UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D. C. 20555

December 23, 1988

NRC Information Notice No. 88-100: MEMORANDUM OF UNDERSTANDING BETWEEN NRC AND OSHA RELATING TO NRC-LICENSED FACILITIES (53 FR 43950, OCTOBER 31, 1988)

Addressees:

All major nuclear materials licensees and utilities holding construction permits and operating licenses.

Purpose:

This notice is intended to inform all licensees of a new Memorandum of Understanding (MOU) between NRC and the U.S. Occupational Safety and Health Administration (OSHA) that provides guidelines for coordination of interface activities between the two Agencies. It is expected that licensees will review this information, and distribute the notice to responsible radiation safety and industrial hygiene staffs. However, suggestions contained in this information notice do not constitute new NRC requirements, and no written response is required.

Discussion:

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 that NRC regulates and industrial safety that OSHA regulates, a coordinated interagency effort can ensure against gaps in the protection of workers, and at the same time, avoid duplication of effort. The new MOU replaces an existing procedure which outlined the NRC's and OSHA's interagency activities.

Although NRC does not specifically examine industrial safety during 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 or monitor corrective action 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. Also, when known, NRC inspectors will encourage licensees to report to OSHA accidents resulting in a fatality or multiple hospitalizations. It is not the intent of the Commission that NRC inspectors perform the role of OSHA inspectors; however, they are to elevate OSHA safety issues to the attention of OSHA Regional management when appropriate.

Similarly, OSHA Regional Offices will inform the appropriate NRC Regional Office of matters which are in the purview of NRC, when these matters come to their attention during Federal or State safety and health inspections or through complaints.

The Memorandum of Understanding between NRC and OSHA is enclosed for your information.

No written response is required by this notice. If you have any questions about this information notice, please contact the appropriate NRC regional office or this office.

Glen L Sjoblom

Richard E. Cunningham, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material
Safety and Safeguards

Technical Contacts: Glen L. Sjoblom, NMSS
(301) 492-3430

Frederick J. Hebdon, NRR
(301) 492-1243

Attachments:
1. Memorandum of Understanding from the Federal Register Dated October 31, 1988
2. List of Recently Issued NRC Information Notices

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE U.S. NUCLEAR REGULATORY COMMISSION

AND

THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

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 licensees 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 inter-agency 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;
   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, and c). NRC does not have statutory authority for the fourth hazard described in paragraph 3 (d). P.Z

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 (OSH 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.

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

FOR THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

John A. Pendergrass
Assistant Secretary

October 21, 1988

(2) Return to me. Bidwell

UNITED STATES
NUCLEAR REGULATORY COMMISSION
Office of Governmental and Public Affairs
Washington, D.C. 20555

No. 88-148
Tel. 301/492-0240

FOR IMMEDIATE RELEASE
(Friday, October 21, 1988)

OSHA, NUCLEAR REGULATORY COMMISSION AGREE ON COORDINATION OF EFFORTS TOWARD WORKER SAFETY IN NUCLEAR FACILITIES

The Nuclear Regulatory Commission and the Occupational Safety and Health Administration (OSHA) in the U.S. Department of Labor have agreed on a coordinated effort toward worker safety in nuclear facilities licensed by the NRC.

The agreement spells out the responsibilities of the two agencies in protecting workers at NRC-licensed facilities, provides guidelines for improved coordination, and also commits the two agencies to periodic joint evaluation of operational safety hazards involved in chemical processing of nuclear material at some facilities.

The agreement is contained in a memorandum of understanding signed for the NRC by its Executive Director for Operations, Victor Stello, Jr., and for OSHA by Assistant Secretary of Labor for Occupational Safety and Health, John A. Pendergrass.

It is expected to benefit many thousands of workers in several thousand NRC-licensed facilities such as nuclear power plants, plants manufacturing nuclear fuel for nuclear power reactors, radiopharmaceutical manufacturers, hospitals and small plants and laboratories licensed by the NRC to use radioactive materials.

The accord also replaces existing guidelines which had been used to coordinate activities of the two agencies.

Discussions which led to today's agreement were prompted by concerns about jurisdiction of the two agencies following a 1986 fatal accident at Sequoyah Fuels Corp.'s uranium conversion plant near Gore, Oklahoma, which involved release of a substance that was both chemically toxic and radioactive.

