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Memoranda of Understanding With States

Directive 5.2

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Memoranda of Understanding With States Directive 5.2

Policy (5.2-01)

It is the policy of the U. S. Nuclear Regulatory Commission to avoid duplication of effort and delays in the regulatory process. Section 274i of the Atomic Energy Act of 1954, as amended, authorizes the Commission to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. This directive and the specific memoranda of understanding (MOUs) contained in Handbook 5.2 comply with the policy statement on "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (57 FR 6462, February 25, 1992). (See Exhibit 1 of Handbook 5.2.)

Objectives (5.2-02)

- To devise a system for working with States in developing arrangements whereby the parties agree to cooperate and avoid duplication of effort. (021)
- To develop specific arrangements with States expressing an interest in NRC activities to commit to undertaking specific actions or responsibilities. These specific actions or responsibilities may include but are not limited to the following: (022)
 - State observation of NRC inspection activities (may be incorporated in an informal accompaniment protocol or letter of agreement) (a)

Objectives

(5.2-02) (continued)

- State participation in NRC inspection activities, including State resident engineers at nuclear power plants and inspection of packages and transport of low-level waste destined for disposal facilities (b)
- Exchange of information (c)
- Emergency planning (d)

Organizational Responsibilities and Delegations of Authority

(5.2-03)

The Commission

(031)

Approves policy matters related to first-of-a-kind MOUs.

Executive Director for Operations (EDO)

(032)

Approves and signs similar MOUs when the Commission decides on related policy.

Director, Office of State Programs (OSP)

(033)

- Coordinates the development of all MOUs with regional administrators and directors of affected program offices. (a)
- Reviews the language of all MOUs to ensure that they are consistent with Commission policy and that they contain—(b)
 - An introductory statement expressing the desire by NRC and the State to cooperate to avoid delays in decisions (i)
 - Principles of cooperation (ii)
 - Definition of the respective State and Federal authorities (iii)
 - A statement to distinguish MOUs from Section 274b agreements. The statement should include the following: (iv)

Director, Office of State Programs (OSP)

(033) (continued)

- Statement of purpose (a)
- Definition of the scope of the MOU (b)
- Definition of individual or joint procedures and responsibilities (c)
- Identification of principal working level contacts (d)
- Effective date and a statement regarding procedures for modification or termination of the MOU (e)
- A statement that commits both parties to periodic reviews to evaluate implementation of the MOU. (v)
- Ensures that appropriate headquarters and regional offices have input into the development of all MOUs that may affect their responsibilities. (c)
- Ensures that Commission approval is received for MOUs that commit the agency to significant resource expenditures in future years. (d)

**Office Directors and
Regional Administrators**

(034)

- Advise the Director, OSP, and other affected offices of initial inquiries from States regarding MOUs or of an internally perceived need for MOUs. (a)
- Initiate discussion with States on the development of MOUs or when requested to do so by OSP or another office. (b)

**Director of a Lead Office,
Regional Administrators, and the
Director, Office of State Programs**

(035)

- Take the lead in drafting MOUs with the advice and assistance of the Office of the General Counsel (OGC) and other appropriate offices. (a)

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**Director of a Lead Office,
Regional Administrators, and the
Director, Office of State Programs**
(035) (continued)

- Ensure that concurrences are obtained from OGC and other offices, as required. (b)
- Publish the MOU in the *Federal Register* for comment, as appropriate. The policy statement on "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" includes the provision that all agreements negotiated under its provisions be published for public comment. (c)
- Prepare a Commission Action Paper for the EDO's signature for first-of-a-kind policy matters related to an MOU and include a copy of the proposed MOU and a proposed *Federal Register* notice publishing the MOU for public comment. (d)
- Analyze public comments, develop a reply in coordination with OGC, and forward the MOU package, along with a recommendation, to the Commission for final approval. (e)
- When an MOU is to be signed by the EDO following Commission approval, prepare a paper to the EDO transmitting the MOU, the proposed transmittal letter, and the proposed *Federal Register* notice. Coordinate with the Office of Public Affairs (OPA) to develop a press release and to release the public announcement when the MOU has been signed by the appropriate parties. (f)
- Transmit three originals of the MOU to the State for signature. (g)
- Coordinate with OPA to release the public announcement after the MOU has been signed by NRC and the State. In coordination with the State through OSP, release the *Federal Register* notice through the Office of the Secretary. One of the signed originals is transmitted with the *Federal Register* notice. (h)
- Produce copies of the MOU for both NRC and State use (normally 50 copies). (i)

