UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

MAY 13 1994

MEMORANDUM FOR: Maria Lopez-Otin, Federal Liaison Manager
Office of State Programs

FROM: Malcolm R. Knapp, Director
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

SUBJECT: CENTRALIZATION OF MEMORANDA OF UNDERSTANDING (MOU)

Per the request of the Mr. Thompson, Deputy Executive Director, enclosed are copies of MOUs between the Office of Nuclear Materials Safety and Safeguards (NMSS) and other Federal agencies. Almost all of the MOUs between NMSS and other Federal agencies have been published in the Federal Register and are included in Volume IV of the U.S. Nuclear Regulatory Commission Rules and Regulations under the section heading "Memoranda of Understanding." Enclosure 1 provides a copy of these MOUs as of February 28, 1994.

The following MOU is not included in Volume IV but was published in the Federal Register:

October 31, 1991	NRC/Environmental Protection Agency (EPA)/Colorado/Texas/Washington concerning implementation of the Clean Air Act under 40 CFR 61 Subparts T and W. (56 FR 67568, December 31, 1991), included in the EPA Federal Register notice regarding National Emission Standards for Hazardous Pollutants. (56 FR 67561)

In addition, staff has identified the following MOUs with other Federal Agencies that have not been published in the Federal Register:

November 6, 1990	NRC/Department of Energy (DOE) - Mill Tailings. Review and concurrence procedures for executing respective statutory responsibilities under Title I of the Uranium Mill Tailings Radiation Control Act of 1978. (Mod 2, dated November 6, 1990.)
May 29, 1991	NRC/Federal Bureau of Investigation (FBI) - Memorandum of Understanding regarding nuclear threat incidents involving NRC licensed facilities, materials, or activities.
January 5, 1993	NRC/Federal Aviation Administration (FAA) - Memorandum of Understanding regarding contingency response planning, coordination, and cooperation in dealing with threats against or hijacking of aircraft carrying NRC licensed special nuclear material.

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June 3, 1993	NRC/DOE - High-Level Waste Management. Procedural agreement identifying guiding principles for interface during geologic site investigation and site characterization.
December 9, 1993	NRC/EPA MOU - Decommissioning concerning the development of the Generic Environmental Impact Statement for the rulemaking to establish radiological criteria for decommissioning of NRC-licensed facilities. (December 9, 1993, letter from R. Bernero, NRC to R. Sanderson, EPA).

Enclosure 2 provides copies of these documents.

Per the request of Mr. Thompson, we will place Maria Lopez-Otin, Federal Liaison Manager, Office of State Programs on distribution for all future MOUs as well as continuing to provide copies of all MOU's to Central Files so that they may keep the official agency subject file.

If you have any questions, please contact John Surmeier at 415-7319.

(SIGNED) JOHN J. SURMEIER
for

Malcolm R. Knapp, Director
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosures: As stated

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ENCLOSURE 1

U.S. NUCLEAR REGULATORY COMMISSION MEMORANDA OF UNDERSTANDING

CONTENTS

COMMISSION NOTICES

MEMORANDA OF UNDERSTANDING

38 FR 24936
Published 9/11/73

AEC-LICENSED FACILITIES

Memorandum of Understanding

Both the Environmental Protection Agency (EPA) and the Atomic Energy Commission (AEC) have complementary responsibilities in areas of environmental protection and the control of radiation effects. In order to fix an appropriate interface of the respective functions of the two agencies, to further facilitate their useful cooperation, and to avoid unnecessary duplication of regulatory effort, EPA and the AEC have executed a memorandum of understanding with regard to AEC-licensed facilities. The text of the memorandum is set forth below.

AEC-EPA MEMORANDUM OF UNDERSTANDING WITH RESPECT TO AEC-LICENSED FACILITIES

Both the Atomic Energy Commission (AEC) and the Environmental Protection Agency (EPA) have complementary responsibilities in areas of environmental protection and the control of radiation effects. Pursuant to Reorganization Plan No. 3 of 1970, "the functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, administered through its Division of Radiation Protection Standards to the extent that such functions of the Commission consist of establishing generally applicable environmental standards[1] for the protection of the general environment from radioactive material" and all functions of the Federal Radiation Council were transferred to the Administrator of EPA. The President's message to the Congress upon transmitting Reorganization plans to establish EPA and NOAA stated that "AEC would retain responsibility for the implementation and enforcement of radiation standards through its licensing authority." In order to fix an appropriate interface of the respective functions of the two agencies, to further facilitate their useful cooperation, and to avoid unnecessary duplication with regard to AEC-licensed facilities, the AEC and EPA agree as follows:

1. AEC-licensed facilities are subject through AEC licensing authority and requirements to EPA's generally applicable environmental radiation standards, as defined in Reorganization Plan No. 3 of 1970. AEC will take appropriate action to assure that AEC-licensed facilities are operated in such a manner that routine radioactive discharges therefrom do not exceed generally applicable environmental standards established by EPA, outside the site boundary, for the protection of the general environment from radioactive material.

2. The AEC and the EPA will jointly undertake and carry out arrangements for special studies for the purpose of obtaining necessary information for establishing generally applicable environmental standards for the protection of the general environment from radioactive material discharged from AEC-licensed facilities. For example, the AEC will supply to EPA AEC data and will use its best efforts to supply reasonably obtainable licensee data, relevant to radioactive effluents and the generation of pathway models. The AEC will also participate and will take appropriate action to arrange for its licensees to participate, as may be necessary, in providing data on releases and concurrent meteorological data in support of EPA field measurements and special studies such as pathway model verification at typical licensed facilities. The EPA will endeavor to minimize the number of separate typical facilities on which field measurements will be needed in establishing pathway models.

3. It is agreed that EPA may accompany AEC inspectors on AEC inspections of AEC-licensed facilities for the purpose of becoming informed on how licensees conform with generally applicable environmental standards. Such accompaniment may, at the discretion of EPA, be on either announced or unannounced AEC inspections. It is anticipated that up to 5 such accompaniments may be made in FY 1974. EPA will determine those inspections on which it wishes to accompany AEC. The first step will be for AEC to familiarize the EPA with the scope of AEC inspections.

4. EPA will advise and obtain AEC comments prior to the publication of data relating to discharges from AEC-licensed facilities and the results of these programs.

5. EPA will furnish technical advice and assistance to AEC upon request on discharges to the environment from AEC-licensed facilities.

6. Nothing in this Memorandum of Understanding, or any activities conducted hereunder, shall be construed as precedent for, or as recognizing, any authority of EPA to duplicate or supervise inspection activities of the AEC.

For the United States Atomic Energy Commission.

WILLIAM O. DOUB,
Commissioner.

AUGUST 27, 1973.

For the United States Environmental Protection Agency.

CHARLES ELKINS,
Acting Assistant Administrator for Hazardous Materials Control.

AUGUST 21, 1973.

[1] The word "standards," as used herein, has the same meaning as in Reorganization Plan No. 3 of 1970, as follows: "standards mean limits on radiation exposure or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material."

39 FR 2124
Published 1/17/74

AEC-LICENSED FACILITIES

Memorandum of Understanding

The United States Coast Guard (USCG) and the Atomic Energy Commission (AEC) both have responsibilities for the regulation of safety and protection of the environment from effects of construction and operation of floating nuclear power plants. To avoid the duplication of effort implicit in this common responsibility, and to take best advantage of the capabilities of both agencies, USCG and AEC have executed a Memorandum of Understanding for Regulation of Floating Nuclear Power Plants. The text of the memorandum is set forth below.

Memorandum of Understanding Between the United States Coast Guard and the United States Atomic Energy Commission for Regulation of Floating Nuclear Power Plants

1. *Purpose.* For the purpose of coordinating and implementing consistent and

comprehensive requirements to maximize safety with respect to the design, fabrication, construction and operation of floating nuclear power plants, to minimize the possible adverse environmental impact of such plants, and to minimize duplication and avoid possible inconsistency in safety requirements applied to such plants, the United States Coast Guard (U.S.C.G.) and the United States Atomic Energy Commission (U.S.A.E.C.) do hereby agree—subject to their respective statutory authorities described below—as indicated herein. A "floating nuclear power plant" is defined as a nuclear power plant, mounted on and thereby integrally with a barge, fabricated at a central shipyard facility, then towed to a fixed position where it is installed and moored, nuclear fuel is loaded, and where it is operated as a floating facility to supply electrical energy into an onshore electrical load network.

2. *Statutory Background.* a. *The United States Coast Guard (U.S.C.G.).* The United States Coast Guard, under 46 U.S.C. 395 et seq. and other related provisions of Title 46 of the U.S. Code (including but not limited to 46 U.S.C. 392, 406–412, 435, 222, and 672) is authorized to regulate the design and construction, the inspection, and the issuance of certificates of inspection to seagoing barges admeasuring to greater than 100 gross tons, in accordance with the provisions of 46 U.S.C. 71 et seq. and regulations issued pursuant thereto, with respect to their hulls, boilers, unfired pressure vessels, auxiliary machinery, electrical apparatus, equipment, and manning.

All barges admeasuring to greater than 150 gross tons are required to obtain a load line certificate issued by the American Bureau of Shipping for the U.S.C.G. under 46 U.S.C., 88 et. seq., prior to proceeding from a port or place in the United States to another port or place in the United States; including, but not limited to, proceeding from a fabrication site ashore to an offshore site within the territory of the United States where they will be permanently situated.

The U.S.C.G. under 46 U.S.C. 481 is authorized to regulate seagoing barges with respect to all lifesaving, firefighting, and mooring equipment and bilge systems, and under 33 U.S.C.A. 1221(2) the carrying or installation of electronic or other devices.

The U.S.C.G. under 33 U.S.C.A. 1221(7) is authorized to prescribe safety equipment requirements for structures in, on, or on the land immediately adjacent to the navigable waters of the United States and for protection systems involving structures, including, but not limited to, breakwaters in the navigable waters of the United States. In addition, all structures located in the navigable waters of the United States must be equipped with lights and other signals as required by the U.S.C.G. under 14 U.S.C. 86. Similarly, under 14 U.S.C. 83, no aids to navigation may be established except as authorized by the U.S.C.G.

The U.S.C.G. exercises broad authority respecting vessel operation and control, structure safety, and environmental protection in the navigable waters of the United States under the Ports and Waterways Safety Act, 33 U.S.C.A. 1221 et. seq.

The U.S.C.G. regulates the transfer, stowage, handling, discharge and dumping of oil, hazardous substances, explosives, and other dangerous articles or substances under 46 U.S.C. 391a, 46 U.S.C. 170, 33 U.S.C.A. 1221, 33 U.S.C.A. 1321, 33 U.S.C.A. 1417, and 50 U.S.C. 191. In addition, the U.S.C.G. regulates the installation of marine sanitation devices aboard seagoing barges under 33 U.S.C.A. 1322.

The U.S.C.G. is required by the National Environmental Policy Act (NEPA) to consider the effects on the environment of any major action which it takes.

b. *The United States Atomic Energy Commission (U.S.A.E.C.).* Under 42 U.S.C. Chapter 23 and rules and regulations issued pursuant thereto, the U.S.A.E.C. is authorized to license and regulate the manufacture, construction and operation of atomic energy production and utilization facilities from the standpoint of the common defense and security and the public health and safety. In addition, pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et. seq., the U.S.A.E.C. is required as lead agency to prepare an environmental impact statement on, and consider in its licensing actions, the effects on the quality of the human environment caused by the manufacture, construction and operation of such plants.

No person may operate the controls or direct the operation of the controls of a nuclear power plant without first having been issued an operator's license by the U.S.A.E.C. pursuant to 42 U.S.C. 2137.

3. *Agency Responsibilities.* a. *General Arrangements.* The U.S.A.E.C. will serve as "Lead Agency" in the licensing, permitting, certification, and inspection of floating nuclear power plants during their construction, operation, relicensing, recertification, alteration, repair, decommissioning, or other activities involving the statutory responsibilities of both agencies.

Except as provided for in Field Working Agreements, and for enforcement actions below, all written communications of U.S.C.G. to and from a license applicant or licensee of such plants relating to such matters will be transmitted through the U.S.A.E.C. Director of Regulation or his designee. In particular, any actions requiring partial or complete shutdown of the nuclear power plant or changes from the design and operating conditions approved within the terms of this memorandum of understanding will be transmitted through the U.S.A.E.C. Director of Regulation or his designee.

Pursuant to the provisions of this agreement, the U.S.A.E.C. may issue manufacturing licenses, construction permits, and operating licenses while the U.S.C.G. may issue load line certificates (through the American Bureau of Shipping), certificates of inspection, and amendments to certificates of inspection. Except with respect to any actions requiring partial or complete shutdown of the nuclear power plant or changes from the design and operating conditions approved by either agency, each agency will separately enforce the conditions of the permits, licenses, and certificates which it issues and pertinent regulations or orders issued by the agency. Enforcement, as used in this memorandum of understanding, means the discovery of a violation of law or the conditions of a certification or license, the issuance of a notice of violation, and subsequent actions for the imposition of sanctions.

To the extent practicable, each agency will consult fully with the other with respect to any enforcement action concerning matters which are the subject of this memorandum of understanding. Copies of all correspondence and other documents relating to such enforcement action will be furnished to the other agency on a timely basis.

The U.S.A.E.C. and the U.S.C.G. will exercise the functions described in this agreement so as to avoid duplication of regulation to the maximum extent consistent with their respective statutory obligations, public health and safety, and environmental protection. To this end, each agency may use personnel, facilities, advice, and information provided by the other agency for the purpose of carrying out its responsibilities.

The U.S.A.E.C. will have the primary responsibility for conducting the environmental impact reviews and preparing the environmental statements required by NEPA. The U.S.C.G. will participate in the preparation of the environmental impact statement with respect to Item 2 of Appendix "B" and other appropriate items that may be agreed upon. In addition, the U.S.C.G. will review the environmental impact statement and comment on other areas within its regulatory jurisdiction and in which the U.S.C.G. has special expertise, as required by NEPA.

b. *Technical Review of Plant Design.* The U.S.A.E.C. will exercise responsibility for the review of all matters related to radiological health and safety, including nuclear power plant safety, and to protection of the environment. The U.S.C.G. will exercise responsibility for review of matters related to the safe design and construction of the barge, to maritime safety, and to the protection of the marine environment.

The U.S.A.E.C. will review the design of all pressure vessels and piping essential to radiological safety, including all structures, supports, and systems covered by Section III of the American Society of Mechanical Engineers' (ASME) Boiler and Pressure Vessel Code, plant structures, buildings, and foundations, plus all other systems containing radioactive materials and the systems and subsystems needed to control and activate such systems.

The U.S.A.E.C. reviews will be based on design requirements and guides presented in:

(1) Title 10, Chapter 1, Code of Federal Regulations.

(2) The U.S.A.E.C. "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants."

(3) U.S.A.E.C. Regulatory Guides.

Appendix "A" contains a list of areas of primary interest to, and within the primary review and inspection responsibilities of U.S.A.E.C., which have been identified by the U.S.C.G. as those in which U.S.C.G. also has an interest. Each item is further classified as to whether U.S.C.G. will accept the U.S.A.E.C. review and inspection without further action by U.S.C.G. (Column 1), or whether the U.S.C.G. will conduct a separate review of its own for matters of barge and maritime safety (Column 2).

The U.S.C.G. reviews will be based on 46 CFR, 33 CFR, and U.S.C.G. navigation and vessel inspection circulars.

Appendix "B" contains a list of areas of primary interest to, and within the primary review and inspection responsibilities of the U.S.C.G., which have been identified by the U.S.A.E.C. as those in which U.S.A.E.C. also has an interest. Each item is further classified as to whether U.S.A.E.C. will accept the U.S.C.G. review and inspection without further action by U.S.A.E.C. (Column 1) or whether the U.S.A.E.C. will conduct a separate review of its own for matters of radiological and nuclear power plant safety (Column 2).

c. *Inspections.* (1) *New Construction.* Except as otherwise provided for under Field Working Agreements, all inspection activities of the U.S.A.E.C. and the U.S.C.G. will be coordinated by the appropriate U.S.A.E.C. Regional Office(s).

The U.S.A.E.C. and the U.S.C.G. will exercise the same responsibilities with respect to inspections as they exercise with respect to technical review of plant design. The U.S.C.G. will advise the U.S.A.E.C. of any special inspection requirements related to the items of Appendix "A". The U.S.A.E.C. will advise the U.S.C.G. of any special inspection requirements related to the items of Appendix "B".

Either agency may request inspection assistance from the other agency, subject to the conditions of Section 5, Procedures, below.

(2) *Continuing Inspection and Reinspection at Site.* Areas of responsibility shall be as described for new construction and in Appendices "A" and "B".

(3) *Field Working Agreements.* The cognizant U.S.A.E.C. Regional Director and the cognizant U.S.C.G. Officer-in-Charge, Marine Inspection, or Captain of the Port will develop local working agreements as necessary relating to matters of concern to both agencies not specifically referenced in this memorandum and to the implementation of matters so referenced involving both initial licensing and certification and periodic following actions. It is the intent of the U.S.C.G. and the U.S.A.E.C. that these working agreements will be used to provide a means by which the different field organizations and procedures of the agencies will be accommodated. Such an accommodation is essential to the orderly and effective imple-

mentation of this memorandum.

All working agreements shall be reduced to writing, and copies shall be transmitted to the U.S.A.E.C. Director of Regulation and the U.S.C.G. Commandant for ratification. In all cases, copies of correspondence with the applicant or licensee on matters covered by this agreement shall be sent to the U.S.A.E.C. Director of Regulation and the Commandant, U.S.C.G.

d. *Attendance at Hearings.* Each agency agrees to furnish representatives, as needed, to attend hearings and other proceedings related to matters covered in this Memorandum of Understanding and to present their agency position on any such matters.

e. *Public Information.* All correspondence between U.S.C.G. alone and the applicant, and other documents addressed to the U.S.C.G. alone, relating solely to matters of U.S.C.G. primary responsibility as specified in Appendix "B" shall be subject to U.S.C.G. regulations implementing the Freedom of Information Act, 5 U.S.C. 552. All other documents and information transmitted in accordance with this memorandum of understanding will be subject to U.S.A.E.C. regulations implementing that act.

4. Schedule of Licenses, Permits, and Certifications. a. *U.S.A.E.C. License to Manufacture.* The U.S.A.E.C. may issue a license to manufacture one or more floating nuclear power plants at a given manufacturing site pursuant to 42 U.S.C. 2133. The U.S.A.E.C. may issue a license to manufacture on the basis of, among other things, the design and other information submitted by the applicant in accordance with the provisions of 10 CFR. Prior to issuance of a license to manufacture, the U.S.C.G. will write a letter of acceptance to U.S.A.E.C. indicating U.S.C.G. satisfaction with the preliminary design information involving the review areas specified in Appendix "B", Column 1 and Appendix "A", Column 2.

