U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 5.2	COOPERATION WITH STATES AT COMMERCIAL NUCLEAR POWER PLANTS AND OTHER NUCLEAR PRODUCTION OR UTILIZATION FACILITIES	DT-16-40
Volume 5:	Governmental Relations and Public Affairs	
Approved By:	Marc Dapas, Director Office of Nuclear Material Safety and Safeguards	
Date Approved:	September 29, 2016	
Expiration Date:	September 29, 2021	
Issuing Office:	Office of Nuclear Material Safety and Safeguards Federal, State and Tribal Liaison Branch	
Contact:	Stuart Easson 301-415-5134	

EXECUTIVE SUMMARY

Management Directive (MD) 5.2, "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities," is being revised as part of an ongoing effort to improve the agency's MD program. MD 5.2 has been updated to reflect organizational changes and current practices resulting from the merger of the Office of Federal and State Materials and Environmental Management Programs with the Office of Nuclear Material Safety and Safeguards (NMSS). This revision—

- Updates the programmatic delegation of authority related to implementation of the statement of policy on "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities." NMSS is responsible for the programmatic coordination of the agency's cooperation with the Agreement States.

- Includes COMSECY-10-0004, "Delegation of Signature Authority for Section 274i Agreements" (ML100670279), and the "Delegation of Authority to the Director of the Office of Nuclear Material Safety and Safeguards," September 24, 2014, (ML14261A010) as references.

TABLE OF CONTENTS

I. POLICY 2
II. OBJECTIVES 2
III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY 3
A. Commission 3
B. Executive Director for Operations (EDO) 3
C. Director, Office of Nuclear Material Safety and Safeguards (NMSS) 3
D. Regional Administrators 3
E. Director of a Lead Office, Regional Administrators, and the Director, NMSS 4
F. Directors of Affected Offices Other Than the Lead Office 4
IV. DEFINITIONS 4
V. APPLICABILITY 4
VI. DIRECTIVE HANDBOOK 4
VII. REFERENCES 5

I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission 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.

II. OBJECTIVES

- Provide guidance on exchanging information with States on matters of interest to the States relating to the safe operation of nuclear production or utilization facilities.
- Describe a process for allowing State representatives to attend, as observers, public meetings between the NRC and its licensees and applicants.
- Describe a process for allowing host and adjacent State representatives knowledgeable in radiological health and safety matters to observe specific inspections and/or inspection entrance and exit meetings.

– Describe a process for developing a specific instrument of cooperation (IOC) for participation in NRC inspections and/or inspection entrance and exit meetings by qualified State representatives from States in which an NRC-licensed facility is located.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Commission

Approves policy matters related to cooperation with States and first-of-a-kind agreements proposed under NRC's policy statement. (See Exhibit 1 of this handbook.)

B. Executive Director for Operations (EDO)

Approves similar agreements, documented in formal memoranda of understanding (MOUs), following Commission policy direction for specific types of agreements.

C. Director, Office of Nuclear Material Safety and Safeguards (NMSS)

1. Provides programmatic guidance for implementing the Commission's policy on cooperation with States.
2. Coordinates the communication of generic, agencywide activities with Governor-appointed State Liaison Officers (SLOs).
3. Coordinates the development of all MOUs for State involvement in NRC activities to ensure consistency with Commission policy.
4. Ensures that appropriate headquarters and regional offices have input into the development of all MOUs that may affect their respective responsibilities and/or resources.

D. Regional Administrators

1. Coordinate the communication of region-specific, site-specific, and other State matters of interest to Governor-appointed SLOs, and/or their designees.
2. Coordinate the response to State requests for information.
3. Coordinate the notification of SLOs, and/or their designees, of public meetings between the NRC and its licensees in order that State representatives may attend as observers.
4. Coordinate the notification of SLOs, and/or their designees, of the NRC reactor or fuel facility inspections, as applicable, in order that State representatives may observe specific inspections and/or inspection entrance and exit meetings.
5. Advise the Director of NMSS and other affected offices of initial inquiries from States regarding MOUs, or of an internally perceived need for MOUs.
6. Initiate discussion with States on the development of MOUs or when requested to do so by NMSS or another office.

E. Director of a Lead Office, Regional Administrators, and the Director, NMSS

1. Take the lead in drafting MOUs with the advice and assistance of the Office of the General Counsel (OGC) and other appropriate or affected offices and regions.
2. Ensure that MOUs are prepared in accordance with the instructions provided in Directive Handbook 5.2.

