

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE U.S. NUCLEAR REGULATORY COMMISSION  
AND  
THE U.S. ARMY CORPS OF ENGINEERS  
FOR COORDINATION ON CLEANUP & DECOMMISSIONING OF THE FORMERLY  
UTILIZED SITES REMEDIAL ACTION PROGRAM (FUSRAP) SITES WITH NRC-  
LICENSED FACILITIES**

**ARTICLE I - PURPOSE AND AUTHORITY**

- A. This Memorandum of Understanding (MOU) is entered into by and between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers (USACE), ("The Parties") for the purpose of minimizing dual regulation and duplication of regulatory requirements at FUSRAP sites with NRC-licensed facilities. For activities where a potential for dual regulation could exist, the two agencies agree to cooperate, share information, and/or coordinate activities in their respective programs. This MOU applies to USACE response actions meeting the decommissioning requirements of 10 C.F.R. 20.1402, "Radiological Criteria for Unrestricted Use." USACE Response actions meeting the restricted release requirements of 10 C.F.R. 20.1403, are outside the scope of this MOU.
- B. The NRC has the statutory responsibility for the protection of the public health and safety related to the possession and use of source, byproduct, and special nuclear material under the Atomic Energy Act of 1954, as amended (Public Law 83-703, 68 Stat. 919). This includes ensuring the decommissioning of the nuclear facilities that it licenses. The Commission's licenses and regulations set out conditions to provide for the protection of the public health and safety and the environment. To terminate such licenses, NRC must ensure that licensees meet the Commission's decommissioning requirements including the provisions of 10 CFR 20 Subpart E – Radiation Criteria for License Termination.
- C. USACE is administering and executing cleanup at FUSRAP sites pursuant to a March 1999, MOU with the Department of Energy and the provisions of the Energy and Water Development Appropriations Acts for Fiscal Years 1998-2001 (Public Laws 105-62, 105-245, 106-60 and 106-377, respectively). Section 611 of Pub. L. 106-60 requires the USACE to remediate FUSRAP sites, in accordance with, and subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R., Chapter 1, Part 300. Section 611 also confers lead agency status on the USACE for remedy selection. USACE, as provided for in section 121(e) of CERCLA and 40 C.F.R. 300.400(e), is not required to obtain a NRC license for its on-site remediation activities conducted under its CERCLA

authority. However, if a response action is required, CERCLA requires the remedy to be protective of human health and the environment.

D. This MOU describes how the two agencies will work together to meet their existing statutory 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 a licensed site; does not relieve a license holder of its responsibilities and liabilities under any law; and does not create rights in any third party against USACE, NRC, or the United States.

E. CERCLA obligations imposed on the USACE may duplicate the obligations established by NRC regulations and licenses, resulting in duplicate regulatory requirements at NRC-licensed FUSRAP sites that will impose an added regulatory burden without an added safety benefit. To avoid unnecessary duplication of regulatory requirements and effort, this MOU sets out the conditions, consistent with the protection of the public health and safety, that will permit NRC to exercise its discretion to suspend NRC issued licenses at FUSRAP sites so that NRC requirements do not hinder USACE in its remediation of sites under CERCLA.

F. Each agency will bear its own costs for actions consistent with this MOU, but this does not preclude each agency from recovering costs, based on its statutory authority, from the licensee or responsible parties.

G. USE OF TERMS.

1. The term "response action" means response actions as defined in CERCLA at 42 U.S.C. 9601(25) including removal and remedial actions and related CERCLA enforcement actions.
2. The term "closeout" means that all construction activities and reports are complete, the cleanup goals specified in the final ROD are achieved, coordination with regulatory agencies, and publication of notice in accordance with the provisions of CERCLA, the National Contingency Plan (NCP) and USACE procedures have been completed.
3. The term "completed response action" means that all construction activities are complete; for components other than ground or surface water, the cleanup goals specified in the ROD are achieved; any ground and/or surface water restoration remedies are operating as designed; and a remedial or removal action report is complete.
4. The term "FUSRAP site" means any geographic area certified by the Department of Energy (DOE) to have been used for activities in support of the Nation's early atomic energy program, and determined by USACE to require a response action pursuant to CERCLA or placed into the FUSRAP program pursuant to Congressional direction. A FUSRAP site may overlap all, or any part, of an NRC-licensed site.
5. The term "possession" means physical control of the property or materials for purposes of environmental restoration and protection of the health and safety of the

public. Possession does not require ownership nor is USACE assuming responsibility for the operations and activities of the NRC licensee or owner of the materials. The USACE will take control only of the FUSRAP-related materials on the licensed site as provided in paragraph III. B.. Non-FUSRAP materials, unless the responsibility of the USACE under CERCLA, remain under control of the licensee.

6. The term "licensed site" means that a NRC license has been issued, and remains active or suspended, to possess and use material licensed under the Atomic Energy Act at the site.

