



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

AUG 03 1988

NOTE TO: All Interested Parties
FROM: Eileen T. Tana
SUBJECT: NOTICE OF MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE NUCLEAR REGULATORY COMMISSION AND THE DEPARTMENT OF ENERGY

Enclosed for your information is the Federal Register notice dated August 1, 1988 which contains the MOU between the NRC and the DOE regarding the NRC's recovery of the costs it incurs in performing pre-license application activities related to the disposal of high-level radioactive waste and spent fuel in a geologic repository.

Sincerely,

A handwritten signature in cursive script that reads "Eileen T. Tana".

Eileen T. Tana, Licensing Assistant
Operations Branch
Division of High-Level Waste Management
Office of Nuclear Material
Safety and Safeguards

Enclosure:
As stated

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U.S. Nuclear Regulatory Commission,
Washington, DC 20555. Telephone (301)
492-4750.

Samuel J. Chilk,

Secretary of the Commission.

**Memorandum of Understanding
Between the United States Nuclear
Regulatory Commission and the United
States Department of Energy**

The Memorandum of Understanding establishes general policy and procedures regarding the Nuclear Regulatory Commission's (NRC) recovery of the costs it incurs in performing pre-license application activities related to the disposal of high-level radioactive waste and spent fuel in a geologic repository. NRC costs are to be recovered from the Nuclear Waste Fund managed by the Department of Energy (DOE).

I. Introduction

A. Background

In section III of the Nuclear Waste Policy Act of 1982, as amended (NWPA), Congress made clear that while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and spent nuclear fuel, the costs of disposal should be borne by the generators and owners of the waste and spent fuel. To implement this policy, Congress in section 302 of the NWPA established the Nuclear Waste Fund. The Fund consists of payments from the owners and generators of high-level radioactive waste and spent nuclear fuel. Section 302 authorizes the Secretary of Energy to make expenditures from the Fund for activities under Titles I and II of the NWPA. This would include appropriate reimbursement of NRC costs.

B. Purpose

The purpose of this Memorandum of Understanding is to set forth the activities to be performed by the NRC during the pre-license application phase of the Civilian Radioactive Waste Management Program for which costs shall be paid from the Nuclear Waste Fund, and to establish general procedures for the payment of such costs from the Nuclear Waste Fund. The primary objective of these activities is to identify and resolve issues to the extent possible prior to license application. The parties intend to enter into another Memorandum of Understanding at a later date to provide for NRC recovery of its post-license application costs.

**NUCLEAR REGULATORY
COMMISSION**

**Energy; Permanent Disposal of High-
Level Radioactive Waste and Spent
Nuclear Fuel; Memorandum of
Understanding**

AGENCY: Nuclear Regulatory
Commission.

ACTION: Notice of Memorandum of
Understanding between the Nuclear
Regulatory Commission and the
Department of Energy.

SUMMARY: On July 20, 1988, the Nuclear
Regulatory Commission and the
Department of Energy, entered into the
Memorandum of Understanding below.
The purpose of the MOU is to establish
the terms under which the NRC will be
reimbursed from the Nuclear Waste
Fund for NRC pre-application activities
related to the disposal of high-level
radioactive waste and spent fuel in a
geologic repository.

FOR FURTHER INFORMATION CONTACT:
Ronald M. Scroggins, Deputy Director
for Financial Management & Controller.

C. Authority

This Memorandum of Understanding is in accordance with the provisions of sections 111, 113, 114, and 302 of the NWPA.

D. Policy

Consistent with the NWPA, both the NRC and DOE's Office of Civilian Radioactive Waste Management (OCRWM) agree that it is in the best interest of the Nuclear Waste Management Program for NRC to review OCRWM activities during the pre-license application phase so that issues can be identified and resolved to the extent possible prior to the submission of a license application by OCRWM. OCRWM agrees to reimburse from the Nuclear Waste Fund all reasonable costs that are incurred by the NRC as a direct result of NRC's pre-license application consultations provided to the OCRWM program. Activities for which costs will be recovered from the Nuclear Waste Fund are as follows: (1) The development of NWPA regulatory requirements and technical guidance (technical guidance in the form of regulatory guides, rules, or other appropriate management approved guidance, consultation with DOE, States, and Indian Tribes, and changes to 10 CFR 2 to accommodate the licensing support system and improve the review and hearing process to meet the mandated three-year licensing schedule); (2) the development of technical assessment capability for repository licensing reviews; (3) the development and implementation of quality assurance/quality control and inspection programs for NWPA activities; (4) site characterization reviews (conducting pre-license application reviews of OCRWM and OCRWM contractor NWPA activities, conducting pre-license application reviews of the environmental impact statement (EIS) resulting from the repository program including those activities required to make the EIS acceptable for adoption by NRC); (5) the review of transport packages certificate applications and technical issues related to package certification; (6) the review of pre-license application activities relating to a monitored retrievable storage (MRS) facility; (7) the conduct of high-level waste research necessary to support NRC regulatory activities directly related to the repository, MRS or transportation aspects of the program; (8) activities relating to the disposal of defense high-level waste in the geologic repository; (9) the cost of an independent auditor performing audits of NRC costs covered by this

Memorandum; and (10) that portion of the costs of the following that arise solely as a result of NRC's pre-license application consultations with the OCRWM program: (a) NRC staff's legal support for NWPA activities; (b) Atomic Safety and Licensing Board and Atomic Safety Licensing Appell Panel expenses related to NWPA issues; (c) reviews of NWPA activities conducted by NRC's Advisory Committee on Nuclear Waste; and (d) services provided by NRC's Office of Governmental and Public Affairs related to NWPA issues. In carrying out its responsibilities covered by this Memorandum of Understanding, the NRC will avoid unnecessary duplication of activities performed by DOE.

Additional activities may be added to those listed above, after consultation between OCRWM and NRC.

II. Management and Program Guidelines

As soon as practicable, following the end of each fiscal year, the NRC shall provide the DOE with a statement certified by an independent auditor setting forth the amount DOE is obligated to pay for NRC's costs incurred for work as defined in this MOU during the fiscal year just completed. DOE shall promptly, following the appropriation of funds, deposit into the General Fund of the Treasury of the United States a sum equal to the certified NRC costs. If in any year, the NRC audited costs significantly exceed the funds available for NRC reimbursement based upon funds appropriated to OCRWM, DOE shall promptly notify the NRC so that a payment schedule can be set.

The NRC shall provide OCRWM, prior to June of each year, with an estimate of the costs NRC expects to incur during the next three fiscal years. These estimates shall include a description of anticipated work and an explanation of how these amounts were derived. This information shall be included in NRC's budget submission to the Office of Management and Budget.

Further details regarding billing and payment will be set forth in the annual Interagency Agreement between the NRC and the Department of Energy.

III. Administration

This Memorandum of Understanding may be modified or amended by written agreement between NRC and OCRWM and terminated by either party upon 60-day written notice to the other party. This Memorandum of Understanding is effective when signed by both parties.

The following signatures constitute acceptance of this agreement.

Nuclear Regulatory Commission.

Date: July 20, 1988.

Victor Stello, Jr.,

Executive Director of Operations.

Department of Energy.

Date: July 18, 1988.

Charles E. Kay,

Acting Director, Office of Civilian

Radioactive Waste Management.

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BILLING CODE 7590-01-M