

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF ENERGY
AND
THE U.S. NUCLEAR REGULATORY COMMISSION

I. PARTIES

- A. The parties to this Memorandum of Understanding (MOU) are the U.S. Department of Energy (DOE) and the U. S. Nuclear Regulatory Commission (NRC).
- B. The DOE will administer and execute its responsibilities under this MOU through its Uranium Mill Tailings Remedial Actions (UMTRA) Project Office, Albuquerque Operations Office. The NRC will administer and execute its responsibilities under this MOU through its Office of Nuclear Material Safety and Safeguards (NMSS) or any other NRC element designated by NMSS.

II. PURPOSE AND AUTHORITY

Under authority of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), Public Law 95-604 (42 U.S.C. 7901 et.seq.), as amended, the DOE and NRC have entered into this MOU in order to provide for an orderly process for executing their respective statutory responsibilities under Title I of the UMTRCA. It is contemplated that such process will minimize or eliminate unnecessary duplication of effort, will facilitate and expedite reviews and concurrences, and will promote the accomplishment of the objectives of Title I of the UMTRCA within the statutorily mandated schedule and within the constraints imposed by Congressional appropriations.

III. BACKGROUND

Title I of the UMTRCA authorizes the DOE to undertake remedial action at designated inactive uranium processing sites and associated vicinity properties containing uranium mill tailings and other residual radioactive materials derived from the operations performed at inactive processing sites. The purpose of these remedial actions is to stabilize and control uranium mill tailings and other residual radioactive materials in a safe and environmentally sound manner.

The selection and performance of remedial actions undertaken by the DOE pursuant to the UMTRCA are to be with the full participation of

DOE GM04-85AL26037
DOE-NRC MOU
UMTRA Project
MOD: 2
DATE: NOV 6 1990

the affected states and Indian tribes and with the concurrence of the NRC. Such remedial actions are to be performed in accordance with standards established by the Environmental Protection Agency (EPA), 40 CFR 192, and consistent with applicable federal and state law. This MOU delineates the concurrence procedures and areas of cooperation between the DOE and the NRC in the implementation of Title I of the UMTRCA. The UMTRA Project originally had a statutorily imposed completion schedule of seven years from the date of promulgation of the EPA standards. The EPA standards were promulgated effective March 7, 1983. Title I of the UMTRCA was amended on November 5, 1988 to extend the authority of the DOE to perform remedial action until September 30, 1994, except that the authority of the DOE to perform groundwater restoration activities is without limitation.

Within the DOE, program responsibility for carrying out Title I of UMTRCA is within the Division of Southwestern Area Programs, DOE Headquarters. Field responsibility has been delegated to the Albuquerque Operations Office, where the UMTRA Project Office has been established. Consequently, the DOE will execute its responsibilities under Title I of the UMTRCA principally through the UMTRA Project Office. The DOE liaison with the NRC for purposes of implementing this MOU shall be the Manager, UMTRA Project Office, or such person as he may delegate.

Within the NRC, the program responsibility for carrying out Title I of UMTRCA is within NMSS, NRC Headquarters. The NRC will execute such responsibilities principally through the Operations Branch (LLOB) in the Division of Low-Level Waste Management and Decommissioning (LLWM) or any other NRC element designated by NMSS. The NRC liaison with DOE for purposes of this MOU shall be the Branch Chief, LLOB, or such other person as he may delegate.

IV. DEFINITIONS

- A. Except as otherwise defined in this Article, the definition of terms used in this MOU shall be the same as in Title I of the UMTRCA.
- B. The following terms shall have the following meanings:
 - 1. "Processing site" means any of the 24 inactive uranium mill sites: (1) designated by DOE, pursuant to Section 102(a) of the UMTRCA, for remedial action under the UMTRCA; and (2) listed in the notice of such designation published in the Federal Register at 46 FR 60875 (December 4, 1981).

2. "Vicinity property" means any real property and improvement thereon which: (1) is in the vicinity of a processing site or in the vicinity of the uranium mill currently owned by the Tennessee Valley Authority (TVA) in Edgemont, South Dakota; (2) is determined by the DOE, in consultation with affected states or Indian tribes and the NRC, to be contaminated with residual radioactive materials derived from a processing site or the TVA mill in Edgemont, South Dakota; and (3) the DOE has designated and included such property, pursuant to Section 102(e) of the UMTRCA, to be within the scope of the UMTRA Project and eligible for remedial action under the UMTRA Project.
3. "Disposal site" means the site, which may include a processing site or vicinity property, used for the permanent disposition, stabilization, and control of residual radioactive materials.
4. "EPA standards" means the standards of general application promulgated by the EPA at 40 CFR 192, for the protection of the public health, safety and the environment from radiological and nonradiological hazards associated with residual radioactive material. The DOE and NRC recognize that sites where NRC final concurrence with the DOE selection of remedial action with respect to groundwater protection designs had been obtained, prior to the September 1985 court decision remanding the groundwater portion of the EPA standards, have met the provisions of UMTRCA, Title I Section 108(a)(2) & (3). These sites' remedial actions are not subject to new provisions of the proposed EPA groundwater standards published in 52 FR 36000 on September 24, 1987. However, at sites associated with Canonsburg, PA; Salt Lake City, UT; and Shiprock, NM, the DOE and NRC interpret the EPA standards to require specific analyses of and a determination of the need for groundwater protection or restoration in accordance with Subpart C of the EPA standards, prior to the September 1985 remand, as stipulated in 48 FR 590 on January 5, 1983, and to require the implementation of any such protection or restoration measures so determined to be needed. For the remaining sites, DOE and NRC agree to use proposed EPA standards (52 FR 36000, September 24, 1987) on an interim basis, and will use the final EPA standards, when promulgated.