One purpose of the agreement is to clarify each agency's jurisdictional responsibilities in NRC-licensed facilities. OSHA will cover plant conditions which result in an occupational risk, but do not affect the safety of licensed radioactive materials. For example, OSHA will protect against exposure to toxic nonradioactive materials and other industrial hazards in the workplace.

The NRC will deal with radiation and chemical risks resulting from radioactive materials, and plant conditions which affect the safety of radioactive materials and thus present an increased radiation risk to workers. For example, the NRC would seek to prevent a fire or explosion which could lead to release of radioactive materials or an unsafe reactor condition.

Under the agreement, the NRC will advise the licensee management and OSHA when industrial safety concerns are identified during radiological and nuclear safety inspections or when complaints are received from workers about OSHA-covered working conditions. In the case of complaints, NRC will withhold the identify of the employee from the licensee. NRC also will encourage licensees to report to OSHA accidents that result in a fatality or multiple hospitalizations.

In turn, OSHA will inform the NRC when matters involving radiological or nuclear safety are revealed in OSHA inspections or through complaints. Examples are matters involving lax security or work practices that would affect nuclear or radiological health and safety, improper posting of radiation areas, or employee charges that the NRC license and/or regulations were being violated.

The two agencies agreed that the chemical processing of nuclear materials at some NRC-licensed facilities presents safety hazards which can best be evaluated by joint NRC-OSHA teams. Each agency will make its best efforts to support such assessments at about 20 facilities once every five years. About one-third of these facilities are in states with OSHA-approved occupational safety and health programs. OSHA will assist in promoting participation by state personnel in those states.

OSHA will provide the NRC with information, based on reports of injuries or complaints, about nuclear power plant sites where increased management attention to worker safety is needed.

OSHA also will give training in basic chemical and industrial safety to NRC inspection personnel so that they will be able to better identify matters of concern to OSHA in radiological and nuclear inspections. The NRC will provide training in radiation safety to those OSHA and state program personnel who may participate in joint evaluation of safety hazards in some facilities.

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NOTE TO EDITORS: This announcement also is being issued by the Occupational Safety and Health Administration.

MEMORANDUM OF UNDERSTANDING
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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."

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   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.

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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.

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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.

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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.

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INTERFACE PROCEDURES:

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

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

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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.

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FOR THE NUCLEAR REGULATORY COMMISSION

Victor Stello, Jr.
Executive Director for Operations

FOR THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

John A. Pendergrass
Assistant Secretary

October 21, 1988

Office of Personnel Management guidelines set forth the following as required components of an Employee Assistance Program: (1) Employee counseling and referral; (2) education and training on drug-related issues; (3) supervisory consultation regarding troubled employees; and (4) supervisory training to assist managers in maintaining a drug-free workplace.

I. Scope of Work

The NRC will assist the Board in establishing and maintaining an Employee Assistance Program by offering the following services:

(a) *Education and Training for Board Managers and Supervisors* to familiarize them with the signs and symptoms of alcohol and drug abuse, and to define and clarify their role and responsibilities as they relate to the Drug-free Federal Workplace Program.

The NRC schedules supervisory training on a regular basis and will provide spaces for Board employees in these cures. If, however, the Board wishes to provide training sooner and/or more extensively than can be accommodated by NRC's schedule, NRC will provide the names of possible sources for training which can meet the Board's needs.

(b) *Informal Consultation.* The NRC's Employee Assistance Program and Labor Relations staffs will be available to the Board's General Manager and other designated staff members to share their knowledge and experiences in matters dealing with troubled employees, including drug testing, disciplinary action, confidentiality issues, the rehabilitation process, and reintegration of rehabilitated employees into the workplace. NRC staff will not, however, provide direct counseling to Board employees or directly advise Board superviors and managers on specific cases.

(c) *Referral Sources.* The NRC will assist the Board with other EAP functions, i.e., individual counseling, referral, supervisory consultation, and employee education, by providing the names of EAP firms in the Washington metropolitan area who can provide those services to meet the unique requirements of the Board.

II. Period of Performance

The period of performance shall commence upon signature by both parties and shall continue uninterrupted at the pleasure of either party. This agreement may be modified with the consent of both parties. Either party may terminate the agreement by providing 60 days written notice to the other party.

