

## MEMORANDA OF UNDERSTANDING

consultants opportunity to accompany NRC personnel on such visits.

### B. EPA Responsibilities

1. EPA will provide formalized review, consultation and comment throughout the entire project.

2. EPA will review and provide comments on the site reclamation plan; and other associated deliverables, within timeframes as agreed to between NRC and EPA. In the event that EPA determines that the implementation of the site reclamation plan has not resulted in, or may not result in, cleanup conditions that meet applicable or relevant and appropriate requirements under CERCLA, then EPA may take whatever action it deems appropriate.

3. EPA intends to pursue and complete a Remedial Investigation and Feasibility Study, public comment and agency response process, and Record of Decision (ROD) directed at off-site groundwater contamination, with the intention of completing this process by October 1, 1988. EPA intends to implement, or require UNC or other potentially responsible parties to implement, any EPA selected remedial actions set forth in a ROD. Any remedial actions conducted by UNC or other potentially responsible parties to implement an EPA selected remedy will be done under EPA oversight and in accordance with the terms of any Consent Decree entered into with EPA. EPA intends that any such Consent Decree would cover actions outside the byproduct material disposal site needed to implement the ROD remedy.

### VI. Dispute Resolution

In the event of dispute between EPA and the NRC concerning site activities, the persons designated by each Agency as primary or, in their absence, alternate contact points will attempt to promptly resolve such disputes. If disputes cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further consultation. The supervisory referral and resolution process will continue, if necessary to resolve the dispute, to the level of the Regional Administrators of the NRC and EPA.

Both Parties shall continue to maintain their respective rights or responsibilities under the MOU during the dispute resolution process.

### VII. Execution and Modification

This agreement shall take effect upon execution by EPA and the NRC. It shall remain in effect for the duration of the program addressed herein unless terminated by mutual agreement by the two Agencies; or, the MOU may be terminated unilaterally if any of the conditions set forth below are present.

1. The planning or conduct of groundwater cleanup actions fail to

meet standards set forth in the Basis for Agreement (Section II) of this MOU.

2. The site is deleted from the NPL.

3. The site is turned over to the Department of Energy or other responsible State or Federal authority for long term care.

4. Regulatory, Statutory, or other events occur which make this MOU unnecessary, illegal, or otherwise inappropriate.

### VIII. Modification

The Parties may modify this MOU from time to time in order to simplify and/or define the procedures contained herein. Each Party shall keep the other informed of any relevant proposed modifications to its basic statutory or regulatory authority, forms, procedures, or priorities. This MOU shall be revised, as necessary, by the adoption of such modifications. The MOU should be reviewed on an annual basis by both the Director-URFO, Region IV, NRC, and the Director-Hazardous Waste Management Division, Region VI, EPA or their designated representatives.

### IX. Reservation of Rights

The Parties reserve any and all rights or authority that they may have, including but not limited to legal, equitable, or administrative rights. This specifically includes EPA's and NRC's authority to conduct, direct, oversee, and/or require environmental response in connection with the site, as well as the authority to enter the site and require the production of information, within each of their own areas of responsibility.

Executed and agreed to:

Dated: August 26, 1988.

Robert D. Martin,  
*Regional Administrator, U.S. Nuclear  
Regulatory Commission, Region IV,  
Arlington, Texas.*

Dated: August 26, 1988.

Robert E. Layton, Jr., P.E.,  
*Regional Administrator, U.S. Environmental  
Protection Agency, Region VI, Dallas, Texas.*

53 FR 43950  
Published 10/31/88

DEPARTMENT OF LABOR  
Occupational Safety and Health  
Administration

NUCLEAR REGULATORY  
COMMISSION

Memorandum of Understanding  
Between The Nuclear Regulatory  
Commission and the Occupational  
Safety and Health Administration;  
Worker Protection at NRC-licensed  
Facilities

The Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) have

entered into a Memorandum of Understanding (MOU) to provide general guidelines for interface activities between the two agencies. The MOU is designed to ensure that there will be no gaps in the protection of workers at NRC-licensed facilities where the OSHA also has health and safety jurisdiction. At the same time, the MOU is designed to avoid duplication of effort on the part of the two agencies in those cases where it is not always practical to sharply identify boundaries between the NRC's responsibilities for nuclear safety and the OSHA's responsibilities for industrial safety.