DOE GM04-85AL26037
DOE-NRC MOU
UMTRA Project
MOD: 2
DATE: NOV 6 1990

5. "Designation" means the DOE action to formally identify a processing site or potential vicinity property as eligible for remedial action by DOE under Title I of the UMTRCA, on the basis of radiological surveys or assessments of historical data available.
6. "Inclusion" means the DOE actions of: confirming, on the basis of detailed surveys, that radiological conditions at a designated potential vicinity property exceed the concentrations or levels of contamination set forth in the EPA standards; and formally including the property within the designation of the processing site as eligible for remedial action.
7. "Remedial action" means the stabilization and control of, decontamination and decommissioning of, and cleanup of processing sites and vicinity properties in accordance with the EPA standards and consistent with applicable Federal and state law.
8. "Remedial Action Plan" (RAP) means the document, developed by the DOE in order to obtain from the NRC (and the affected state or Indian tribe) concurrence with DOE's selection of remedial action and to document the basis for the DOE's conclusion that the proposed remedial actions for a processing site or disposal site, or both, will meet the EPA standards. The RAP includes comprehensive technical information on the proposed site and design, addressing: geologic and geotechnical stability; surface water hydrology and erosion protection; water resources protection; radon attenuation and site cleanup; and the supporting analyses and documentation that demonstrates that the proposed remedial action complies with the EPA standards.

Wherever possible, the RAP will conform in scope, content and format with the NRC Staff Technical Position, "Standard Format And Content For Documentation Of Remedial Action Selection At Title I Uranium Mill Tailings Sites." Hereafter, this guidance will be referred to as the NRC SF&C Position.

9. "Participating agency" means any state or Indian tribe party to a cooperative agreement with the DOE under Title I of the UMTRCA.
10. "Cooperative agreement" means a contractual instrument executed by an affected state or Indian tribe and the DOE for the purpose of defining the DOE and state/tribe responsibilities in connection with remedial action, and which contains such terms and conditions as the DOE deems appropriate and consistent with the purposes of the UMTRCA.

V. SCOPE OF COORDINATION

- A. For the purposes of this MOU, NRC responsibilities under the UMTRCA are indicated below:

<u>UMTRCA RESPONSIBILITY</u>	<u>UMTRCA SECTION</u>	<u>NRC ROLE</u>
1. <u>Designation</u>		
Designation of processing sites and potential vicinity properties and determination of site boundaries.	102(a) 102(e)	Consultation with DOE
2. <u>Remedial Actions</u>		
Selection and performance of remedial action at processing, disposal, and vicinity property sites.	108(a)	Concur in DOE selection and performance.
Determination that radioactive materials should be removed from processing sites.	104(b)(1)- State 105(b)- Tribe	Concur in DOE decision.
Allowing mineral recovery from residual radioactive materials.	108(b)	Concur in DOE decision to allow recovery.
Determination that remedial action is completed.	104(f)(1)	Concur in DOE determination.

UMTRCA RESPONSIBILITY

UMTRCA
SECTION

NRC ROLE

3. Acquisition/Disposal of Lands

Acquisition/disposal of processing sites.	104(a),(e)	Concur in DOE decision to require state acquisition or to allow state sale/retention or transfer of the acquired site.
Designation of DOE controlled or Department of Interior (DOI)-administered lands as disposal sites.	104(b)(2)	Concur in DOE designation.

4. Long-Term Maintenance of Disposal Sites

Long-term maintenance, monitoring and emergency measures at disposal sites in such manner as will protect the public health, safety, and the environment.	104(f)(2) 105(b)	Issue license.
Sale or lease of subsurface mineral rights at licensed disposal sites.	104(h)	Concur, along with DOE, in DOI decision to sell or lease mineral rights.

5. Public Participation

Public participation in program, including designation, selection of remedial action, execution of cooperative agreements.	111	Encourage, together with DOE and EPA.
--	-----	---------------------------------------

<u>UMTRCA RESPONSIBILITY</u>	<u>UMTRCA SECTION</u>	<u>NRC ROLE</u>
6. <u>Administrative</u>		
Execution of cooperative agreements.	103(e)- 105(a)	Concur in each cooperative agreement between DOE and a state or tribe.
Preparation of annual report to Congress.	114(a)	Consultation with DOE.
Documentation of UMTRA Project.	114(e)	NRC action with DOE.