The U.S.A.E.C. will, prior to issuance of a license to manufacture floating nuclear power plants, perform a nuclear safety evaluation of the preliminary plant design and will prepare an environmental statement pursuant to NEPA that discusses the effects of the manufacture of the floating nuclear power plants on the environment at the place of manufacture and, in general terms, the anticipated effects on the ocean environment at one or more typical sites where such a plant might eventually be located. The environmental statement will be based on, among other things, information given in an environmental report submitted by the license applicant, including the generic consideration of the environmental impact of 1) construction at the typical operating sites, 2) the movement of the plant to the sites, 3) its permanent emplacement, 4) operation for a given lifetime, and 5) the subsequent decommissioning of the plant.

b. *U.S.A.E.C. Site Construction Permit.* The U.S.A.E.C. may issue permits to utilities desiring to construct and operate a nuclear power plant at an ocean site prior to commencement of construction of a breakwater or other appurtenant facilities at the proposed site. Such a permit will not be issued before a license to manufacture floating nuclear power plants has been issued. The U.S.A.E.C. will prepare an environmental statement, before such a construction permit is issued, that discusses the environmental effects of construction and operation of the plant at the proposed site, and will evaluate the safety of the construction and operation of a nuclear plant manufactured pursuant to the relevant manufacturing license. This site construction permit will be issued on the basis of, among other things, the design and other information presented by the applicant in accordance with Title 10, Chapter 1, Code of Federal Regulations. Before any site construction permit is issued, U.S.C.G. will write a letter of acceptance to U.S.A.E.C. indicating U.S.C.G. satisfaction with the site preliminary design information within the review responsibilities specified in Appendix "A", Column 2, and Appendix "B", Column 1.

c. *U.S.C.G. Certificate of Inspection.* Early in the manufacture of each plant, a formal application for inspection will be made by the manufacturer to the U.S.C.G. for each floating nuclear power plant. Prior to the departure of each barge from the manufacturing site, after the inspection of the barge and equipment to assure compliance with applicable regulations, including but not limited to the acquisition of a load line certificate, has been completed to the satisfaction of the U.S.C.G. Officer-in-Charge, Marine Inspection (OCMI), a certificate of inspection will be issued by the U.S.C.G. Prior to the issuance of this certificate, the U.S.A.E.C. Regulatory staff will write a letter of acceptance to U.S.C.G. indicating U.S.A.E.C. satisfaction with the systems and equipment involved in the review areas specified in Appendix "A", Column 1, and Appendix "B", Column 2.

d. *U.S.A.E.C. Operating License and U.S.C.G. Certificate of Inspection (Nuclear Vessel).* At the operating site, prior to the fueling of the reactor, the barge will be inspected by the OCMI. When compliance with applicable regulations is assured, the U.S.C.G. will amend the existing certificate of inspection or issue a new one on the floating nuclear power plant. Prior to this certification or amendment action, the U.S.A.E.C. Regulatory staff will write a letter of acceptance to the U.S.C.G. indicating its satisfaction with the systems and equipment involved in the review areas specified in Appendix "A", Column 1.

Following or concurrent with the above, and after any requisite public hearings have been held, a facility operating license may be issued by the U.S.A.E.C. pursuant to 42 U.S.C. 2133 and 2235. Prior to such issuance, the U.S.C.G. will write a letter to the U.S.A.E.C. indicating U.S.C.G. satisfaction with the systems and equipment involved in the review areas specified in Appendix "B", Column 1. Prior to these actions, manning requirements for the safe operation of the nuclear power plant shall be as determined by the U.S.A.E.C. and shall include the issuance of necessary reactor operators licenses. Additional personnel licensing and certificating, and manning requirements to assure safe machinery operation and the safety of the barge and all personnel in the marine environment shall be specified by the U.S.C.G.

5. *Procedures.* a. *Correspondence.* Except as provided for in Field Working Agreements, the following will be promptly transmitted by the U.S.A.E.C. Director of Regulation or his designee: all official U.S.A.E.C. notices to license applicants or licensees, issuances of licenses, certifications from the U.S.C.G. specified in this memorandum, all correspondence to license applicants or licensees pertaining to licensing and certification reviews, and to inspection actions. The U.S.A.E.C. will promptly forward to the U.S.C.G. copies of correspondence with the applicant and other documents.

b. *Submittals and Drawings.* Under U.S.A.E.C. regulations in 10 CFR Part 50, the applicant will be required to submit design information for the entire floating nuclear power system, for which acceptable content and format are described in U.S.A.E.C. "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants." In addition, for the subject areas described in Appendix "B" the applicant will be required to submit drawings and design justifications following the format and procedures required by the U.S.C.G. Appendix "B" submittals, by U.S.C.G. standards, will be required to include sufficient design information to describe interface details between U.S.A.E.C. and U.S.C.G. reviews.

c. *Coordination of Reviews.* In routine matters relating to review of license applications, the Nuclear Coordinator, Office of Merchant Marine Safety, will be the contact within the U.S.C.G., and the designated Licensing Project Manager, Directorate of Licensing, will be the contact point within the U.S.A.E.C. Any questions which cannot be resolved at this level will be referred to intermediate levels of management within the U.S.C.G. and the U.S.A.E.C. If any questions cannot be resolved at these levels, they will be considered in direct communications between the Director of Regulation, U.S.A.E.C., and the Commandant, U.S.C.G.

d. *Coordination of Inspections.* In matters of field inspections, the cognizant U.S.A.E.C. Regional Director(s) and the cognizant U.S.C.G. Officer-in-Charge, Marine Inspections, or Captain of the Port will be the contact points for routine matters. Any questions which cannot be resolved at this level will be referred to the Chief, Merchant Vessel Inspection Division, Office of Merchant Marine Safety, U.S.C.G., and the Deputy Director for Field Operations, Regulatory Operations, U.S.A.E.C. Any questions that cannot be resolved at this level will be referred to the Commandant, U.S.C.G., and the Director of Regulation, U.S.A.E.C.

e. *Avoidance of Duplicative Procedures and Documentation.* With respect to reviews and inspections in the areas identified in this memorandum of understanding, and especially where both agencies are involved in review or inspection of certain components or systems, it is recognized that full exercise of procedures of both the U.S.A.E.C. and the U.S.C.G. could result in delay and duplication of function. Normally, in cases wherein a component or system within the primary review or inspection responsibility of one agency is to be inspected or reviewed by the other, only the drawings and design documentation required by the first agency will be required of the licensee or applicant. In addition, the inspection standards and procedures of the first agency will normally apply.

f. *General Coordination.* For any matters with respect to specific licensing and certificate activities for floating nuclear power plants requiring continuing liaison between the U.S.C.G. and the U.S.A.E.C., including matters other than those specifically detailed above, and for resolving coordination problems at all levels, the contact points will be the Deputy Director of Licensing for Reactor Projects, Regulation, U.S.A.E.C., and the Chief, Merchant Marine Technical Division, U.S.C.G. For all matters other than specific licensing and certification activities for floating nuclear power plants, the contact points will be the Director of Government Liaison, U.S.A.E.C., and the Chief, Merchant Marine Technical Division, U.S.C.G.

g. *Schedule of Reviews and Inspections.* In order to coordinate inspection and review of all activities and efficiently implement regulatory requirements, each agency will advise the other of its schedules for accomplishing reviews and inspections required for the various licensing, certification, and recertification actions described in this memorandum. Where applicable, these schedules will be incorporated into the U.S.A.E.C. licensing project schedule. Representatives of each agency will be invited to coordination meetings held by the other agency pertaining to review and inspection activities which are to be coordinated. Each agency will give priority to keeping the agreed schedules and will keep the other agency advised of problems which are jeopardizing schedules, where coordination is required.

h. *Amendment of Appendices.* Appendices "A" and "B" may be amended by exchange of letters between the Director of Regulation, U.S.A.E.C., and Commandant, U.S.C.G.

6. *Other Laws and Matters.* Nothing in this memorandum of understanding shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor the application or enforcement of such laws to matters other than those specified herein, nor shall anything in this memorandum be construed as modifying the existing authority of either agency.

7. *List of Appendices.*

Appendix "A", Areas of Primary U.S.A.E.C. Review and Inspection Responsibilities with U.S.C.G. Review Input to U.S.A.E.C.

Appendix "B", Areas of Primary U.S.C.G. Review and Inspection Responsibilities with U.S.A.E.C. Review Input to U.S.C.G.

Dated: January 4, 1974.

L. M. MUNTZING,
Director of Regulation, U.S.A.E.C.

Dated: January 4, 1974.

C. R. BENDER,
Commandant U.S.C.G.

APPENDIX A

AREAS OF PRIMARY U.S.A.E.C. REVIEW AND INSPECTION RESPONSIBILITIES WITH U.S.C.G. REVIEW INPUT TO U.S.A.E.C.

Subject	*Col. 1* U.S.C.G. accepts complete review and inspection by U.S.A.E.C.	*Col. 2* U.S.C.G. separate non-radiological safety review
A1. Evaluations (2.2.3) [1]	X	
A2. Design of Category I Structures (3.8)	X	
A3. Mechanical Systems and Components (3.9)	X	
A4. Reactor Coolant System and Connected Systems (5.0)	X	
A5. Engineered Safety Features (6.0)	X	
A6. Onsite Power Systems (8.3)	X	Requirements of IEEE 308 and 46 CFR Subchapter J.[2]
Power Supply Feeders (8.3.1.1(1))	X	Do.
Busing Arrangements and Loads Supplies from each Bus (2) [2] (3).	X	Do.
Interconnection Between Safety and Non-Safety Related Buses (5).	X	Do.
Equipment Capacities (7)	X	Do.
A7. Instrumentation and Control Systems for the Applicable Power Systems with the Assigned Power Supply Identified (10).	X	Do.[2]
A8. Electric Circuit Protection Systems Network (e.g., selective trip), Including Setting Criteria (11).	X	Do.[2]
Items below are under 8.3.1.1 of SAR Format also, but are numbered as listed on page 8.3-2 (SAR Format):		
A9. Fuel oil storage and transfer system (emergency power) (8).	X	Do.[2]
Cooling and heating systems (9)	X	Do.[2]
A10. Instrumentation and control systems with assigned power supply (10).	X	Do.[2]
Items below are under 8.3.1.1 of SAR Format also, but are numbered as listed on page 8.3-3:		
A11. Motor size, motor starting torque, and motor insulation (1), (2) and (3).	X	Do.[2]
A12. Interrupting capacity of switch-gear, load centers, control centers and distribution panels (4).	X	Do.[2]
A13. Electrical circuit protection (5)	X	Do.[2]
A14. Grounding requirements (6)	X	Do.[2]
A15. Independence of Redundant Systems (8.3.1.4)	X	
A16. Cable derating and cable tray fill (1)	X	Do.
A17. Cable routing in congested areas and areas of hostile environment (2).	X	
A18. Fire detection and protection in areas where cables are installed (4).	X	
Cable and Cable tray marking (5)	X	
A19. Area barriers and separation between redundant trays.	X	Requirements of IEEE-45 and 46 CFR Subchapter J.[2]
A20. D-C Power Systems (8.3.2)	X	Do.
A21. Fire Protection System (9.5.1); other than B4e	X	Do.
A22. Plant Emergency Lighting Systems (9.5.3)	X	
A23. Diesel Generator Fuel Oil Storage Transfer System (9.5.4).	X	
A24. Diesel Generator Cooling Water System (9.5.5)	X	
A25. Diesel Generator Starting System (9.5.6)	X	
A26. Main Steam Supply System (10.3)	X	
A27. Radioactive Waste Management (11.0)	X	
A28. Qualification Requirements for Nuclear Plants Personnel (13.1.3).	X	
A29. Technical Specifications (Table 16-1)	X	
A30. Site Related Items:		
a. Collision Barriers/Wave Attenuator (e.g., breakwater).	X	
b. Mooring System	X	USCG will conduct review and inspection of certain subcategories of the system.

[1] Reference sections "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants, Revision 1, U.S. Atomic Energy Commission, Director of Regulation. USAEC has total responsibility for all subjects contained in this document. The subject areas identified in Appendix A indicate only those areas that the USCG has some interest & possible input.

[2] Applicant may apply for alternate or equivalent equipment or materials in accordance with normal regulatory procedures.

APPENDIX B

AREAS OF PRIMARY U.S.C.G. REVIEW AND INSPECTION RESPONSIBILITIES WITH U.S.A.E.C. REVIEW INPUT TO U.S.C.G.

Subject area	Col. 1 U.S.A.E.C. accepts complete review and inspection by U.S.C.G.	Col. 2 U.S.A.E.C. separate review for radiological safety effect
B1. Electrical System	X	
a. Hotel Electrical System (Galley, Lighting, etc.)		
b. Hull Related Electrical System. (Bilge, Trim Pumps, etc.).		
c. Emergency Electrical System (Lighting, Generator, Fire Detection, Hull Leakage Detection and other Vital Loads).		
d. Interior Communication.		Emergency plan requirements for radiological incidents.
e. Ship to Shore Communication.		
f. Cathodic Protection.		
g. Cable Selection.		
h. Circuit Protection.		
B2. Pollution	X	
a. Oil and Hazardous Substance Procedures and Safeguards.		
b. Waste Disposal (Non-Radioactive).		
c. Domestic Water and Sanitary System.		
B3. Boilers and Evaporators other than ASME Section III.	X	Interface with Sec. III systems location and arrangement applying to high energy line failure.
B4. Piping Systems and Pressure Vessels Plant-Related Systems (Complete Listing [1]).	X	
a. Flammable and Toxic Gas and Cryogenic Systems.		
b. Bulk Chemical Systems.		
c. Non-Essential Cooling Water System (Raw and Service).		Interface with containment penetrations.
d. Service Air Systems.		
e. Fire Protection System.		
f. Heating Boiler Steam and Feedwater Systems.		
Hull-Related Systems		
a. Weather-Deck Drainage System.		
b. Platform Drainage System.		
c. Platform Trim System.		
d. Fuel Oil Storage and Systems.		
B5. Structural Fire Protection	X	
B6. Hull	X	Requirements as needed for Category I structures.
a. Hull Girder.		
b. Local Strength.		
c. Machinery Foundations.		
d. Mooring Foundations.		
e. Materials.		
f. Wastage Allowance.		
g. Welding.		
h. Stability.		
i. Subdivision.		
j. Vibration Analysis.		
B7. Hull Arrangements	X	Location and arrangement applying to missile protection and high energy line failure. Emergency plan requirements for radiological incidents.
a. Personnel Accomodations.		
b. Service Area.		
c. Means of Escape, Fire Exits.		
d. Hospital Spaces.		
B8. Equipment	X	
a. Navigation and Anchorage Lights for Barge.		
b. Lifesaving Equipment.		
c. Cargo Gear (except fuel handling equipment).		
d. Deck Rails, Machinery Guards.		
e. Towing Equipment, (Anchors, Chocks, Procedures, etc.).		
B9. Non-Radiological Ventilation	X	
B10. Loadline (ABS) [2]	X	
B11. Dangerous Articles as Ship's Stores and Supplies	X	
B12. Site Related Item.		
a. Lighting and Marking of Breakwater	X	
b. Safety Equipment of Breakwater	X	

[1] These are the only plant-related mechanical systems not identified in Appendix "A", to be reviewed and inspected by U.S.C.G.

[2] American Bureau of Shipping.

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REGULATION OF NUCLEAR POWER PLANTS

Memorandum of Understanding

Both the Corps of Engineers, United States Army, and the United States Nuclear Regulatory Commission have responsibilities for assuring that nuclear power plants on coastal and inland navigable waters and at offshore sites are built and operated safely and with minimum impact on the environment. For the purpose of coordinating and implementing consistent and comprehensive requirements to assure effective, efficient and thorough regulation of nuclear power plants and to avoid conflicting and unnecessary duplication of effort and of standards related to overall public health and safety and environmental protection, the Corps of Engineers, United States Army, and the United States Nuclear Regulatory Commission have entered into a memorandum of understanding. The text of the memorandum is set forth below.

Dated at Washington, D.C., this 18th day of August 1975.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

MEMORANDUM OF UNDERSTANDING BETWEEN THE CORPS OF ENGINEERS, UNITED STATES ARMY, AND THE UNITED STATES NUCLEAR REGULATORY COMMISSION FOR REGULATION OF NUCLEAR POWER PLANTS

1. *Purpose.* a. For the purpose of coordinating and implementing consistent and comprehensive requirements to assure effective, efficient and thorough regulation of nuclear power plants and to avoid conflicting and unnecessary duplication of effort and of standards related to overall public health and safety and environmental protection, the Corps of Engineers, United States Army (US Army CE) and the United States Nuclear Regulatory Commission (U.S.N.R.C.) have entered into this Memorandum of Understanding—subject to their respective statutory authorities. The agreement pertains to nuclear power electric generating stations using nuclear steam supply systems, including their appurtenant structures, located in or affecting navigable waters. In the case of a floating nuclear power plant, such structures include the electrical transmission lines from the plant to a landbased substation, the protective breakwater and mooring systems, and all appurtenant supporting facilities.

b. Nothing in this Memorandum of Understanding is to be interpreted as contravening the terms of the existing Memorandum of Understanding between the Atomic Energy Commission and the Department of Defense dated 14/18 Feb 1967, pursuant to Section 91b of the Atomic Energy Act of 1954, as amended.

2. *Statutory Background.* a. *The Corps of Engineers, United States Army (US Army CE).* Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Secretary of the Army, acting through the US Army CE exercises regulatory authority over the construction of any structures in navigable waters of the United States, the dredging and/or filling of any navigable waters of the United States, and any other activity which would alter or modify the course, condition, location or capacity of a navigable water of the United States. This responsibility encompasses onshore as well as offshore activities when such activities affect the course, condition or capacity of a

navigable water of the United States. Navigable waters of the United States have been administratively defined by the US Army CE (33 C.F.R. 329.9(a)) to generally include those waters including the territorial seas, which are subject to the ebb and flow of the tide or which have been used, are used, or are susceptible of use as an instrument to transport interstate commerce.

The Outer Continental Shelf Lands Act (43 U.S.C. 1333(f)) extends the authority of the Secretary of the Army, acting through the US Army CE, to the prevention of obstruction to navigation in the navigable waters of the United States due to the construction of artificial islands and fixed structures on the outer continental shelf beyond the territorial sea.

Pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344), the Secretary of the Army, acting through the US Army CE, exercises regulatory authority over the discharge of dredged or fill material in navigable waters at specified disposal sites. The selection of disposal sites will be in accordance with guidelines developed by the Administrator of the United States Environmental Protection Agency in conjunction with the Secretary of the Army. Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishing areas, wildlife or recreation areas.

Under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.), the Secretary of the Army, acting through the US Army CE, is authorized to issue permits for the transportation of dredged material from the United States for the purpose of dumping into ocean waters. However, as "dumping" is defined by Section 3(f) of that Act, it does not include the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on/or in the submerged land beneath such waters, for a purpose other than disposal when such construction or such placement is otherwise regulated by Federal law.