F. Directors of Affected Offices Other Than the Lead Office

1. Consult with the Director of NMSS, regional administrator(s), and/or a director of a lead office on the development of MOUs affecting responsibilities and authorities of their office.
2. Appoint primary working-level contacts for MOUs affecting their program area.

IV. DEFINITIONS

Adjacent State(s)

The State (or States) within the plume-exposure pathway emergency planning zone (EPZ) (within approximately a 10-mile radius) of an NRC-licensed facility located in another State.

Host State

The State in which a specified NRC-licensed facility is located.

Instrument of Cooperation (IOC)

With respect to this policy, an IOC is documentation of agreed-upon, ongoing actions and/or expectations between NRC and a State regarding cooperation at commercial nuclear power plants and other nuclear production or utilization facilities. An IOC may be in the form of an informal Letter of Agreement or a formalized Memorandum of Understanding (MOU).

V. APPLICABILITY

The policy and guidance in this directive and handbook apply to all NRC employees.

VI. DIRECTIVE HANDBOOK

Directive Handbook 5.2 provides guidelines for implementing the Statement of Policy on “Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities,” lists IOCs between NRC and States that are currently in effect, provides a model MOU for use as the basis of a formal IOC, and provides the current MOUs for the States who use the Emergency Response Data System.

VII. REFERENCES

Code of Federal Regulations

10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors."

10 CFR 50.91, "Notice for Public Comment; State Consultation."

Office of the Federal Register

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).

Nuclear Regulatory Commission Documents

NRC Enforcement Policy:
http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

NRC Enforcement Manual:
http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html.

Management Directive—

12.6, "NRC Sensitive Unclassified Information Security Program."

12.7, "NRC Safeguards Information Security Program."

COMSECY-10-0004, "Delegation of Signature Authority for Section 274i Agreements," April 16, 2010 (ML100670279).

"Delegation of Authority to the Director of the Office of Nuclear Material Safety and Safeguards," September 24, 2014 (ML14261A010).

Yellow Announcement YA-05-0077, "Policy Revision: NRC Policy and Procedures for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI)," October 26, 2005 (ML051220278).

United States Code

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

U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)

DH 5.2	COOPERATION WITH STATES AT COMMERCIAL NUCLEAR POWER PLANTS AND OTHER NUCLEAR PRODUCTION OR UTILIZATION FACILITIES	DT-16-40
Volume 5:	Governmental Relations and Public Affairs	
Approved By:	Marc Dapas, Director Office of Nuclear Material Safety and Safeguards	
Date Approved:	September 29, 2016	
Expiration Date:	September 29, 2021	
Issuing Office:	Office of Nuclear Material Safety and Safeguards Federal, State and Tribal Liaison Branch	
Contact:	Stuart Easson 301-415-5134	

EXECUTIVE SUMMARY

Management Directive (MD) 5.2, "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities," is being revised as part of an ongoing effort to improve the agency's MD program. MD 5.2 has been updated to reflect organizational changes and current practices resulting from the merger of the Office of Federal and State Materials and Environmental Management Programs with the Office of Nuclear Material Safety and Safeguards (NMSS). This revision—

- Updates the programmatic delegation of authority related to implementation of the statement of policy on "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities." NMSS is responsible for the programmatic coordination of the agency's cooperation with the Agreement States.

- Includes COMSECY-10-0004, "Delegation of Signature Authority for Section 274i Agreements" (ML100670279), and the "Delegation of Authority to the Director of the Office of Nuclear Material Safety and Safeguards," September 24, 2014, (ML14261A010) as references.

For updates or revisions to policies contained in this MD that were issued after the MD was signed, please see the Yellow Announcement to Management Directive index (YA-to-MD index).

TABLE OF CONTENTS

I. PURPOSE OF THIS HANDBOOK 3

A. Purpose 3

B. NRC State Liaison Officer (SLO) Program Development and Implementation 4

C. NRC Policy on Cooperation With States 5

II. INFORMATION EXCHANGE WITH STATES 6

A. Policy 6

B. Implementation 6

C. Information To Communicate 6

D. Requesting Information From States 8

III. OBSERVATION OF NRC PUBLIC MEETINGS BY STATE PERSONNEL 8

A. Policy 8

B. Implementation 8

IV. OBSERVATION OF NRC INSPECTIONS AND INSPECTION ENTRANCE AND EXIT MEETINGS BY STATE PERSONNEL 9

A. Policy 9

B. Implementation 9

V. STATE PARTICIPATION IN NRC INSPECTIONS 11

A. Policy 11

B. Implementation 11

VI. STATE ATTENDANCE AT PREDECISIONAL ENFORCEMENT AND REGULATORY CONFERENCES 13

EXHIBITS

Exhibit 1 Statement of Policy on "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" 14