B. Appendix A, Review and Concurrence Procedures, sets forth the detailed procedures for DOE and NRC coordination in the implementation of Title I of the UMTRCA. Appendix A may be amended from time to time by the parties to accommodate the dynamic nature of the UMTRA Project. The DOE agrees to use its best efforts to provide UMTRA Project documents of high quality for NRC review, including all pertinent information or data concerning any DOE-proposed remedial action design, processing site, disposal site, or vicinity property. DOE agrees, where possible, considering the point in the remedial action process, to provide information, data, and analyses consistent with the scope, content, and format of the NRC SF&C Position.

The DOE prepares and maintains a current detailed project schedule itemizing key remedial action activities and site-specific documentation to be submitted from DOE to NRC for the purpose of review, comment, and/or concurrence. Copies shall be provided to NRC for information. The NRC agrees to use its best efforts to respond within the response times for action set forth in Appendix A. However, if multiple documents are submitted to the NRC concurrently, response schedules will be modified on the basis of priorities established by the DOE and discussed on a weekly basis by telecommunication between DOE and NRC staff.

C. The DOE and NRC agree that the principal focus of NRC coordination and concurrence under this MOU is to assure compliance with the EPA standards in the DOE's selection of remedial action among reasonable remedial action alternatives and implementation of such remedial action.

VI. RESOLUTION OF INTERAGENCY CONFLICTS

- A. Any required concurrence of the NRC under this MOU shall be communicated to the DOE liaison in writing. A decision to withhold concurrence shall be communicated to the DOE liaison with a written rationale. Concurrences shall not be unreasonably withheld or denied. Lack of compliance, or lack of sufficient demonstration of compliance with the EPA standards shall constitute reasonable grounds for withholding or denying concurrence in the selection or performance of remedial action. Informal communication during the review and concurrence process is to be encouraged, including notification by NRC to the DOE at the earliest opportunity of issues which may preclude NRC concurrence, and notification by the DOE to the NRC at the earliest opportunity of any significant changes to documents under review by NRC.
- B. Any conflict arising under this MOU shall be resolved at the lowest possible level of agency decision making but shall be referred to successive levels of agency decision making until resolution is reached.

VII. EFFECTIVE DATE

This MOU shall take effect upon the latter date of execution by the DOE and NRC.

III. TERM AND TERMINATION

The term of this MOU shall be from the effective date through the date the DOE and the NRC mutually agree in writing that the objectives of the remedial action program have been met and that all activities under this MOU, or any modification thereto, have been completed.

IX. PROCUREMENT AND FUNDING

Each party shall be responsible for funding its performance under this MOU. Each party shall procure services, equipment, or supplies under its own regulations and shall be solely responsible for managing and directing its contractors' efforts.

PUBLIC INFORMATION COORDINATION

Consistent with the Freedom of Information Act (FOIA) (5 U.S.C. 552, as amended), timely release of information to the public regarding the coordination of UMTRCA activities under this MOU shall be conducted according to each agency's own rules and regulations, with the following provision. To the extent permitted by law, the NRC shall make best efforts not to release to the public information originating from DOE that the DOE determines to be exempt from disclosure under Exemption 5 of the FOIA (5 U.S.C. 552 (b)(5)). When transmitting information to the NRC, the DOE shall indicate in the transmittal letter whether the information is to be exempt from disclosure under Exemption 5 of the FOIA. All requests under the FOIA for this exempt information should be referred to the DOE and the requester so informed.

XI. APPENDIX

The following appendix is attached to and made a part of this MOU:

Appendix A - Review and Concurrence Procedures.

XII. EXECUTION

The parties have executed this MOU in several counterparts.

DEPARTMENT OF ENERGY
Roger P. Whitfield
Associate Director
Office of Environmental
Restoration

By: *R. P. Whitfield*

Date: 11/6/90

NUCLEAR REGULATORY COMMISSION
Richard L. Bangart, Director
Division of Low-Level Waste
Management and Decommissioning,
NMSS

By: *Richard L. Bangart*

Date: 09/13/90

APPENDIX A

REVIEW AND CONCURRENCE PROCEDURES

1.0 REVIEW AND CONCURRENCE DOCUMENTS

These procedures set forth coordination responsibilities, including the preparation and transmittal of documents, the review of such documents, the preparation of comments, and in some cases an indication of concurrence or nonconcurrence with such documents. The Document Coordination Table, below, is intended to be a graphic identification of the document, the version of the document (e.g., draft, final), the number of copies to be transmitted, the purpose of the transmittal (i.e., for information, review and comment, concurrence), the response time, and the pertinent section of the procedures that provides for NRC-DOE coordination of the document.