Where significant impacts on the quality of the human environment are expected to result from activities covered by an application for a permit under the above statutory provisions, the US Army CE must prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., before the Secretary of the Army, acting through the US Army CE, may issue the permit.

b. *The United States Nuclear Regulatory Commission (U.S.N.R.C.).* The Energy Reorganization Act of 1974 (Pub. Law 93-438 (88 Stat. 1233)) abolished the Atomic Energy Commission, and Section 201 of that Act created the Nuclear Regulatory Commission and transferred to the U.S.N.R.C. all the licensing and related regulatory functions of the Atomic Energy Commission. Pursuant to the Energy Reorganization Act of 1974; Chapters 6, 7, 8, 10, and 16 of the Atomic Energy Act of 1974, as amended, 42 U.S.C. 2011 et seq.; and the rules and regulations issued pursuant thereto, the U.S.N.R.C. is authorized to license and regulate the construction and operation of, among other things, nuclear power plants, from the standpoint of the common defense and security and public health and safety. In addition, pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., the U.S.N.R.C. is required to prepare an environmental impact statement on, and consider in its licensing actions, the effects on the quality of the human environment caused by the construction and operation of such plan

3. *Agency Responsibilities.* a. *General Arrangements.* The U.S.N.R.C. will serve as "Lead Agency," exercising the primary responsibility in conducting environmental reviews and in preparing environmental statements for nuclear power plants covered by this Memorandum of Understanding. Except as otherwise indicated, all written communications of US Army CE to a licensee, a license applicant or licensee relating to environmental analyses and reports will be transmitted through the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee. In particular, any actions requiring partial or complete shutdown of the nuclear power plant or changes from the design and operating limitations and conditions approved within the terms of this Memorandum of Understanding will be transmitted through the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee.

Except with respect to any actions requiring partial or complete shutdown of a nuclear power plant or changes from the design and operating conditions approved by either agency, each agency will separately enforce its pertinent regulations or orders and the conditions of the permits and licenses which it issues. Enforcement, as used in this Memorandum of Understanding, means the detection of a violation of law or the conditions of a permit or license, the issuance of a notice of violation, and subsequent actions for the imposition of sanctions.

To the extent practicable, each agency will consult fully with the other with respect to enforcement actions concerning matters which affect the responsibilities of the other agency as described in this Memorandum of Understanding. Copies of correspondence and other documents relating to such enforcement action will be furnished to the other agency on a timely basis.

The U.S.N.R.C. and the U.S. Army CE will exercise the functions described in this agreement so as to avoid duplication of regulation to the maximum extent consistent with their respective statutory obligations, public health and safety, and environmental protection.

The U.S. Army CE, acting through the appropriate District Engineer, with the assistance of U.S. Army Corps of Engineers research and development centers, when such assistance is appropriate, will participate with the U.S.N.R.C. in the preparation of the environmental impact statements to include the drafting of material for the sections which consider and evaluate the following topics, as applicable, and the analysis leading thereto.

(1) Coastal erosion and other shoreline modifications, shoaling, and scouring;

(2) Siltation and sedimentation processes;

(3) Dredging activities and disposal of dredged materials; and

(4) Location of structures in or affecting navigable waters.

The applicant will comply with U.S. Army CE regulations in developing information needed for U.S. Army CE review. As do U.S.N.R.C. regulations, these regulations require the applicant to submit, at his expense, information required in support of his application. Once such information is received, the following procedure will apply to independent analysis of information received in any of these four areas. (An independent analysis is one requiring effort in addition to the analysis done by the U.S.N.R.C. and the U.S. Army CE staff.)

(1) U.S.N.R.C. will provide funding for such an independent analysis if U.S.N.R.C. agrees the independent analysis is needed and would normally be required by U.S.N.R.C. if U.S. Army CE were not involved.

(2) U.S. Army CE will require that the applicant pay contract or other costs of such analysis, as required in U.S. Army CE regulations, if U.S. Army CE determines that the independent analysis is needed, but U.S.N.R.C. does not agree that it is needed or does not agree that such analysis would be required under the regulatory procedures of U.S.N.R.C. In these cases, the contracting and collection of associated costs from the applicant will be the responsibility of the U.S. Army CE. The U.S.N.R.C. will be furnished the results of the study.

In addition, the U.S. Army CE will review and comment on the draft environmental statement in other areas within its regulatory jurisdiction and areas in which the U.S. Army CE has special expertise, as required by NEPA.

b. *Inspections.* Within the scope of this Memorandum of Understanding, the U.S.N.R.C. and the US Army CE will exercise responsibilities for the same activities with respect to inspections as they exercise with respect to environmental reviews as discussed in 3.a. above.

c. *Public Hearings.* The U.S.N.R.C. will conduct a mandatory adjudicatory public hearing with the opportunity for public participation before an Atomic Safety and Licensing Board covering all environmental and radiological health and safety matters relating to the proposed issuance of a U.S.N.R.C. permit for construction of a nuclear power plant. When U.S.N.R.C. proposes to issue a limited work authorization for a nuclear power plant prior to issuance of a construction permit, a public hearing on site suitability and environmental issues will be held pursuant to the applicable U.S.N.R.C. regulations. An adjudicatory hearing will be also conducted prior to issuance of a U.S.N.R.C. license for operation of the nuclear power plant upon request of any person whose interest may be affected or if the U.S.N.R.C., on its own initiative, decides that such a hearing should be held.

The US Army CE, in connection with its statutory and regulatory requirements, will conduct public hearings when required (normally, when the US Army CE permit involves disposal of dredged or fill material).

On request, each agency will participate in any public hearings held by the other agency. Particularly, in the case of the U.S.N.R.C. hearings, the US Army CE will provide expert testimony, as required, in those areas (sections) covered in the U.S.N.R.C. Environmental Statements in whose preparation the US Army CE participated and those areas of special US Army CE expertise.

4. *U.S.N.R.C. Permits and Licenses and US Army CE Department of the Army Permits.* A U.S.N.R.C. permit to construct a nuclear power plant must be obtained prior to any commencement of any construction at the proposed site.[1] For certain nuclear power reactors, such as the floating nuclear power plants, such a construction permit will not be issued before the U.S.N.R.C. has issued a license to manufacture these reactors. The U.S.N.R.C. will prepare an environmental statement before such a construction permit is issued, discussing the environmental effects of construction and operation of the nuclear power plant at the proposed site; and the U.S.N.R.C. will also evaluate compliance with U.S.N.R.C. criteria for safe design, construction and operation of the nuclear plant including, if applicable, a plant manufactured pursuant to a manufacturing license. US Army CE will participate in the preparation of this environmental statement as described in Section 8. above. The construction permit will be issued on the basis of, among other things, the design and other information presented by the applicant in accordance with requirements of Title 10, Code of Federal Regulations, Chapter I.

It is anticipated that the single US Army CE Department of the Army permit which authorizes all construction activities to be performed at the plant site and the U.S.N.R.C. construction permit (or limited work authorization, as applicable) will be issued approximately concurrently for power reactors for which both agencies are authorized to issue permits. Each agency will promptly notify the other in writing of its issuance of a permit. If the U.S.N.R.C. issues a limited work authorization or grants a construction

[1] Some activities may be conducted under a limited work authorization.

exemption in a situation where a US Army CE permit is also required, the U.S.N.R.C. will promptly notify the US Army CE in writing of the issuance of such an authorization or exemption. When the U.S.N.R.C. decides that it will grant a limited work authorization prior to issuance of a construction permit, the U.S.N.R.C. will advise the US Army CE of this decision. Both agencies will then coordinate their schedules of review and issuances of licenses and permits.

Prior to these issuances, each agency will send to the other a letter commenting on the proposed issuance from the point of view of the reviews assigned to the sending agency in Section 3 above and stating its intention to approve or disapprove issuance of its own permit.

Each agency will caution the applicant that issuance of its permit does not alleviate the need for permits and licenses of other agencies.

Following the above agency actions, and after any requisite public hearings have been held, a facility operating license may be issued by the U.S.N.R.C. pursuant to 42 U.S.C. 2133, 2134, 2232, and 2235.

5. *Procedures.* a. *Correspondence.* The following documents, relating to US Army CE responsibilities as described in Section 3 of this Memorandum, will be promptly transmitted to the proper recipients by the U.S.N.R.C. Director of Nuclear Reactor Regulation: issuances of licenses pursuant to applicable statutes and regulations, and in accordance with the provisions of this memorandum, correspondence to license applicants or licensees pertaining to licensing and certification or his designee; official U.S.N.R.C. notices to license applicants or licensees affected by the provisions of this Memorandum, verification reviews, and correspondence relating to inspection actions. The U.S.N.R.C. will promptly forward to the US Army CE copies of correspondence with the applicant and other documents which affect the responsibilities of the US Army CE under the provision of this Memorandum.

b. *Public Information.* All correspondence to or from either agency dealing with matters which are the subject of this Memorandum of Understanding will be subject to the Freedom of Information Act. In addition, all correspondence flowing through the U.S.N.R.C. will be subject to § 2.790 of 10 CFR Part 2, which provides for routine disclosure of certain documents in public document rooms. Each agency will consult with the other agency before issuing any press releases on matters assigned to the other agency within this Memorandum of Understanding.

c. *Coordination of Reviews.* In routine matters relating to review of license applications, the appropriate U.S. Army Corps of Engineers District Engineer will be the contact point with the U.S. Army CE, and the designated Environmental Project Manager, Division of Reactor Licensing, will be the contact point within the U.S.N.R.C. Any questions which cannot be resolved at this level will be referred to intermediate levels of management within the U.S. Army and the U.S.N.R.C. If any questions cannot be resolved at these levels, they will be considered in direct communications between the Executive Director for Operations, U.S.N.R.C., and the Chief of Engineers, United States Army.

d. *Coordination of Inspections.* In matters of field inspections, the cognizant Directors of U.S.N.R.C. Regional Inspection and Enforcement Offices and the cognizant District Engineer will be the contact points for routine matters. Any questions which cannot be resolved at this level will be referred to intermediate levels of management within U.S. Army CE and U.S.N.R.C. Any questions that cannot be resolved at these levels will be referred to the Chief of Engineers, United States Army, and the Executive Director for Operations, U.S.N.R.C.

e. *Schedules of Reviews and Inspections.* In order to coordinate inspection and review activities and to efficiently implement regulatory requirements, each agency will advise the other of its schedules for accomplishing inspections and environmental reviews which have an effect on the activities of the other agency as defined in Section 3.a. of this Memorandum of Understanding. Where applicable, these schedules will be incorporated into the U.S.N.R.C. licensing project schedule. Representatives of each agency will be invited to coordination meetings held by the other agency pertaining to environmental review activities which are to be coordinated. Each agency will give priority to keeping the agreed schedules for environmental reviews and will keep the other agency advised of problems which are jeopardizing schedules.

f. *Amendment of Assignments.* The assignment of responsibilities of this Memorandum may be amended by exchange of letters between the Executive Director for Operations, U.S.N.R.C., and the Chief of Engineers, United States Army.

6. *Other Laws and Matters.* Nothing in this Memorandum of Understanding shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor the application or enforcement of such laws to matters other than those specified herein, nor shall anything in this Memorandum be construed as modifying the existing authority of either agency.

Dated: July 2, 1975.

LEE V. GOSSICK,
Executive Director for Operations,
Nuclear Regulatory Commission.

Dated: July 2, 1975.

W. C. GRIBBLE, Jr.,
Chief of Engineers of
U.S. Army CE.

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Effective 1/30/76

FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972

Second Memorandum of Understanding and Policy Statement Regarding Implementation of Certain NRC and EPA Responsibilities

Prior to the enactment of Pub. L. 92-500, the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), the Atomic Energy Commission (AEC) had regulatory authority pursuant to the National Environmental Policy Act of 1969, (NEPA), and in consideration of the environmental impact of the discharge of pollutants and other factors, to impose limitations on the discharge of pollutants from nuclear power plants and other facilities or activities requiring an AEC license or permit, as a condition of such license or permit.

The FWPCA now requires the Environmental Protection Agency (EPA) to establish (for use in permits for the discharge of pollutants to waters of the United States from point sources as defined in the FWPCA such as nuclear power plants, etc.) effluent limitations for all pollutants. The FWPCA provides that nothing under NEPA shall be deemed to authorize any Federal agency to review any effluent limitation or other requirement established pursuant to the FWPCA, or to impose, as a condition of any license or permit, any effluent limitation other than any such limitation required by EPA in order to establish effluent limitations in permits. Pursuant to the authority of NEPA, the Nuclear Regulatory Commission (NRC) may require applicants for licenses or permits to submit information required by NRC in order to evaluate and consider the environmental impacts of any actions it may take. Consequently, the informational needs imposed by the two agencies may be similar in the area of impacts on water quality and biota.

NEPA requires that all Federal agencies prepare detailed environmental statements on proposed major Federal actions which can significantly affect the quality of the human environment. A principal objective of NEPA is to require the agency to consider, in its decision-making process, the environmental impacts of each proposed major action and the available alternative actions. Both EPA and NRC have responsibilities pursuant to NEPA regarding the issuance of licenses or permits for nuclear power plants and certain other facilities.

The purpose of the memorandum is to clarify the respective roles of EPA and NRC in the decision-making processes concerning nuclear power plants and other facilities requiring an NRC license or permit.

In late 1973, the Chairman of the Council on Environmental Quality (CEQ) wrote to the Chairman of the then AEC and the Administrator of EPA suggesting steps that might be taken "to make the analysis of the water quality impact of nuclear power plants more effective and more meaningful and, at the same time, reduce demands for data being placed upon applicants for licenses."

In summary, CEQ suggested that AEC and EPA:

(1) Explore mechanisms available to assure that applicants' environmental reports to AEC contain sufficient data to satisfy EPA requirements on water quality matters;

(2) Consider the possibility of preparing a single impact statement to meet AEC's requirements under NEPA and EPA's requirements under FWPCA; and

(3) Consider the possibility of unified hearings.

In response to CEQ's suggestions, AEC and EPA developed the Proposed Second Memorandum of Understanding regarding their respective responsibilities under NEPA and FWPCA, which was published in the FEDERAL REGISTER for public comment on ovember 7, 1974 (39 FR 39490). Comments on the Proposed Second Memorandum of Understanding were received from 15 sources representing more than 200 electric utilities, three states, one river basin commission, and one regional office of EPA.

On January 29, 1973, the AEC published in the FEDERAL REGISTER a first "Memorandum of Understanding Regarding Implementation of Certain Complementary Responsibilities" between AEC and EPA under the Federal Water Pollution Control Act Amendments of 1972. On the same date the AEC published in the FEDERAL REGISTER an Interim Statement of Policy concerning the effect of section 511 of the FWPCA upon the AEC's statutory responsibility

and authority under NEPA in licensing actions covered by 10 CFR Part 50, Appendix D (now superseded by 10 CFR Part 51). Both the first Memorandum and Interim Policy Statement were made effective upon publication, but comments were invited from interested persons with a view to possible amendments to the Interim Policy Statement.

After consideration of comments to both notices and other relevant factors, NRC and EPA have entered into the Second Memorandum of Understanding set forth below and NRC has adopted the revised Policy Statement set forth in Appendix A to this Second Memorandum. The revised Policy Statement will serve as the legal framework for NRC decision-making concerning licensing matters covered by NEPA and FWPCA section 511. The January 29, 1973, Memorandum is superseded by the present Second Memorandum of Understanding.

The significant changes from the language of the Proposed Second Memorandum of Understanding and the significant comments received on the Second Memorandum are summarized below:

1. A number of comments were received concerning NRC-EPA-State relationships. The principal comments are discussed below:

a. It was recommended that the NRC-EPA-State relationship be clarified and that States should be made a full party to any agreement of understanding on specific projects. The requested clarification is provided in Sections 8 & 9 of this Memorandum. Both NRC and EPA plan to work closely with States in all cases; however, it was not considered practical to make the 50 States a party to this Memorandum at this time. NRC and EPA plan to work with States in order to achieve the substance of the Memorandum on a State-by-State basis.

b. It was recommended that the States should be informed of the results of the EPA, NRC, and Energy Research and Development Administration (ERDA) working groups. Eight such working groups covering the various biological and engineering areas of interest for section 316 (a) and (b) determinations were established by EPA to generally identify the information on water quality and biota that must be included in applicants' environmental reports to permit early water quality decisions. This will be done by EPA in the form of a section 316(a) technical manual and a section 316(b) technical manual.

c. It was stated that when a State is the permit issuance authority pursuant to section 402, EPA should not duplicate the State's evaluation of compliance with FWPCA requirements. EPA will not duplicate State efforts; however, section 402(d) provides for EPA review of the State action.

d. It was urged that EPA require that State permit programs include procedures for early determinations under sections 316(a) and (b) of the FWPCA. It is the view of the parties that the States with approved National Pollutant Discharge Elimination System (NPDES) permit programs have authority to establish a procedure similar to the early permit issuance procedure discussed in Paragraph 3. hereof. Both EPA and NRC strongly encourage States which have such authority to institute a similar, early issuance procedure and to cooperate with EPA and NRC in implementing this procedure.

e. It was pointed out that a number of States have adopted "Permit and Install Regulations", e.g., Ohio, South Carolina and New York, which must be taken into account. Such State regulations will be taken into account by NRC and EPA.

2. It was suggested that the fact should be clarified that a single environmental statement will be prepared to meet NRC and EPA needs. This comment has been adopted.

3. It was suggested that an actual section 402 discharge permit should be issued rather than a "Preliminary Determination" and the effective date of such permit should coincide with the NRC operating license issuance date. This suggestion was partially adopted, by providing for early issuance of section 402 permits. Such permits will contain appropriate terms and conditions for all discharge of pollutants expected during the life of the permit (five years maximum) and terms and conditions with regard to cooling water intake structures and Section 316(a) determinations concerning thermal discharges. Additional permit terms and conditions for discharges not contemplated during the life of the permit (such as certain chemical and other releases not expected until operation startup) may be derived from applicable State water quality standards and applicable new source performance standards contained in 40 C.F.R. Chapter I, Subchapter N. Permits will be reissued, as appropriate, and any reissued permit, to be effective at the commencement of actual discharge as provided above, may require additional limitations and controls based on data gathered during the initial permit or may require additional section 316(a) and (b) studies for the purpose of confirming conclusions reached from previous predictive studies.

4. It was suggested that NRC's role in the water quality area should be clarified and NRC should discontinue its practice of determining compliance with requirements of the FWPCA and should cease evaluating alternatives relating to environmental effects regulated under the FWPCA. This matter is addressed in the Policy Statement (Appendix A to this Memorandum) which is discussed in more detail below.

5. It was recommended that NRC should initiate a rulemaking proceeding to develop regulations through which the environmental effects of activities subject to the FWPCA can be factored into the cost-benefit analyses performed in each individual licensing proceeding. Prior to completion of that rulemaking, NRC should continue to evaluate, on a case-by-case basis, the environmental effects of facility systems either as proposed by applicants or as described in the Section 401 certificate or Section 402 permit issued for the particular facility, as appropriate. This suggestion was not adopted since NRC does not feel it would be practical at this time to treat the many individual and site specific facets of water quality impacts in a generic fashion.