Exhibit 2 Sample Memorandum of Understanding for the State of _____ Participation in U.S. Nuclear Regulatory Commission Inspections 19

Exhibit 3 List of Current Memoranda of Understanding (MOUs) with States* 27

Exhibit 4 List of Current Memoranda of Understanding (MOUs) on the Emergency Response Data System (ERDS)* 28

I. PURPOSE OF THIS HANDBOOK

A. Purpose

The U.S. Nuclear Regulatory Commission's mission to protect the public health and safety, provide for the common defense and security, and protect the environment, can be served by a policy of cooperation with State governments. The Commission has formally adopted a 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). With respect to commercial nuclear production or utilization facilities, States, Tribes, and local governments may have the primary responsibility for offsite emergency response while the NRC regulates operations and onsite activities. However, the Commission recognizes the interest of States in the security and operational safety of nuclear reactors and other nuclear production or utilization facilities (e.g., fuel cycle facilities). Accordingly, the NRC believes that the agency's mission can best be served by a policy of cooperation with State governments to facilitate the common goals of the NRC and the States. The Commission's policy statement of February 25, 1992, provides the basis for how NRC staff communicates and works with Governor-appointed State officials regarding oversight of such facilities. This handbook provides an overview of the historical basis for this policy, as well as implementation guidance for NRC staff. This handbook outlines how NRC staff interacts with States on matters pertaining to nuclear power reactors in the following areas:

1. Information exchanges;
2. Observation of NRC public meetings;
3. Observation of NRC inspections and inspection entrance and exit meetings;

4. Participation in NRC inspections; and
5. Attendance at predecisional enforcement and regulatory conferences.

B. NRC State Liaison Officer (SLO) Program Development and Implementation

1. In the 1960s, the Atomic Energy Commission sought State input on siting concerns and environmental reviews for nuclear power reactor construction and operation applications. This often entailed contacting and coordinating with multiple State agencies and officials. The NRC established the State Liaison Officer (SLO) Program in 1976, in response to recommendations from the National Governors Association and other organizations, to more efficiently coordinate with States on such licensing efforts. Under this program, the NRC requested that Governors identify one individual to serve as the primary technical-level contact with the NRC on environmental questions of mutual interest. For this reason, many of the SLOs were originally selected from the State environmental agencies.
2. Largely as a result of the Three Mile Island (TMI) accident, the scope of interactions between the NRC and States grew to encompass other operational aspects of the plants, as well as emergency planning and preparedness. The current program establishes a single point of contact in each State to provide the primary communication channel between the NRC and the States.
3. The Governor-appointed SLO is intended to be the primary person in the State to—
   (a) Keep the Governor informed of issues under the jurisdiction of the NRC, including nuclear regulatory, security, and radiological public health and safety matters.
   (b) Inform and coordinate with other State agencies regarding these matters.
   (c) Answer NRC inquiries and provide the NRC with State information on particular nuclear safety, security, or environmental issues.
4. The NRC requests that the individual appointed as SLO be someone in whom the Governor has confidence and who is authorized to represent to the NRC the official State position on issues. The individual should also be able to quickly and effectively communicate directly with the Governor's office.
5. The Regional State Liaison Officers (RSLOs) are the NRC points of contact for the SLOs within each NRC region. The NRC developed these full-time positions beginning in 1977 to meet the States' needs as interest and involvement in nuclear matters increased.
6. The Office of Nuclear Material Safety and Safeguards routinely communicates with SLOs on generic issues, holds periodic Webinars, and hosts routine national conferences (typically held on a biennial basis) on issues of State interest.

C. NRC Policy on Cooperation With States

1. Interactions between the NRC and the States regarding the regulation of nuclear power reactors is defined and governed by the Commission's policy statement, "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities." The policy statement stems from the Atomic Energy Act of 1954, which was amended in 1959 to add Section 274, "Cooperation with States." Much of this section relates to the concept of the Agreement State program, by which States can assume regulatory responsibility with respect to byproduct, source, and special nuclear materials. However, Subsection (i) authorizes NRC 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 subsection clarifies the NRC's authority to obtain the services of State personnel to perform functions on its behalf.