The response times shown are weeks from receipt of the document or from NRC acceptance of the document if an acceptance review is performed. In general, these represent reasonable review periods considering normal operating conditions. If conflicts or submittals of multiple documents for review occur, schedules will be modified on the basis of priorities established by the DOE and discussed during weekly telecommunications between DOE and NRC staff.

DOCUMENT COORDINATION TABLE

<u>PROCEDURES SECTION</u>	<u>UMTRAP DOCUMENT</u>	<u>PURPOSE OF TRANSMITTAL</u>	<u>RESPONSE TIME</u>	<u># OF COPIES</u>		
3.1.1	Draft EA	Information	N/A	6		
	Final EA	Information	N/A	6		
	Draft EIS	Review/Comment	6 weeks	9		
	Final EIS	Information	N/A	9		
	Notice of Intent	Information	N/A	2		
	VP Environmental Report	Information	N/A	2		
3.1.2	Draft RAP	Informal Review	At site meeting scheduled no sooner than 6 weeks after NRC receipt.	9		
			Preliminary final RAP	Review/Comment	8 weeks	9
			Final RAP RAP Modification	Concurrence Concurrence	8 weeks 5 weeks	9 5

<u>PROCEDURES SECTION</u>	<u>UMTRAP DOCUMENT</u>	<u>PURPOSE OF TRANSMITTAL</u>	<u>RESPONSE TIME</u>	<u># OF COPIES</u>
3.1.3	REA (Normal Cases) REA (Supp.Stds., separate disposal site)	Information Concurrence	N/A 6 weeks	1* 5
	Modification to VPMIM	Concurrence	5 weeks	4
3.2.1	Modifications to UMTRA Project QA Plan Remedial Action Inspection Plan	Review/Comment Concurrence	5 weeks With pre- liminary Final and Final RAP	2 2
	NRC In-Process/On-Site Report Review	Identification of Concerns	N/A	2
3.2.2	Modifications to UMTRA Project EH&S Plan Site-Specific EH&S Plan	Information Information	N/A N/A	2 2
3.4	Draft Completion Report - Disposal/Processing Site	Review/Comment	8 weeks	6
	Certification Report - Disposal/Processing Site - Separate VPs - Normal VPs	Concurrence Concurrence Information	6 weeks 4 weeks N/A	4 2 1*
3.5	Remilling Contract	Review/Comment	Reasonable Time	2
4.2	Prior Written Notice of Pre-RAP Processing Site Acquisition or Acquisition of VP	Concurrence	3 weeks	1
4.3	Prior Written Notice of State Sale/Retention of Processing Site/VP	Concurrence	3 weeks	1
4.4	Indian Permits/Easements/ Rights of Way	Information	N/A	2
4.5	Prior Written Notice of State Transfer of Title to Disposal Site	Concurrence	Reasonable Time	1

DOE GM04-85AL26037
 DOE-NRC MOU
 UMTRA Project
 MOD: 2
 DATE: NOV 6 1990

<u>PROCEDURES SECTION</u>	<u>UMTRAP DOCUMENT</u>	<u>PURPOSE OF TRANSMITTAL</u>	<u>RESPONSE TIME</u>	<u># OF COPIES</u>
5.2	Draft Licensing Support Documentation (including Site Surveillance and Maintenance)	Review/Comment	5 weeks	6
	Final Licensing Support Documentation	License	Reasonable Time	6
5.3	Modifications to Guidance for UMTRA Project Surveillance and Maintenance	Review/Comment	4 weeks	4
6.1	Draft Cooperative Agreement or Modification	Review/Comment	5 weeks	2
	Executed Cooperative Agreement or Modification	Concurrence	3 weeks	4
6.2	Annual Report to Congress	Consultation/ Separate Comments	Timely Response	2

Only upon specific NRC request.

2.0 DESIGNATION

- 2.1 Processing Sites - The DOE, in consultation with the NRC, has designated the processing sites included within the UMTRA Project. In connection with such designation, the DOE assigned to each site a relative priority for carrying out remedial action at such site. The priorities are indicated in 46 FR 60875 (December 4, 1981).
- 2.2 Vicinity Properties - The DOE, with the concurrence of the NRC, developed a Summary Protocol for the Survey and Inclusion of Vicinity Properties (Summary Protocol) as guidance for designation and inclusion of vicinity properties. The DOE will include designated properties within the scope of the UMTRA Project cleanup effort in accordance with the Summary Protocol.

3.0 REMEDIAL ACTIONS

- 3.1 Selection of Remedial Action - The DOE has the primary responsibility for selecting remedial action under Title I of the UMTRCA. Selection of remedial action shall be with the concurrence of the NRC and participating agencies. NRC concurrence shall be effected as provided herein.
 - 3.1.1 Environmental Documents - The DOE, in selecting remedial action, will comply with the National Environmental Protection Act (NEPA), and will prepare environmental documents evaluating the environmental impacts of the various alternatives for remedial action for each processing site. The NRC, as a Federal Agency with relevant expertise, will review draft EIS's in compliance with guidelines established by the Council on Environmental Quality (CEQ). Moreover, the NRC will provide comments, if any, resulting from its review of the NEPA documentation. Should any aspect of the information presented by the DOE in its environmental documents affect compliance with the UMTRCA, Title I and/or the relevant EPA standards, the NRC will notify the DOE of such a determination and will factor such information into any concurrence determinations.