The MOU, which replaces an existing procedure for interagency activities, defines the general areas of responsibilities of both agencies, describes generally the efforts of each to achieve worker protection at NRC-licensed facilities, and provides general procedures for the coordination of interface activities and exchange of information between the NRC and OSHA. The text of the MOU is set out below.

### Purpose and Background

1. The purpose of this Memorandum of Understanding between the U.S. Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) is to delineate the general areas of responsibility of each agency; to describe generally the efforts of the agencies to achieve worker protection at facilities licensed by the NRC; and to provide guidelines for coordination of interface activities between the two agencies. If NRC licenses observe OSHA's standards and regulations, this will help minimize workplace hazards.

2. Both NRC and OSHA have jurisdiction over occupational safety and health at NRC-licensed facilities. Because it is not always practical to sharply identify boundaries between the nuclear and radiological safety NRC regulates and the industrial safety OSHA regulates, a coordinated interagency effort can ensure against gaps in the protection of workers and at the same time, avoid duplication of effort. This memorandum replaces an existing procedure for interagency activities. "General Guidelines for Interface Activities between the NRC Regional Offices and the OSHA."

Hazards Associated With Nuclear Facilities

3. There are four kinds of hazards that may be associated with NRC-licensed nuclear facilities:

- a. Radiation risk produced by radioactive materials;
- b. Chemical risk produced by radioactive materials;

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c. Plant conditions which affect the safety of radioactive materials and thus present an increased radiation risk to workers. For example, these might produce a fire or an explosion, and thereby cause a release of radioactive materials or an unsafe reactor condition; and,

d. Plant conditions which result in an occupational risk, but do not affect the safety of licensed radioactive materials. For example, there might be exposure to toxic nonradioactive materials and other industrial hazards in the workplace.

Generally, NRC covers the first three hazards listed in paragraph 3 (a, b, and c), and OSHA covers the fourth hazard described in paragraph 3 (d). NRC and OSHA responsibilities and actions are described more fully in paragraphs 4 and 5 below.

### NRC Responsibilities

4. NRC is responsible for licensing and regulating nuclear facilities and materials and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and the Nuclear Nonproliferation Act of 1978; and in accordance with the National Environmental Policy Act of 1969, as amended, and other applicable statutes. These NRC responsibilities cover the first three nuclear facility hazards identified in paragraph 3 (a, b, c). NRC does not have statutory authority for the fourth hazard described in paragraph 3 (d).

NRC responsibilities include protecting public health and safety; protecting the environment; protecting and safeguarding materials and plants in the interest of national security; and assuring conformity with antitrust laws for certain types of facilities, e.g., nuclear power reactors. Agency functions are performed through: Standards-setting and rulemaking; technical reviews and studies; conduct of public hearings; issuance of authorizations, permits and licenses; inspection, investigation and enforcement; evaluation of operating experience, and confirmatory research.

### OSHA Responsibilities

5. OSHA is responsible for administering the requirements established under the Occupational Safety and Health Act (OSHA Act) (29 U.S.C. 651 *et seq.*), which was enacted in 1970. OSHA's authority to engage in the kinds of activities described below does not apply to those workplace safety and health conditions for which other Federal agencies exercise statutory authority to prescribe and enforce standards, rules or regulations.

Under the OSH Act, every employer has a general duty to furnish each employee with a place of employment that is free from recognized hazards that can cause death or serious physical harm and to comply with all OSHA standards, rules, and regulations.

OSHA standards contain requirements designed to protect employees against workplace hazards. In general, safety standards are intended to protect against traumatic injury, while health standards are designed to address potential overexposure to toxic substances and harmful physical agents, and protect against illnesses which do not manifest themselves for many years after initial exposure.

OSHA standards cover employee exposures from all radiation sources not regulated by NRC. Examples include x-ray equipment, accelerators, accelerator-produced materials, electron microscopes and betatrons, and naturally occurring radioactive materials such as radium.

It is estimated that the Act covers nearly 6 million workplaces employing more than 80 million workers. Federal OSHA covers approximately three-fifths, or four million, of these workplaces. States which operate OSHA approved job safety and health programs or "Plans," cover the remainder.

OSHA State Plan States are encouraged, but not required, to delineate their authority for occupational safety and health at NRC-licensed facilities in the same manner as Federal OSHA.