2. The NRC first proposed a formal policy statement outlining State involvement at nuclear production or utilization facilities in response to increasing State interest stemming from the TMI accident. State governments, under pressure from citizens to ensure the protection of public health and safety, began asserting an oversight role at commercial power reactors. Oregon installed a State Resident Inspector (authorized by State law) at the Trojan Plant in 1980. Similarly, in 1980, Pennsylvania passed its Radiation Protection Act, and hired nuclear engineers to monitor nuclear power plant status.

3. In 1984, the State of Illinois entered into a Memorandum of Understanding (MOU) with the NRC to perform inspections of low-level waste activities at NRC-licensed facilities, including nuclear power plants. This was the first MOU of its kind, and its execution was soon copied in other States. Some States requested that their personnel be permitted to attend NRC inspections, inspection entrance and exit meetings, and enforcement conferences involving nuclear power reactors. This practice resulted in informal letter agreements with some States, outlining protocols for State observation of certain NRC activities.

4. The NRC determined that increased cooperation would enhance States' understanding of the NRC's oversight and would, therefore, increase public confidence in the regulation of nuclear power. The Commission determined that there should be a uniform policy governing the agency's interactions with States regarding commercial nuclear power oversight. On February 22, 1989 (54 FR 7530), the Commission published a final policy statement that built upon the already established SLO program and expanded it to include NRC/State communications, opportunities for States to observe NRC meetings and inspections, and a process by which States may themselves conduct certain inspections on behalf of or in concert with the NRC. The NRC encouraged the States to revise pre-existing instruments of

cooperation to meet the provisions of the policy statement, even though the letter agreements remained effective. See Exhibit 3 for a list of agreements.

5. Shortly after publication of this policy statement, the Commission approved interim implementation guidance outlining roles and responsibilities for both State observers and the NRC in a protocol agreement. On February 25, 1992, the Commission formally revised the policy statement to allow adjacent States to observe (but not to participate in) NRC staff inspections and inspection entrance and exit meetings. The revision also formally incorporated into the policy the protocol agreement for State observation of NRC inspections.

II. INFORMATION EXCHANGE WITH STATES

A. Policy

The NRC will keep SLOs informed on matters of interest to the States. In general, all State requests for information or observation of NRC inspections should come from the SLO to the appropriate NRC regional office. Channeling all State inquiries through the SLO assures the Commission that NRC information of interest to the States will be sent forward to those State agencies that need to know. It also assures interested State agencies that their requests and inquiries will be handled in a uniform and businesslike manner.

B. Implementation

1. The NRC will make every attempt to respond to all requests from States for information on matters concerning nuclear production or utilization facility safety within 30 days or less. The NRC will work to achieve a timely response to State recommendations relating to the safe operation of nuclear production or utilization facilities.

2. The level and areas of interest in matters involving nuclear power plants and other nuclear production or utilization facilities varies from State to State and may change over time. The RSLOs will continually communicate with the SLOs in their region to determine the type and frequency of information from the NRC that is desired. The RSLOs will also provide feedback to these State contacts on the information NRC management requests of States.

C. Information To Communicate

The following is a list of the types of information that the NRC may provide to States. This list is meant to be illustrative of the types of information that may be shared and is not meant to be all-inclusive or to be uniformly applied to all States. As mentioned previously, the information needs of each State are different and may vary over time.

1. Event Notifications (Other Than Emergency Classifications)

   The RSLO routinely informs States (SLO or designee) of licensee events, particularly when the information will become publicly available. This notification includes events reported to the NRC under Title 10 of the *Code of Federal Regulations* (CFR) 50.72, events involving offsite response agencies (e.g., local law enforcement agencies), and events that may attract public or media interest. Ideally, these notifications should occur before the information is made available to the public.

2. NRC Actions

   The RSLOs routinely inform States of the pending issuance of significant NRC actions, including escalated enforcement actions, orders, and confirmatory action letters. Such notifications should occur before the documents are released to the public and should consist of providing the State contact a copy of the document, if requested.

3. NRC Documents

   The RSLOs routinely inform States of the pending issuance of NRC documents, including Preliminary Notifications, press releases, advisories, meeting notices, inspection reports, and licensing documents (licenses or requests for additional information) that are of high State or public interest. Even though States are included in the distribution of these documents, verbal notification should occur before significant documents are released to the public and should consist of providing the State contact a copy of the document, if requested.