The DOE and NRC acknowledge that NEPA compliance for vicinity properties may be accomplished by the environmental documents prepared for the associated processing site, in which case the procedures for review will be those outlined above. Otherwise, the DOE shall submit the pertinent vicinity property environmental assessment or report to the NRC for information. In the event the DOE conducts scoping in connection with environmental documents, the DOE shall provide NRC with an opportunity to participate in the scoping process, and shall provide to the NRC 30-day prior notice of any scoping meeting.

- 3.1.2 Remedial Action Plans - The DOE shall prepare and submit for NRC review, as the basis for concurrence with the selection of each remedial action, including those for combined sites, a remedial action plan (RAP). This document will logically lay out all the information, data, and analyses necessary for the NRC to conclude that the EPA standards will or will not be satisfied. Where it is possible, considering the point in the remedial action process, each site RAP should conform to the NRC SF&C Position.

The NRC shall perform an informal review of the draft RAP and provide comments to the DOE either in writing or orally during a site visit meeting. The site meeting will be scheduled to occur no sooner than six (6) weeks following NRC receipt of the draft RAP. The NRC and DOE shall insure that appropriate personnel attend the site visit/design review meeting so that all NRC comments on the draft RAP can be discussed. Meeting notes shall be prepared and representatives of the DOE and NRC shall sign the meeting notes to acknowledge that the notes accurately represent what was discussed. The DOE and NRC shall attempt to reconcile these and other NRC comments in the course of DOE's preparation of the preliminary final RAP through informal communication.

The NRC shall review the preliminary final RAP, and will provide a written response that will highlight any open issues that remain. Subsequent NRC/DOE efforts to resolve any outstanding open issues will result in one of the following:

- .1 Indication in writing of the NRC's formal concurrence with the selection of the remedial action, as described in the final RAP. NRC concurrence is required only for those aspects which are pertinent to a determination as to whether the proposed remedial action complies with the EPA standards and other applicable law, and is consistent with the purposes of Title I of the UMTRCA.
- .2 Indication in writing of the NRC's formal conditional concurrence with the selection of remedial actions as described in the final RAP. Along with the signature pages, the NRC will address these open issues in a written response that will indicate the basis for withholding full concurrence with the selection of remedial action. At the request of the DOE and with reasonable justification by the DOE, the NRC shall separately advise the DOE of the extent of any construction activities, which DOE proposes to pursue in advance of full NRC concurrence, which the DOE may pursue without prejudice to NRC's conditional

DOE GM04-85AL26037
DOE-NRC MOU
UMTRA Project
MOD: 2
DATE: NOV 1991

radioactive materials at the associated processing site in accordance with Subpart A of the EPA standards; and that such long-term control will be the same as that presented in the associated processing site's RAP, with which NRC concurs under Section 3.1.2 of these procedures. Consequently, the NRC shall exercise a "separate" concurrence for vicinity properties only in those cases where the DOE proposes to use the supplemental standards set forth in Subpart C of the EPA standards; the DOE proposes to designate, include, or perform remedial action at a vicinity property or group of vicinity properties after the NRC has concurred with the DOE's certification of the completion of remedial action at the disposal site; or the DOE proposes to use a disposal site other than that used for the disposal of the residual radioactive materials from the associated UMTRA processing site. In the case of the Edgemont, South Dakota, vicinity properties, the NRC has already concurred with the DOE's use of the disposal site for decommission and decontamination of the mill site owned by the TVA through its concurrence with DOE Interagency Agreement No. DE-AI04-84AL27241.

For cases of "separate" NRC concurrence as discussed above, the DOE shall submit to the NRC for its review and concurrence copies of an REA for each vicinity property or group of vicinity properties. The REA shall include a radiological assessment of the vicinity property, design data for the proposed remedial action, and where appropriate, the DOE's rationale for application of supplemental standards. The NRC shall review the REA and indicate concurrence with the recommended remedial action or provide comments to the DOE. The DOE and NRC shall attempt to reconcile any NRC comments prior to DOE initiation of remedial action at the subject vicinity property or properties.

3.2 Performance of Remedial Actions at Processing/Disposal Sites

- 3.2.1 Quality Assurance - Copies of the UMTRA Project Quality Assurance (QA) Plan have been provided by the DOE to the NRC for information purposes. DOE shall provide to NRC copies of any modifications to the UMTRA Project QA Plan for NRC review and comment.