**Directors of Affected Offices Other
Than the Lead Office**
(036)

- Consult with the Director, OSP, and the regional or lead office in negotiations with States concerning the development of MOUs affecting responsibilities and authorities of their offices. (a)
- Appoint principal working-level contacts for MOUs affecting their program area. (b)

Definitions
(5.2-04)

Memoranda of Understanding. Specific or detailed instruments containing statements and principles of cooperation that commit NRC and the State to cooperate in nuclear regulatory matters to the extent permitted by law.

Applicability
(5.2-05)

This directive and handbook apply to all NRC headquarters and regional employees who implement the system and staff plan for developing and negotiating MOUs with States, as authorized under Section 274i of the Atomic Energy Act of 1954, as amended.

Handbook
(5.2-06)

Handbook 5.2 lists memoranda currently in effect, contains the current statement of policy, and provides a model MOU.

References
(5.2-07)

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Statement of Policy on "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (57 FR 6462, February 25, 1992).

***Memoranda of
Understanding With
States***

***Handbook
5.2***

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Purpose of This Handbook

This handbook contains authorities for the U.S. Nuclear Regulatory Commission (NRC) to enter into memoranda of understanding (MOUs) with States and also contains examples of existing MOUs.

Exhibit 1 is the NRC's policy on cooperation with States at commercial nuclear power plants and other nuclear production or utilization facilities (57 FR 6462, dated February 25, 1992). This policy creates a uniform method of allowing States to observe, and in some cases participate in, inspections at nuclear power plants. The policy was also amended to allow State representatives in adjacent States (within the 10-mile plume exposure pathway emergency planning zone) to observe NRC inspections at licensed facilities in another State.

Exhibit 2 lists current MOUs with States (as of October 1997), excluding MOUs on the Emergency Response Data System (see Exhibit 3). Exhibit 2 MOUs cover a variety of different subjects, such as exchange of proprietary information, low-level waste (LLW) inspections, and LLW transportation regulation.

Exhibit 3 lists the MOUs with States that allow the States to have access to NRC's emergency response data system (ERDS). ERDS is a direct computer link between licensees' computers at commercial nuclear power plants and computers at the NRC Operations Center, which allows NRC to acquire accurate and timely data on plant conditions during emergencies. The ERDS MOUs give the States access to ERDS data for nuclear power plants within a 10-mile plume exposure emergency planning zone (EPZ) of their borders.

Exhibit 4 is a sample MOU with a State that allows the State to participate in NRC inspections through its State resident engineer. The MOU describes the process for coordinating inspection coverage between NRC and the State that will exist under the signed agreement.

Exhibit 1

Statement of Policy on "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (57 FR 6462, February 25, 1992)

It is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. The NRC and the States have complementary responsibilities in protecting public health and safety and the environment. Furthermore, the NRC is committed to the full and timely disclosure of matters affecting the public and to the fair and uniform handling of all agency interactions with the States, the public, and NRC licensees.