6. It was pointed out that the EPA headquarters-regional responsibility needs to be clarified, i.e., the Assistant Administrator for Enforcement is named as the prime EPA contact. The matter has been clarified in the Memorandum by stating that the principal EPA contact shall be the Assistant Administrator for Enforcement and/or the Regional Administrator or his designee as appropriate.

7. It was suggested that once a "Preliminary Determination" has been issued at the construction permit stage, one should not have to go through the "Preliminary Determination" at the operating license stage. The "Preliminary Determination" concept has been dropped and actual Section 402 permits will be issued; however, as indicated in the response to Comment 3, there will be need for reissuance of the permits at appropriate intervals.

8. It was suggested that Paragraph 1 of the applicability statement be broadened to apply to all environmental impacts of cooling systems, e.g., the effect of chemical effluents, entrainment of biota, etc. EPA's early section 402 permit will contain terms and conditions regarding thermal releases and cooling water intake requirements. In addition, with regard to chemical or other requirements, where an applicant seeks a variance from new source performance standards or any other applicable EPA regulations relative to discharges, EPA will consider the issues as necessary at the early section 402 permit stage. (See response to comment number 3)

9. The question was raised as to whether discharge permit requirements will be made a part of the NRC environmental technical specifications. The matter of incorporation of permit requirements will depend on a case-by-case application of the requirements of NEPA and the Policy Statement set forth in Appendix A to the Memorandum.

10. It was stated that the terms and conditions of Section 401 certifications must not be changed between the Construction Permit and Operating License stage. Section 401 certifications are subject to change pursuant to section 401 (a)(3) of the FWPCA and are, therefore, beyond the scope of this Memorandum.

11. It was noted that the proposed Memorandum should be coordinated with the appropriate river basin commissions. Activities under the Memorandum will be coordinated with appropriate river basin commissions.

12. It was suggested that only the existence of significant issues should serve as a basis for revision of the "Preliminary Determination" at the time of issuance of the NPDES permit. It is suggested that "good cause" be replaced by "significant issues". As indicated above the concept of "Preliminary Determinations" has been dropped in favor of the actual issuance and reissuance of section 402 permits.

In summary, the Memorandum

1. Specifies the statutory authority of both agencies for entering into the Memorandum.

2. Defines those licensing and regulatory activities to which the Memorandum shall be applicable.

3. Designates NRC as the lead agency for preparation of environmental statements for the identified activities as provided for in § 1500.7(b) of the CEQ Guidelines for Preparation of Environmental Impact Statements (August 1, 1973).

4. Specifies that NRC and EPA will work together to identify needed environmental information for early evaluations related to impact from the identified activities on water quality and biota.

5. Provides for EPA to exercise its best efforts to evaluate impacts on water quality and biota as far as possible in advance of the issuance of NRC's final environmental impact statement for any covered activity and specifies that EPA and NRC will maintain close working relationships during the entire environmental review process.

6. Specifies that EPA will issue to the applicant, where appropriate, in light of substantive requirements, a complete Section 402 permit as far as possible in advance of authorization by the NRC of any commencement of construction or issuance by NRC of a license or early site approval, whichever is applicable.[1] Such permits will contain appropriate terms and conditions for all discharges of pollutants expected during the life of the permit (five years maximum) and terms and conditions with regard to cooling water intake structures and Section 316(a) determinations concerning thermal discharges. Additional permit terms and conditions for discharges not contemplated during the life of the permit (such as certain chemical and other releases not expected until operation startup) may be derived from applicable State water quality standards and applicable new source performance standards contained in 40 CFR Chapter I, Subchapter N. Permits will be reissued, as appropriate, and any reissued permit, to be effective at the commencement of actual discharge as provided above, may require additional limitations and controls based on data gathered during the initial permit or may require additional section 316 (a) and (b) studies for the purpose of confirming conclusions reached from previous predictive studies. It is expected that the early issuance of Section 402 discharge permits will assure, to the maximum extent possible, that considerations regarding impacts on water quality and biota will not result in the need for significant changes in plant design or in the costs and benefits of the operation of the facility subsequent to the completion of NRC's environmental review.

7. Specifies that EPA and NRC will consider the feasibility of holding combined or concurrent hearings on EPA's proposed section 402 permits and NRC's proposed issuance of construction permits or other activities where appropriate.

8. Rescinds the Memorandum of Understanding Regarding Implementation of Certain Complementary Responsibilities under the FWPCA and dated January 15, 19 and 22, 1973 (38 FR 2713).

After consideration of the comments received on the Interim Policy Statement and other factors involved, the NRC has adopted the revised Policy Statement set forth in Appendix A to the Memorandum. The significant changes from the language of the previous Interim Policy Statement are as follows:

a. Additional language has been included to make it clear that limitations imposed through the exercise of State authority preserved by section 510 of the FWPCA will be regarded by NRC as minimum limitations if they address matters different from matters addressed by other limitations imposed pursuant to the FWPCA.

b. The bases for cost-benefit analyses of alternatives have been clarified and modified. First, the specific requirement that, in designated circumstances, NRC independently determine the matter of compliance with FWPCA limitations and requirements has been deleted. NRC believes that in light of the general requirement that full certifications regarding compliance be furnished to it prior to license or permit issuance pursuant to section 401, and in light of the provisions of the memorandum providing for early issuance of permits pursuant to section 402, due regard will be given to the compliance matter within the NRC regulatory context without NRC assuming an independent and essentially duplicative function in this regard. Second, the requirement that environmental impact be evaluated on the basis of discharges or other activities at the level of FWPCA limitations or requirements has been replaced by the requirement that environmental impact simply be evaluated. Whether that evaluation should be conducted at the level of the FWPCA requirements or at some level more protective of the environment will depend upon such factors as the physical nature of the facility and other circumstances of the case. Third, the provisions regarding alternatives have been modified and simplified so as to provide that NRC will not require adoption of an alternative in order to minimize impacts on water quality and biota that are subject to FWPCA limitations or requirements.

c. A new Paragraph has been added in response to a comment that the status of certifications issued pursuant to section 21(b) of the FWPCA as in effect immediately prior to the date of enactment of the FWPCA should be clarified. In addition, the definition of FWPCA limitations or other requirements has been expanded to include limitations or other requirements of State law preserved by Section 510 of the FWPCA which have been imposed as license conditions pursuant to section 401(a)(2) of the FWPCA, and other paragraphs in the Policy Statement have been modified as appropriate to reflect this expanded definition.

d. A new Paragraph has been added to address the situation where limitations or other requirements with respect to heated effluents have been promulgated or imposed but a request for alternative effluent limitations under section 316(a) may be filed and no limitations under section 316(a) have yet been imposed. Under these circumstances less stringent limitations or other requirements could be imposed with respect to heated effluents under section 316(a). The NRC would in this situation retain authority under NEPA, where necessary from the standpoint of environmental protection, to impose its own requirements with respect to heated effluents which were less stringent than or equally stringent as those promulgated or imposed under the various sections of the FWPCA other than Section 316(a). It is recognized that any such NRC requirements regarding heated effluents may be subject to modifications in light of the provisions of any later section 402 permit. Of course, where an early discharge permit is required, any NRC requirements would need to be consistent with the terms of the permit, and paragraph 8 of the Policy Statement would be inapplicable.

e. Finally, a new Paragraph 6 has been added to provide for an orderly transition period for proceedings, where the application and environmental report had been filed prior to enactment of the FWPCA, by affording recognition to proposals by the applicants to abide by more stringent requirements.

No comments were received on the Interim Policy Statement from any governmental agency or environmental organization. The comments that were received by NRC generally reflected the opinion that NRC was precluded by section 511 of the FWPCA from considering any water quality matters generally covered by the FWPCA regardless of the status of FWPCA implementation, and that the Interim Policy Statement would result in duplication of effort and confusion in licensing proceedings because of the evolving nature of FWPCA requirements. The NRC believes that NEPA and FWPCA require that NRC continue to exercise its NEPA responsibility to evaluate environmental impacts. The revised Policy Statement set forth in Appendix A to the Memorandum of Understanding seeks to avoid duplication of effort to the maximum extent consistent with statutory requirements. The NRC recognizes that some limited duplication of effort will result from the NRC continuing to evaluate environmental impact regardless of the status of FWPCA implementation but believes that this limited duplication of effort is a necessary incident to a proper implementation of section 511.

Several comments suggested that Paragraph 3. of the Interim Policy Statement was inconsistent with Paragraphs 4. and 5. dealing with alternatives. Revised paragraph 4 indicates that NRC will not require adoption of an alternative because it would produce less water pollution than allowed by FWPCA limitations or requirements. However, NRC would not be precluded from insisting on an alternative which is a better environmental solution taking into account total impacts such as air quality, aesthetics, etc., simply because it also produces less water pollution. Thus, for example, if a plant with once through cooling system complied with FWPCA thermal effluent limitations under section 316(a) of the FWPCA, more stringent thermal limita-

[1] See 10 CFR Part 2, Appendix A, Paragraph I(c).

tions would not be imposed by NRC as a result of consideration of another cooling system as an alternative unless matters not covered by the thermal effluent limitations, such as effects of fogging, indicated that such adoption was warranted.

Accordingly, pursuant to NEPA, FWPCA, Section 161 of the Atomic Energy Act and the Energy Reorganization Act of 1974, notice is hereby given that NRC and EPA with the concurrence of CEQ have entered into the following Memorandum of Understanding.

The NRC and EPA invite all interested persons to submit written comments or suggestions for consideration in connection with the Memorandum. The comments should be sent to the Secretary of the NRC, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section on or before January 20, 1976. Consideration will be given to such submissions with the view to possible further amendments. Copies of comments received may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

On January 27, 1976, NRC and EPA will hold a meeting to discuss the Memorandum and answer questions. All interested persons are invited to attend, provided that notice of intent to attend is received by NRC prior to Jan. 20, 1976. The meeting will be held at NRC's Offices at 7920 Norfolk Avenue, Bethesda, Maryland, beginning at 9:30 a.m. in Room P-118.

Dated at Washington, D.C. this 23rd day of December 1975.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

SECOND MEMORANDUM OF UNDERSTANDING REGARDING IMPLEMENTATION OF CERTAIN NRC AND EPA RESPONSIBILITIES

Prior to the enactment of P.L. 92-500, the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), the Atomic Energy Commission (AEC) had regulatory authority pursuant to the National Environmental Policy Act of 1969 (NEPA), in consideration of the environmental impact of the discharge of pollutants and other factors, to impose limitations on the discharge of pollutants from nuclear power plants and other facilities or activities requiring an AEC license or permit, as a condition of such license or permit.

The FWPCA now requires the Environmental Protection Agency (EPA) to establish (for use in permits for the discharge of pollutants to navigable waters of the United States from point sources as defined in the FWPCA, such as nuclear power plants, etc.) effluent limitations for all pollutants. The FWPCA (section 511) provides that nothing under NEPA shall be deemed to authorize any Federal agency to review any effluent limitation or other requirement established pursuant to the FWPCA, or to impose, as a condition of any license or permit, any effluent limitation other than any such limitation established pursuant to the FWPCA.

Pursuant to the authority of the FWPCA, EPA requires applicants for discharge permits to submit information required by EPA in order to establish effluent limitations in permits. Pursuant to the authority of NEPA, NRC may require applicants for licenses or permits to submit information required by NRC in order to evaluate and consider the environmental impacts of any actions it may take. Consequently, the informational needs imposed by the two agencies may be similar in the area of impacts on water quality and biota.

The NEPA requires that all Federal agencies prepare detailed environmental statements on proposed major Federal actions which can significantly affect the quality of the human environment. A principal objective of NEPA is to require the Agency to consider in its decision-making process the environmental impacts of each proposed major action and the available alternative actions. Both EPA and NRC have responsibilities pursuant to NEPA regarding the issuance of licenses or permits for nuclear power plants and certain other facilities.

The purpose of the memorandum is to clarify the respective roles of EPA and NRC in the decision-making processes concerning nuclear power plants and other facilities requiring an NRC license or permit.

Requirements under the FWPCA which affect actions for NRC include: (1) The requirement under section 401 of the FWPCA for a state certification to be received by NRC prior to the issuance of a license or permit to conduct any activity which may result in any discharges into navigable waters; (2) the requirement under section 301 of the FWPCA that a Section 402 National Pollutant Discharge Elimination System (NPDES) permit be issued for the discharge of any pollutant; (3) the possibility that variances from section 301 or 306 thermal effluent limitations may be granted under Section 316(a); (4) the requirement under section 316(b) that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact; and (5) the provisions of section 511 as discussed above. Recognizing (1) NRC's and the applicant's need for early evaluation of impacts on water quality and biota that may arise from nuclear power plants, and certain other activities requiring an NRC license or permit which are subject to the requirements of 10 CFR 51.5 (a); (2) EPA's and NRC's desire to reach such evaluations consistent with the requirements of the FWPCA and NEPA, and (3) the need for minimizing duplication of effort, EPA and NRC agree that pursuant to their statutory authorities:

1. NRC will exercise its responsibility and authority under NEPA as modified by Section 511 of the FWPCA in accordance with the statement of policy set forth in Appendix A hereto. The Memorandum of Understanding Regarding Implementation of Certain Complementary Responsibilities Under the FWPCA and dated January 15, 19 and 22, 1973 (38 FR 2713) is hereby rescinded.

2. Paragraphs 3 through 14 of this Memorandum of Understanding shall apply to requirements for the control and consideration of impacts on water quality and biota associated with the licensing and regulation, including early site approval,[1] of the following plants or facilities:

a. Nuclear power and test facilities.
b. Nuclear fuel reprocessing facilities.
c. Uranium isotope enrichment facilities.
d. Nuclear fuel fabrication plants.
e. Uranium hexafluoride conversion plants.
f. Uranium milling plants, and
g. Nuclear waste treatment and storage plants.

3. NRC and EPA will work together to identify and consolidate the environmental information needed for early evaluations related to impacts on water quality and biota under the FWPCA with the objective that the scope, form and timeliness of the information to be submitted by the applicant satisfy the requirements of both Agencies. This will include information needed for issuance of State water quality certifications pursuant to section 401 and NPDES permits pursuant to section 402, (including where applicable section 316(b) considerations regarding best technology available as applied to cooling water intake structures and section 316(a) determinations regarding the granting of alternative effluent limitations for the thermal component of discharges) and information needed to evaluate the environmental impact of the facility based on compliance with FWPCA requirements.

4. Where a facility specified in section 2 of this Memorandum is a "new source" (as defined under Section 306 of the FWPCA) and EPA is the permit issuing authority, EPA has a responsibility to comply with section 102 (2)(C) of NEPA. EPA and NRC intend that a single environmental impact statement will be prepared for the facility, and that NRC will be the lead agency for preparation of such a statement as provided in § 1500.7(b) of the CEQ guidelines for Preparation of Environmental Impact Statements (August 1, 1973).

(a) EPA will parfticipate in the preparation of the water quality and related sections of the draft statement prepared by NRC staff. EPA may provide assistance to the NRC staff in areas (other than water quality) where EPA has jurisdiction or expertise.

(b) During the draft statement comment period, EPA will review and comment pursuant to section 309 of the Clean Air Act, as amended, and § 1500.7(b) of the CEQ Guidelines for Preparation of Environmental Impact Statements (August 1, 1973) on the draft environmental impact statement prepared by NRC staff. EPA will participate with NRC in the review of comments on the draft EIS and in the preparation of the final EIS.

(c) Where there are areas of disagreement that cannot be resolved prior to issuance of the final statement, both NRC's and EPA's views shall be accurately set forth in the final statement.

(d) It is expected that where EPA does not agree with any of the discussions, analyses and conclusions of the NRC staff as set forth in the final environmental impact statement, EPA may petition for leave to intervene pursuant to 10 CFR 2.714 in any proceeding pending before an NRC atomic safety and licensing board on the license or permit application at issue in order to have its opposing views considered further on their merits by NRC.

(e) In any hearing held by EPA pursuant to 40 CFR 125.36 regarding the issuance of a permit under Section 402, only those issues concerning matters within EPA's regulatory jurisdiction will be considered, and those NEPA issues outside of EPA's regulatory jurisdiction will be resolved in the NRC impact statement and, if necessary, hearing process.

5. NRC will take the lead in communicating to the applicant those minimum NRC and EPA requirements for information to facilitate their respective environmental evaluations. Requests for additional information, as needed in specific situations, may be directed to the applicant by EPA. Such requests will be coordinated with NRC to the maximum extent practicable in order to avoid duplication of effort.

6. EPA and NRC will meet, as appropriate, at an early time prior to and/or during the environmental review process for each facility or plant specified in Section 2 of this Memorandum to discuss potential impacts on water quality and biota.

7. EPA will exercise its best efforts to evaluate the levels of discharges and impacts on water quality and biota pursuant to sections 403 and 316(a), as appropriate, and complete cooling water intake structure evaluations pursuant to section 316(b) as far as possible in advance of the planned date of issuance by NRC of the final environmental impact statement for the construction permit or operating license for each nuclear power reactor. EPA also will exercise its best efforts to make such evaluations

[1] See 10 CFR Part 2, Appendix A, Paragraph I(c).

as far as possible in advance of the planned date of issuance of the final environmental impact statement for any other plant or facility specified in section 2 of this Memorandum, or issuance of early site approvals associated with nuclear power and other facilities.

Further, where possible, EPA's comments on NRC's draft environmental impact statement for each such facility or plant will reflect such evaluations. EPA will, if necessary, undertake to revise existing NPDES regulations in order to establish a procedure for issuance to the applicant (copy to NRC), where appropriate in light of the substantive requirements of section 402, of a complete section 402 permit as soon as possible prior to the planned date of authorization by the NRC of any commencement of construction[1] or issuance by NRC of a license, or early site approval, whichever is applicable.

Such permits will contain appropriate terms and conditions for all discharges of pollutants expected during the life of the permit (five years maximum) and terms and conditions with regard to cooling water intake structures and section 316(a) determinations concerning thermal discharges. Additional permit terms and conditions for discharges not contemplated during the life of the permit (such as certain chemical and other releases not expected until operation startup) may be derived from applicable State water quality standards and applicable new source performance standards contained in 40 CFR, Chapter I, Subchapter N. Permits may be reissued, or modified as appropriate, and any reissued or modified permit, to be effective at the commencement of actual discharge as provided above may require additional limitations and controls based on data gathered during the initial permit or may require additional section 316(a) and (b) studies for the purpose of confirming conclusions reached from previous predictive studies. Applications for permit reissuance as provided above will be evaluated by EPA in light of a policy to assure to the maximum extent possible that subsequent considerations regarding impacts on water quality and biota will not result in the need for significant changes in plant design or in the costs and benefits of the operation of the facility subsequent to the completion of NRC's environmental review.[2]

8. EPA will work closely with NRC in connection with NRC's efforts with State and regional authorities to assure that water quality certifications pursuant to section 401 for the facilities specified in section 2 that require such certification are issued in advance of the planned date of issuance of NRC staff's final environmental impact statement for the facility. Where needed EPA also will work closely with NRC in connection with NRC's efforts with State and regional authorities to assure that discharge permits pursuant to section 402 for facilities specified in section 2 are issued as soon as possible prior to the planned date of authorization by NRC of any commencement of construction or issuance by NRC of a license, or early site approval, whichever is applicable.

