

**SITE-SPECIFIC MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS,
THE U.S. NUCLEAR REGULATORY COMMISSION,
THE U.S. DEPARTMENT OF ENERGY – OFFICE OF ENVIRONMENTAL MANAGEMENT,
AND
THE NATIONAL NUCLEAR SECURITY ADMINISTRATION**

ARTICLE I – PURPOSE AND AUTHORITY

This Site-Specific Memorandum of Understanding (MOU) is entered into by and among the U.S. Army Corps of Engineers (USACE), the U.S. Department of Energy – Office of Environmental Management (DOE-EM), the National Nuclear Security Administration (NNSA), and the U.S. Nuclear Regulatory Commission (NRC) (hereafter collectively “the parties”) for the purpose of articulating the cooperation of the parties relating to the remediation of radioactive wastes at the Shallow Land Disposal Area (SLDA) Formerly Utilized Sites Remedial Action Program (FUSRAP) site in Parks Township, Pennsylvania. This MOU will facilitate the comprehensive and timely remediation of radioactive waste, including waste containing special nuclear material (SNM) at the SLDA site consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and reflects the parties’ understanding that standards of control in managing SNM include the relevant and appropriate requirements in Title 10 Code of Federal Regulations (C.F.R.) Part 70 “Domestic Licensing of Special Nuclear Material”, Part 73 “Physical Protection of Plants and Materials,” and Part 74 “Material Control and Accounting of Special Nuclear Material.”¹

This MOU is not intended to supersede provisions of any existing Memoranda of Understanding between any of the parties for any reason, to include public health and safety. It is rather intended that the provisions contained herein supplement prior agreements with specific focus on the unique circumstances presented by the SLDA site to include criticality safety, physical security, and material control and accounting in managing radioactive waste containing Special Nuclear Material (SNM).

ARTICLE II–REFERENCES

- a. Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended (CERCLA).
- b. Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011, *et seq.* (AEA).
- c. Energy & Water Development Appropriations Act for Fiscal Year 2000, Pub. L. 106-60 §611 (Sept. 29, 1999).
- d. Director’s Decision under 10 C.F.R. §2.206, 99-7, (March 26, 1999).
- e. Memorandum of Understanding Between the U.S. Department of Energy and the U.S. Army Corps of Engineers Regarding Program Administration and Execution of Formerly Utilized Sites Remedial Action Program (FUSRAP) (March 1999) (DOE-USACE MOU).

¹References II a and k.

- f. NRC-USACE Memorandum of Understanding – Coordination on Cleanup & Decommissioning of FUSRAP Sites with NRC-Licensed Facilities (July 2001) (NRC-USACE MOU).
- g. DoD and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, Pub. L. 107-117, 2002 § 8143 (Jan. 10, 2002) (authorizing legislation for SLDA in FUSRAP).
- h. National Oil and Hazardous Substance Pollution Contingency Plan (NCP), 40 C.F.R. Part 300.
- i. Record of Decision (ROD), Shallow Land Disposal Area (September 2007) and any successive RODs.
- j. Department of Energy Organization Act, Pub. L. No. 95-91, § 646, 42 U.S.C. § 7256 (Aug. 4, 1977).
- k. 10 C.F.R. Part 70, Domestic Licensing of Special Nuclear Material, 10 C.F.R. Part 73, Physical Protection of Plants and Materials and 10 C.F.R. Part 74, Material Control and Accounting of Special Nuclear Material.
- l. Department of Energy Order 474.2, “Nuclear Material Control and Accountability” (June 2011).
- m. Executive Order 13526 – Classified National Security Information (December 29, 2009).

ARTICLE III – INTERAGENCY COMMUNICATIONS

To provide for consistent, effective and coordinated communication between the parties, each party will appoint and identify a Principal Executive to serve as the party’s decision-making authority and a Principal Representative to serve as the party’s central point of contact on matters relating to this MOU.