Accordingly, the NRC will continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States. The NRC will respond in a timely manner to a State's requests for information and its recommendations concerning matters within the NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of public meetings between NRC and its licensees and applicants in order that State representatives may attend as observers. Additionally, at the State's request, representatives from a State in which the NRC-licensed facility is located (the host State) and from a State within the plume exposure pathway emergency planning zone (EPZ) (within approximately a 10-mile radius) of an NRC-licensed facility located in another State (the adjacent State) will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

The Commission recognizes that the involvement of qualified State representatives in NRC radiological health and safety programs has the potential for providing additional safety benefit. Therefore, the NRC will consider State proposals to enter into instruments of cooperation for State participation in inspections and inspection entrance and exit meetings. State participation in NRC programs would allow qualified State representatives from States in which an NRC-licensed facility is located, either individually or as a member of a team, to conduct specific inspection activities in accordance with NRC standards, regulations, and procedures in close cooperation with the NRC. State activities will normally be conducted under the oversight of an authorized NRC representative with the degree of oversight dependent upon the activity involved. In the proposal to enter into an instrument of cooperation, the State must identify those activities for which cooperation with the NRC is desired. The State must propose a program that: (1) recognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or

Exhibit 1 (continued)

utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; (2) is in accordance with Federal standards and regulations; (3) specifies minimum education, experience, training, and qualifications requirements for State representatives which are patterned after those of NRC inspectors; (4) contains provisions for the findings of State representatives to be transmitted to NRC for disposition; (5) would not impose an undue burden on the NRC and its licensees and applicants; and (6) abides by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.

Consistent with section 274c of the Act, the NRC will not consider State proposals for instruments of cooperation that do not include the elements listed above, which are designed to ensure close cooperation and consistency with the NRC inspection program. As a practical matter, the NRC is concerned that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation. For purposes of this policy statement, an independent State inspection program is one in which State representatives would conduct inspections and assess NRC-regulated activities on a State's own initiative and authority without close cooperation with, and oversight by, an authorized NRC representative.

Instruments of cooperation between the NRC and the States, approved prior to the date of this policy statement will continue to be honored by the NRC. The NRC strongly encourages those States holding these agreements to consider modifying them, if necessary, to bring them into conformance with the provisions of this policy statement.

Implementation

As provided in the policy statement the NRC will routinely keep State Liaison Officers informed on matters of interest to the States. In general, all State requests should come from the State Liaison Officer to the appropriate NRC Regional Office. The NRC will make every effort to respond as fully as possible to all requests from States for information on matters concerning nuclear production, or utilization facility safety within 30 days. The NRC will work to achieve a timely response to State recommendations relating to the safe operation of nuclear production or utilization facilities. Host State or adjacent State representatives are free to attend as observers any public meeting between the NRC and its applicant and licensees. The appropriate Regional Office will routinely inform State Liaison Officers of the scheduling of public meetings upon request. Requests from host States and adjacent States to observe inspections and/or inspection entrance and exit meetings conducted by the NRC require the approval of the appropriate Regional Administrator.

Exhibit 1 (continued)

Implementation (continued)

NRC will consider host State participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the specific inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement. NRC may develop inspection plans along with qualified State representatives using applicable procedures in the NRC Inspection Manual. Qualified State representatives may be permitted to perform inspections in cooperation with, and on behalf of, the NRC under the oversight of an authorized NRC representative. The degree of oversight provided would depend on the activity. For instance, State representatives may be accompanied by an NRC representative initially, in order to assess the State inspectors' preparedness to conduct the inspection individually. Other activities may be conducted as a team with NRC taking the lead. All enforcement action will be undertaken by the NRC.

The Commission will decide policy matters related to agreements proposed under this policy statement. Once the Commission has decided the policy on a specific type of agreement, similar State-proposed agreements may be approved, consistent with Commission policy, by the Executive Director for Operations. A State-proposed instrument of cooperation will be documented in a formal MOU signed by NRC and the State.

Once the NRC has decided to enter into an MOU for State involvement in NRC inspections, a formal review, not less than six months after the effective date, will be performed by the NRC to evaluate implementation of the MOU and resolve any problems identified. Final agreements will be subject to periodic reviews and may be amended or modified upon written agreement by both parties and maybe terminated upon 30 days written notice by either party.

Additionally, once State involvement in NRC activities at a nuclear production or utilization facility is approved by the NRC, the State is responsible for meeting all requirements of an NRC licensee and applicant related to personal safety and unescorted access of State representatives at the site.

