



Agencies Struggle To Craft Offsite Cleanup Plan For Nuclear Power Accidents

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EPA, the Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) are struggling to determine which agency -- and with what money and legal authority -- would oversee cleanup in the event of a large-scale accident at a nuclear power plant that disperses radiation off the reactor site and into the surrounding area.

The effort, which the agencies have not acknowledged publicly, was sparked when NRC recently informed the other agencies that it does not plan to take the lead in overseeing such a cleanup and that money in an industry-funded insurance account for nuclear accidents would likely not be available, according to documents obtained by *Inside EPA* under the Freedom of Information Act (FOIA). ([Request Part 1](#), [Request Part 2](#))

Environmentalists concerned with nuclear safety and cleanup issues say indications in the FOIA documents that the government has no long-term cleanup plan in the event of an emergency casts doubt on the nuclear power industry's ongoing efforts to revive itself. The industry currently has 22 applications to build new nuclear power plants pending before NRC and is marketing itself as a source of carbon-free emissions.

"This is a revelation that should call into question efforts to revive the industry," one environmentalist says. "Certainly there should be no new [power plant] construction if this issue can't be resolved." The activist adds that the lack of a cleanup plan is "pretty ironic because nuclear energy is not a new technology or issue. The first nuclear reactor was built in 1942 -- that's 68 years ago."

A spokesman for the Nuclear Energy Institute (NEI), which represents the nuclear power industry, says officials believe such cleanups would be handled by the insurance fund despite assertions in the documents to the contrary. The NEI spokesman also downplays the likelihood of such a cleanup being necessary, saying accidents are "highly unlikely to occur."

Staff for the three agencies began meeting to discuss the issue last year, when NRC officials indicated to the other agencies that they do not, as some federal officials had previously assumed, plan on leading cleanup oversight in the event an accident at a nuclear power plant dispersed radioactive contamination off the reactor site and into the surrounding area. NRC suggested EPA would be the appropriate agency to lead such an effort, according to the documents. While NRC and FEMA require nuclear plants to have emergency response plans, it is not clear these plans extend beyond the initial aftermath of an accident or apply to radiation dispersed over large areas, the documents say.

However, the NRC officials also indicated during the meetings that the industry-funded account established under the Price Anderson Act -- which Congress passed in 1957 in an effort to limit the industry's liability -- would likely not be available to pay for such a cleanup. The account likely could only be used to provide compensation for damages incurred as the result of an accident, such as hotel stays, lost wages and property replacement costs, the documents show, leaving federal officials unsure where the money to pay for a cleanup would come from.

This summer, EPA staff began drafting a white paper on the issue in preparation for emergency drills the agencies were planning for August that documents say were expected to involve high-level administration officials, including either President Obama or Vice President Biden.

Disagreements Over EPA Authority

The white paper was never completed amid disagreements between EPA staff over what authority the agency may or may not have to clean up after a power plant accident.

A July 27 draft of the white paper cites Superfund as a possible source of cleanup funding -- either through EPA's appropriation-driven Superfund trust fund or the agency's authority to sue parties responsible for contamination under Superfund law. But EPA staff disagree on whether Superfund is applicable to cleanup after a nuclear power plant accident, calling into question its viability as both a source of funding and cleanup authority.

Some EPA staffers argue that "special nuclear material from a nuclear incident" is exempt from the types of toxic releases governed by Superfund, according to the documents. Others suggest that such material is typically commingled with chemicals and other radioactive materials that are covered by the law, meaning EPA would be able to assert its Superfund authority to conduct a cleanup.

In internal e-mails, EPA staff provide examples of instances where the agency has been involved with cleanups at nuclear power plant sites due to the sites being contaminated with chemicals. For example, Mary Ballew, of EPA Region I, on Aug. 18 forwarded examples of EPA involvement with power plant decommissioning due to chemical contamination to Stuart Walker, of EPA's Office of Superfund Remediation and Technology Innovation (OSRTI). Ballew offered to talk to any lawyers in EPA headquarters "that say that the nuke plants don't have chemicals."

According to the information Ballew provided, Region I has been involved with decommissioning at three nuclear power plants -- Maine Yankee, Connecticut Yankee and Yankee Rowe, MA -- and all all three required cleanups under the Resource Conservation & Recovery Act (RCRA) due to chemical contamination.

But Jean Schumann, a lawyer in EPA's Office of Emergency Management (OEM), criticizes suggestions that the presence of chemical contaminants gives the agency the authority to clean up after a nuclear power plant incident. In one Aug. 5 e-mail, Schumann argues it is uncertain whether Superfund law gives EPA such authority when radioactive substances from the accident are commingled with other contaminants. "I think there is enough uncertainty still on what the 'release' exclusion means that we're better off staying at a higher level of detail" in the draft white paper, she writes.