The Principal Executive for the USACE will be the Chief of Environmental Programs at Headquarters, USACE, 441 G Street, NW, Washington, DC 20314.

The Principal Executive for the DOE-EM will be the Deputy Assistant Secretary for Waste Management, Mail Stop EM-30/Forrestal Building, US Dept of Energy, 1000 Independence Ave., SW, Washington, DC 20585.

The Principal Executive for the NRC will be the Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Programs, or his successor in a successor organization, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The Principal Executive for the NNSA will be the Associate Principal Deputy Administrator, National Nuclear Security Administration, 1000 Independence Avenue, SW, Washington, DC 20585, and his or her successors.

All documents, notices, information, and other communications to be provided to the parties under this MOU will be furnished to the following Principal Representatives:

The Principal Representative for USACE will be the National FUSRAP Program Execution Manager, USACE – Headquarters, 441 G Street, NW, Washington, DC 20314.

The Principal Representative for the DOE-EM will be the Director of the Office of Disposal Operations, Mail Stop EM-31/Cloverleaf Building, US Dept of Energy, 1000 Independence Ave., SW, Washington, DC 20585.

The Principal Representative for the NRC will be the SLDA Project Manager, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Programs, or its successor organization, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The Principal Representative for the NNSA will be the Emerging Threats Program Manager, Office of Asian and FSU Threat Reduction, U.S. Department of Energy National Nuclear Security Administration, 1000 Independence Avenue, SW, Washington, DC 20585 and his or her successors.

All parties may change their Principal Executive at any time, except these responsibilities shall not be assigned below the level of an official in the Senior Executive Service or a General Officer. In the event of a change in the Principal Executive by a party, all other parties will be notified in writing no more than thirty (30) business days after the change takes effect.

All parties may change their Principal Representative at any time. In the event of a change in the Principal Representative by a party, all other parties will be notified in writing no more than thirty (30) business days after the change takes effect.

ARTICLE IV – SCOPE

This Site-Specific MOU applies to the remediation of radioactive waste at the SLDA site in Parks Township, Pennsylvania. The purpose of this Site-Specific MOU is to address the management of SNM, specifically criticality safety, physical security, material control and accounting, packaging, transportation and final disposition. It does not create any cause of action for or by any person or entity, including a third party legal right at law or equity for failure to adhere to any terms or conditions herein. It does not supersede any other interagency agreement already executed between any of the parties and should be interpreted narrowly to only affect SLDA and to supplement any such existing agreements.

This MOU does not alter or abrogate the independent authority and jurisdiction of the respective parties nor does it affect the legal relationship between the parties, but is designed to facilitate the sharing of relevant expertise.

The parties will utilize standards of control in managing SNM to include the relevant and appropriate requirements from 10 C.F.R. Parts 70, 73 and 74.

This MOU is neither a fiscal nor funds obligation document. Nothing in this MOU authorizes or is intended to require the parties to obligate, disburse, expend, exchange, or reimburse funds, services or supplies or transfer or receive anything of value in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

ARTICLE V – ROLES AND RESPONSIBILITIES

A. United States Army Corps of Engineers (USACE)

Since Fiscal Year (FY) 1998, the Secretary of the Army, acting through the Chief of Engineers has been authorized by Energy and Water Development Appropriations Acts to expend certain funds to conduct response actions at eligible FUSRAP sites, and, by Pub. L. 106-60, §611², to act as the lead federal agency that administers and executes the FUSRAP and to carry out these response actions subject to CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

Pursuant to Public Law 107-117³, the Secretary of the Army, acting through the Chief of Engineers is authorized to “clean up the radioactive waste” at the SLDA site under FUSRAP. USACE will be responsible for site safety, health, security and management of the project in accordance with FUSRAP, the Memorandum of Understanding between USACE and the NRC⁴, and the Memorandum of Understanding between USACE and DOE-EM.⁵ In addition, USACE is responsible for the management of SNM which is addressed in the remedial action at the SLDA site, including criticality safety, physical security, and material control and accounting.⁶

By virtue of the exemption provided in CERCLA §121(e)(1), and the authority established in Pub. L. 106-60, §611, USACE is exempt from any requirement to obtain a license under the Atomic Energy Act (AEA)⁷ for CERCLA response actions conducted on the SLDA site. Although the USACE is not a licensee⁸ under the AEA and is not subject to the regulatory jurisdiction of the NRC, USACE will seek NRC participation through consultation and coordination in the response actions USACE will conduct on the SLDA site.