9. It is the view of the parties that the States which have approved NPDES permit programs have authority to establish a procedure similar to the early permit issuance procedure discussed in Paragraph 7 hereof. Both EPA and NRC strongly encourage States which have such authority to institute an early issuance procedure relevant at least to thermal discharge and intake structure determinations and other discharges anticipated during the life of the permit and to cooperate with EPA and NRC in implementing this procedure.

10. EPA and NRC will maintain close contact on water quality and related matters during the entire environmental review, including:

(1) Open interagency communications, and mutual cooperation and coordination on all relevant water quality matters;

(2) A status meeting, where appropriate, after completion of the public comment period on NRC staff's draft environmental impact statement; and

(3) Notification to the other Agency, by the Agency first becoming aware of the situation, at any point during the environmental review or subsequent thereto, of any significant new considerations that develop, e.g., a major change in plant design or the identification of significant considerations regarding impacts on water quality or biota that were not previously evaluated as may result from a major change in plant design.

11. EPA and NRC will consider the feasibility of holding combined or concurrent hearings on EPA's section 402 permits and NRC's construction permits or other actions, on a case-by-case basis. If there are areas involving impact on water quality or biota where there are significant differences of opinion between NRC and EPA, every reasonable attempt will be made to identify and resolve these differences prior to the planned date of issuance of NRC's final environmental statement.

12. The principal NRC contact under this Memorandum of Understanding shall be the Assistant Director for Environmental Projects. The principal EPA contact under this Memorandum of Understanding shall be the Assistant Administrator for Enforcement, and/or the Regional Administrator or his designee as appropriate.

13. Nothing in this Memorandum of Understanding is intended to restrict the statutory authority of either Agency. The Memorandum of Understanding regarding NRC-Licensed Facilities and dated August 21 and 27, 1973 (38 FR 24936) shall remain in effect in accordance with its terms.

14. This Memorandum of Understanding shall take effect on January 30, 1976 after the signing by authorized representatives of the respective Agencies and approval by the Council on Environmental Quality. The Memorandum shall apply to all pending and future applications for licenses or permits covered by paragraphs 1 and 2 except that, with respect to applications for licenses or permits for facilities and plants docketed prior to the effective date of this Memorandum, Paragraphs 2 through 14 shall only be applied to the maximum extent practicable. This Memorandum of Understanding and Appendix A hereto supersede the Memorandum of Understanding Regarding Implementation of Certain Complementary Responsibilities Under the FWPCA and dated January 18, 19 and 22, 1973 (38 FR 2713) and associated Interim Policy Statement (38 FR 2079).

Dated at Washington, D.C. this 17th day of December 1975.

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION,

LEE V. GOSSICK,
Executive Director for Operations.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

STANLEY W. LEGRO,
Assistant Administrator for Enforcement.

APPROVED BY THE COUNCIL ON ENVIRONMENTAL QUALITY FOR THE COUNCIL,

GARY WIDMAN,
General Counsel.

APPENDIX A—POLICY STATEMENT ON IMPLEMENTATION OF SECTION 511 OF THE FEDERAL WATER POLLUTION CONTROL ACT (FWPCA)

1. Applicability. This statement and Paragraph 1 of the Memorandum shall apply to all licensing proceedings subject to 10 CFR Part 51, involving facilities or activities which may result in the discharge of a pollutant into the navigable waters, as defined in section 502(12)(A) of the FWPCA.

2. Definition of Terms. As used in this statement: a. Limitations or other requirements promulgated or imposed pursuant to the FWPCA means effluent limitations or other requirements promulgated or imposed pursuant to sections 208(e), 301, 302, 303(e), 304(b), 306, 307, 316, 318, 401, 402, 403, or 404 of the FWPCA. It also includes (1) water quality standards continued in effect or promulgated pursuant to Sections 303(a), 303(b), or 303(c) of the FWPCA; (2) maximum daily loads for pollutants and maximum daily thermal loads, promulgated pursuant to section 303(d) of the FWPCA; and (3) limitations or other requirements of State law under authority preserved by section 510 of the FWPCA, but only if and to the extent that such limitations or other requirements covered by this Paragraph (a)(3) are imposed and set forth in a certification pursuant to Section 401(d) of the FWPCA, or are imposed as a condition in the license pursuant to section 401(a)(2) of the FWPCA, or are imposed and set forth as a condition in a permit issued pursuant to section 402 of the FWPCA. It does not include effluent limitations or other requirements regarding source, byproduct, or special nuclear materials, which are subject to regulation by the Nuclear Regulatory Commission (NRC) pursuant to the Atomic Energy Act of 1954, as amended, or limitations or other requirements promulgated or imposed pursuant to other Federal law.

b. Pollutant discharge system means equipment or mode of operation designed or intended for the control of the discharge of pollutants, as that last phrase is defined in Section 502(12) of the FWPCA. It does not include equipment or mode of operation designed or intended for the control of source, byproduct or special nuclear materials, which are subject to regulation by NRC pursuant to the Atomic Energy Act of 1954, as amended.

c. Cooling water intake structure location, design, construction and capacity means cooling water intake structure location, design, construction and capacity within the meaning of Section 316(b) of the FWPCA.

3. Authority to Impose Requirements or Limitations Pursuant to National Environmental Policy Act of 1969 (NEPA).

Except as provided in Paragraph 7, if and to the extent that there are applicable limitations or other requirements promulgated or imposed pursuant to the FWPCA, different limitations or requirements will not be imposed by NRC pursuant to NEPA as a condition to any permit or license, provided however, that limitations or other requirements of State law, under authority preserved by Section 510 of the FWPCA which (1) are imposed and set forth in a certification pursuant to Section 401(d) of the FWPCA, or imposed as a condition in the license pursuant to Section 401(a)(2) of the FWPCA, or imposed and set forth as a condition in a permit issued pursuant to Section 402 of the FWPCA, and (2) address matters different from the matters addressed by other limitations or other requirements promulgated or imposed pursuant to the FWPCA, shall be regarded as only minimum limitations or requirements and NRC shall retain any authority under NEPA to impose more stringent limitations or requirements.

4. Alternatives. a. Neither alternative cooling water intake structure location, design, construction, and capacity, nor alternative pollutant discharge systems will be consid-

[1] The term "commencement of construction" means commencement of construction as defined in 10 CFR 50.4(w), 40.4(n), 50.10 (c) or 70.4(s), as applicable.

[2] A facility which has been given section 316(a) alternative effluent limitations is not entitled to the 10-year grace period (or applicable amortization period) provided for in section 306(d) for new sources or in 316 (c) for modified sources.

ered by NRC pursuant to NEPA (1) if and to the extent that conditions imposed as a part of the license or permit for the facility of activity pursuant to section 401(d) or section 401(a)(2) of the FWPCA require that a particular alternative be adopted, or (2) if and to the extent that a permit or determination with a condition requiring the adoption of a particular alternative has been issued for the facility or activity pursuant to sections 208(b)(2)(C)(ii) and 303(e)(3)(B), 318, 402 or 404 of the FWPCA.

b. Alternative pollutant discharge systems will not be considered by NRC pursuant to NEPA where effluent limitations have been imposed on the facility or activity under sections 301(c) or 302 of the FWPCA.

c. Neither alternative sites, facilities or activities, nor alternative systems will be considered by NRC pursuant to NEPA if and to the extent that a determination made with respect to the facility or activity under sections 208(b)(2)(C)(ii) and 303(e)(3)(B) of the FWPCA requires as a condition that a particular site, facility or activity, or system be adopted.

d. NRC will not require adoption of an alternative pursuant to NEPA in order to minimize impacts on water quality and biota that are subject to limitations or other requirements promulgated or imposed pursuant to the FWPCA.

5. Cost-Benefit Balances. In evaluting the costs and benefits of a proposed action pursuant to NEPA, NRC will evaluate impacts on water quality and biota notwithstanding that such impacts are subject to limitations or other requirements promulgated or imposed pursuant to the FWPCA.

6. Certifications. A certification issued pursuant to section 21(b) of the FWPCA in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 will be accepted as satisfying the certification requirements of FWPCA section 401(a) with respect to NRC licensing actions after that date subject to section 401(a) if the certification otherwise remains in effect.

7. More Stringent Requirements—Transition Period. The NRC may include limitations or requirements in the license or permit that are more stringent than limitations or requirements promulgated or imposed pursuant to the FWPCA where such limitations or requirements are proposed by the license or permit applicant in a licensing proceeding in which the applicant's licence or permit application at issue and environmental report had been filed prior to enactment of the FWPCA.

8. Effect of section 316(a). Whenever there are limitations or other requirements promulgated or imposed pursuant to the FWPCA with respect to discharges of heated effluent but a request pursuant to section 316(a) has been or may be filed and no limitations pursuant to section 316(a) have yet been imposed, the other limitations or other requirements respecting discharges of heated effluent shall be regarded as expressing only the most stringent limitations or other requirements that might be promulgated or imposed pursuant to the FWPCA in implementing Paragraph 3.

9. Effect on Part 51. To the extent that there is a conflict between any of the provisions of this statement of policy and the provisions of 10 CFR Part 51, the provisions of this statement shall govern.

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL ON ENVIRONMENT QUALITY

DECEMBER 17, 1975.

DEAR MESSRS. GOSSICK AND LEGRO: The Council on Environmental Quality is pleased to approve the Second Memorandum of Understanding Regarding Implementation of Certain NRC and EPA Responsibilities. The memorandum provides for the coordination and integration of NEPA review concerning licensing of certain nuclear facilities. Such coordination is a goal which the Council supports and encourages in CEQ's Guidelines.

Recognizing that the agreement is limited to states where EPA is the permit-issuing authority, the Council nevertheless wishes to clarify its interpretation of a sentence in Paragraph 4 of the Memorandum, in order to avoid any misunderstanding of the Council's position. Paragraph 4 provides, inter alia, Where a facility specified in section 2 of this Memorandum is a new source (as defined under section 306 of the FWPCA) and EPA is the permit issuing authority, EPA has a responsibility to comply with section 102(2)(C) of NEPA.

The Council agrees with this statement. However, to the extent this sentence may suggest that NEPA does not apply to EPA if EPA has approved a state permit program pursuant to section 402(b) of the FWPCA, the Council believes that such a suggestion is legally inaccurate. After reviewing the applicable provisions of the FWPCA and NEPA, their legislative histories and relevant case law, CEQ believes that EPA has sufficient authority over permits in states with approved programs to establish responsibility for its own compliance with Section 102(2)(C) of NEPA.

Sincerely,

GARY L. WIDMAN
General Counsel,

Mr. LEE V. GOSSICK,
Executive Director for Operations, Nuclear Regulatory Commission.
Mr. STANLEY W. LEGRO,
Assistant Administrator for Enforcement, Environmental Protection Agency.
GARY WIDMAN, *Esquire, General Counsel, Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C.*

DECEMBER 17, 1975.

DEAR MR. WIDMAN: The purpose of this letter is to confirm our mutual understanding of the purpose and intent of paragraph 4.c. of the policy statement set forth as Appendix A to the "Second Memorandum of Understanding Regarding Implementation of Certain NRC and EPA Responsibilities."

The paragraph reflects the constraint on NRC's authority under NEPA imposed by section 511(c)(2) of the FWPCA. The paragraph limits the authority of NRC under NEPA to review and evaluate alternative sites where a State or EPA, acting under section 208(b)(2)(C)(ii) of the FWPCA, establishes and implements in the particular case a regulatory program which includes review and analysis of sites and [illegible] is essentially equivalent in its scope and [illegible]pth of review of environmental factors [illegible]lternatives to that required of Federal [illegible]ncies, such as NRC, under NEPA.

NRC is not relieved of its responsibility to review and evaluate alternative sites under NEPA to the extent that the State or EPA review program under section 208(b)(2)(C)(ii) is narrower in scope of review of environmental factors than required of Federal agencies by NEPA. For example, if environmental impacts of transmission lines or if land use impacts were not considered, NRC would consider such impacts in its review of the application.

Sincerely,

LEE V. GOSSICK,
Executive Director for Operations.

41 FR 3515
Published 1/23/76

FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972

Second Memorandum of Understanding and Policy Statement Regarding Implementation of Certain NRC and EPA Responsibilities

Correction

In FR Doc. 75-35138 appearing on page 60115 in the issue for Wednesday, December 31, 1975, make the following changes:

44 FR 3793
Published 1/18/79

HEALTH EFFECTS RESEARCH

Memorandum of Understanding

Pursuant to Pub. L. 95-601, the Nuclear Regulatory Commission and the Environmental Proection Agency have executed a Memorandum of Understanding delineating respective agency responsibilities in the conduct of epidemiological planning studies to investigate the health risks associated with low-level ionizing radiation. The text of the memorandum is set forth below.

Dated at Washington, D.C., this 12th day of January 1979.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

NRC/EPA MEMORANDUM OF UNDERSTANDING CONCERNING EPIDEMIOLOGICAL RESEARCH ON THE HEALTH EFFECTS OF LOW-LEVEL IONIZING RADIATION

The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) have complementary responsibilities in areas of environmental protection and the control of radiation health hazards. Pursuant to Reorganization Plan No. 3 of 1970, all functions of the former Federal Radiation Council and the authority of the former Atomic Energy Commission (AEC) for setting "generally applicable environmental radiation standards" were transferred to EPA. In addition, under other environmental statutes EPA has authority to establish various specific environmental standards for radiation protection of the public. The Nuclear Regulatory Commission was created by the Energy Reorganization Act of 1974 to continue the regulatory activities of the former AEC for ensuring, among other things, the protection of public health and safety from commercial uses of source, byproduct, and special nuclear materials. The NRC also has responsibility for implementing Federal guidance prepared by EPA and approved by the President which pertains to NRC-licensed activities and responsibility for enforcing "generally applicable environmental radiation standards" issued by EPA.

The Congress of the United States has authorized and directed NRC and EPA to: (1) conduct preliminary planning and design studies for epidemiological research on the health effects of low-level ionizing radiation; (2) submit to Congress by April 1, 1979 an assessment of their capabilities and needs in the area of health effects of ionizing radiation research; and (3) submit a report to Congress by September 30, 1979, which includes a study of options for Federal epidemiological research on the health

effects of low-level ionizing radiation, with evaluations of the feasibility of such options.

In order to clarify their respective roles with regard to the conduct of the planning studies, the EPA and NRC agree as follows:

1. In complying with the specific requirement of Subsection 5C of the 1979 NRC Authorization bill (item (2) in the preceding paragraph), NRC and EPA will separately prepare assessments of capabilities and research needs in the area of health effects of low-level ionizing radiation for their respective agencies, and will jointly prepare the report to Congress of the results of those assessments.

2. Preparation of the technical scopes of work for the preliminary planning and design studies, selection of the type of organizations most appropriate to conduct such studies and monitoring of the technical progress and the effort, will be accomplished under the direction of a five-member scientific review group. It will consist of members of the professional staffs of NRC, EPA, and the Department of Health, Education, and Welfare (HEW), two members designated by NRC and two by EPA with each other's agreement, and one member designated by HEW, with NRC's and EPA's agreement. EPA will select, with NRC's agreement, the chairperson of this review group. NRC will select, with EPA's agreement, a program manager (not a member of the review group), to be responsible for the day-to-day management of the feasibility and planning studies and for the submission of technical reports to the review group.

3. Any questions that cannot be resolved by the scientific review group will be resolved by conference between the EPA Assistant Administrator for Air, Noise, and Radiation Programs and the Director of NRC's Office of Standards Development.

4. As appropriate during the conduct of the studies, NRC and EPA shall consult with appropriate scientific organizations and Federal and State agencies.

5. NRC and EPA professional staffs will be utilized for preparation of work scopes, technical and administrative management of studies, and preparation of necessary reports to the Congress. The NRC will make available up to $500,000 for outside assistance for the studies. If a private contractor is to be selected, the Division of Contracts of the Nuclear Regulatory Commission will provide administrative support for issuing requests for proposals, receiving proposals, making contract awards, and administering the funds authorized for this purpose.

6. After review of the report by the scientific review group, the report will be sent to the Commission and Administrator of EPA for final approval prior to transmittal to the Congress.

LEE V. GOSSICK,
Executive Director for Operations, U.S. Nuclear Regulatory Commission.
DAVID G. HAWKINS,
Assistant Administrator for Air, Noise and Radiation, U.S. Environmental Protection Agency.
STEPHEN J. GAGE,
Assistant Administrator for Research and Development, U.S. Environmental Protection Agency.

44 FR 30306
Published 5/24/79

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1231-4]

Federal Responses to Radioactive Contamination From Specified Foreign Nuclear Detonations; Multiagency Memorandum of Understanding Among AF, DOE, EPA, FAA, FDA, NOAA, and NRC

Background

The following agencies have complementary roles in responding to potential radioactive contamination due to specified foreign nuclear detonations during peacetime: Department of the Air Force (DAF); Department of Energy (DOE); Environmental Protection Agency (EPA); Department of Health, Education, and Welfare, Food and Drug Administration (FDA); Department of Commerce, National Oceanic and Atmospheric Administration (NOAA); Nuclear Regulatory Commission (NRC); and Department of Transportation, Federal Aviation Administration (FAA). At present, specified nuclear detonations consist of those atmospheric nuclear detonations which are announced by the DOE.

Two types of response conditions have been identified. The first deals with the movement of contaminated air masses over the United States and possible effects at ground level due to dry fallout or rainout of radioactive debris. The second type of response concerns civil aircraft which may pass through contaminated air masses at various altitudes.

Specific agency responsibilities under two types of response conditions are outlined below as Parts I and II, respectively, in the Memorandum of Understanding.

Purpose and Scope

The purpose of this Memorandum of Understanding is to identify responsibilities and interactions of Federal agencies concerned with monitoring radioactive contamination from foreign nuclear detonations and protecting the public from adverse effects of such contamination.

This Memorandum of Understanding formally outlines agreements regarding continuation of communications, policies and ongoing cooperative efforts to enable each agency to most effectively carry out its responsibilities, to make the most efficient use of Federal resources, and to protect the public health and safety and the environment.

Agency Responsibilities

Under Reorganization Plan No. 3 of 1970, the Environmental Protection Agency (EPA) has the overall Federal responsibility for national ambient radiation monitoring. This includes the collection, analysis, and interpretation of data on environmental radiation levels attributed to radioactive contamination from foreign nuclear detonations during peacetime. EPA is the Federal agency responsible for advising the President and the general public on the potential health significance of such radioactive contamination. In this context, EPA is responsible for coordinating all Federal activities for public health protection and dissemination of information to the public. To effectively carry out these responsibilities, EPA needs the cooperation of several other Federal agencies. Therefore, EPA has taken the lead in developing this Memorandum of Understanding to assure coordination in the collection and dissemination of information regarding potential radioactive contamination from foreign nuclear detonations. The responsibilities of each agency as outlined below are within the scope of authorities already possessed by each agency.

