outlined below to give an understanding of the general scope and approach for the proposed eventual MOU. The U.S. Nuclear Regulatory Commission (NRC) and U.S. Department of Defense (DoD) staff discussions have resulted in these key provisions for a draft MOU. After Commission direction, further development of the draft MOU could proceed and provide the detailed wording of these provisions.

ARTICLE I—PURPOSE, AUTHORITY, AND SCOPE

Purpose

- Ensure protection of public health and safety and the environment.
- Minimize dual regulation for overlapping statutory responsibilities.
- Framework and consultation process for the NRC and DoD to work together and cooperate fully to meet respective responsibilities.

Authority

- The NRC's authority under the Atomic Energy Act of 1954, as amended (AEA) and implementing regulations.
- The DoD's authority pursuant to the Defense Environmental Restoration Program, as amended (DERP) and the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA) and implementing regulations.
- The MOU neither creates nor removes any agency responsibility or authority.

Scope

- Comprehensive MOU, including the following:
 - All DoD sites with confirmed radiological material that is or may be subject to the NRC regulation under the AEA.
 - The DoD sites on active DoD installations, Base Realignment and Closure (BRAC) properties, and Formerly Used Defense Sites.
 - Buildings with contamination not addressed under CERCLA.
 - Sites with unrestricted and/or restricted release remedial actions.
 - Sites under an existing Air Force or Navy NRC Master Materials License permit, where DoD requests and NRC approves suspension of the permit during remediation under CERCLA and subsequent reinstatement and termination of the permit.
 - All steps and activities of the CERCLA process, including investigations, remediation, and 5-year reviews.

ARTICLE II—INTERAGENCY COMMUNICATION

Principal Representatives

- Identify in the MOU the positions of the principal representatives for the NRC and DoD, Army, Navy, and Air Force.
- Each agency will identify in writing its primary points of contact for day-to-day communications.

ARTICLE III—INVENTORY AND NRC MONITORING OF ONGOING DoD RESPONSE ACTIONS WITH RADIOLOGICAL MATERIALS

Annual Inventory of Sites

- The DoD prepares and updates an annual site inventory to notify NRC of sites; notify the NRC if a new site is identified during the year. Provides site-specific information for planning and coordination (information fields to be determined but might include: radionuclides making up the contamination; location of contamination (e.g., soil, groundwater, building interiors, sewer lines, landfills, firing range targets); remedial action considered or approved (unrestricted and/or restricted release); step in CERCLA process; National Priority List (NPL) or non-NPL; U.S. Environmental Protection Agency regulatory oversight; state oversight; type of site (e.g., active installation, BRAC property, Formerly Used Defense Sites); site location; and closest population center.

NRC and DoD Coordination and Planning

- The NRC review and discussion of inventory with DoD.
- The NRC notifies DoD of sites selected for staying informed and monitoring.
- Coordinate site-specific plans and schedules annually and for site-specific NRC monitoring activities.

NRC Access to Sites and Information

- The DoD provides NRC with access to sites to observe activities and to conduct confirmatory radiological surveys as requested.
- The DoD provides access to CERCLA documents, supporting radiological documents, and data.
- The DoD facilitates NRC monitoring activities.

NRC Decommissioning Dose Criteria

- The DoD meets the 25 mrem/yr dose criteria in 10 CFR 1402 and/or 10 CFR 1403(b) as appropriate for a specific site or a more stringent criterion.
- The DoD CERCLA documents provide technical basis for meeting dose criteria.

NRC Involvement

- The NRC would determine the type of involvement with DoD's remediation at specific sites--either stay informed or monitor.
- Monitoring to confirm that DoD has met the applicable NRC dose criteria identified above.
- Monitoring activities include, but not limited to, meetings for information exchange, document reviews, site visits, and confirmatory radiological surveys.
- Coordination with internal DoD radiological reviewers on their final reports.

- The DoD adjudication of the NRC comments.
- The DoD will provide a written response to the NRC comments.
- The NRC prepares a final report or letter stating the NRC's conclusion regarding DoD's completion of remediation.

Records

- The NRC monitoring activities, comments, and conclusions documented in letters or monitoring reports that would be public documents available in NRC's Agencywide Documents Access and Management System.
- The DoD will maintain a written record of MOU information exchanged.
- Management of restricted records.

NRC Technical Assistance or Regulatory Advice

- The DoD could submit a request for NRC technical assistance or regulatory advice.
- The NRC responds to DoD requests (e.g., providing appropriate NRC guidance documents).

Licenses for DoD Service Provider Radiological Activities

- Where DoD's radiological remediation activities are conducted by service providers, DoD will verify that its service providers use the NRC's guidance to determine whether an NRC or Agreement State license is required in order to conduct its activities.

NRC Fees

Note that this MOU cannot resolve the question regarding NRC fees.

ARTICLE IV—DISPUTE RESOLUTION

Dispute Resolution

- The NRC and DoD will make every effort to fully discuss and resolve disputes.
- Raise disputes to higher levels of management for resolution.
- Each agency reserves any authority to take action.
- The NRC could document unresolved disputes in the NRC non-compliance letters.

ARTICLE V—AMENDMENT AND TERMINATION

- The MOU may be modified or amended in writing by mutual agreement of the NRC and the DoD.
- Either agency may terminate its participation in the MOU by providing written notice.

ARTICLE VI—EFFECTIVE DATE

- Effective date will be upon the last date of signature.
 - Signatures of both parties; NRC: Office of Federal and State Materials and Environmental Management Programs, Office Director; DoD: To Be Determined.