4. Reactor Licensing Changes

   The RSLOs pay special attention to NRC actions taken and documents issued or related to significant events or changes at commercial power reactor facilities, because of the infrequent nature of these significant events or changes. Example actions or documents include issuance of construction permits, combined licenses, initial operating licenses, and/or authorizations to operate; notifications of permanent shutdown; and license termination. The RSLOs also consider the potential for significant impacts to State and local government programs and resources and a high level of public interest. The RSLOs routinely maintain awareness of reactor decommissioning activities and milestones and, in coordination with the responsible NRC headquarters office, participate in the development of a communication plan to inform State and local officials of certain key actions the NRC may take following the permanent shutdown of a commercial nuclear power plant. Examples of events or key NRC actions that may be of interest to a State include—

(a) Licensee submittals of decommissioning planning documents (Post-Shutdown Decommissioning Activities Report, License Termination Plan) and dates of associated NRC public meetings,

(b) Licensing actions that relax Offsite Emergency Preparedness requirements,

(c) Termination of the Emergency Response Data System data link, and

(d) Licensing actions related to the use of the Decommissioning Trust Fund.

D. Requesting Information From States

As stated previously, the SLO is the Governor-appointed individual within each State with whom the NRC communicates. Through the RSLOs or NRC headquarters, the NRC provides information to these designees for dissemination to other State organizations with interest or need to know. The SLO program also establishes the expectation of mutual information exchange, engendered by the complementary roles the NRC and States play in protecting public health and safety. The NRC requests that the SLOs similarly inform the NRC of matters of interest to the agency, including—

1. State policies as expressed in proposed or enacted legislation, regulations, initiatives, referenda, official policy statements, significant press releases, and adjudicatory advisories or decisions;
2. Concerns within the State as expressed among agencies or other entities within State governments;
3. Concerns expressed between State bodies and affected or interested local entities, Native American Tribes, interstate and regional organizations, public interest groups, and/or industry; and
4. State comments on license amendments requested by power reactors in the State, as discussed in 10 CFR 50.91(b).

III. OBSERVATION OF NRC PUBLIC MEETINGS BY STATE PERSONNEL

A. Policy

Host State or adjacent State representatives are free to attend as observers any public meeting between the NRC and its applicants and licensees. The appropriate NRC regional office will routinely inform SLOs of the scheduling of public meetings upon request.

B. Implementation

The RSLOs should inform SLOs of upcoming public meetings, including meetings involving licensees within the SLO's State or emergency planning zone (EPZ) and

meetings on topics of high public or State interest. The RSLOs may verbally inform SLOs of such meetings or may provide an electronic copy of the meeting notice. The RSLOs should notify the NRC meeting contact of expected State attendance at an NRC public meeting so that the State attendee may be recognized and afforded the opportunity to ask a question or make a statement as appropriate for the meeting category.

IV. OBSERVATION OF NRC INSPECTIONS AND INSPECTION ENTRANCE AND EXIT MEETINGS BY STATE PERSONNEL

A. Policy

If requested, the NRC will allow State observation of NRC inspection activities. State requests to observe NRC inspections and/or inspection entrance and exit meetings will normally be coordinated through the RSLOs.

B. Implementation

1. Notice of Inspections

   As stated previously, SLOs receive copies of all NRC inspection reports related to facilities within their States and EPZs. With regard to the NRC's Reactor Oversight Process, SLOs receive NRC regional mid-cycle and end-of-cycle letters, which include a 15-month look ahead NRC inspection schedule, to licensees for each site in that region summarizing the staff's review and assessment of that facility's performance and inspection findings. When made aware, the RSLOs also should communicate to the SLOs any emergent inspections or inspection schedule changes so that State representatives are afforded the opportunity to observe associated inspection activities.

2. Observation Requests

   State observation requests should be made in writing and should identify the specific inspection the State wishes to observe. All State observation requests require the approval of the appropriate regional administrator, who may limit the scope and duration of the observation period if observation activities would compromise the efficiency or effectiveness of the inspection. The regional administrator may delegate approval authority to the RSLO or other appropriate staff.

3. Observation Protocol

   (a) State observers must sign a copy of the "Protocol Agreement for State Observation of NRC Inspections" (Exhibit 1, Appendix A) prior to conducting an observation. The regional administrator determines the periodicity with which this agreement must be signed (e.g., for each observation, annually). The regional

administrator may delegate authority for this determination to the RSLO or other appropriate staff. States will be informed that they must not release information concerning the time and purpose of unannounced inspections. Additionally, NRC inspectors will make it clear to the licensee that State views are not necessarily endorsed by the NRC, and that only the NRC has regulatory authority for inspection findings and enforcement actions regarding radiological health, safety, and security.