Distribution of Information

Any unclassified information or data collected by any of the agencies who are part of this agreement shall be communicated to any of the other signatories of this agreement upon their request. All public announcements or press releases generated by any of the signatories shall be communicated to the other signatory agencies in as expeditious a manner as possible.

Part I—Responses Regarding Movement of Contaminated Air Masses and Potential Ground Level Effects

A. *Department of the Air Force* (DAF). 1. Provides classified data to NOAA on nuclear debris samples to include location, time, altitude, and concentration of airborne samples. These data will be provided from sorties satisfying DAF or FAA mission requirements. If NOAA has additional data requirements, DAF will be reimbursed for resources expended. Reimbursement procedures will be established in a separate DAF-NOAA memorandum. DOE will be provided a copy of the data.

2. Data will be provided as soon as possible after every sampling mission.

B. *Department of Energy* (DOE). 1. Gathers information on the nature of the nuclear detonation, i.e., location, time, yield, and height of detonation and reports this information to NOAA.

2. Makes public announcements on the occurrence of specified nuclear detonations and provides this information directly to the EPA, FDA, and NRC prior to such public release.

3. Collects data from radiation measurements made at DOE facilities, including national laboratories, that are pertinent to fallout and reports these data to EPA and to other agencies upon request.

4. Will provide to NOAA any advisories released by its Atmospheric Release Advisory Capability Center at Livermore, Calif., including forecasts of radiation levels, and estimates of size and movement of radioactive clouds on a 12-hourly basis, with more frequent updates if appropriate.

C. *Environmental Protection Agency* (EPA). 1. Notifies State agencies with responsibility for environmental radiation monitoring of the possibility of radioactive fallout occurring. Keeps affected State agencies informed on the regional and national radiological picture as information develops.

2. Provides predictions from NOAA on pathways of contaminated air mass movements over the United States and areas of possible rainout of radioactive materials to Federal agencies and the general public.

3. Recommends radiation surveillance or protective actions to appropriate State agencies.

4. Activates the standby portions of the Environmental Radiation Ambient Monitoring System (ERAMS) and increases the frequency of sample collections in those parts of ERAMS which operate routinely in order to assess the national radiological fallout situation. The collection of pasteurized milk samples will be coordinated through the Food and Drug Administration, HEW.

5. Collects additional monitoring program information from State agencies, DOE, and NRC as necessary to further assess the national radiological situation.

6. Prepares regional and national radiological assessments including interpretations of data relative to health impacts and issues this information as news releases. When news releases involve information relative to the direct concern of/or activities regulated by a signator of this agreement, such releases would be cleared with the interested agency prior to issuance, e.g., releases involving information on foods and animal feeds would be cleared with FDA. All signatory agencies would receive copies of press releases. The public will be advised of recommended protective actions in accordance with Federal radiation guidance and other appropriate radiation protection criteria as necessary.

7. Keeps other Federal agencies informed on regional and national radiological situations as appropriate to their mission. This includes routine information updatings to NOAA, DOE, FDA, and NRC, and information to others upon request.

D. *Food and Drug Administration* (FDA). The Food and Drug Administration (FDA) of the Department of Health, Education, and Welfare is responsible for the enforcement of a number of public health laws including the Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). FDA's activities under the FD&C Act are directed toward the protection of public health of the Nation by assuring that foods, exclusive of water from domestic consumption, are safe and wholesome. This responsibility is accomplished in part through comprehensive scientific and medical evaluation of known and possible food and feed contaminants such as radioactive contamination. In exercising this responsibility with regard to radioactive food and feed contamination, FDA determines the public health significance of such contamination, and advises the States and public at large accordingly. Specifically, FDA:

1. Receives information from NOAA regarding the probable location of fallout contamination, and consults with EPA concerning radiation surveillance and protective actions.

2. At the request of EPA, FDA through its regional representatives will alert State and local agencies to increase or decrease the frequency of pasteurized milk sample collection, according to FDA's ongoing cooperative role in milk sampling for EPA's Environmental Radiation Ambient Monitoring System.

3. Collects and analyzes food and animal feed samples for radionuclides from fallout as deemed necessary.

4. Assists EPA in analysis of milk samples associated with a fallout incident when requested.

5. In consultation with EPA, provides guidance to State and local governments in regard to appropriate responses necessary for evaluating and preventing hazardous radioactive contamination of foods and animal feeds and the control and use of such products should they become contaminated.

6. Cooperates with EPA in the exchange of all scientific and analytical data associated with a fallout incident.

7. Participates in the review and clearance of EPA press releases relative to food or animal feed contamination by radioactive fallout.

E. *National Oceanic and Atmospheric Administration* (NOAA). 1. The official NOAA forecast will be the basis for all public announcements by other agencies on the movement of airborne radioactivity and areas of potential rainout of nuclear debris. These forecasts will be identified as NOAA forecasts. In preparing these forecasts, NOAA will take into account all data and forecasts provided by DOE, DAF, and other sources. NOAA will provide the official forecast to EPA and DOE routinely, and to other agencies upon request.

2. NOAA will provide information on predicted location and radioactivity concentration of contaminated air masses to the other agencies upon request.

3. Transmits the official EPA public announcements to its National Weather Service Forecast Offices over the NOAA Radar Report and Warning Coordination Teletypewriter Network (RAWARC) for dissemination by local forecast offices in answering local public or news media inquiries.

F. *Nuclear Regulatory Commission* (NRC). 1. Notifies appropriate NRC licensees of possibility of radioactive fallout as it deems necessary.

2. Reports to EPA any data obtained from NRC licensees relating to radioactive fallout. Upon special request by a signatory of this agreement, NRC will query appropriate licensees to obtain information which these licensees may possess regarding radioactive fallout and may request the voluntary assistance of licensees in conducting special sampling and analysis, as appropriate. NRC will not, however, routinely request licensee data or assistance.

3. Participate in the review and clearance of EPA press releases relative to the involvement of NRC licensees.

Part II.—Responses Regarding Civil Aircraft Flights Through Contaminated Air Masses

The Federal Aviation Administration (FAA) is responsible for the safety of air commerce. In the event of the detonation of a nuclear device producing airborne radioactivity which presents a potential hazard to air commerce, the FAA will assemble an in-house task force to implement its standing operating procedures. Information on the activities of this task force will be disseminated to designated representatives of Department of the Air Force (DAF), Environmental Protection Agency (EPA), Department of Energy (DOE) and National Oceanic and Atmospheric Administration (NOAA). This task force will serve as the Federal

focus of activities related to ensuring the protection of air commerce from hazards associated with airborne radioactivity. The responsibilities of each of the agencies in support of the activities of this task force are outlined below:

A. *Department of the Air Force.* 1. Will provide sampling aircraft for detection and measurement of debris concentrations at altitudes of civil aircraft flight (FL250–600), on a noninterference basis with normal DAF missions as requested by FAA. If feasible, FAA requirements will be accomplished concurrently with Air Force requirements; if not, DAF is to be reimbursed for resources expended to meet FAA sampling requirements. Reimbursement procedures will be established in a separate memorandum.

2. Will provide data to FAA on atmospheric concentrations of nuclear debris in picocuries per cubic meter. Data will be provided every 12 hours and will include position of debris, and 12/24 hour forecast location. Copies will be provided to DOE and NOAA.

B. *Department of Energy.* 1. Will provide to FAA, through its Atmospheric Release Advisory Capability Center at Livermore, California, forecasts of radiation levels at flight altitudes, and estimates of size and movement of radioactive clouds on a 12-hour basis, with more frequent updates if appropriate; copies of such data will also be simultaneously forwarded to NOAA.

2. Will provide support to FAA in the form of radiological monitoring of aircraft at selected airports and in flight, as is compatible with DOE resources.

C. *Environmental Protection Agency.* 1. Will provide consultation and guidance to FAA on appropriate limits of exposure for aircraft passengers.

2. Will provide guidance to FAA on appropriate limits of surface contamination in situations not otherwise covered in existing FAA or Department of Transportation regulations.

3. Will work with FAA in its development and updating of appropriate standing operating procedures for radiological monitoring, radiation exposure control, record keeping, and decontamination.

4. Will provide interpretation of radiological monitoring data and other radiological health-related material, as required.

5. Prepares regional and national radiological assessments including interpretations of data relative to health impacts and issues this information as news releases. When news releases involve information on civil aircraft they will have their specific language approved by FAA.

D. *Federal Aviation Administration.* 1. Will ensure that the best possible information is made expeditiously available to users, including appropriate air traffic control centers, airman's information centers and airlines, with respect to airspace which should be avoided due to potential or actual radioactive contamination.

2. Will ensure that appropriate radiological monitoring and record keeping procedures are instituted for air commerce, in accordance with the most recent FAA operating plans.

3. Will ensure the safety of air commerce by issuing appropriate regulations to the air transport industry.

4. Will provide the Department of the Air Force, Deputy Chief of Staff, Plans and Operations, Directorate of Operations and Readiness, Reconnaissance Division (AF/XOORZ) location, altitude, and required time of debris detection and measurement, and will advise the DAF when requirements are terminated.

5. Will act as principal Federal representative and focal point for all public and news media inquiries relative to aviation as it is or might be affected by radioactive debris.

6. Will establish and maintain through its communications center, proper coordination of Federal activities with regard to aviation with designated representatives of the agencies who have entered into Part II of this agreement.

E. *National Oceanic and Atmospheric Administration.* 1. The official NOAA forecast will be the basis for all public announcements by other agencies on the movement of airborne radioactivity and areas of potential rainout of nuclear debris. These forecasts will be identified as NOAA forecasts. In preparing these forecasts, NOAA will take into account all data and forecasts provided by DOE, DAF, and other sources. NOAA will provide the official forecasts to EPA, FAA and DOE routinely, and to other agencies upon request.

2. NOAA will provide information to FAA on predicted location and radioactivity concentration of contaminated air masses.

Public Information

DAF, DOE, EPA, FAA, NOAA, and NRC recognize the importance of providing timely and accurate information to the public regarding airborne radioactive contamination which may affect civil aircraft. Each agency further recognizes the potential disruption of national and international air commerce which could result from dissemination of inaccurate or misleading information on this subject. It is, therefore, agreed that during the time of concern over possible hazards to air commerce from airborne radioactive contamination, all inquiries from the public, news media, or industry regarding aviation as it is or might be affected by such contamination will be referred to the FAA, except that copies of official statements issued by FAA, or statements whose specific language has been approved by FAA, will be provided to EPA, and other agencies according to their needs, and may be disseminated by them in response to public and news media inquiries. FAA will also respond to general inquiries regarding DAF participation using information obtained in advance from the Secretary of the Air Force, Office of Information; for this purpose, direct interdepartmental public affairs contact is authorized. News media inquiries concerning DAF participation which cannot be answered within the context of predeveloped material will be referred to the Directorate for Defense Information, Office of the Assistant Secretary of Defense (Public Affairs).

Supplementary Agreements

This Memorandum of Understanding may be further implemented by supplementary agreements of the following types:

A. Authorized representatives of the signatory agencies may amplify or otherwise modify the policy or provisions in the memorandum or any of its supplements, provided that any material modification of the provisions in this memorandum or any of its supplements shall be subject to the approval of the authorized signators of this memorandum from each agency.

B. Supplementary agreements which affect fewer than the total number of agencies, and which are otherwise consistent with the purposes and provisions of the overall agreement, may be executed by only the parties concerned provided that advance copies of such supplementary agreements are made available to all signing agencies and the decision of other authorized signatories that they are affected and should be included in the supplementary agreement, shall be accepted by all.

Duration of Agreement

This Memorandum of Understanding shall take effect when accepted by all parties and shall endure for five years or until all but one of the parties have individually terminated it, whichever occurs first. The effective date of this agreement is April 15, 1979. This agreement may be renewed by review and approval of the parties after five years from acceptance, or earlier if

terminated in accordance with the terms of the agreement.

Participation in this agreement may be terminated by any of the parties following 30 days advance written notice by that party to all of the other parties.

Supplementary agreements may be temporary and terminate on a certain date or upon completion, as provided.

The termination of any party's participation in this Memorandum of Understanding or any supplementary agreement does not render such agreements void to the other parties.

Implementing Agency Components

The following is a list of agency components with responsibilities for implementing the provisions of this Memorandum of Understanding. Each organizational component will designate specific personnel to be contacted on matters related to implementing this MOU. EPA shall provide each implementing component with an up-to-date list of these personnel semiannually or more frequently if EPA is notified of changes in personnel.

Department of the Air Force, Deputy Chief of Staff, Operations, Plans and Readiness, Directorate of operations and Readiness, Reconnaissance Division.

Department of Energy, Office of Assistant Secretary for Environment, Division of Operational and Environmental Safety.

Environmental Protection Agency, Office of Radiation Programs, Environmental Analysis Division.

Department of Health, Education, and Welfare, Food and Drug Administration, FDA Recall and Emergency Staff.

Department of Commerce, National Oceanic and Atmospheric Administration, Air Resources Laboratory.

Nuclear Regulatory Commission, Office of Inspection and Enforcement.

Department of Transportation, Federal Aviation Administration, Office of Environmental Quality.

Agreement Authority

This agreement is entered into under various provisions for interagency cooperation appearing in the legislative authorities of the signatory agencies.

For the Department of the Air Force.

Brig. Gen. Walter B. Ratliff,

Acting Director of Operations and Readiness.

For the Department of Energy.

Ruth C. Clusen,

Assistant Secretary for Environment.

For the Environmental Protection Agency.

Paul Stolpman,

Acting Assistant Administrator for Air, Noise, and Radiation.

For the Federal Aviation Administration.

Charles R. Foster,

Associate Administrator for Aviation Standards.

For the Food and Drug Administration.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

For the National Oceanic and Atmospheric Administration.

George S. Benton,

Associate Administrator.

For the Nuclear Regulatory Commission.

Lee V. Gossick,

Executive Director for Operations.

44 FR 38690

Published 7/2/79

DEPARTMENT OF TRANSPORTATION

Nuclear Regulatory Commission

Transportation of Radioactive Materials; Memorandum of Understanding

The roles of the Department of Transportation and the Nuclear Regulatory Commission in the regulation of the transportation of radioactive materials were described in a memorandum of understanding signed on June 8, 1979. The present memorandum supersedes a 1973 agreement between the Atomic Energy Commission and the Department of Transportation. A text of the memorandum is set forth below.

Radioactive Materials

Abstract. This agreement delineates the respective responsibilities of the Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) for the regulation of safety in transportation of radioactive materials. It supersedes the existing agreement executed on March 22, 1973, between the DOT and the Atomic Energy Commission. Generally, the DOT is responsible for regulating safety in transportation of all hazardous materials, including radioactive materials, and the NRC is responsible for regulating safety in receipt, possession, use, and transfer of byproducts, source, and special nuclear materials. The NRC reviews and approves or denies approval of package designs for fissile materials and for other radioactive materials (other than low specific activity materials) in quantities exceeding Type A limits, as defined in 10 CFR Part 71.

Agreement between the DOT and the NRC. The Department of Transportation (DOT), under the Transportation of Explosives Act (18 U.S.C. 831–835), the Dangerous Cargo Act (R. S. 4472, as amended, 46 U.S.C. 170), Title VI and 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430 and 1472(h)), the Department of Transportation Act (49 U.S.C. 1655), and the Hazardous Materials Transportation Act (49 U.S.C. 1801–1812), is required to regulate safety in the transportation of hazardous materials, including radioactive materials.

The Nuclear Regulatory Commission (NRC), under the Atomic Energy Act of 1954, as amended (42 U.S.C. Chapter 23), and Section 201 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841), is authorized to license and regulate the receipt, possession, use, and transfer of "by product material," "source material," and "special nuclear material" (as defined in 42 U.S.C. 2014). The NRC authority to license air shipment of plutonium is further governed by Pub. L. 94–79.

For the purpose of developing, establishing, and implementing consistent and comprehensive regulations and requirements for the safe transportation of radioactive materials, and avoiding duplication of effort, the DOT and the NRC agree, subject to their respective statutory authorities, as follows. Terms used in this agreement are defined in 49 CFR Parts 100–199 and 10 CFR part 71.

I. Development of Safety Standards

A. The DOT (in consultation with the NRC) will develop safety standards for the classification of radioactive materials; for the design specifications and performance requirements of packages for quantities of radioactive materials (other than fissile materials) not exceeding Type A limits and for low specific activity (LSA) radioactive materials; for the external radiation fields, labeling, and marking of all radioactive materials packages and vehicles; for the mechanical conditions, construction requirements, and tie-down requirements of carrier equipment; for the qualifications of carrier personnel; for the procedures for loading, unloading, handling, and storage in transit; for any special transport controls (excluding safeguards) necessary for radiation safety during carriage; and for all other safety requirements except those specified in the next paragraph.

B. The NRC (in consultation with the DOT) will develop safety standards for design and performance of packages for fissile materials and for quantities of other radioactive materials (other than LSA materials) exceeding Type A limits in the following areas:

1. Structural materials of fabrication;
2. Closure devices;
3. Structural integrity;
4. Criticality control;
5. Containment of radioactive material;
6. Shielding;
7. Generation of internal pressure;
8. Internal contamination of packages;
9. Protection against internal overheating; and
10. Quality assurance of packaging design, fabrication, testing, maintenance, and use.

II. Adoption of Safety Standards and Regulations

A. The DOT will adopt regulations imposing on shippers and carriers subject to its jurisdiction those standards developed by the DOT and the NRC pursuant to Section I of this Memorandum of Understanding and any additional requirements necessary to protect the public health and safety. The DOT will require NRC approval of designs of packages for shipment of fissile materials and other radioactive materials in quantities exceeding Type A limits (except LSA materials) by all persons subject to the jurisdiction of the DOT. The DOT will issue complete and comprehensive Federal regulations for the packaging and transportation of all radioactive materials as a part of its overall body of Federal regulations (49 CFR Parts 100–199) for the packaging and transportation of all hazardous materials.

B. The NRC will adopt packaging standards for fissile materials and for quantities of other radioactive materials (other than LSA materials) exceeding Type A limits and will adopt regulations imposing on its licensees administrative, procedural, and technical requirements necessary to protect the public health and safety and to assure the common defense and security.

C. The NRC will adopt procedures, standards, and criteria for approval of package designs and for approval of special transport controls proposed by the applicant for a given package design. The NRC will require its licensees to comply with the DOT regulations when those persons are not otherwise subject to the DOT regulations.

III. Package Review

A. The DOT will submit to the NRC for review the following package designs:

1. Specification containers. Approval by the NRC of package designs for fissile mateials and for radioactive materials (other than LSA materials) in quantities exceeding Type A limits will be obtained before publication of such designs in the DOT regulations.