The DOE shall implement a graded approach to QA during site remedial action activities as follows:

- .1 DOE shall define quality assurance procedures in a site-specific Remedial Action Inspection Plan (RAIP), which will contain, as a minimum, details regarding or provisions for organizational structure; testing and inspection; qualifications and certificate of inspection of test personnel; quality assurance records control; control of measuring and test equipment; and nonconformance and corrective action. Although the RAIP is a separate document, the DOE shall provide to the NRC copies of the site-specific RAIP when the corresponding preliminary final and final RAP are submitted to the NRC. The NRC will review and concur in the RAIP and RAP concurrently.
 - .2 The DOE shall perform in-process surveillance activities in order to evaluate quality and compliance of the remedial actions with relevant design specifications and standards; assure accurate measurement of appropriate radiological and physical conditions; and assess completion of remedial action and readiness of the site for DOE certification.
 - .3 The DOE will assure that the NRC has a current schedule of remedial action DOE audits and in-field inspections. The NRC may accompany the DOE on site reviews of remedial action activities from time to time for the primary purpose of assuring that the DOE-prescribed system of quality assurance is in place and is functioning in a manner that assures compliance with the RAP and the EPA standards. The NRC may also conduct periodic construction inspections in accordance with NRC Manual, Chapter 2620. The NRC shall provide notification to the DOE UMTRA Project Office at least 5 days in advance of any routine inspection to enable a DOE representative to be present. The NRC inspectors shall be afforded the opportunity for a one-on-one discussion of site activities and records with site personnel. The NRC and DOE shall attempt to immediately resolve any issues arising out of such inspection. The NRC shall provide two copies of any report resulting from such inspection to the DOE liaison upon NRC issuance of the report. The DOE will notify the NRC liaison of analyses and resolution of issues identified during NRC on-site reviews.
- 3.2.2 Environmental Health and Safety - The DOE shall have overall responsibility for the health and safety of occupational workers and the general public during remedial actions at UMTRA Project sites. Copies of the UMTRA Project Environmental Health and Safety Plan have been provided by the DOE to the NRC. The DOE shall provide to

the NRC copies of any modification to the UMTRA Project Environmental Health and Safety Plan. The DOE shall cause its remedial action contractor(s) to prepare, for DOE approval, detailed and site-specific plans/procedures for implementing the UMTRA Project Environmental Health and Safety Plan. The DOE shall provide to the NRC copies of such DOE-approved plans/procedures for information.

- 3.3 Performance of Remedial Actions at Vicinity Properties - The DOE shall perform on-site remedial action in connection with vicinity properties in accordance with the VPMIM. NRC concurrence with completion of remedial actions at vicinity properties shall be as provided for in Section 3.4 of these procedures.
- 3.4 Certification - The DOE shall evidence completion of remedial actions by preparation of a certification report. NRC concurrence with the certification report shall be considered by the DOE and NRC as concurrence that remedial actions are completed. The DOE certification submittal for a disposal and/or processing site is comprised of the following:
- a. A Final Completion Report containing but not limited to an executive summary; a description of remedial action; a description of post remedial action conditions; as-built specifications and drawings; field test reports; and verification measurement results.
 - b. Final Audit Reports (including reports of in-process surveillances prepared by the DOE and/its contractors).
 - c. A DOE Certification Summary signed by the DOE UMTRA Project Manager.

The DOE shall provide to the NRC, for review and comment, copies of a draft completion report for a disposal and/or processing site. Upon reconciliation of any NRC comments, DOE shall submit to the NRC, for concurrence, a final certification report.

The DOE certification submittal for a vicinity property requiring "separate" NRC concurrence as provided in Section 3.1.3 of these procedures will consist of a final completion report and a DOE Certification Summary. The DOE shall provide to NRC, for review and concurrence, copies of a final certification report. Should revisions to a "separate" vicinity property final certification report be required, DOE shall make the appropriate revisions and resubmit the report to NRC for concurrence.

DOE GM04-85AL26037
DOE-NRC MOU
UMTRA Project
MOD: 2
DATE: NOV 6 1990

Upon NRC request, the DOE shall provide to the NRC information copies of certification reports for vicinity properties that do not require "separate" NRC concurrence as provided in Section 3.1.3 of these procedures.

The Uranium Mill Tailings Remedial Action Amendments Act of 1988 provides for an extension of the DOE's remedial actions under Title I of UMTRCA. For those cases where long-term groundwater restoration is necessary, the Amendments Act contemplates a two-phased remedial action. The first phase culminates in the NRC's concurrence with the DOE's certification that all design specifications have been completed, except for groundwater restoration, in accordance with the RAP or REA previously concurred with by the NRC. It should be noted that remedial action design aspects relating to groundwater protection from future contamination would still need to be addressed in the first phase. Should the groundwater restoration require additional time beyond that needed to complete the first phase, the second phase would continue with no restrictions of the DOE's ability to conduct such groundwater restoration, and hence no congressionally mandated completion date. Only groundwater restoration activities relating to cleanup of existing groundwater contamination would be included under the second phase remedial period. Upon promulgation of the final EPA groundwater protection standards, the NRC and DOE will cooperate to establish the implementation strategy at sites where the second phase groundwater restoration is necessary. The DOE would evidence completion of the groundwater restoration phase of remedial action, separately, but in the same fashion as was done for the first phase.