(b) The State will be responsible for determining the technical and professional competence of its representatives who accompany NRC inspectors; however, they must have some general understanding of the nature of nuclear power for the observation to be meaningful. The State observer will be expected to exhibit the same standard of professional conduct as NRC inspectors during the accompaniment. State observation may be terminated by the NRC if the observer's conduct interferes with a fair and orderly inspection.

(c) A State observer accompanies an NRC inspector at his or her own risk. The NRC will not be responsible for injuries or exposures to harmful substances that 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 remain in the company of NRC personnel throughout the course of the inspection. Prior to the actual inspection, the State will make advance arrangements with the licensee for site access training and badging (subject to requirements set forth in 10 CFR 73.55(b)(7)).

(d) The State observer will communicate with the licensee through appropriate NRC staff (e.g., senior resident inspector or inspection team leader). If the State observer notices any apparent nonconformance with safety, security, or regulatory requirements during the inspection, he or she will make those observations promptly known to the NRC lead inspector. If overall conclusions or views of the State observer are substantially different from those of the NRC inspectors, the State will advise the NRC lead inspector and forward those views, in writing, to the cognizant NRC region. This course of action will allow the NRC to take any necessary regulatory action. 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 regarding NRC inspection activities may be made publicly available as attachments to the NRC inspection reports <u>after</u> they have been transmitted to and reviewed by the NRC.

(e) The adjacent State SLO must also communicate his or her observation request to the host State SLO so that each State is aware of the other's intentions. Normally, no more than one State representative will be allowed to observe an

NRC inspection. If a host 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 accompany the NRC staff during the inspection. If there is a need to limit the number of observers, the regional administrator will normally give preference to the host State.

4. Information Security – Safeguards Information and Sensitive Unclassified Non-Safeguards Information

   (a) A State observer is permitted to review Safeguards Information (SGI) or sensitive unclassified safeguards information (SUNSI) including proprietary information associated with certain types of inspections, provided the State observer meets the requirements for access to such information (e.g., for SGI 10 CFR 73.22(b) and 10 CFR 73.23(b). Observers will not remove any material from the site without NRC and/or licensee approval, as appropriate. A State observer of such inspections may be required to complete a non-disclosure agreement in accordance with the licensee protocols. For more information on specific SGI requirements, see 10 CFR 73.21.

   (b) Proprietary information is categorized as SUNSI. For more information on SUNSI requirements, see MD 12.6, "NRC Sensitive Unclassified Information Security Program," as well as the "NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information," which is available on the internal NRC Security Web site, at http://www.internal.nrc.gov/sunsi/pdf/SUNSI-Policy-Procedures.pdf, and NRC Yellow Announcement YA-05-0077, "Policy Revision: NRC Policy and Procedures for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI)," issued on October 26, 2005 (ML051220278).

V. STATE PARTICIPATION IN NRC INSPECTIONS

A. Policy

Section 161.f of the Atomic Energy Act of 1954, as amended, gives the Commission broad discretionary authority to enter into arrangements with States. In 1959, Congress clarified this authority by providing in the first sentence of Section 274i that, "The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized 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."

B. Implementation

Accordingly, the NRC will consider host and adjacent State participation in inspections and the associated inspection entrance and exit meetings where the State proposes an

instrument of cooperation identifying the specific inspections with which they wish to assist the NRC and provides a program containing specific elements.

1. State Program Elements

   The proposed State program must—

   (a) Recognize the Federal Government, specifically the 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 utilization facilities, except for certain authorities granted to States by the Clean Air Act;

   (b) Be in accordance with Federal standards and regulations;

   (c) Specify minimum education, experience, training, and qualifications requirements for State representatives that are patterned after those of NRC inspectors;

   (d) Contain provisions for the findings and observations of State representatives to be transmitted to the NRC for disposition;

   (e) Not impose an undue burden on the NRC and its licensees and applicants; and

   (f) Abide by NRC protocol not to publicly disclose inspection findings and observations prior to the release of the NRC inspection report.

2. NRC Approval

   The Commission will decide policy matters related to proposed instruments of cooperation. Once the Commission has decided the policy on a specific type of instrument, similar State-proposed instruments 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 the NRC and the State. A sample MOU is provided as Exhibit 2.

3. NRC Coordination

   The 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 inspector's preparedness to conduct the inspection independently. Other activities may be conducted using an inspection team approach, with the NRC taking the lead. All enforcement action will be undertaken by the NRC.