2. Packages with foreign certification. Approval by the NRC will be obtained before revalidation of the foreign certificates required in the DOT regulations for packags shipped between origins and destinations within the United States, except for import and export shipments. Approval by the NRC is not required if a package is used solely for export or import or if a package is authorized by the DOT regulations solely for transportation through or over the United States between origins and destinations outside the United States, the DOT has the responsibility for exercising discretion as to whether it requests NRC review of such packages.

3. Any package for which NRC evaluation is warranted in DOT opinion.

B. The NRC will evaluate package designs for fissile materials and for other radioactive materials (other than LSA materials) in quantities exceeding Type A limits and will, if satisfactory, issue approvals therefor (viz., a license, Certificate of Comliance, or other package approval) directly to the person requesting the approval.

IV. Inspection and Enforcement

A. Each agency will conduct an inspection and enforcement program within its jurisdiction to assure compliance with its requirements. The NRC will assist the DOT, as appropriate, in inspecting shippers of fissile materials and of other radioactive materials in quantities exceeding Type A limits.

B. The DOT and the NRC will consult each other on the results of their respective inspections in the areas where the results are related to the other agency's requirements, and each will take enforcement action as it deems appropriate within the limits of its authority.

V. Accidents and Incidents

A. The DOT will require of all carriers subject to its jurisdiction the notification and reporting to the DOT of accidents, incidents, and instances of actual or suspected leakage involving radioactive material packages if such an event occurs in transit and the DOT will promptly notify the NRC of such events.

B. The NRC will require of its licensees the notification and reporting to the NRC of accidents, incidents, and instances of actual or suspected leakage involving radioactive material packages if such an event occurs prior to delivery to a carrier for transport or after delivery to a receiver. The NRC will encourage the Agreement States [1] and the DOT will encourage the non-Agreement States to impose incident reporting requirements on shippers and receivers subject to the States' jurisdiction.

C. In all accidents, incidents, and instances of actual or suspected leakage involving packages of radioactive material regulated by the NRC, the NRC will normally be the lead agency for investigating the occurrence and preparing the report of the investigation. The DOT may either participate, as appropriate, in the investigation with the NRC as the lead agency or conduct a separate investigation. Subsequent to each investigation involving radioactive material regulated by the NRC, the NRC and the DOT will jointly define he scope of the enforcement actions to be taken by each agency to assure that shippers and carriers are subject to concurrent and equivalent enforcement actions but not unduly subject to duplicate enforcement actions.

D. This section V does not affect the authority of the National Transportation Safety Board, which is independent of the DOT and the NRC, to receive accident reports and to investigate transportation accidents.

VI. National Competent Authority

A. The DOT will be the national competent authority with respect to the administrative requirements set forth in the regulations for the Safe Transport of Radioactive Materials of the International Atomic Energy Agency (IAEA). In issuing certificates of competent authority for the United States under those regulations, the DOT will require for certain packages other than DOT specification containers an NRC approval in accordance with Section III.A of this Memorandum of Understanding. The NRC will provide to the national competent authority (DOT) technical support and advice pertaining to the transportation of radioactive materials.

B. The DOT will act as the representative of the United States to the IAEA and other international groups on matters pertaining to the administrative and safety regulatory aspects of transportation of radioactive materials. The NRC will provide technical support and advice to the DOT in this capacity.

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[1] States which have entered into an Agreement with the Atomic Energy Commission or the NRC pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, under which the NRC has relinquished to such States the majority of its regulatory authority over source, byproduct and special nuclear material in quantities not sufficient to form a critical mass.

VII. Exchange of Information

A. Prior to issuance of any regulations by either the DOT or the NRC involving transportation of radioactive materials, each agency will advise and consult with the other to avoid possible conflict in regulations and to assure that: (1) the regulations will afford adequate protection of the health and safety of the public, (2) the effect of those regulations will not be inimical to the common defense and security of the United States; and (3) the regulations are in the public interest.

B. The DOT and the NRC will exchange information, consult and assist each other within the areas of their special competence in the development and enforcement of regulations and procedures. Each agency will make available to the other, subject to security requirements and statutory provisions affecting the release of information, summaries of inspection records, investigations of serious accidents, and other matters relating to safety in the transportation of radioactive materials.

VIII. Working Arrangements

The NRC and the DOT will designate appropriate staff representatives and will establish joint working arrangements from time to time for the purpose of administering this Memorandum of Understanding.

IX. Effect

A. Nothing herein is intended to affect the statutory exemption of shipments of radioactive materials made by or under the direction or supervision of the Department of Energy or the Department of Defense in accordance with the provisions of 18 U.S.C. 832(c).

B. This agreement will take effect upon the signing by authorized representatives of the respective agencies, and shall supersede in its entirety the March 22, 1973, Memorandum of Understanding between the DOT and the Atomic Energy Commission.

C. Nothing in this Memorandum of Understanding is intended to restrict the statutory authority of either the DOT or the NRC.

Done at Washington, D.C., in triplicate, this 8th day of June 1979.

For the United States Department of Transportation.

James D. Palmer,

Administrator, Research and Special Programs Administration, Department of Transportation.

For the United States Nuclear Regulatory Commission.

Joseph M. Hendrie,

Chairman, Nuclear Regulatory Commission.

44 FR 49529
Published 8/23/79

Memorandum of Understanding Between the Nebraska Department of Environmental Control and the United States Nuclear Regulatory Commission

The Commission, in mid-January 1978 adopted the policy of entering into agreement with States that have been delegated responsibility by EPA for issuance of National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Federal Water Pollution Control Act. Although considerable latitude is provided, generally such agreements embody the principles of the Second Nuclear Regulatory Commission-Environmental Protection Agency Memorandum of Understanding (NRC/EPA) (FR Vol. 40, No. 251, p 60115 ff, December 31, 1975) for cooperation in the licensing of nuclear power plants.

To date, six such agreements have been consummated. Three, those with Virginia, New York, and South Carolina were published in the **Federal Register**, Vol. 43, No. 88, p 19485 ff, on May 5, 1978. The fourth, with the State of Washington, was published in the **Federal Register**, Vol. 43, No. 188, p 43774 ff, on September 27, 1978. The fifth, with the State of Indiana, was published in the **Federal Register**, Vol. 43, No. 251, p 61053 ff, on December 29, 1978. The sixth is entitled "Memorandum of Understanding between the Nebraska Department of Environmental Control and the U.S. Nuclear Regulatory Commission pursuant to the Federal Water Pollution Control Act, as amended (FWPCA)." It calls for the State and the NRC to cooperate and share information as each moves forward in its decisionmaking process for a nuclear facility. The new procedures are intended to ensure that water quality and biota impacts are considered early and will be less likely to result in significant changes in plant design, or costs and benefits of operation, following the NRC staff's environmental review. The Memorandum became effective on August 2, 1979, the text is published below.

In order to avoid confusion in terminology between general and water quality agreements with States and those agreements under section 274b of the Atomic Energy Act wherein the State assumes certain materials licensing responsibility, and new general or water quality instrument will hereafter be called a Memorandum of Understanding as is the NRC/EPA instrument.

FOR FURTHER INFORMATION CONTACT: Frank W. Young, Office of State Programs, telephone 301-492-7794, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland this 16th day of August, 1979.

For the Nuclear Regulatory Commission

Robert T. Jaske,

Acting Director, Office of State Programs.

Memorandum of Understanding Between the Nebraska Department of Environmental Control and the U.S. Nuclear Regulatory Commission Pursuant to the Federal Water Pollution Control Act as Amended (FWPCA)

The State of Nebraska (hereafter the "State") is a permit issuing State under Section 402 of the Federal Water Pollution Control Act, as amended (FWPCA). As such the State is not directly affected by the "Second Memorandum of Understanding Regarding Implementation of Certain Nuclear Regulatory Commission and Environmental Protection Agency Responsibilities Under the Federal Water Pollution Control Act as amended (FWPCA) and the National Environmental Policy Act of 1969." However, the State agrees with the principles embodied in that Memorandum and wishes to cooperate with the U.S. Nuclear Regulatory Commission (hereafter "NRC") in implementing those principles.

Specifically, these cooperative efforts will extend to requirements for the control and consideration of impacts on water quality and biota associated with the licensing and regulation including early site approval[1] of the following facilities within the State:

a. nuclear power and test facilities,
b. nuclear fuel reprocessing facilities,
c. uranium isotope enrichment facilities,
d. nuclear fuel fabrication plants, and
e. nuclear waste treatment, storage and disposal facilities.

1. Without relinquishing existing statutory authority, the State and NRC will cooperate to identify and consolidate the environmental information needed for early evaluation related to impacts on water quality and biota under the FWPCA. The objective should be that the scope, form and timeliness of the information to be submitted by the applicant will satisfy the requirements of both the State and NRC, recognizing the final responsibility of the State for the same under FWPCA. This information will include that needed for issuance of State water quality certifications pursuant to Section 401 and NPDES permits pursuant to Section 402. It shall also include, where applicable, Section 316(b) considerations regarding best available technology as applied to cooling water intake structures and Section 316(a) determinations regarding the granting of alternative effluent limitations for the thermal component of discharges, as well as information needed to evaluate the environmental impact of the facility based on compliance with FWPCA requirements.

2. The State and NRC will meet, as appropriate, at an early time prior to and/or during the environmental review process for each facility or plant subject to this

[1] See 10 CFR Part 2, Subpart F and Appendix A Paragraph I(c).

Memorandum to discuss potential impacts on water quality and biota.

3. (a) The State will exercise its best efforts to evaluate the levels of discharges and impacts on water quality and biota pursuant to Section 402 and 316 (a), as appropriate, and complete cooling water intake structure evaluations pursuant to Section 316(b) as far as possible in advance of the planned date of issuance by NRC of the final environmental impact statement for the construction permit for any nuclear power reactor. The State will also exercise its best efforts to make such evaluations as far as possible in advance of the planned date of issuance of the final environmental impact statement for any other plant or facility subject to this Agreement or issuance of early site approvals associated with nuclear power and other facilities.

(b) Where possible, the State's comments on NRC's draft environmental impact statement for each such facility will reflect such evaluations. The State will undertake the issue a complete Section 402 permit as soon as possible prior to the planned date of authorization by NRC of any commencement of construction [8] or issuance by NRC of any license, or early site approval, whichever is applicable.

(c) Such permits will contain appropriate terms and conditions for all discharges of pollutants expected during the life of the permit and, to the extent possible, terms and conditions with regard to cooling water intake structures and Section 316(a) determinations concerning thermal discharges. Additional permit terms and conditions for discharges not contemplated during the life of the permit (such as certain chemical and other releases not expected until operation startup) may be derived from applicable State water quality standards and applicable new source performance standards contained in 40 CFR, Chapter 1, Subchapter N. Permits may be reissued, or modified as appropriate, and any reissued or modified permit, to be effective at the commencement of actual discharge as provided above, may require additional limitations and controls based on data gathered during the initial permit or may require additional Section 316 (a) and (b) studies for the purpose of confirming conclusions reached from previous predictive studies. Applications for permit reissuance as provided above will be evaluated by the State, so far as allowed by FWPCA, in light of the policy to assure to the maximum extent possible that subsequent considerations regarding impacts on water quality and biota will not result in the need for significant changes in plant design or in costs and benefits of the operation of the facility subsequent to the completion of NRC's environmental review.

4. The State will work closely with NRC to assure, so far as possible, that water quality certifications pursuant to Section 401 for the facilities subject to this Memorandum that require such certification are issued in advance of the planned date of issuance of NRC staff's final environmental impact statement for the facility.

5. The State and NRC will maintain close contact on water quality and related matters during the entire environmental review, including:

(a) Open interagency communications, and mutual cooperation on all relevant water quality matters;

(b) A status meeting, where appropriate, after completion of the environmental review or subsequent thereto, on any significant new considerations that develop; e.g., a major change in plant design or the identification of significant considerations regarding impacts on water quality or biota that were not previously evaluated as may result from a major change in plant design.

6. The State and NRC will consider the feasibility of holding combined or concurrent hearings on the State's Section 402 permits and NRC's construction permits, or other actions, on a case-by-case basis. If there are areas involving impact on water quality or biota where there are significant differences of opinion between the State and NRC, every reasonable attempt will be made to identify and resolve these differences prior to the planned date of issuance of NRC's final environmental statement. In the event that agreement cannot be reached, the NRC shall assume responsibility for insuring that the differences are addressed in the environmental statement.

7. Nothing in this Memorandum is intended to restrict or extend the statutory authority of either NRC or the State or to effect or vary the terms of the present agreement between the State and NRC under Section 274b of the Atomic Energy Act of 1954, as amended.

8. The principal NRC contact under this Memorandum shall be the Assistant Director for Environmental Projects. The principal State contact under this Memorandum shall be the Director of the Department of Environmental Control.

9. This Memorandum of Understanding shall take effect immediately upon signing by the State and the Nuclear Regulatory Commission, and may be terminated upon 30 days written notice by either party.

For the United States Nuclear Regulatory Commission:

Lee V. Gossick,

Executive Director for Operations.

Dated at Washington, D.C., this 2nd day of August, 1979.

For the Nebraska Department of Environmental Control:

Dan T. Drain, *Director.*

44 FR 75535
Published 12/20/79

Federal Bureau of Investigation and Nuclear Regulatory Commission Memorandum of Understanding for Cooperation Regarding Threat, Theft, or Sabotage in U.S. Nuclear Industry

December 13, 1979.

The attached memorandum, subject as above, provides a basis for contingency response planning, coordination, and cooperation between the Federal Bureau of Investigation (FBI) and the Nuclear Regulatory Commission (NRC) in order to deal effectively with threats, and with acts associated with theft or sabotage attempts against NRC licensed nuclear materials, facilities (nuclear power plants and other types of nuclear plants in the nuclear fuel cycle) and activities.

E. Morris Howard,

Director, Division of Safeguards Inspection, Office of Inspection and Enforcement.

Federal Bureau of Investigation and Nuclear Regulatory Commission Memorandum of Understanding for Cooperation Regarding Threat, Theft, or Sabotage in U.S. Nuclear Industry

1.0 Purpose.

The purpose of this memorandum is to provide a clear basis for contingency response planning, coordination and cooperation between the Federal Bureau of Investigation (FBI) and the Nuclear Regulatory Commission (NRC) in order to deal effectively with threats, and with acts associated with theft or sabotage attempts against NRC licensed nuclear materials, facilities [1] and activities.

Having closely related statutory responsibilities with regard to nuclear materials, facilities, and activities in U.S. nuclear industry, the FBI and the NRC cooperate fully in carrying out their respective responsibilities in the interest of achieving:

(1) Effective communication and exchange of relevant information, and

(2) Timely, reliable, and effective response actions.

2.0 Applicable authority.

2.1 *Federal Bureau of Investigation.*
The FBI's authority relative to NRC licensed nuclear facilities, activities, and materials stems from responsibilities assigned the FBI in the following areas (inter alia):

(1) Pub. L. 83-703, Atomic Energy Act of 1954 as amended, Title 42, U.S. Code.

(2) Title 18 and Title 50, U.S. Code, as may be applicable such as extortion, sabotage, or theft of government property.

2.2 *Nuclear Regulatory Commission.*
The NRC's regulatory authority stems from responsibilities assigned the NRC in the following areas (inter alia):

(1) Pub. L. 93-438, Energy Reorganization Act of 1974, Title 42, U.S. Code.

(2) Pub. L. 83-703, Atomic Energy Act of 1954, as amended, Title 42, U.S. Code.

[8] The term "commencement of construction" is as defined in 10 CFR 50.10(c), 30.4(w), 40.4(n) and 70.4(a) as applicable.

[1] The term, facility, used generally throughout this document, includes nuclear power plants and other types of nuclear plants in the nuclear fuel cycle.

3.0 Incidents and Incidents of Mutual Concern.

In accordance with their respective statutory responsibilities, the FBI and the NRC agree to coordinate planning and responses dealing with but not limited to threats, material thefts and diversions, incursions or infiltrations, extortions, conspiracy, and sabotage relating to all facilities, activities, and materials licensed under the Atomic Energy Act of 1954, as amended.

Both agencies agree to cooperate in formation exchange relating to the foregoing topics for purposes of threat evaluation.

4.0 Agency Roles and Relationships.

4.1 *FBI's Role With Respect to Incidents at Licensed Nuclear Facilities and Activities.* Criminal acts in the categories stipulated in paragraph 3.0, when committed against NRC licensed nuclear facilities and activities, may be in violation of the Atomic Energy Act of 1954 or the regulations of the NRC, as well as other Federal statutes of concern to the FBI. In such cases, the general role of the FBI would be one of actively investigating the incident and coordinating other necessary action by state and local law enforcement agencies in order to apprehend the perpetrators, recover any stolen or diverted nuclear material, and support Federal prosecutions as appropriate. FBI special weapons and tactics teams and hostage negotiation experts also would be available for contingency response against barricaded adversaries if needed.

Because of relative location and travel time, the FBI's presence at the scene of an incident may not be prompt enough to provide the immediate law enforcement action required. Thus, local law enforcement agencies must be relied on in general for prompt response needs. The FBI, upon arrival at the scene, would assume control and coordination of the law enforcement operations, except where violation of Federal statutes is not involved.

The FBI effects liaison with the NRC and local law enforcement agencies as necessary to effectively plan for and carry out the above role, and to accomplish information exchange concerning threats and potential adversaries of concern.

4.2 *NRC's Role With Respect to Incidents at Licensed Nuclear Facilities and Activities.* In its regulation of US nuclear industry, the NRC, among other things, requires certain licensees to provide and maintain a physical protection system, inclusive of contingency response plans and coordination with local law enforcement agencies, in order to protect their nuclear facilities, activities, and materials against attempted criminal acts. If such an attempt occurs, the immediate contingency role of the NRC would be one of gathering and assessing information to determine the situation, apprising and cooperating with the FBI in order to expedite and assist FBI response, and arranging for other needed and feasible contingency response assistance that is requested through NRC channels.

After the immediate contingency aspects of the situation have passed, NRC would continue to cooperate with the FBI on a noncontingency, prolonged basis as required to assist any ensuing FBI investigations relative to the incident.

The NRC effects liaison with the FBI as necessary to effectively plan for and carry out the above role, and to accomplish information exchange and assessment concerning threats and potential adversaries of concern.

4.3 *Concept for Contingency Response Coordination and Cooperation.* Criminal acts against licensed nuclear facilities, activities, and materials are reported to the pertinent NRC Regional Office by the licensee, along with information about the local situation and about the law enforcement or other agencies notified or responding. The NRC Regional Office notifies the NRC Headquarters, assures that the pertinent FBI Field Office (or resident agent) having jurisdiction is informed without delay about overt acts requiring prompt law enforcement attention. The NRC Regional Office and FBI Field Office dispatch representatives to the scene as warranted by the situation and inform their respective national headquarters about the situation. The NRC Headquarters in turn assures that the Atomic Energy Desk at the FBI Headquarters is informed promptly about the situation.