III. Applicable Guidance

The NRC and the Board will follow the guidance and directives contained in NRC Manual chapter 4161 and the NRC Drug Testing Plan (NUREG/BR-0134), section IV.

IV. Funding

NRC training and informal advice will be provided to the Board at no cost.

V. Point of Contact

The organizational points of contact are:

NRC: Patricia Kaplan, (301) 492-4639.
DNFSB: Janet Burke, (202) 376-5083.

Accepted:

By:

John T. Conway,

Chairman, Defense Nuclear Facilities Safety Board.

Dated: November 28, 1990.

By:

James M. Taylor,

Executive Director for Operations, U.S. Nuclear Regulatory Commission.

Dated: November 26, 1990.

55 FR 51973
Published 12/18/90

Final Subagreement Pertaining to State Resident Engineers Between NRC and the State of Illinois

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Subagreement No. 3 between NRC and the State of Illinois.

SUMMARY: Section 274i of the Atomic Energy Act of 1954, as amended, allows the Nuclear Regulatory Commission (NRC or Commission) 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 a 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 licensees' facilities which generate low-level radioactive waste.

On June 7, 1990, following signature by NRC and the Illinois Department of Nuclear Safety, NRC published Subagreement No. 2 (55 FR 23317) regarding ASME Code inspections with the State of Illinois.

In Subagreement No. 3, NRC and the Illinois Department of Nuclear Safety (IDNS) seek to allow Illinois Resident Engineers to participate in NRC inspections at nuclear power plants in Illinois. This Subagreement is one of the first to be signed under the NRC's policy regarding "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530; 2/22/89). As stated in the policy, "The 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."

Analysis: On March 27, 1990, the proposed Subagreement Pertaining to State Resident Engineers Between NRC and the State of Illinois was published in the **Federal Register** for public comment, at 55 FR 11275. One set of comments was received from Commonwealth Edison Co. (CECo). The comments are addressed individually, as follows:

Comment: CECo should be allowed to express its views formally on whether a particular meeting or inspection will involve sensitive matters. Sections VI.C.8 and VI. D.3 establish the NRC's discretion to determine whether the Senior Resident Engineer may attend certain meetings with CECo or participate in certain inspections of its activities. One factor in the exercise of that discretion is the potentially sensitive nature of the subject, meeting or inspection. To ensure that the potential for sensitivity is fully appreciated, CECo should be given a formal opportunity to express its views on whether a particular meeting or inspection will involve sensitive matters.

Response: The Subagreement provides that the State recognize that there may be occasions when, because of the sensitive nature of certain inspections and meetings, it will be necessary for the NRC, at its discretion, to conduct such activities privately and separately. The Subagreement does not preclude the license from communicating its opinion on these matters to the NRC.

Correction to Section VI.C.13—CECo states that the last sentence of section VI.C.13. should read, "NRC will forward the report to the licenses with a cover letter discussing the issues, if any, that the NRC believes warrant action by the licensee." The words "the report to the licensee with" were inadvertently omitted from the **Federal Register** Notice. The comment is accepted, and the text of the Subagreement has been changed.

Comment: NRC, IDNS and CECo should work together to agree on which IDNS issues warrant CECo action. Section VI.C.13 would require IDNS to submit all written communications concerning CECo inspection activity to the NRC. The NRC will review those communications and inform CECo as to which issues the NRC believes warrant action by CECo. CECo believes that a more efficient process would result if the NRC, IDNS and CECo would work together to agree on which IDNS issues warranted CECo action.

Response: The Subagreement specifically indicates that State activities will be performed in accordance with Federal standards and requirements and NRC practices. Also consistent with NRC's Policy Statement on Cooperation With States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities, the Subagreement specifically states that nothing in this agreement confers upon the State or the State Resident Engineer 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. Clearly there is no option for a collaborative process in interpreting or imposing NRC requirements on a licensee.

Comment: Differences in Freedom of Information Acts. Sections VI.D.5 and VI.D.6 imply that IDNS will apply the Illinois Freedom of Information Act (IFOIA) to the fullest extent possible to protect sensitive and proprietary information just as the NRC applies the Federal Freedom of Information Act (FOIA). It is not clear that IFOIA provides the same level of protection as FOIA. There are far fewer judicial interpretations of IFOIA than of FOIA; Illinois judges may take a broader view of the public's right to know than have federal judges. Therefore, greater protection would be provided if IDNS had unlimited access to information covered by the Subagreement but did not physically retain any information which IFOIA could not clearly protect from unwarranted public disclosure.