USACE will ensure that their prime contractor possesses the necessary field expertise and experience in the management of SNM at SLDA. USACE will implement its quality assurance process to inspect and oversee the management of SNM during remediation activities by any contractor on the SLDA site.

USACE shall be responsible for the protection of public health and safety and common defense and security consistent with CERCLA and the requirements set forth in 10 C.F.R. Parts 70, 73 and 74 in the development of Work Plans.

USACE will coordinate the development of project execution schedules and major updates in consultation with NRC, DOE-EM and NNSA to assist all parties with their respective resource support planning. The project execution schedules will include anticipated review timeframes based on consultation with the parties for each major document or work plan. In addition, by the end of the third quarter of each fiscal year, USACE will provide NRC, DOE-EM and NNSA an updated out year project schedule for the following three (3) fiscal years.

If significant changes to the schedule are required during a fiscal year, USACE will notify the other parties and revise the schedule for the year within thirty (30) days of its knowledge of the change.

² Reference II.c.

³ Reference II.g.

⁴ Reference II.f.

⁵ Reference II.e.

⁶ Reference II.k.

⁷ Reference II.b.

⁸ See Reference II.d.

Upon notification of the change, NRC, DOE-EM and NNSA will provide the revised review time frame for the affected major document or Work Plan. This will become part of the project execution schedule.

USACE will seek early and frequent coordination in the development of Work Plans, during their implementation, and during remediation activities of radioactive waste, specific to SNM. To the extent it determines necessary, USACE may invite NRC, DOE-EM and NNSA representatives to participate as members of the Project Delivery Team⁹ for the purposes of developing written products, including, but not limited to, technical work plans, physical security plans and programs, criticality safety plans, material control and accounting plans and programs, health and safety plans and programs and final status survey plans.

USACE intends to exercise its authority in a way that avoids the accumulation of SNM. If USACE discovers difficult-to-characterize material believed to be SNM, or accumulates SNM in “recoverable” quantities as specified in an interagency agreement between USACE and NNSA, or if USACE encounters SNM waste in a form and quantity that is “non-recoverable” and that precludes utilizing a commercial disposal facility for final disposition of such material, USACE will notify DOE-EM and NNSA and request assistance from DOE-EM and NNSA, as appropriate, who will act in accordance with their Roles and Responsibilities outlined below in sections C and D. This would be accomplished through the timely execution of Interagency agreements and Economy Act transactions. USACE will include in its request to DOE-EM and NNSA all material characterization data (e.g., description of material form, radiological and other analysis) which USACE used to make the determination that SNM exists, and, additionally, for requests made to NNSA for assistance with “recoverable” material, all material characterization data which USACE used to make the determination that sufficient quantities of “recoverable” SNM exist.

B. Nuclear Regulatory Commission (NRC)

The NRC, under the AEA of 1954, as amended (42 U.S.C. Chapter 23), and Section 201 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. § 5841), is authorized to license and regulate the receipt, possession, use, and transfer of "by product material," "source material," and "special nuclear material" (as defined in 42 U.S.C. § 2014). The NRC has regulatory jurisdiction over BWX Technologies Inc.'s possession, use and disposition of SNM at the SLDA site under NRC License Number SNM-2001.