Exhibit 1 (continued)

**Appendix A
Protocol Agreement for State Observation of
NRC Inspections**

NRC Protocol:

- The Regional State Liaison Officer (RSLO) will normally be the lead individual responsible for tracking requests for State observation, assuring consistency regarding these requests, and for advising the Regional Administrator on the disposition of these requests. The appropriate technical representative or Division Director will communicate with the State on specific issues concerning the inspection(s).
- Requests for observations of Headquarters-based inspections will also be coordinated through the RSLO. Headquarters-based inspections should be referred through the RSLO to a technical representative designated by the Region.
- NRC will process written requests to the Regional Administrator through the State Liaison Officer (SLO). Requests should identify the type of inspection activity and facility the State wishes to observe.
- Limits on scope and duration of the observation period may be imposed if, in the view of the Regional Administrator, they compromise the efficiency or effectiveness of the inspection. Regions should use their discretion as to which, if any, inspections will be excluded from observations.
- States will be informed they must not release information concerning the time and purpose of unannounced inspections.
- The Region will make it clear to the licensee that the State views are not necessarily endorsed by NRC. The Region will also make it clear that only NRC has regulatory authority for inspection findings and enforcement actions regarding radiological health and safety.

State Protocol:

- A State will make advance arrangements with the licensee for site access training and badging (subject to fitness for duty requirements), prior to the actual inspection.
- Normally, no more than one individual will be allowed to observe an NRC inspection.
- The State will be responsible for determining the technical and professional competence of its representatives who accompany NRC inspectors.

Exhibit 1 (continued)

State Protocol: (continued)

- An observer's communication with the licensee will be through the appropriate NRC team member, usually the senior resident inspector or the team leader.
- When informed of an unannounced inspection, a State must not release information concerning its time and purpose.
- An observer will remain in the company of NRC personnel throughout the course of the inspection.
- State observation may be terminated by the NRC if the observer's conduct interferes with a fair and orderly inspection.
- An observer will not be provided with proprietary or safeguards information. Observers will not remove any material from the site without NRC or licensee approval.
- The State observer, in accompanying the NRC inspectors, does so at his or her own risk. NRC will not be responsible for injuries or exposures to harmful substances which may occur to the accompanying individual during the inspection and will assume no liability for any incidents associated with the accompaniment.
- The State observer will be expected to adhere to the same conduct as NRC inspectors during an inspection accompaniment.
- If the State observer notices any apparent non-conformance with safety or regulatory requirements during the inspection, he/she will make those observations promptly known to the NRC team leader or lead inspector. Likewise, when overall conclusions or views of the State observer are substantially different from those of the NRC inspectors, the State will advise the team leader or lead inspector and forward those views, in writing, to the NRC Region. This will allow NRC to take any necessary regulatory actions.
- Under no circumstances should State communications regarding these inspections be released to the public or the licensee before they are reviewed by the NRC and the inspection report is issued. State communications may be made publicly available, similar to NRC inspection reports, after they have been transmitted to and reviewed by NRC.

Adjacent State Protocol:

- An adjacent State is a State within the plume exposure pathway emergency planning zone (EPZ) (within approximately a 10-mile radius) of an NRC-licensed facility located in another State. A host State is a State in which an NRC-licensed facility is located. An adjacent State may request permission to observe NRC inspections at an NRC-licensed facility in a host State.

Exhibit 1 (continued)

Adjacent State Protocol: (continued)

- The adjacent State SLO must communicate his/her request for observation to the Regional Administrator for the region in which the facility is located.
- The adjacent State SLO must also communicate his/her request to the host State SLO so that each State is aware of the other's intentions.
- If a host State and an adjacent State request observation of the same inspection, the Regional Administrator will make the final determination on the number of State observers who may attend the inspection. If there is a need to limit the number of observers, the Regional Administrator will routinely give preference to the host State observers.
- Adjacent State observers will abide by the same protocol in all aspects of the inspection as host States under this agreement.