Response: In practice, CECo must identify any proprietary or sensitive information submitted to the NRC which it wishes to have withheld from public disclosure (10 CFR 2.790(b)(1)). Any information so submitted and determined to be protected from public disclosure under the criteria in 10 CFR 2.790 is accorded protection from disclosure to the full extent of FOIA and NRC regulations. If such information is shared with the State under Illinois Subagreement No. 3, it should still be protected from disclosure to the same extent as it would be at the NRC. Therefore, if the IFOIA provided less protection than FOIA, the NRC would be concerned regarding a method of providing an equal level of protection for the documents provided to the State under this Subagreement.

However, CECo does not specifically contend that IFOIA provides less protection to sensitive or proprietary information than FOIA. Indeed, a facial comparison shows that IFOIA seems to provide a similar level of protection to that afforded by FOIA. Additionally, in paragraph VI.D.5. of proposed Illinois Subagreement No. 3, the State agrees to conform its practices regarding information disclosure to those of the NRC. In paragraph VI.D.6., the State and NRC agree to consult with each other before releasing sensitive or proprietary information related to this Subagreement. IFOIA and these provisions would appear likely to provide protection. At this time it is impossible to predict with complete confidence how Illinois will interpret and implement this Subagreement and the relevant IFOIA provisions. However, the NRC-State consultations pursuant to paragraph VI.D.6. should insure that the NRC is aware of Illinois practices and procedures in releasing information. If additional protective measures are required, they can be tailored to address the specific requirements of the situation.

Comment: Consultation. Section VI.D.6 also would require IDNS and the NRC to consult with each other before releasing sensitive or proprietary information related to this Subagreement. To ensure that the sensitivity of particular information is fully appreciated, CECo should have an opportunity to participate in the consultation before a final decision to release information is made. Moreover, any disagreements over release should be resolved in accordance with the dispute resolution provisions set forth in section VIII.

Response: The release of sensitive or proprietary information in this situation is governed by the FOIA, NRC related regulations, and IFOIA. If CECo is concerned about the release of sensitive or proprietary information, CECo must first be certain that any such information is submitted pursuant to the regulations contained in 10 CFR 2.790. This information, if it has been properly submitted to the NRC and determined to be properly withheld from disclosure, should be protected by operation of these statutes and regulations, and also by the consultation process between the State and NRC (pursuant to paragraph VI.D.6.). CECo's participation in the process would be unworkable and inconsistent with the NRC's and the State's conduct of their own procedures, which are governed by the applicable statutes and regulations.

Comment: Regulatory Confusion. CECo expressed concern that the addition of another regulatory observer may create confusion and administrative burdens for plant management.

Response: Both the Subagreement and the Commission's Policy Statement on Cooperation With States reflect that State activities must be conducted in accordance with Federal standards and requirements and NRC practices, with no undue burden on the NRC or its licensees.

Comment: Recommendation to Monitor Implementation. CECo strongly recommends that NRC monitor implementation of the Subagreement.

Response: The NRC has provided a number of controls in the Subagreement so that it can be confident in the State Resident Inspector's ability to perform inspections, is aware of and has accounted for the inspections planned by the State, and communicates with the licensee on all follow-up actions and enforcement. It is intended that there will be communication between NRC and State staff members on day-to-day activities. Further, the Subagreement requires a formal review, not less than six months after the effective date, to be performed by the NRC to evaluate implementation of the Subagreement and resolve any problems identified. In addition, periodic reviews are called for thereafter.

Conclusion: After careful consideration of the comments submitted, the Commission has determined to approve Subagreement No. 3 Pertaining to State Resident Engineers Between the U.S. Nuclear Regulatory Commission and the State of Illinois. Certain minor editorial changes to the text of the Subagreement have been made, including the change to section VI.C.13 discussed in the NRC response to comments.

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Dated at Rockville, MD this 10th day of December 1990.

For the Nuclear Regulatory Commission.

Carlton Kammerer,

Director, State Programs, Office of Governmental and Public Affairs.