The NRC possesses expertise and knowledge in the materials, including SNM that might be encountered, and through consultation and coordination will share this expertise and knowledge with USACE. NRC may observe, as it deems warranted, remediation activities at SLDA. The NRC will keep USACE apprised in writing of questions, comments and concerns arising from any NRC observations of USACE response action activities and will immediately notify the USACE of any conditions having a potential to adversely affect the environment or the health and safety of the public in accordance with the 2001 Memorandum of Understanding between the NRC and the USACE referenced in Article II, in addition to any issues that may arise during the management of SNM regarding criticality safety, physical security, and material control and accounting.

The NRC will review all draft documents provided by USACE for review and comment and provide comments to USACE in a timely manner consistent with the anticipated review period on the current project schedule. If, following receipt of the major document or work plan, the NRC determines

⁹ This is a term of art within USACE and means a group that includes the Project Manager (PM), technical experts within or outside the local USACE activity, specialists, consultants/contractors, the customer(s), stakeholders, representatives from other federal and state agencies, and vertical members from USACE division and headquarters that are necessary to effectively develop and deliver the project.

that the anticipated review period may not be sufficient, NRC will immediately notify USACE so that potential revision to the project schedule can be provided.

NRC staff will evaluate and advise as to acceptability of the Final Work Plans pertaining to SNM to ensure that they meet the applicable or relevant and appropriate requirements set forth in 10 C.F.R. Parts 70, 73 and 74. The NRC understands that USACE will implement these Final Work Plans when conducting its remediation activities at the SLDA site. If during remediation activities USACE anticipates any significant changes to or deviations from the aforementioned Final Work Plans, USACE will formally notify the NRC in writing within 30 days and allow an opportunity to evaluate and advise as to acceptability of any significant changes to these Plans prior to their implementation. In an event of imminent danger to public health and safety or common defense and security, or the environment, or any issues arising from the management of SNM (i.e. criticality safety, physical security, material control and accounting) that requires USACE to immediately implement any significant changes or deviate from the Final Work Plans without NRC's prior evaluation of acceptability, USACE will inform NRC immediately and follow-up with a formal written notification detailing the circumstances for this course of action. Upon receipt of this notification, the NRC staff will evaluate whether the preceded changes or modifications to procedures implemented by USACE are consistent with the applicable or relevant and appropriate requirements in 10 C.F.R. Parts 70, 73 and 74.

C. Department of Energy - Office of Environmental Management (DOE-EM)

The DOE-EM enters into this agreement under the authority of § 646 of the Department of Energy Organization Act (1977)¹⁰ and will provide technical and contractual support through interagency agreements and Economy Act transactions.

In accordance with the 1999 MOU referenced in Article II, DOE-EM will provide technical assistance throughout the development of USACE's work products for the SLDA project as requested.

In the event that USACE encounters SNM in a form and quantity that is non-recoverable and that precludes disposal at a commercial disposal facility, the DOE-EM will provide technical and contractual support through NNSA's Nevada Field Office, to include development and review of waste profiles within normal Nevada National Security Site (NNS) timeframes, waste packaging assistance, transportation assistance, and disposal, consistent with applicable requirements, at NNS.

As requested by USACE, DOE-EM will provide representatives to participate on the USACE Project Delivery Team for purposes of developing written products necessary to perform the remediation of radioactive wastes at SLDA.

The DOE-EM will review, and coordinate with NNSA as needed, all draft final documents and provide USACE comments, to the extent possible, within thirty (30) calendar days from agency receipt of such document. Comments received after 30 calendar days will be considered, but USACE cannot guarantee they will be incorporated into final documents.

D. National Nuclear Security Administration (NNSA)

In the event that USACE encounters difficult-to-characterize material believed to be SNM or accumulates SNM in recoverable quantities as specified in an interagency agreement, the NNSA will, upon USACE request and pursuant to the terms of an interagency agreement between USACE and

¹⁰ Reference II. j.

NNSA, provide onsite staff and laboratory support within forty-five (45) calendar days of such request from USACE, and technical and contractual support, to include developing detailed plans to manage recoverable SNM quantities in a safe and secure manner, material packaging, transportation assistance, and removal from the site. NNSA will remove recoverable SNM from SLDA as soon as possible, factoring in, as applicable, National Security priorities.