Signature of State Observer

Date

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Exhibit 2

List of Memoranda of Understanding With States*

State	Umbrella	Specific/Limited MOU
Illinois	49 FR 20586 5/15/84	LLW Inspection, 49 FR 27861 7/6/84 ASME Code Inspections, 55 FR 23317 6/7/90 Resident Engineer, 55 FR 51973 12/18/90
Indiana	43 FR 61053 12/29/78	Water Quality, 43 FR 61053 12/29/78
Louisiana		Inspections in Outer Continental Shelf, 32 FR 6807 5/3/67
Nebraska		Water Quality, 44 FR 49529 8/23/79 In Situ Mining, 47 FR 55444 12/9/82
New York	43 FR 19485 5/5/78	
Oregon	45 FR 8394 2/7/80	Proprietary Information, 45 FR 8394 2/7/80 Resident Inspectors, 45 FR 8395 2/7/80
Pennsylvania	51 FR 43487 12/2/86	LLW Inspection, 52 FR 43695 11/13/87 Site Decommissioning Management Plan, 61 FR 46832 9/5/96
South Carolina		Water Quality, 43 FR 19486 5/5/78 Transportation Regulation at Waste Site, 47 FR 23836 6/1/82
Virginia		Water Quality, 43 FR 19487 5/5/78
Washington	43 FR 43774 9/27/78	Transportation Regulation at Waste Site, 47 FR 17893 4/26/82 Public Information, 48 FR 38358 8/23/83 Exchange of Information, 50 FR 14782 4/15/85

*As of October 1997.

Exhibit 3

List of Memoranda of Understanding (MOU) on the Emergency Response Data System (ERDS)*

State	ERDS MOU
Alabama	57 FR 49725 11/03/92
Arizona	58 FR 26801 05/05/93
Arkansas	58 FR 65198 12/13/93
Delaware	Effective 01/25/95**
Georgia	57 FR 38528 08/25/92
Kansas	59 FR 6979 02/14/94
Louisiana	61 FR 64379 12/04/96
Massachusetts	58 FR 37761 07/19/93
Maryland	58 FR 13510 03/11/93
Michigan	57 FR 5022 02/11/92
North Carolina	57 FR 27075 06/17/92
New Hampshire	59 FR 52321 10/17/94
New Jersey	58 FR 21603 04/22/93
New York	58 FR 21605 04/22/93
Ohio	57 FR 20856 05/15/92
Pennsylvania	Effective 08/01/92**
South Carolina	Effective 04/20/94**
Tennessee	58 FR 43920 08/18/93
Vermont	62 FR 6281 02/11/97
Washington	57 FR 18531 04/30/92
Wisconsin	61 FR 51727 10/03/96

*As of October 1997.

**Not published in *Federal Register*.

Exhibit 4

Memorandum of Understanding Pertaining to State Resident Engineers Between the U.S. Nuclear Regulatory Commission and the State of _____

I. Authority

The U.S Nuclear Regulatory Commission (NRC) and the State of _____ enter into this Memorandum of Understanding under the authority of Section 274i of the Atomic Energy Act of 1954, as amended, and Section 4 of the _____ Facility Safety Act (State legislation).

II. Background

- A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the NRC 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 protect the public health and safety. Under these statutes, NRC is the responsible agency regulating nuclear power plant safety.
- B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (57 FR 6462, February 25, 1992.) The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC. NRC will only consider State proposals for instruments of cooperation to conduct inspection programs of NRC-regulated activities that provide for close cooperation with, and oversight by, the NRC.
- C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, conducting safety inspections of nuclear power plants to assure that the plants are designed, constructed, tested, maintained, operated and decommissioned in accordance with NRC regulatory requirements. The NRC operating reactor inspection program is conducted by Headquarters personnel, region-based inspectors and Resident Inspectors. NRC Resident Inspectors are located at each nuclear power plant

Exhibit 4 (continued)

II. Background (continued)

site. Resident Inspectors provide the major onsite presence for direct observation and verification of licensee activities. The NRC Resident Inspector also acts as the primary onsite evaluator for the NRC inspection effort related to such items as Licensee Event Reports, events, and incidents. NRC Resident Inspectors also interact with local officials, the press, and the public.