## **ARTICLE II - INTERAGENCY COMMUNICATION**

To provide for consistent and effective communication between NRC and USACE, each agency shall appoint a Principal Representative to serve as its headquarters-level point of contact on matters relating to this MOU. Written notices required by the MOU shall be sent to the USACE's and NRC's Principal representatives. The Principal Representatives are:

Chief, Decommissioning Branch  
Division of Waste Management  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Chief, Environmental Division  
Directorate of Military Programs  
U.S. Army Corps of Engineers  
441 G Street, N.W.  
Washington, D.C. 20314-1000

## **ARTICLE III - AGREEMENT**

A. At the request of USACE, NRC will initiate action for the suspension of the NRC license or portions of the license for a FUSRAP site to be remediated by USACE under CERCLA authority contingent upon USACE notifying the NRC in writing that:

1) USACE is prepared to take physical possession of all or part of the licensed site for purposes of control of radiation from FUSRAP materials subject to NRC jurisdiction and be responsible for the protection of the public health and safety from those materials consistent with 10 CFR Part 20 "Standards For Protection Against Radiation" and other requirements consistent with CERCLA;

2) USACE will conduct a response action at the licensed site under its FUSRAP and CERCLA authority, with regard to FUSRAP materials subject to NRC

jurisdiction, to meet at least the standards required under 10 C.F.R. 20.1402, and

3) USACE has no objection to, and will facilitate, NRC observing USACE in-process remediation activities.

Such written notification to the NRC should be provided after the final Record of Decision (ROD), or its equivalent, is issued, if one is prepared, and at least 90 calendar days prior to USACE's expected date of initiation of a site response action so that the NRC can initiate the process for suspension of the license. Prior to submitting the notification, USACE will make a reasonable attempt to obtain the licensee's consent to USACE's proposed action and document the results of this effort in the notification.

B. Depending on the extent of FUSRAP materials and their separability from other hazardous substances on the site, USACE's responsibility may encompass the entire site, portions of the site, all the radioactive materials or just the FUSRAP and commingled materials, as specified in the final ROD. USACE will notify NRC of its findings regarding the type and extent of hazardous substance on a licensed site prior to requesting license suspension. Prior to USACE submitting a request for license suspension on a site where the NRC license suspension will not encompass the entire site, USACE and NRC will meet to agree on the scope of the suspension. The licensee may be involved in these discussions.

C. NRC licensing action for the suspension of the license, or portions of the license, will be effective, subject to:

1) written notification from USACE to the NRC that USACE has taken physical possession of the licensed site for purposes of radiation control and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20 and

2) the effectiveness rules of the NRC hearing process pursuant to 10 CFR Part 2, "Rules Of Practice For Domestic Licensing Proceedings And Issuance Of Orders."

Prior to license suspension, the licensee retains responsibility for meeting the Commission's requirements for protecting the environment and the health and safety of the public.

D. NRC may observe, as it deems warranted, remediation activities being conducted by USACE. For the purpose of scheduling in-process activity observation, USACE shall provide the NRC with the schedule of major activities, regular progress reports on sites' activities, studies, and/or remediation, and planned work stoppages.

E. The NRC shall keep USACE apprised in writing of questions, comments or concerns arising from any NRC observations of USACE response action activities and shall

immediately notify the USACE of any conditions having a potential to adversely affect the environment or the health and safety of the public.

- F. USACE shall be responsible for the protection of the health and safety of the public consistent with the requirements of CERCLA and 10 CFR Part 20 during the time it is in physical possession of the licensed site or portions thereof which are suspended in accordance with the agreement at the time of license suspension.
- G. USACE shall remediate the licensed site to meet at least the requirements of CERCLA and of 10 CFR 20.1402. The Applicable or Relevant and Appropriate Requirement (ARAR) in the final executed ROD will include 10 CFR 20.1402 or a more stringent requirement.
- H. USACE shall manage all activities and prepare program estimates, funding requirements, and budget justifications for all FUSRAP activities for which it has been given responsibility as provided by the annual Energy and Water Development Appropriations Act, and the terms of this MOU. USACE shall request FUSRAP appropriations in the annual Energy and Water Development Appropriations Act for these activities. USACE shall respond to inquiries from public officials, Congressional interests, stakeholders, and members of the press regarding USACE activities under FUSRAP.
- I. USACE shall consult with NRC if USACE surveys, investigations, and data analyses are inconsistent with the NRC description of the potential radioactive and/or chemical contaminants and processes involved in the historical activities at a licensed site at which the USACE is conducting a FUSRAP investigation or response action under CERCLA. USACE shall immediately notify NRC if, as a result of its Preliminary Assessments, Remedial Investigations, or other surveys prior to production of a ROD, conditions warrant a time-critical removal action, and the agencies will identify an appropriate response that protects the environment and the health and safety of the public.
- J. USACE shall notify NRC in writing if there is a need for a radiological response action under FUSRAP on any property not covered by the license suspended or to be suspended ( whether or not owned by the licensee) as a result of radioactive contamination from a licensed site undergoing a FUSRAP investigation or response action.
- K. Following completion of the response action at a FUSRAP site with an NRC-licensed facility, USACE shall provide the NRC with a copy of the CERCLA Administrative Record for the NRC historical public record. At the time of close out USACE will provide NRC with copies of any additional information that has been placed in the CERCLA Administrative Record.
- L. USACE shall notify the NRC in writing if there are NRC-licensed facilities on FUSRAP sites that may require coordination with the NRC in addition to the four known sites:

Maywood Site (Stepan), Maywood, NJ; CE-Windsor Site, Windsor, CT; St. Louis Downtown Site (Mallinkrodt), St. Louis, MO; and the Shallow Land Disposal Area, Parks Township, PA.