The OSHA areas of responsibility described in this memorandum are subject to all applicable requirements and authorities of the OSH Act. However, the industrial safety record at NRC-licensed nuclear power plants is such that OSHA inspections at these facilities are conducted normally as a result of accidents, fatalities, referrals, or worker complaints.

### Interface Procedures

6. In recognition of the agencies' authorities and responsibilities enumerated above, the following procedures will be followed:

Although NRC does not conduct inspections of industrial safety, in the course of inspections of radiological and nuclear safety, NRC personnel may identify safety concerns within the area of OSHA responsibility or may receive complaints from an employee about OSHA-covered working conditions. In such instances, NRC will bring the matter to the attention of licensee management. NRC inspectors are not to perform the role of OSHA inspectors; however, they are to elevate OSHA safety issues to the attention of NRC

Regional management when appropriate. If significant safety concerns are identified or if the licensee demonstrates a pattern of unresponsiveness to identified concerns, the NRC Regional Office will inform the appropriate OSHA Regional Office. In the case of complaints, NRC will withhold, from the licensee, the identity of the employee. In addition, when known to NRC, NRC will encourage licensees to report to OSHA accidents resulting in a fatality or multiple hospitalizations.

When such instances occur within OSHA State Plan States' jurisdiction, the OSHA Regional Office will refer the matter to the State for appropriate action.

7. OSHA Regional Offices will inform the appropriate NRC Regional Office of matters which are in the purview of NRC, when these come to their attention during Federal or State safety and health inspections or through complaints. The following are examples of matters that would be reported to the NRC:

a. Lax security control or work practices that would affect nuclear or radiological health and safety.

b. Improper posting of radiation areas.

c. Licensee employee allegations of NRC license or regulation violations.

8. The NRC and OSHA need not normally conduct joint inspections at NRC-licensed facilities. However, under certain conditions, such as investigations or inspections following accidents or resulting from reported activities as discussed in items 6 and 7 above, it may be mutually agreed on a case-by-case basis that joint investigations are in the public interest.

9. The chemical processing of nuclear materials at some NRC-licensed fuel and materials facilities presents chemical and nuclear operational safety hazards which can best be evaluated by joint NRC-OSHA team assessments. Each agency will make its best efforts to support such assessments at about 20 facilities once every five years. Of these facilities, about one-third are in the OSHA Plan States. OSHA will also assist in promoting such participation by State personnel in OSHA Plan States.

10. Based upon reports of injury or complaints at nuclear power plant sites, OSHA will provide NRC with information on those sites where increased management attention to worker safety is needed. The NRC will bring such information indicating significant breakdown in worker safety to the attention of licensee management and monitor corrective actions. This will not interfere with OSHA authority and responsibility to investigate industrial accidents and worker complaints.

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11. Power reactor sites are inspected by NRC Region-based and Resident Inspectors. Personnel from NRC Regional Offices routinely conduct inspections at most fuel and materials licensed facilities. In order to enhance the ability of NRC personnel to identify safety matters under OSHA purview during nuclear and radiological safety inspections, OSHA will provide NRC Regional personnel with basic chemical and industrial safety training and indoctrination in OSHA safety standards, consistent with ongoing OSHA training programs. To enhance the ability of OSHA and State Plan personnel to effectively participate in the Operational Safety Team Assessments, NRC will provide training in basic radiation safety requirements, consistent with ongoing NRC training programs. Details of such training will be as mutually agreed by the NRC Technical Training Center and the OSHA National Training Institute.

12. Resolution of policy issues concerning agency jurisdiction and operational relations will be coordinated by the NRC Deputy Executive Director for Operations, and by the OSHA Director of Policy. Appropriate Headquarters points of contact will be established.

13. Resolution of issues concerning inspection and enforcement activities involving both NRC and OSHA jurisdiction at NRC-licensed facilities will be handled between NRC's Office of Enforcement and OSHA's Directorate of Compliance Programs. Each NRC and OSHA Regional Office will designate points of contact for carrying out interface activities.

For the Nuclear Regulatory Commission,  
Victor Stello, Jr.,  
*Executive Director for Operations.*

October 21, 1988.

For the Occupational Safety and Health Administration.

John A. Pendergrass,  
*Assistant Secretary.*

53 FR 47279

Published 11/22/88

Comment period expires 12/22/88.

**Memorandum of Understanding (MOU)  
Between the NRC and the Illinois  
Department of Nuclear Safety**

**AGENCY:** Nuclear Regulatory  
Commission.

**ACTION:** Publication of Draft  
Subagreement No. 2 between NRC and  
the Illinois Department of Nuclear  
Safety for public comment.