4. NRC Reviews

   Once the NRC has decided to enter into an MOU for State involvement in NRC inspections, a formal review, not less than 6 months after the effective date, will be conducted 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 may be terminated upon 30 days' written notice by either party.

VI. STATE ATTENDANCE AT PREDECISIONAL ENFORCEMENT AND REGULATORY CONFERENCES

The Commission's policy regarding State government attendance at predecisional enforcement and regulatory conferences, and guidance for its implementation, is described in Part 1, Section 1.2.15.2.D, "State Government Attendance at Predecisional Enforcement Conferences or Enforcement Conferences," of the NRC Enforcement Manual (ML15029A148).

EXHIBITS

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 [SLOs] 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 SLOs of [p]ublic meetings between [the] 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) [r]ecognizes the Federal Government, primarily [the] 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 utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; (2) is in accordance with

Fede[r]al 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) abid[e]s by [the] NRC['s] protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.

Consistent with section 274.c 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 [SLOs] informed on matters of interest to the States. In general, all State requests should come from the [SLO] 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 or sooner. 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 [SLOs] 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.

[The] 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 [the] NRC with and provides a program containing those elements as described in the policy statement. [The] 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 [Memorandum of Understanding] MOU signed by [the] 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 may be 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.

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.

- [The] NRC will process written requests to the Regional Administrator through the Governor-appointed 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 [the] 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, badging (subject to fitness for duty requirements), as well as obtain appropriate security clearances for its observers, based on a need to know determination, if applicable, 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.

- 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. [1] 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

[1] Under current NRC regulations, a State observer is permitted to review Safeguards Information (SGI) or sensitive unclassified non-safeguards information (SUNSI), including proprietary information associated with certain types of inspections, provided the State observer meets the requirements for access to such information (e.g., for SGI 10 CFR 73.22(b) and 10 CFR 73.23(b).

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 [the] 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.

- 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

Exhibit 2 Sample Memorandum of Understanding for the State of _____ Participation in U.S. Nuclear Regulatory Commission Inspections

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of _____ enter into this Memorandum of Understanding (MOU) 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 in order to promote the common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating commercial nuclear power safety.

B. The NRC believes that its mission to protect the public health and safety, provide for the common defense and security, and protect the environment, 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 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 the NRC. The 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. The NRC fulfills its statutory mandate to regulate the safety of commercial nuclear activities by, among other things, conducting safety inspections of nuclear production or utilization facilities to assure that they 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. The NRC Resident Inspectors are located at each nuclear production or utilization facility. 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. The NRC Resident Inspectors also interact with local officials, the press, and the public.

III. Scope

A. This MOU defines the way in which the NRC and the State, with the assistance of State Resident Engineers, will cooperate in planning and conducting inspections of nuclear

production or utilization facilities in the State to ensure compliance with NRC regulations. This MOU does not apply to investigations or inquiries conducted by the 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 site 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 the NRC.

C. Nothing in this MOU is intended to restrict or expand the statutory authority of the NRC or the State or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274.b 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 the NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively for 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 and security inspections of nuclear power plants to ensure that the plants are designed, constructed, tested, operated, maintained, and decommissioned in accordance with 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 the 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 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 the 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 meeting safeguards information and site access requirements 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 licensee, including fitness-for-duty, site access, and onsite space and support. The NRC is not responsible for ensuring access or working space for State personnel.

5. The State will certify to the 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. The 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 the NRC establishes special training classes, the State agrees to reimburse the NRC for its costs of training State Resident Engineers, if requested.

4. The NRC will provide one week of on-the-job training and orientation for the State Resident Engineer at each site.

5. Information acquired by the 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 Engineers' activities are intended to assist the 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.

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. The NRC shall take such recommendations into account in formulating its Master Inspection Plans (MIP).

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. The 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 schedule conflicts 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. The NRC staff inspection activity will not be reduced for a facility below minimum program requirements on the basis of the availability of the State's inspection resources.

6. The 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.

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 the NRC, at its discretion, to conduct such activities privately and separately.

9. The NRC will provide the State with a copy and current updates of the NRC Inspection Manual and 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 the 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 of this MOU.

12. If a State Resident Engineer identifies situations with immediate safety or security 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 the 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 the NRC, Region ___ (the Regional Duty Officer during non-business hours).

13. All written communications with the licensee will be made through the 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. The 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.