III. Scope

- A. This MOU defines the way in which NRC and the State, with the assistance of State Resident Engineers, will cooperate in planning and conducting inspections of nuclear power plants in the State to ensure compliance with NRC regulations. This MOU does not apply to investigations or inquiries conducted by NRC.
- B. For the purpose of this MOU, inspection is defined as the examination, review, or evaluation of any program or activity of a licensee to determine the effectiveness of the program or activity in ensuring that the health and safety of the public and plant personnel are adequately protected and that the facility is operated safely; and to determine compliance with any applicable NRC rule, order, regulation, or license condition pursuant to the Atomic Energy Act of 1954, as amended, and commitments made to NRC.
- C. Nothing in this MOU is intended to restrict or expand the statutory authority of NRC or the State or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this MOU intended to restrict or expand the authority of the State on matters not within the scope of this MOU.
- D. Nothing in this MOU confers upon the State or State Resident Engineers authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; and (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.
- E. Under this MOU, one State Resident Engineer may be assigned to each nuclear power plant site in the State.

IV. NRC's General Responsibilities

NRC is responsible for conducting safety inspections of nuclear power plants to ensure that the plants are designed, constructed, tested, operated, maintained, and decommissioned in

Exhibit 4 (continued)

IV. NRC's General Responsibilities (continued)

accordance with the NRC regulatory requirements. These inspections are conducted in accordance with the NRC Inspection Manual using personnel appropriately qualified and trained to perform the necessary tasks. Only the NRC may take appropriate enforcement actions for all inspections conducted under this MOU.

V. The State's General Responsibilities

- A. The State, through its State Resident Engineer, will cooperate with NRC in performing safety inspections. Such inspections shall be conducted in accordance with NRC regulatory requirements and procedures governing operating nuclear power plants in the State and under the oversight of an authorized NRC representative.
- B. The State will cooperate with the NRC in such inspections as necessary for the NRC to ensure that power reactors in the State continue to be operated without undue risk to the public health and safety and the environment.
- C. State activities will be performed in accordance with Federal standards and requirements and NRC practices, with no undue burden on the NRC or its licensees.

VI. Implementation

The State and NRC agree to work in concert to assure that the following staffing, training, inspection and enforcement, communications and information exchange and conflict resolution protocol regarding the State Resident Engineer Program are followed.

A. Staffing

- 1. The State will select its State Resident Engineers in accordance with its own procedures and qualifications, patterned after those for NRC Resident Inspectors.
- 2. State Resident Engineers will have education and experience equivalent to that required for an NRC Resident Inspector.
- 3. The State is responsible for obtaining security clearances for State Resident Engineers that are acceptable to the nuclear power plant licensee.
- 4. The State is responsible for ensuring that State Resident Engineers comply with all requirements established by the nuclear power plant licensee, including fitness for duty, site access, and onsite space and support. NRC is not responsible for ensuring access or space for State personnel.

Exhibit 4 (continued)

VI. Implementation (continued)

A. Staffing (continued)

5. The State will certify to NRC that each State Resident Engineer has no financial or other interests that may call into question his or her objectivity or that create a conflict of interest or the appearance of a conflict of interest.

B. Training

1. State Resident Engineers performing inspection functions will be qualified and certified by the State in accordance with the NRC Inspection Manual or its equivalent. Such qualification and certification will be made for each inspection activity in which a State Resident Engineer will participate, such as:

Reactor operations (boiling-water reactor (BWR))
Reactor operations (pressurized-water reactor (PWR))
Reactor engineering—electrical
Reactor engineering—instrumentation

2. NRC will use its best efforts to make space available in its inspector training courses and special orientation programs to accommodate the training needs of State Resident Engineers.
3. The State will pay the travel and per diem expenses of State Resident Engineers attending training courses. Where NRC establishes special training classes, the State agrees to reimburse NRC for its costs of training State Resident Engineers, if requested.
4. NRC will provide one week of on-the-job training and orientation for the State Resident Engineer at each site.
5. Information acquired by NRC relating to the ability of a State Resident Engineer to perform inspections satisfactorily in accordance with NRC Regulations, requirements, standards and procedures will be provided to the State for appropriate action.