M. USACE shall keep NRC apprised in writing of progress toward completion of Preliminary Assessments and/or Site Investigations at licensed sites to determine:

1) Whether FUSRAP and commingled materials at the site are a threat or potential threat to public health and safety or the environment as a result of the licensed materials there; and

2) Whether the release requires a response under CERCLA.

N. The NRC will reinstate the license or portions of the license put into suspension due to USACE's remediation if USACE:

1) is no longer controlling the FUSRAP-related portion of the licensed site for radiation protection purposes,

2) is no longer proceeding with a response action at the licensed site under CERCLA, or

3) has otherwise completed its response action.

At least 90 calendar days prior to USACE terminating its physical possession of the licensed site for purpose of control of radiation, USACE will notify the NRC in writing so that the NRC can initiate the process for reinstating the license. USACE shall promptly notify NRC in writing if annual funding for the FUSRAP response action at an NRC-licensed site does not appear to be sufficient to complete the response action.

O. NRC shall be responsible for appropriate regulatory action, including requiring any further decommissioning if necessary, following license reinstatement.

P. As may be necessary, NRC and USACE will develop working procedures to implement this MOU. Such procedures will be approved by the Principal Representatives.

#### **ARTICLE IV – FURTHER ASSISTANCE**

NRC and USACE shall provide such information as may be reasonably necessary or required, which are not inconsistent with applicable laws and regulations, and the provisions of this MOU, in order to give full effect to this MOU and to carry out its intent.

#### **ARTICLE V- DISPUTE RESOLUTION**

Every effort will be made to resolve issues between NRC and USACE by the staff directly involved in the activities at issue, through consultation and communication. If a mutually acceptable resolution cannot be reached, the dispute will be elevated to successively higher levels of management up to the signers of this MOU. If resolution cannot be reached, NRC may in its discretion reinstate the licenses involved after providing a written 30 calendar day advance notice to the USACE. Upon license reinstatement, USACE's obligations under this MOU for the particular site shall cease and the licensee becomes responsible for control of radioactive materials on the licensed site, as well as protecting the environment and the health and safety of the public, subject to NRC regulation and other applicable law. Upon determining that the licensee has established control of the site and hazardous substances, USACE will relinquish possession of the site and hazardous substances, will cease remediation activities, and will vacate the site. License reinstatement constitutes notice of the shift in responsibility for control of the site and its hazardous substances.

#### **ARTICLE VI- AMENDMENT AND TERMINATION**

This MOU may be modified or amended in writing by the mutual agreement of the parties. Either party may terminate the MOU by providing written notice to the other party. The termination shall be effective 60 calendar days following notice, unless the parties agree to a later date. Termination of this MOU does not relieve USACE of its statutory responsibility for protecting the environment or the health and safety of the public until NRC has reinstated the license and the licensee has taken control of the site and its hazardous substances.

**ARTICLE VII - EFFECTIVE DATE**

This MOU shall become effective when signed by authorized officials of NRC and USACE.

**U.S. Nuclear Regulatory Commission**

**U.S. Army Corps of Engineers**

**Martin J. Virgilio**  
Director,  
Office of Nuclear Materials Safety  
and Safeguards  
U.S. Nuclear Regulatory Commission

**M.G. Hans A. Van Winkle**  
Major General, U.S. Army  
Director, Civil Works  
U.S. Army Corps of Engineers

  
Signature

Date: 7/2/01

  
Signature

Date: 5 July 01

PAR 4/10/04 RS



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 22, 2003

Ms. Patricia A. Rivers  
Chief, Environmental Division  
Directorate of Military Programs  
U.S. Army Corps of Engineers (USACE)  
441 G Street, N.W.  
Washington, DC 20314-1000

SUBJECT: NOTICE OF CHANGE OF NRC PRINCIPLE REPRESENTATIVE FOR  
NRC-USACE FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM  
(FUSRAP) MEMORANDUM OF UNDERSTANDING (MOU)

Dear Ms. Rivers:

As called for by Article II - Interagency Communication of the subject MOU (66 FR 36606), this letter is to inform you that Mr. Daniel M. Gillen, Chief, Decommissioning Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, will be the NRC principle representative for the NRC-USACE FUSRAP MOU. Mr. Gillen can be reached at (301) 415-7295.

I remain NRC point of contact for the MOU, and can be reached at (301) 415-0023.

Sincerely,

Amir Kouhestani  
Project Manager  
Section A  
Decommissioning Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

cc: James Lieberman, OGC  
Tomiann McDaniel, USACE