

**Coordinating NRC License Closure/Termination and Army Corps of Engineers FUSRAP Cleanups**

N. Walter, PE, LEP  
MACTEC  
511 Congress Street, Portland, ME 04101  
USA

D. R. Greene, Esq.  
LeBoeuf, Lamb, Greene & MacRae LLP  
225 Asylum Street, Hartford, CT 06103  
USA

R. K. Knauerhase, CG  
Combustion Engineering  
2000 Day Hill Road, CEP 5580-2207, Windsor, CT 06095  
USA

**ABSTRACT**

Overlapping regulatory cleanup programs present a significant challenge for business entities seeking to close and redevelop properties in an environmentally-appropriate but cost-effective manner. In the nuclear decontamination context, this challenge has been recognized in Memoranda of Understanding ("MOUs") between regulators with overlapping responsibilities seeking to minimize duplicative efforts/costs while fulfilling their respective regulatory obligations. For instance, an MOU between the Army Corps of Engineers (the "Corps") and the Nuclear Regulatory Commission ("NRC") for coordinating Corps' cleanups under the Formerly Utilized Sites Remedial Action Program ("FUSRAP") and NRC D&D to close and terminate an NRC license was reached in July 2001. Similarly, U.S. Environmental Protection Agency ("EPA") and NRC entered into an MOU in October 2002 addressing the interaction between NRC decontamination and decommissioning ("D&D") oversight and EPA's authority under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") at NRC-licensed sites. Yet, despite these MOU agreements, the simultaneous application of different regulatory programs, differing perspectives on their respective objectives and limited experience in addressing such circumstances often can lead to issues that demand creative solutions.

This paper examines the interplay of these regulatory programs, the MOU of the agencies seeking to address their responsibilities under them and the coordination of the cleanups and license closure/termination process under the programs. It also offers technical and practical

suggestions and insight to cost-effectively manage such efforts based on experiences with these programs and the regulators and stakeholders involved (at the federal, state and local levels).

## **INTRODUCTION**

Overlapping regulatory cleanup programs present a significant challenge for business entities seeking to close and redevelop properties in an environmentally-appropriate but cost-effective manner. In the nuclear decontamination context, there may be federal, state and local agencies and stakeholders with authority and/or interests that must be addressed in order for the impacted property in question to be returned to productive reuse. In addition to the issues raised by the application of potentially incongruent regulatory programs, local stakeholders also may bring timing pressures for the redevelopment of such properties in order to capture market opportunities that may only be available at certain times.

In some cases, the potential overlap of regulatory programs and competing jurisdictional questions proactively have been addressed by the relevant agencies involved entering into proactive Memoranda of Understanding ("MOUs"). Such MOUs typically seek to minimize duplicative efforts and costs while allowing the agencies to meet their respective regulatory obligations. One such MOU is that between the Army Corps of Engineers (the "Corps") and the Nuclear Regulatory Commission ("NRC") for coordinating Corps' cleanups under the Formerly Utilized Sites Remedial Action Program ("FUSRAP") and NRC Decontamination and Decommissioning ("D&D") plans to close and terminate an NRC license, which was reached in July 2001.

Other stakeholders of the cleanup process also have a bearing on the cleanup process of a FUSRAP site, but most often, their interests are not defined in an agreement such as an MOU. The needs of State agencies and local government as well as the property owner must also be considered in decision making to make the cleanup successful.

## **FUSRAP**

FUSRAP originally was initiated as an administrative program by the immediate predecessor of the Department of Energy ("DOE"), the Energy Research and Development Association ("ERDA"), in 1974 to identify, investigate and remediate Government- and privately-owned sites that were environmentally contaminated as a result of work performed to support the United States' development of atomic energy, including activities by private contractors under contract with the United States that assisted projects of the United States Navy and Manhattan Engineering District. [1]

In 1997, the United States Congress established funding for implementing FUSRAP and transferred the Program to the Corps. Congress also directed that "response actions . . . under this program shall be subject to the administrative, procedural, and regulatory provisions of CERCLA [the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq.] and the National Contingency Plan [NCP]." [2] This mandate to

comply with CERCLA and the NCP was particularly important because, unlike ERDA/DOE, no other government agency possessed the benefit of being exempt from obtaining a federal permit in order to perform FUSRAP remediation work. [3] Therefore, the permit waiver authorized under CERCLA Section 121(e) allowed federal remediation activities by the Corps without the need for the Corps to obtain otherwise necessary federal, state and/or local permits, including an NRC license.