- 3.5 Remilling - Pursuant to Section 108(b) of the UMTRCA, the DOE, with the concurrence of the NRC, may permit the remilling of residual radioactive materials at a processing site in conjunction with remedial action. The DOE shall include any proposed remilling alternative in the remedial action plan for that site. NRC concurrence with the remedial action plan shall be considered concurrence with the DOE's decision to permit remilling, provided that the NRC shall also have the right to review and comment on any proposed agreement or contract between the DOE and the person selected to re-mill the residual radioactive materials that sets forth the terms and conditions of remilling.

4.0 ACQUISITION AND DISPOSAL OF LANDS

4.1 Right of Entry - The DOE shall assure that the NRC has a permanent right of entry to inspect processing sites and disposal sites, including those on Indian lands, in furtherance of the provisions of Title I of the UMTRCA and to enforce the UMTRCA and any rules prescribed thereunder. The DOE shall also assure that the NRC has a right to inspect any vicinity property, including any on Indian lands, for the same purposes during the course of remedial actions on that property. Any NRC entry onto a processing site, disposal site, or vicinity property shall be coordinated in advance by the NRC with the DOE liaison.

4.2 Acquisition

4.2.1 State Acquisition - The NRC has a responsibility to make a concurrence decision under UMTRCA regarding DOE decisions to require state acquisition of processing sites, disposal sites, and vicinity properties. NRC concurrence with DOE acquisition decisions normally will be effectuated by its concurrence with the RAP. In those cases where acquisition will be initiated prior to DOE submittal of a RAP to the NRC for concurrence, and in those cases where DOE decides that acquisition of a vicinity property is appropriate, then DOE shall provide to the NRC written notice of its decision regarding acquisition and the rationale therefore, and request NRC concurrence with such decision.

4.2.2 DOE Acquisition - From time to time the DOE may, pursuant to Section 106 of the UMTRCA, initiate either of the following methods of direct Federal acquisition of a processing site, disposal site, or vicinity property:

- .1 Request the Department of Interior to transfer jurisdiction of public lands to the DOE.
- .2 Utilization of the U.S. Army Corps of Engineers (COE) to acquire real estate by purchase, donation, or condemnation on behalf of the DOE.

In the event of such direct Federal acquisition, the DOE shall provide to the NRC information regarding the acquisition in the appropriate licensing submittal.

- 4.3 Sale of Sites - The parties acknowledge that in the case of any processing site or vicinity property to which DOE or an affected state acquire title and for which DOE and such state share the costs of acquisition under a cooperative agreement, the state may sell such site or property or retain such site or property for permanent use by the state solely for park, recreational, or other public purposes. The DOE shall, prior to such sale or retention, provide to the NRC written notice of the proposed sale or retention and request NRC concurrence with same.
- 4.4 Indian Lands - The DOE shall provide to the NRC information copies of any permit, easement, right-of-entry, or other real estate agreement authorizing DOE to conduct remedial actions or maintenance, monitoring, or emergency measures at disposal sites on Indian lands.
- 4.5 Transfer of Title - The parties acknowledge that title to any disposal site acquired by a state under a cooperative agreement with the DOE, and all residual radioactive materials deposited at such disposal site, must be transferred to the government upon completion of remedial action. The DOE shall, prior to such transfer of title, provide to the NRC written notice of the proposed transfer of title requesting NRC concurrence with same within a reasonable period of time. The NRC shall respond to the DOE within a reasonable period of time.
- 4.5.1 Transfer from States - Such transfer is generally executed following NRC concurrence with the DOE's certification that the remedial action has been completed. Where convincing circumstances exist warranting such transfer(s) prior to the certification concurrence by the NRC, the DOE shall provide written justification supporting this premature transfer and explicitly demonstrating that no technical, economic, or statutory obstacles shall compromise the compliance with EPA standards or the general provisions of UMTRCA, Title I, as a result of such early transfer(s).
- 4.5.2 Sites on Indian Lands - Where sites stabilized on Indian lands are involved, ownership of the site will remain with that Indian tribe. In such cases where residual radioactive material is relocated off Indian lands, early transfer of title at the disposal site shall be treated as in Section 4.5.1 above.

5.0 LONG-TERM MAINTENANCE OF DISPOSAL SITES

5.1 General - With the exception of the disposal site for residual radioactive materials removed from Edgemont, South Dakota, vicinity properties, which is an NRC-licensed, TVA-owned site, and the disposal site for residual radioactive materials removed from the Riverton, Wyoming, processing site, which is an NRC-licensed Title II site, the DOE shall assume custody of each disposal site that has been transferred to or otherwise acquired by the government. However, for disposal sites located on Indian lands, the DOE will request, where necessary, the appropriate Indian tribe(s) to transfer title of the residual radioactive materials to the Federal government, and withdraw said Indian Lands from the public entry. The DOE shall also perform monitoring, maintenance, and emergency measures at each disposal site, including those disposal sites on Indian lands where approval has been granted by the Indian tribe(s), necessary to protect public health, safety, and the environment and such other actions required by a license to be issued by the NRC, until such time, if ever, as the President designates another Federal agency to perform such monitoring, maintenance, and emergency measures.