14. If the NRC identifies potential violations of NRC regulatory requirements as a result of the State's inspection activities, the NRC may take appropriate enforcement action as set forth in 10 CFR Part 2, Appendix N. The State Resident Engineers will assist the NRC, if requested by 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 the NRC.

D. Communications and Information Exchange

1. The State and the NRC agree in good faith to make available to each other information within the intent and scope of this MOU.

2. The 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. The NRC will inform the State of formal meetings with licensee 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 the NRC determines should be closed as provided in Section VI.C.8 of this MOU.

4. The State and the 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 the NRC shall consult with each other before releasing sensitive or Proprietary Information related to this MOU.

7. Press releases regarding the State's activities or NRC inspections in which the State has been involved under this MOU that 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 of this MOU.

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

VII. Contacts

A. The primary senior management contacts for this MOU will be ___Name/Title___ for the NRC and ___Name/Title___ 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 the 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 responsibility of the Director, Division of Reactor Projects, Region ___, NRC.

C. Differences that cannot be resolved in accordance with Sections VIII.A and VIII.B of this MOU will be reviewed and resolved by the Regional Administrator, Region ___, NRC, and the __Name/Title_____, 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 _____Name/Title_____, State, and the ___Name/Title_____, 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 MOU effective date, will be performed by the NRC to evaluate implementation of the MOU and resolve any issues 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.

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 _____,

_____ _____

(Name and Title of Department Director) Date

Exhibit 3 List of Current Memoranda of Understanding (MOUs) with States*

State	MOU
Illinois	Low-Level Radioactive Waste (LLW) Inspection (49 FR 27861 7/6/84) American Society of Mechanical Engineers Code Inspections (55 FR 23317 6/7/90) Resident Engineers (55 FR 51973 12/18/90) Umbrella Memorandum of Understanding (MOU) (49 FR 20586 5/15/84)
Indiana	Water Quality (43 FR 61053 12/29/78) Umbrella MOU (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 Uranium Mining (47 FR 55444 12/9/82)
New York	Umbrella MOU (43 FR 19485 5/5/78)
Oregon	Proprietary Information (45 FR 8394 2/7/80) Umbrella MOU (45 FR 8394 2/7/80)
Pennsylvania	LLW Inspection (52 FR 43695 11/13/87) Site Decommissioning Management Plan (61 FR 46832 9/5/96) Umbrella MOU (51 FR 43487 12/2/86)
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	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) Umbrella MOU (43 FR 43774 9/27/78)

*As of August 2015. Instruments of cooperation (other than MOUs) with States may include informal letters of agreement not listed in this table.

Exhibit 4 List of Current Memoranda of Understanding (MOUs) on the Emergency Response Data System (ERDS)*

State	ERDS MOU	Date
Alabama	57 FR 49725	11/03/92
Arizona	58 FR 26801	05/05/93
Arkansas	58 FR 65198	12/13/93
California	74 FR 3107	11/26/08
Delaware	ML16271A236	01/25/95**
Georgia	57 FR 38528	08/25/92
Iowa	ML003676315	10/27/99**
Kansas	59 FR 6979	02/14/94
Louisiana	61 FR 64379	12/04/96
Maryland	58 FR 13510	03/11/93
Massachusetts	58 FR 37761	07/19/93
Michigan	57 FR 5022	02/11/92
Missouri	74 FR 3108	11/26/08
Minnesota	ML022040421	09/03/02**
New Hampshire	59 FR 52321	10/17/94
New Jersey	58 FR 21603	04/22/93
New York	58 FR 21605	04/22/93
North Carolina	57 FR 27075	06/17/92
Ohio	57 FR 20856	05/15/92
Pennsylvania	ML16264A481	08/01/92**
South Carolina	Effective	04/20/94***
Tennessee	58 FR 43920	08/18/93
Texas	74 FR 6430	01/23/09
Virginia	74 FR 3105	11/26/08
Washington	57 FR 18531	04/30/92
Wisconsin	61 FR 51727	10/03/96

*As of September 2016.

**Not published in the *Federal Register*.

***The agreement between the U.S. NRC and the State of South Carolina concerning ERDS requirements was effective on April 20, 1994.

NOTE: The Office of Nuclear Security and Incident Response (NSIR) shall coordinate with the Office of Nuclear Material Safety and Safeguards and the Regional State Liaison Officers concerning termination of the ERDS data link for decommissioning power reactors and the associated impact of the termination of the ERDS MOUs for the

affected State. See ADAMS Accession No. ML14363A486 for an example of a letter notifying the State that the ERDS link from a facility was terminated.