But the ability of other laws to provide funding and authority for cleanup are also severely limited, the draft white paper says. The government's emergency response authorities under the Stafford Act, for instance, expire 60 days after an incident, the draft document notes. A Presidential declaration of an emergency "leads to rather limited financial assistance being made available through FEMA" and a "potentially more useful Presidential declaration of a major disaster" appears limited to "natural events," the document says.

Determining Cleanup Standards

Whether EPA can assert its Superfund authorities over a cleanup after a nuclear power plant accident is significant not just from the standpoint of securing funding for the cleanup, but also in determining what cleanup standards would apply to the situation, Walker, of OSRTI, writes in a June 11 e-mail to Elizabeth Southerland, director of OSRTI's assessment and remediation division.

Walker tells Southerland that if EPA appears to be endorsing non-Superfund cleanup approaches in discussions with the other agencies, policy concerns similar to those surrounding EPA's controversial draft guide for responding to all nuclear emergencies -- known as the protective action guidance (PAG) for radiological incidents -- would arise. With the PAG, officials in EPA's Superfund, water and legal offices raised concerns that the document could set a negative precedent weakening the agency's cleanup and drinking water standards because it included guidelines dramatically less stringent than traditional EPA regulations.

The BP oil spill in the Gulf of Mexico, which prompted some Republicans in Congress to suggest the Price Anderson Act be used as model for oil cleanups, also highlights the significance of the issue, Walker argues.

"Given the current circumstances dealing with the Gulf [oil] spill (e.g., questions about who is in charge, is the federal government in control, etc) not inhibiting our flexibility under [Superfund] is a key issue," Walker adds. "Although possibly not the first choice to take a response action during a [nuclear power plant] incident, EPA should not agree to language that appears to be a legal interpretation that inhibits [the Superfund] option."

In addition, despite the expectations of the other federal agencies that EPA "would be heavily involved in the environmental response work, possibly as the lead technical agency," EPA cleanup officials have "not previously been major players in NRC" led drills meant to simulate the government's response to a power plant accident, Walker says.

Confusion Amongst Agencies

Attempts by EPA and NRC officials to answer requests for comment on the issue also highlight confusion within EPA and amongst the agencies over who is responsible for overseeing cleanup. An NRC spokesman told *Inside EPA* that

the “best information” he had was “that EPA would oversee cleanup, based on that agency’s” PAGs, which the agency has yet to complete due to the controversy they have generated.

But when EPA spokeswoman Latisha Pettaway was asked to confirm that EPA would in fact take the lead on such a cleanup and to explain what legal authorities the agency would use, Randy Deitz, a liaison between EPA’s waste and government affairs offices, called the inquiry “an odd-ball request” that “does not fit well with any particular office. . . . Why doesn’t [*Inside EPA*] ask NRC?” Deitz asked. “They regulate the cleanup of NRC regulated facilities. We don’t get involved at all.”

Jeff Maurer of EPA’s Innovation, Partnerships and Communication Office (IPCO) sent Pettaway a similar e-mail about the request for comment, calling it “an inquiry that will not be able to be responded to in a clear cut fashion. . . . This will take awhile,” Maurer said.

Asked by Maurer to provide information on whether EPA would apply Superfund or other standards if it was cleaning up after a nuclear power plant incident, Walker explained that EPA has never “spelled this out anywhere” and that final cleanup levels have not “been discussed by the FEMA, NRC, EPA workgroup looking at Price Anderson Act issues. . . . So I don’t have a clear answer.” Walker did express his personal opinion that EPA should not endorse cleanup standards less stringent than Superfund -- such as NRC’s power plant decommissioning standards that allow exposure to radiation as high as 25 and 100 millirems -- however. In other e-mails, Walker expressed concerns that, during the development of the draft PAG, NRC officials suggested cleanup standards as lax as 10,000 millirem, which activists argue equates to a cancer risk of one in three people.

In her response to *Inside EPA*, Pettaway did not include any of this information or acknowledge that the three agencies were actively studying the issue, however. Pettaway said only that questions regarding whether and how EPA would cleanup after a nuclear power plant incident were “based on hypothetical situations/scenarios” and that EPA could not “give an assessment on something that [was] hypothetical.”

A FEMA spokeswoman deferred a request for comment to EPA. The White House did not respond to a request for comment. -- *Douglas P. Guarino*

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