In the event that USACE encounters SNM in a form and quantity that is non-recoverable and that precludes disposal at a commercial disposal facility, the NNSA will provide technical and contractual support, to include development and review of waste profiles within normal NNSS timeframes, waste packaging, transportation assistance, and disposal, consistent with applicable requirements, at the NNSS through interagency agreements and Economy Act transactions.

As requested by USACE, NNSA will provide representatives to participate on the USACE Project Delivery Team for purposes of facilitating remedial activities, as needed.

ARTICLE VI – Document Management

The NRC, DOE-EM, NNSA and USACE will work collaboratively with respect to document management requests, procedures, and litigation holds relating to radioactive wastes and response actions at the SLDA site. Information, records, or other documents produced under the terms of this agreement will be made available to the USACE upon request.

All parties agree to follow Executive Order 13526¹¹ as implemented by their respective agencies. The parties agree to comply with all applicable litigation holds relating to the SLDA. Insofar as any documents related to the response actions by USACE at the SLDA site are created, obtained or otherwise under the control of the NRC, DOE-EM or NNSA, and are not subject to an applicable litigation hold, such documents will be retained and not destroyed under routine or exceptional agency practices without first notifying USACE of the specific records that are being considered for destruction and offering USACE the opportunity to take possession of any and all such records. “Records” subject to this MOU include all paper documents, electronically stored information within the meaning of the Federal Rules of Civil Procedure, and all other forms of records, documents or information held by the parties or their employees, agents, or contractors.

The NRC, DOE-EM and NNSA will collaborate with USACE and the U.S. Department of Justice (DOJ) with regard to any litigation relating to radioactive wastes at the SLDA site or the response actions conducted by USACE or any party at the site, by, among other things, furnishing all requested documents and information, making officers, employees, agents or contractors available to assist in any matter related to litigation as requested, and providing supporting accounting or cost information for litigation purposes as requested. With regard to litigation holds and document collection, DOJ and/or USACE (in consultation with DOJ) will provide guidance/instructions to all parties, as appropriate, to facilitate a consistent approach.

¹¹ Reference II.m

ARTICLE VII – AMENDMENT & TERMINATION

This MOU may be modified or amended only by written, mutual agreement of the parties. Any party may terminate its role by providing written notice to the other parties. The termination will be effective upon the sixtieth (60th) calendar day following the date of the notice, unless a later date is set forth in the notice. Upon such a termination, USACE will determine if it is able to continue to execute its responsibility under Pub. L. 107-117 and, if necessary, will provide the appropriate notice to NRC pursuant to paragraph III.N. of Reference II.f (2001 MOU between USACE and NRC). Termination of this MOU does not affect responsibilities assumed pursuant to this MOU or pursuant to Reference II.f.

ARTICLE VIII – EFFECTIVE DATE

This MOU will become effective when signed by all parties.

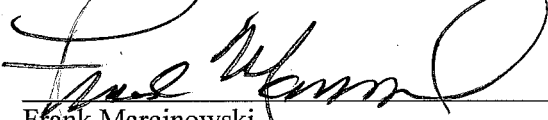
U.S. Nuclear Regulatory Commission (NRC)



Brian Holian
Acting Director, Office of Federal and State Materials and
Environmental Programs

Date: 5/7/2014

**U.S. Department of Energy
– Office of Environmental Management (DOE-EM)**



Frank Marcinowski
Deputy Assistant Secretary for Waste Management

Date: 6/13/14

National Nuclear Security Administration (NNSA)



Art Atkins
Assistant Deputy Administrator
for Global Threat Reduction

Date: 6/10/14

U.S. Army Corps of Engineers (USACE)



Kendall P. Cox
Major General, US Army
Deputy Commanding General
for Military and International Operations

Date: 5/15/14