**SUMMARY:** Section 274i. of the Atomic  
Energy Act of 1954, as amended, allows  
the Nuclear Regulatory Commission  
(Commission or NRC) to enter into an

agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." This section 274i. agreement, typically in the form of a Memorandum of Understanding (MOU), differs from an agreement between NRC and State under the "Agreement State" program; the latter is accomplished only by entering into an agreement under section 274b. of the Atomic Energy Act. A State can enter into a section 274i. MOU whether or not it has a section 274b. agreement.

In April of 1984, NRC and the State of Illinois signed an "umbrella" MOU, providing principles of cooperation between the State and NRC in areas of concern to both.

In June of 1984, NRC and the State of Illinois signed Subagreement No. 1 which provided the basis for mutually agreeable procedures whereby the State may perform inspection functions for and on behalf of the Commission at certain reactor and materials licensee's facilities which generate low-level radioactive waste.

Draft Subagreement No. 2 under this MOU provides the basis for mutually agreeable procedures whereby the Illinois Department of Nuclear Safety (IDNS) may perform inspection, audit, and similar functions for nuclear power plants together with and for and on behalf of the Commission under a program created pursuant to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) and accepted by NRC and IDNS. The Commission is in the process of finalizing the Policy Statement on NRC cooperation with States and the Subagreement may require revisions, in order to conform to the final Policy Statement.

**DATE:** Submit comments by December 22 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSEE:** Mail written comments to:  
Regulatory Publications Branch,  
Division of Freedom of Information and  
Publications Services, Office of  
Administration and Resources  
Management, U.S. Nuclear Regulatory  
Commission, Washington, DC 20555.  
Deliver comments to 7920 Norfolk  
Avenue, Bethesda, Maryland between  
7:45 a.m. and 4:15 p.m. weekdays except  
Federal holidays. Copies of comments  
received may be examined at the NRC  
Public Document Room at 2120 L Street,  
NW., Washington, DC lower level.

**FOR FURTHER INFORMATION CONTACT:**  
Roland Lickus, Chief, State and  
Government Affairs, U.S. Nuclear  
Regulatory Commission, Region III, 799  
Roosevelt Road, Building #4, Glen Ellyn,  
Illinois, 60137, (312) 790-5666.

**SUPPLEMENTARY INFORMATION:** NRC regulation (10 CFR 50.55a) requires the application of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME) Code to certain pressure vessels, piping, pumps and valves of nuclear power reactors. As discussed more fully in the text of the Subagreement which follows, a State role is contemplated in the ASME system as it pertains to certain nuclear power plant components. This Subagreement is intended to formalize and define the manner in which the NRC and the Illinois Department of Nuclear Safety (IDNS) will cooperate in the planning and conducting of ASME Code related inspections at nuclear power plants in Illinois to ensure compliance with NRC regulations. The objective of the Subagreement is to provide a framework for IDNS to assist NRC in performing safety inspections under 10 CFR § 50.55a. The NRC will take appropriate enforcement actions for joint inspections conducted under this Subagreement. Key features of the Subagreement include provisions for (1) ensuring IDNS's activities supplement but do not duplicate the NRC's activities; (2) joint team inspections of ASME related matters led by NRC; (3) documentation by IDNS of its inspection efforts for inclusion into the final NRC inspection report; (4) availability of NRC training for IDNS inspectors; and (5) timely exchange of information between NRC and IDNS.

Dated at Rockville, Maryland, this 15th day of November 1988.

For the Nuclear Regulatory Commission,  
Victor Stello, Jr.,  
*Executive Director for Operations.*

**Subagreement 2 Between the Nuclear  
Regulatory Commission and the Illinois  
Department of Nuclear Safety**

### *I. Authority*

The Nuclear Regulatory Commission (NRC) and the Illinois Department of Safety (IDNS) entered into this Subagreement under the authority of the Memorandum of Understanding (MOU) of April 1984, between Illinois and NRC (49 FR 20586; 5/15/1984) and under section 274i of the Atomic Energy Act of 1954, as amended.

### *II. Background*

#### **A. NRC and ASME Code**

1. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, require the Nuclear Regulatory Commission (NRC) (previously the Atomic Energy Commission (AEC)) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure the common defense and security and to