## **CORPS/NRC MOU**

In July 2001, recognizing the need to address FUSRAP cleanups at sites under NRC jurisdiction (i.e., at which NRC licensed nuclear operations had occurred), the Corps and NRC entered into an MOU to address jurisdictional matters concerning the investigation and remediation of certain facilities. Under the MOU, at NRC-licensed facilities, the Corps agreed to alert/consult the NRC to any FUSRAP cleanups impacting NRC sites and to seek suspension of existing NRC licenses on such sites as appropriate for the purpose of conducting the FUSRAP cleanup. [4] In addition, the Corps agreed to meet NRC regulatory requirements for the cleanup of such areas under license suspension, including specifically those required for unrestricted release under 10 C.F.R. 20.1402 (e.g., public exposure dose limit of 25 mrem/yr).

## **COORDINATION CHALLENGES/ISSUES**

Despite the best intentions behind proactively addressing potential regulatory program overlap, in practice, the coordination of a multitude of requirements and stakeholders is an ongoing juggling act to ensure that timely cleanups can be appropriately accomplished. In the FUSRAP context, stakeholders beyond the Corps and the NRC often are actively involved or need to be considered in order to reach the goal of a final cleanup that will enable the property to be redeveloped. These stakeholders may include, among others, federal agencies/interests beyond the Corps (e.g., the U.S. Environmental Protection Agency ("EPA")) and state agencies/interests (e.g., state environmental agencies), as well as local interest (e.g., local officials seeking to expand or enhance existing tax bases by encouraging commercial and industrial property development). In addition, the property owner and/or NRC license holder's interests also must be incorporated into the decision-making process.

The coordination of these often varying authorities, interests and resource capabilities demands planning and commitment to obtaining input from all of the stakeholders involved. Key elements of any approach to seek timely success include the following:

- *Early definition of roles.* Role definition between regulators, even beyond the general descriptions of many MOUs, is crucial to enable stakeholders to know where to send/obtain information, what approvals and from whom such approvals are necessary and with whom to communicate with to identify issues and to help better address them. In addition, role definition as to what parties will participate in processes (e.g., commenting on draft documents/plans) and how they will participate eliminates unnecessary confusion, delay and waste of resources, time and funds.
- *Early coordination and definition of applicable standards.* Understanding what regulatory programs apply to a site, ensuring the coordination of these programs early in

the process and involving all appropriate agency personnel not only avoids unnecessary wastes of time and funds for the cleanup itself, but helps ensure a better, safer and resource efficient cleanup overall. Such an approach also eliminates the waste of scarce regulatory resources by avoiding the need for the agencies to address the consistency of standards and regulatory requirements by repeatedly coming come back in a piecemeal and time-consuming fashion to bring in different, but necessary, perspectives. By addressing such matters cooperatively in the first instance, projects can move forward with much less delay in a manner which all stakeholders can understand and plan around.

- *Commitment to Developing a Project Schedule and Meeting Deadlines for Stakeholders' Mutual Benefits.* Development of a FUSRAP project schedule and meeting the scheduled dates for various activities allows all the stakeholders to plan and coordinate their efforts. Meeting schedule milestones also demonstrates that the project is being conducted effectively and that the people involved understand and can control the FUSRAP cleanup process.
- *Communication Mechanisms and Stakeholder Commitments to Same.* Ongoing communication is critical to success to a project with many interests involved. Effective communication can best be achieved using a variety of techniques, but periodic meetings to assemble all the stakeholders and solicit their input is probably the most important of these. With a meeting involving all the stakeholders, different parties can hear, understand and discuss other's needs and perspectives, thereby heightening the opportunity to achieve the most effective and efficient remedy while minimizing the level of conflict that may arise.
- *Allowing Stakeholders to Participate in FUSRAP Cleanup Decision-Making.* As FUSRAP cleanups follow the CERCLA process/requirements, they must comply with "applicable and relevant or appropriate requirements" ("ARARs"). The best way to identify these ARARs is to allow the regulatory agency stakeholders to have input into the decision-making process as they are the ones who understand their own requirements the best. In addition, local governments and the property owner have needs for future use of the property that must be considered when developing cleanup levels and making decisions about how to select a cleanup option and design the cleanup.

## CONCLUSION

Executing the FUSRAP cleanup program at sites with NRC licenses is complex due to the number of regulatory and stakeholder requirements and interests. FUSRAP cleanup actions can be most efficiently implemented when:

- roles of stakeholders are defined;

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- cleanup standards and requirements are developed and agreed to early in the process;
- a schedule is developed and schedule milestones are met;
- effective communication is maintained between the Corps and the other stakeholders; and
- stakeholders have input in the decision-making process.

## **REFERENCES**

1. Corps FUSRAP Report to Congress, p. 16 (1998).
2. Energy and Water Development Appropriations Act of 1999, Pub. L. No. 105-245, 112 Stat. 1838 (1998).
3. Testimony of Brigadier General Hans A. Van Winkle Before the Subcommittee on Water Resources and Environmental, Committee on Transportation and Infrastructure on H.R. 910 (Sept. 1999).
4. NRC MOU, Article III (July 5, 2001).