C. Inspections and Enforcement

1. The State Resident Engineer's activities are intended to assist NRC in the conduct of its regulatory activities.
2. The State Resident Engineers are responsible for meeting all requirements imposed by a licensee related to personal safety, radiological protection, and access at the plant site.

Exhibit 4 (continued)

- VI. Implementation** (continued)
- C. Inspections and Enforcement** (continued)
3. To the extent practicable, it is intended that the State Resident Engineers will arrange their schedules of inspection activities in coordination with NRC personnel in order to provide the widest possible coverage of the plant and its operations.
 4. If the State intends to participate in the inspection process, the State will provide recommendations for the NRC inspection plan, consistent with NRC Inspection Manual Chapter 2515, generally describing proposed inspection activities for the upcoming month. These recommendations will include a schedule of the inspections and a listing of NRC procedures to be used by the State Resident Engineer. In accordance with Section VI.C.1 above, such recommendations shall be designed to assist NRC site inspection activities. NRC shall take such recommendations into account in formulating its Master Inspection Plans.
 5. The State will submit the monthly inspection recommendations to the NRC Resident Inspector in sufficient time to allow NRC review before preparation for the inspection plan. NRC will review the State's inspection recommendations and will inform the State of any activities that appear inappropriate, untimely, or impose an undue burden on NRC or the licensee, such as schedular conflict with NRC special inspections, management meetings, or Institute for Nuclear Power Operations (INPO) visits. The State will make adjustments to the State inspection recommendations, as necessary, to address NRC comments. Taking into account recommendations made by the State, NRC will be responsible for developing a single site inspection plan. NRC staff inspection activity will not be reduced for a facility below minimum program requirements on the basis of the availability of State's inspection resources.
 6. NRC will coordinate with the State Resident Engineers, to the extent practicable, unscheduled inspections conducted in response to events, issues and allegations.
 7. An NRC Resident Inspector will initially accompany each State Resident Engineer on at least two inspections to review the performance of the State Resident Engineer. On the basis of these reviews, the NRC Resident Inspector will make recommendations to the State Resident Engineer regarding the preparation, conduct and technical adequacy of the inspections.

Exhibit 4 (continued)

VI. Implementation (continued)

C. Inspections and Enforcement (continued)

8. The NRC Resident Inspectors may accompany the State Resident Engineers on any inspection. The State Resident Engineers may, at the NRC's discretion, accompany the NRC Resident Inspectors on inspections, at inspection entrance and exit interviews, and at enforcement meetings. The State recognizes that there may be occasions when, because of the sensitive nature of certain inspections and meetings, it will be necessary for NRC, at its discretion, to conduct such activities privately and separately.
9. NRC will provide the State with a copy and current updates of the NRC Inspection Manual and Master Inspection Plan (MIP) for each reactor site in the State at which a State Resident Engineer is stationed. The State will hold the MIP in confidence and will not release it to the public or licensees except in accordance with Section VI.D.6 of this MOU.
10. Allegations received by the State Resident Engineers will be provided to the NRC Resident Inspectors and processed in accordance with NRC procedures. Upon request by NRC, the State Resident Engineers will be made available to assist the NRC in addressing allegations.
11. The results of all State Resident Engineers' inspections will be discussed in a timely manner with the NRC Resident Inspectors. Matters that may require action by the licensee will be discussed with licensee management by the NRC Resident Inspectors, or by the State Resident Engineers in the presence of the NRC Resident Inspectors, except as may be necessary under Section VI.C.12.
12. If a State Resident Engineer identifies situations with immediate safety significance, he or she will immediately communicate this information to the licensee and the NRC Resident Inspectors. It is essential that this information be discussed with an NRC representative immediately upon discovery so that NRC may take prompt action as dictated by the situation. If the NRC Resident Inspectors are unavailable, a State Resident Engineer will transmit this information immediately to NRC, Region _____ (the Regional Duty Officer during non-business hours).
13. All written communications with the licensee will be made through NRC. If a State Resident Engineer prepares a written report of the results of an inspection activity covered by this MOU, the report will not be sent directly to the licensee, but will be sent to the NRC Region _____ office and the NRC Resident Inspectors. The State is responsible for the technical adequacy of State Resident Engineers' inspection reports. NRC will forward the report to the licensee with a cover letter discussing the issues, if any, that the NRC believes warrant action by the licensee.