5.2 License - Pursuant to Sections 104(f)(2) and 105(b) of the UMTRCA, the NRC shall license the long-term monitoring, maintenance, and surveillance of a site after NRC concurrence with the DOE's certification report.

In order to facilitate the title transfer and the licensing process, the NRC is in the process of rulemaking to address licensing the DOE's custody of Title I disposal sites after NRC concurrence with DOE certification of remedial action completion. The regulation pertaining to this subject will be promulgated in 10 CFR Part 40.

For each site, including disposal sites on Indian lands, the DOE shall prepare and submit to the NRC six copies of licensing support documentation (including the site surveillance and maintenance plan) for long-term maintenance of each disposal site. After NRC review and concurrence with this licensing support documentation, the NRC shall issue a license to the DOE or such other Federal agency designated by the President to maintain the site according to the conditions of the licensing support documentation as approved by and subsequently amended by the NRC.

5.3 Surveillance and Maintenance - Guidelines for the surveillance and maintenance portion of the license application shall be presented in a document titled "Guidance for UMTRA Project Surveillance and Maintenance" that describes the monitoring, maintenance, and emergency measures to be performed by the DOE, or such other Federal agency as designated by the President, in order to maintain design conditions as certified.

5.4 Sale or Lease of Minerals - Pursuant to Section 104(h) of the UMTRCA, the Secretary of the Interior may dispose of subsurface mineral rights, by sale or lease, in connection with any disposal site to which the Government takes title under Section 104(f) of Title I of the UMTRCA. Such sale or lease is subject to concurrence by the DOE and NRC; and issuance of a license or license modification by the NRC that shall govern disturbance and restoration of the disposal site.

6.0 ADMINISTRATION

6.1 Cooperative Agreements

6.1.1 Concurrence - The DOE shall provide to NRC, for review and comment, copies of a cooperative agreement, in draft form at the same time such draft or revised draft is provided to participating agencies. Upon execution of the cooperative agreement or modification thereof by the affected state or tribe, the DOE shall transmit the agreement to the NRC for review and concurrence, provided that modifications that merely increase the estimated costs of funds obligated in the cooperative agreement without revision to the RAP shall not require NRC concurrence.

6.1.2 Administration - The parties contemplate that the DOE and NRC will interface with other participating agencies in the performance of this MOU. However, the appropriate DOE Contracting Officer shall be responsible for the administration of the cooperative agreements, including sole responsibility on behalf of the government for the modification thereof or any change thereto affecting cost, schedule or performance thereunder. The Project Manager, UMTRA Project Office, shall be designated by the DOE as the Contracting Officer's Representative (COR) for purposes of the administration of cooperative agreements. The COR shall be responsible for monitoring the technical compliance of each state or Indian tribe and managing the performance of the DOE under the cooperative agreements. Each party shall attempt to keep the other informed regarding any interface with participating agencies which affects activities within the scope of this MOU.

6.1.3 Indian Lands following certification - The DOE will request, where necessary, that the appropriate Indian Tribe(s) enter into an agreement or modification to the Cooperative Agreement regarding title to the residual radioactive material; withdrawal of Indian lands from the public entry on which the disposal site is located; and monitoring, maintenance, and surveillance of the disposal site to be performed under license to the NRC following completion of remedial action, as stipulated in UMTRCA, Title I, Section 105(a).

The Cooperative Agreement shall also include the transfer of responsibilities to any successor agency designated by the President. The DOE shall include any such agreement or modification to the Cooperative Agreement in the site surveillance and maintenance plan.

6.2 Annual Report to Congress

Until January 1, 1986, except as such date is extended by Congress, the DOE shall prepare an annual report to Congress on the status of the UMTRA Project as required by Section 114(a) of the UMTRCA. The report shall be prepared in consultation with the NRC and shall contain any separate views, comments, or recommendations of the NRC. The NRC shall provide a timely response to the DOE's request for input to such report.

6.3 Documentation of UMTRA Project

Pursuant to Section 114(e) of the UMTRCA, the NRC, in cooperation with the DOE, shall ensure that any relevant information, other than trade secrets and other proprietary information otherwise exempted from mandatory disclosure under any other provision of law, obtained from the conduct of remedial actions is documented systematically, and made publicly available, conveniently, for use. With regards to normal vicinity property documentation, the DOE shall be the NRC's agent in fulfilling requirements of Section 114(e) and shall provide the NRC with periodic updates of location of document availability. Furthermore, where documentation was not needed by the NRC for its evaluations and which, therefore, was not provided to the NRC, the DOE will act as the NRC's agent in making such documentation conveniently available for public use, as stipulated in UMTRCA, Title I, Section 114(e).