POLICY ISSUE
NEGATIVE CONSENT

August 6, 2001 SECY-01-0150

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: MEMORANDUM OF UNDERSTANDING AND INTERAGENCY AGREEMENT BETWEEN THE U.S. DEPARTMENT OF ENERGY AND THE U.S. NUCLEAR REGULATORY COMMISSION ON THE REVIEW OF INCIDENTAL WASTE DETERMINATIONS FOR THE IDAHO NATIONAL ENGINEERING AND ENVIRONMENTAL LABORATORY

PURPOSE:

To inform the Commission that the staff plans to sign the attached draft Memorandum of Understanding (MOU) and the attached draft Interagency Agreement (IA), between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE), unless instructed otherwise by the Commission.

BACKGROUND:

In the memorandum dated June 18, 2001, the staff informed the Commission of DOE's Idaho Operations Office (DOE-ID) request (by letter dated February 7, 2001) for NRC consultation on, and review of, two draft incidental waste determinations. The memorandum briefly discussed what the determinations would entail, the scope of NRC's review, and the criteria against which we would review DOE's methodologies. The memorandum also explained why the staff was choosing to participate in the review and included resource and schedule estimates.

On July 17, 2001, the staff responded to DOE-ID, clarifying the criteria that would be used to review the incidental waste determinations, which are currently expected to be submitted in

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August 2001 and by December 2001. The first determination addresses management of sodium-bearing waste (SBW) as transuranic waste (TRU). Our review for this determination will only assess whether the SBW has been processed or will be processed to remove key radionuclides to the maximum extent that is technically and economically practical. The second determination addresses the closure of eleven high-level waste storage tanks. Our review will assess whether the tanks with residual waste have been or will be processed to remove key radionuclides to the maximum extent that is technically and economically practical. We will also review the determination to evaluate whether the waste will be managed so that safety requirements comparable to the performance objectives in 10 CFR Part 61 are satisfied. If DOE-ID's tank closure methodology meets these two criteria, the staff would conclude that managing this waste as incidental will be protective of public health and safety and the environment.

The staff has been working with DOE-ID staff to develop an MOU that establishes the framework for NRC to provide technical assistance to DOE-ID in regard to the incidental waste determinations. The staffs have also cooperated in the development of an IA to implement the MOU, which establishes that all costs incurred by NRC, including contractor support, will be reimbursed by DOE-ID. The staff believes that a review of DOE's methodologies will necessitate approximately 1.6 full-time equivalents (FTE) over a period of 14 months, including time for Commission review of the results of the staff's evaluation. Please note that the cost estimate included in the Memorandum from William D. Travers, Executive Director for Operations, to the Commissioners, dated June 18, 2001, indicated that only 1.1 FTE were needed for the reviews, assuming that 1 FTE was equivalent to 2000 hours. The Office of the Chief Financial Officer (OCFO) has since advised the staff that for budget purposes, the staff should assume that 1 FTE is equivalent to 1350 productive hours, as reflected in the current 1.6 FTE estimate.

This MOU is covered by the January 15, 1997, MOU between NRC and DOE on "Cooperation in Support of Significant Projects and Activities." The January 15, 1997, MOU established the following funding policy: "NRC generally will not participate in projects and activities pertaining to DOE's responsibilities unless Congress appropriates resources to NRC for such activities. Exceptions will be considered by NRC on a case-by-case basis and only if DOE reimburses NRC for its full agency cost."

In SECY-95-012, "Reimbursement for Work Performed for Other Agencies," the Commission established a policy of charging full Agency costs in performing work for others that is not a part of NRC's statutory mission and for which NRC receives no appropriations. Recovery of full costs requires charging the license fee rate in effect at the time the work is performed to recover direct salary, benefits, travel, and an appropriate share of Agency overhead costs. Full-cost recovery also requires charging for direct contractual support costs.

DISCUSSION:

The staff has provided, for the Commission's review, the attached draft MOU and draft IA. The MOU and IA are the result of a cooperative effort between DOE-ID and NRC technical, financial, and general counsel staffs. The MOU establishes a basic framework for NRC to provide technical assistance to DOE-ID in regard to its treatment of wastes and tank closure activities at the Idaho National Engineering and Environmental Laboratory, specifically -- DOE-ID's incidental waste determination that SBW may be managed as TRU, and that the tanks and residual waste in the tanks may be managed as low-level waste. The IA implements the MOU, providing for NRC to be reimbursed for its full costs.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objections. The OCFO has also reviewed the paper and concurs.

RECOMMENDATION:

Unless otherwise directed by the Commission within 10 days, the staff plans to sign the attached MOU and IA. Although we consider this action to be within the delegated authority of the Director, Office of Nuclear Material Safety and Safeguards, action will not be taken until the staff requirements memorandum is received.

/RA/

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Attachments:
1. Memorandum of Understanding
2. Interagency Agreement

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