Exhibit 4 (continued)

VI. Implementation (continued)

C. Inspections and Enforcement (continued)

14. If NRC identifies potential violations of NRC regulatory requirements as a result of the State's inspection activities, NRC may take appropriate enforcement action as set forth in Appendix C of 10 CFR Part 2. The State Resident Engineers will assist NRC in the preparation of enforcement actions and during any enforcement conferences or hearings for those matters that were identified as a result of the State's inspection activities. Enforcement action, if any, will be taken only by NRC.

D. Communications and Information Exchange

1. The State and NRC agree in good faith to make available to each other information within the intent and scope of this MOU.
2. NRC and the State agree to meet periodically, at least annually, at mutually agreeable times to exchange information on matters of common concern pertinent to this MOU. Unless otherwise agreed, such meetings will be held in the NRC Region _____ Office or at the NRC Resident Inspector's office.
3. NRC will inform the State of formal meetings with licensed management involving a site to which a State Resident Engineer is assigned and provide the State the opportunity to attend with the exception of those meetings that NRC determines should be closed as provided in Section VI.D.8 of this MOU.
4. The State and NRC agree to consider each other's identified information needs and concerns when developing inspection plans.
5. The State will conform to NRC practices regarding information disclosure. For instance, the State must abide by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.
6. To preclude the premature public release of sensitive information, the State and NRC shall protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the (State) Freedom of Information Act and other applicable authority. The State and NRC shall consult with each other before releasing sensitive or proprietary information related to this MOU.
7. Press releases regarding State's activities or NRC inspections in which the State has been involved under this MOU which are prepared by one party will be provided to the other party before issuance. Press releases are to conform to information disclosure restraints of Sections VI.D.5 and VI.D.6.

Exhibit 4 (continued)

VI. Implementation (continued)

D. Communications and Information Exchange (continued)

8. The State will provide NRC with written notice at least 60 days before the stationing of a State Resident Engineer at a site.

VII. Contacts

- A. The principal senior management contacts for this MOU will be _____ for the NRC and _____ for the State. These individuals may designate appropriate staff representatives for the purpose of administering this MOU.
- B. Identification of these contacts is not intended to restrict communication between NRC and State staff members on technical and other day-to-day activities.

VIII. Resolution of Conflicts

- A. If disagreements or conflicts arise about matters within the scope of this MOU, NRC and the State will work together to resolve these differences.
- B. Resolution of differences between the State and NRC staff over the significance of findings will be the initial responsibilities of the Director, Division of Reactor Projects, Region _____, NRC..
- C. Differences that cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Regional Administrator, Region _____, NRC and the _____, State. The decision of the Regional Administrator will be final.
- D. The NRC's General Counsel has the final authority to interpret the NRC's regulations.

IX. Effective Date

This MOU shall become effective upon signing by the _____, State, and the _____, NRC, and shall remain in effect permanently unless terminated by either party on 30 days written notice.

X. Duration, Termination, and Modification

A formal review, not less than six months after the effective date, will be performed by the NRC to evaluate implementation of the MOU and resolve any problems identified. This MOU will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

Exhibit 4 (continued)

XI. Separability

If any provision(s) of this MOU, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this MOU and the application of such provisions to other persons or circumstances shall not be affected.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION,

Executive Director for Operations

Date

FOR THE STATE OF _____

(Title of Department Director)

Date