Upon arrival at the scene, the FBI and NRC field representatives coordinate and cooperate with each other in carrying out their respective responsibilities. The FBI is in charge of law enforcement operations and represents the Federal government in all law enforcement activity. The NRC facilitates FBI access into the licensed facility or activity as appropriate, provides information and advice regarding the facility or activity (particularly any radiological hazards), and supports the FBI wherever possible to resolve the situation. The FBI and NRC representatives report the situation and make recommendations to their respective agencies regarding the need for additional response assistance at the scene. The need for continuing FBI criminal investigation of the act would be determined by FBI Headquarters.

5.0 FBI Responsibilities.

In fulfilling its role with respect to incidents at NRC licensed nuclear facilities and activities, the FBI accomplishes the following responsibilities:

(1) Provides to NRC intelligence information concerning possible criminal acts relative to the security of nuclear facilities, activities, and materials.

(2) Notifies NRC, unless otherwise precluded by statute or directive, of nuclear related threats and of alleged, attempted, or actual incidents involving sabotage of nuclear facilities and activities or diversion and theft of nuclear materials.

(3) Investigates ongoing nuclear related threat situations; advises the NRC regarding the credibility and danger of such threats.

(4) Accomplishes liaison and contingency response planning with pertinent local law enforcement agencies as required for effective coordinated law enforcement response operations.

(5) Accomplishes liaison with pertinent NRC staff, NRC Regional Offices, and the NRC representative at the scene of an incident, as required for effective information exchange, threat evaluation, contingency response planning, and FBI operations coordinations.

(6) Responds to any attempt to steal a shipment of licensed nuclear material or to any incursion or infiltration attempt against an NRC licensed nuclear facility or activity; appropriately directs and coordinates law enforcement operations at the scene; accomplishes hostage negotiation, special weapons and tactics team operations, and other FBI law enforcement actions as feasible and necessary to deal with the adversary and prevent nuclear material theft/diversion or sabotage.

(7) Investigates incidents of sabotage or attempted sabotage of an NRC licensed nuclear facility or activity.

(8) Investigates incidents of theft/diversion or attempted theft/diversion of NRC licensed nuclear material; conducts law enforcement operations as necessary to identify and apprehend suspects and to locate and recover stolen or diverted SNM.

(9) Investigates incidents of conspiracy and extortion attempts against NRC licensed facilities or activities.

(10) Requests information and other NRC support needed to expedite and facilitate FBI operations.

(11) Coordinates proposed FBI news releases regarding incidents at NRC licensed nuclear facilities and activities

with the Director, Office of Public Affairs, NRC Headquarters.

6.0 NRC Responsibilities.

In fulfilling its role with respect to incidents at NRC licensed nuclear facilities and activities, the NRC accomplishes the following responsibilities:

(1) Reviews and correlates intelligence information on possible criminal acts received from the FBI; coordinates with the FBI, and evaluates potential adversary capabilities and trends as a basis for rule making, evaluations, and systems design.

(2) Accomplishes liaison with pertinent FBI Headquarters staff and FBI Field Offices as required for effective information exchange, threat evaluation, contingency response planning, and NRC support of FBI response operations.

(3) Supports joint operational readiness planning between licensees and associated local law enforcement agencies for prompt law enforcement response assistance when needed at licensed facilities and activities.

(4) Notifies the FBI of threats involving NRC licensed nuclear facilities, activities, and materials; assists the FBI in evaluating the nuclear aspects of such threats and other nuclear threats as appropriate.

(5) Disseminates with the approval of the FBI to affected licensees alert and warning information received from the FBI about specific nuclear related threats.

(6) Promptly notifies the FBI about any attempt to steal a shipment of licensed nuclear material, or about any incursion or infiltration attempt against an NRC licensed nuclear facility or activity; responds to the scene of the incident as appropriate; provides NRC field liaison and technical assistance to the FBI at the scene.

(7) Notifies the FBI about incidents of sabotage or attempted sabotage of an NRC licensed nuclear facility or activity.

(8) Notifies the FBI about incidents of theft/diversion or attempted theft/diversion of NRC licensed nuclear material.

(9) Notifies the FBI about conspiracy or extortion attempts against NRC licensed nuclear facilities or activities.

(10) Provides assistance to the FBI in evaluating the radiological hazards of the particular incident and provides technical assessment of any potential or actual impact upon the public health and safety.

(11) Provides information and assistance requested by the FBI relative to FBI investigations of criminal acts attempted against NRC licensed nuclear facilities and activities.

(12) Coordinates with FBI Headquarters on proposed NRC news releases relative to incidents concerning licensed nuclear facilities, activities or materials if the FBI is involved.

7.0 Working Arrangement.

The working channels of communication established between the FBI and NRC for information exchange and coordination incident to carrying out their respective responsibilities hereunder are indicated in Section 4.3, Concept for Contingency Response Coordination and Cooperation. The identification of these points of contact is not intended to restrict communication between NRC and FBI staff members in technical, administrative and other day-to-day matters in the course of their normal activities and the discharge of agency responsibilities.

8.0 Effective Period.

This memorandum of understanding will take effect when it has been signed by the authorized representative indicated below for each agency. It may be terminated by either the FBI or the NRC following 90 days' written notification to that effect.

Dated: April 23, 1979.

For the Federal Bureau of Investigation.

William H. Webster,

Director, Federal Bureau of Investigation.

For the Nuclear Regulatory Commission.

Joseph M. Hendrie,

Chairman, Nuclear Regulatory Commission.

45 FR 1315

Published 1/4/80

DEPARTMENT OF LABOR

Mine Safety and Health Administration, Nuclear Regulatory Commission Memorandum of Understanding

1. Purpose

The Mine Safety and Health Administration (MSHA), U.S. Department of Labor, and the U.S. Nuclear Regualtory Commission (NRC), enter into this agreement in order to facilitate coordination and cooperation in areas of mutual jurisdiction and concern.

2. Background

Under Sections 3(h)(1) and 4 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801-961 (Supp. I), MSHA has jurisdiction over occupational safety and health protection in the milling of minerals which can be used to produce atomic energy. These minerals are defined as "source material" in Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2014(z). Under sections 63 and 161 of the Atomic Energy Act, 42 U.S.C. 2093 and 2201, and the National Environmental Policy Act, NRC also has jurisdiction over occupational safety and health protection in milling of these minerals.

3. Declaration of Intent

MSHA and the NRC recognize that they both have jurisdiction respecting protection of workers from safety and health hazards in source material mills. Although each agency will carry out its statutory responsibilities separately, the agencies agree that administrative efficiency will be maximized by:

a. Promulgation and enforcement of compatible safety and health standards and regulations.

b. Use of compatible inspection procedures and techniques where feasible.

c. Exchange of information respecting safety and health protection in mills subject to the jurisdiction of both agencies, and the exchange of other information pertinent to each agency's mission.

d. Exchange of information regarding enforcement actions subject to the jurisdiction of both agencies.

4. Areas of Cooperation

a. NRC will assist MSHA in developing safety and health standards compatible with existing NRC regulations. Whenever MSHA or NRC identify the need to promulgate any safety or health standard or regulation which is new to both agencies, or to modify an existing standard or regulation, a joint development project will be initiated. If public meetings or hearings are to be conducted, they will be conducted jointly if possible. MSHA and NRC will initiate a joint review of data keeping regulations and other requirements applicable to source material milling operations, and will attempt to implement compatible programs in this area.

b. MSHA and NRC will perform a trial joint inspection program to identify areas where duplication of MSHA and NRC regulation of mills can be reduced. By undertaking this program, the two agencies will seek to make maximum use of the government's resources and develop procedures which will result in the greater assurance of improved safety and health to persons working in milling operations. At the end of a twelve month trial period, the program will be evaluated. Based on this evaluation, recommendations will be made as to how the public interest could be best served in the area of mutual agency cooperation.

c. MSHA and NRC agree to exchange information pertinent to safety and health hazards, including epidemiological data, monitoring actions; inspection, investigation and other reports; and technical information

The two agencies also agree to cooperate in development and evaluation of medical information pertaining to health hazards from source materials and their daughter products. Each agency will protect the confidentiality of information identified as proprietary that has been supplied to it by the other agency.

d. MSHA and NRC agree to coordinate agency activities respecting safety and health, to the extent possible, in the areas of training programs and such other areas as the agencies may designate, and to cooperate in the implementation of any such programs.

e. Neither NRC nor MSHA will provide advance notice of any joint MSHA-NRC inspection or any other inspection by the other agency. MSHA will advise NRC of any significant administrative adjusticatory proceeding or court proceeding in which it is a party, where such proceeding may affect NRC's programs. MSHA will also advise NRC of any hearing to be held under Section 107(b) of the Mine Act and of the result of any such hearing where the subject of such a hearing may affect NRC's programs. NRC will advise MSHA of any significant enforcement action to be taken, or taken, under the Atomic Energy Act which may affect MSHA's programs, and will advise MSHA of any administrative adjusticatory proceeding or court proceeding in which it is a party where such proceeding may affect MSHA's programs. Each agency will advise the other agency of such administrative or court proceedings at a time early enough to allow the other agency to prepare for meaningful participation if appropriate.

5. MSHA-State Coordination

NRC agrees to assist MSHA in coordinating MSHA's activities with agencies of those States which, under Section 274 of the Atomic Energy Act, 42 U.S.C. 2021, license and inspect source material mills pursuant to agreements with NRC.

6. Implementation

The MSHA official responsible for implementation of this agreement is the Chief, Metal and Nonmetal Mine Health Division; the NRC official responsible for implementation of this agreement is the Executive Director for Operations. Working level coordination shall be established for both headquarters and field operations.

7. Freedom of Information Act Requests

MSHA and NRC shall develop procedures for when consultation with the other agency is necessary before release of information under the Freedom of Information Act, regarding projects and programs implemented pursuant to this agreement. These procedures shall in no way supersede, supplement, or otherwise contravene the Freedom of Information Act or the respective agency Freedom of Information Act regulations.

8. Amendment and Termination

This agreement may be modified, amended or terminated upon thirty (30) days written notice by either party.

9. Effective Date

This agreement is effective when signed by both parties.

Dated: November [illegible], 1979.

Lee V. Gossick,

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

Dated: December 14, 1979.

J. Scott B. Together,

Assistant Secretary, Mine Safety and Health Administration, Department of Labor.

45 FR 8393
Published 2/7/80

Memorandum of Understanding Between the State of Oregon and the Nuclear Regulatory Commission

The Nuclear Regulatory Commission (NRC) and the State of Oregon have signed a Memorandum to cooperate in the regulation of nuclear activities and have signed more detailed sub-agreements covering the sharing of proprietary information and the coordination of resident inspector programs.

The broad Memorandum of Understanding expresses the desire of the State of Oregon and the NRC to cooperate in the regulation of nuclear activities and sets forth principles of cooperation in areas subject to the jurisdiction of both parties. It is intended to form the basis for additional detailed sub-agreements such as the ones on proprietary information and resident inspectors. Neither the Memorandum nor the sub-agreements diminish the responsibilities or authority of either the NRC or the State.

Under the Memorandum, the State and NRC will consult regularly and cooperate in exploring and devising procedures to minimize duplication of effort, avoid delays in decision making and ensure the exchange of needed information.

The Memorandum with Oregon follows closely the precedent established with the signing of similar instruments with Washington on September 6, 1978 (43 FR 43774) and with Indiana on December 14, 1978 (43 FR 61053).

The first detailed sub-agreement provides for protection of information related to nuclear plant security and proprietary information.

The second detailed sub-agreement covers the relationship between the NRC and the Oregon Department of Energy concerning their respective resident inspector programs at the Trojan Nuclear Facility 30 miles northwest of Portland.

The Memorandum of Understanding became effective when signed by Governor Atiyeh in Salem, Oregon on January 19, 1980. The two sub-agreements became effective when signed the same day by Mr. Frank, Director, Oregon Department of Energy. The text of all three instruments is published below.

For further information contact: Frank W. Young, Office of State Programs, telephone 301/492-7794, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or Donald W. Godard, Administrator, Siting and Regulation, telephone 503/378-6469, Oregon Department of Energy, Room 111, Labor and Industries Building, Salem, Oregon 97310.

Dated at Bethesda, Maryland, this 31st day of January, 1980 for the Nuclear Regulatory Commission.

G. Wayne Kerr,

Acting Director, Office of State Programs.

45 FR 72980
Published 11/3/80

ENVIRONMENTAL PROTECTION AGENCY

NUCLEAR REGULATORY COMMISSION

[RH-FRL-1653-3]

Regulation of Radionuclide Emissions; Memorandum of Understanding

AGENCIES: Environmental Protection Agency, Nuclear Regulatory Commission.

ACTION: Notice of a Memorandum of Understanding.

SUMMARY: The Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) have entered into a Memorandum of

Understanding as required by section 122(c)(2) of the Clean Air Act, as amended in 1977, with respect to the regulation of radionuclide emissions into air from sources and facilities licensed by NRC. This Memorandum defines in general terms the respective roles of the two agencies and establishes a framework of cooperation for avoiding unnecessary duplication of effort and for conserving resources in establishing, implementing, and enforcing standards for airborne radionuclide emissions from sources and facilities licensed by NRC. This Memorandum may be revised in the future as EPA develops Clean Air Act radionuclide standards applicable to NRC licensees.

ADDRESSES: Docket No. A-79-11, containing material relevant to this action, is located in the U.S. Environmental Protection Agency, Central Docket Section, Waterside Mall, West Tower Lobby, Gallery One, 401 M Street, SW, Washington, DC. The Docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Paul J. Magno, Office of Radiation Programs (ANR-460), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (703) 557-7380, or John W. N. Hickey, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-5966.

SUPPLEMENTARY INFORMATION: Under various statutes both EPA and NRC have the authority to regulate radioactive emissions of source material, byproduct material, and special nuclear material into the air. Under the Atomic Energy Act of 1954 and Title II of the Energy Reorganization Act of 1974, NRC is authorized to license and regulate the manufacture, production, receipt, acquisition, possession, ownership, use, and transfer of source material, byproduct material, and special nuclear material.[1] Under the Clean Air Act, as amended in 1977, EPA was also given the authority to regulate air emissions of source material, byproduct material, and special nuclear material.[2]

Section 122(a) of the Clean Air Act, as amended in 1977, directed the Administrator of EPA to determine whether emissions of radioactive pollutants (including source material, byproduct material, and special nuclear material) into ambient air will cause or contribute to air pollution which may reasonably be anticipated to endanger public health. If the Administrator made an affirmative finding, he was required to list radioactive pollutants as substances to be regulated under the Clean Air Act.

On December 27, 1979, the Administrator of EPA made an affirmative finding and listed "radionuclides" as hazardous air pollutants under Section 112 of the Clean Air Act (44 FR 78738, December 27, 1979). The term "hazardous air pollutant," as defined by Section 112, means an air pollutant to which no ambient air quality standard is applicable and which causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness. After listing radionuclides as hazardous air pollutants under Section 112 of the Clean Air Act, the Administrator must promulgate regulations establishing standards for these pollutants, and where applicable, all sources and facilities emitting these pollutants, including NRC-licensed sources and facilities, must comply with these standards.

NRC-licensed sources and facilities include nuclear power plant operations and other activities in the nuclear fuel cycle, research and development laboratories, universities, research and test reactors, hospitals, radiopharmaceutical facilities, industrial users and various miscellaneous users of source material, byproduct material, and special nuclear material. Radionuclide air emissions from these licensed sources and facilities are already limited or controlled by a number of existing regulations and standards, including:

1. 10 CFR Part 20, "Standards for Protection Against Radiation," which among other things specifies limits for radionuclide releases into air from all NRC licensees and includes the provision that these releases should be "as low as reasonably achievable" (ALARA);

2. Appendix I of 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," which specifies numerical design objectives to insure that radionuclide releases from light water nuclear power reactors are kept "as low as reasonably achievable" (this regulation is implemented by NRC through technical specifications on individual licensees which specify release limits); and

3. 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," which establishes generally applicable standards for radionuclide emissions from uranium fuel cycle facilities.[3]

Recognizing the overlapping jurisdictional authorities resulting from the Clean Air Act Amendments of 1977, Congress, under Section 122(c)(2) of the Clean Air Act, as amended in 1977, directed EPA and NRC, no later than six months after EPA lists any source material, byproduct material, or special nuclear material as a substance to be regulated under the Act, to enter into an interagency agreement with respect to those sources or facilities which are under NRC's jurisdiction. The Act states that this agreement shall minimize duplication of effort and conserve resources in establishing, implementing, and enforcing Clean Air Act radionuclide standards for sources or facilities licensed by NRC.

EPA and NRC have entered into such an agreement. Under this agreement EPA shall promulgate standards for airborne radionuclide emissions under its Clean Air Act authority and NRC shall have the primary role in implementing and enforcing these standards where applicable for sources and facilities licensed by NRC. EPA shall inform NRC of proposed actions for the development of Clean Air Act radionuclide standards for sources and facilities licensed by NRC and shall consult regularly with NRC during the standards development process. NRC shall assist EPA in standards development by: (a) providing information and recommendations, (b) participating in studies, and (c) reviewing and commenting on proposed standards.

As EPA standards are developed for NRC-licensed sources and facilities, EPA and NRC will work together in developing mutually acceptable procedures for implementing and enforcing these standards. These efforts are expected to lead to a revision of this agreement defining the specific roles of each agency in implementing and enforcing these standards. This revision should be completed before EPA proposes its first standards applicable to NRC-licensed sources and facilities.

The text of the Memorandum of Understanding is set forth below.

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[1] Source material, byproduct material, and special nuclear material are radioactive materials as defined in the Atomic Energy Act of 1954 as amended.

[2] Under the Atomic Energy Act of 1954 and Reorganization Plan No. 3 of 1970, EPA also is authorized to establish generally applicable environmental standards for protection of the general environment from radioactive materials. These standards, which apply outside the boundaries of NRC-licensed facilities, are implemented by NRC through its licensing authority.

[3] This standard was issued by EPA under the Atomic Energy Act authority to establish generally applicable environmental radiation standards. Uranium fuel cycle facilities subject to 40 CFR 190 and regulated by NRC, include uranium mills, uranium conversion plants, uranium fuel fabrication plants, light-water-cooled nuclear power plants using uranium fuel, and spent uranium fuel reprocessing plants, as defined in 40 CFR 190 (42 F.R. 2858, January 13, 1977).

M morandur Understanding Between EPA nd NRC Concerning Clean Air Act, as Amended in 1977

In accordance with Section 122(c)(2) of the Clean Air Act, as amended in 1977, to minimize duplication of effort and conserve resources in the regulation of radionuclide emissions to air from sources or facilities licensed by NRC, EPA and NRC agree to the following:

I. Establishment of Standards

1. EPA shall promulgate standards for airborne radionuclide emissions under its Clean Air Act authority.

2. EPA shall inform NRC of proposed actions for the development of Clean Air Act radionuclide standards for sources and facilities licensed by NRC and shall consult regularly with NRC during standards development.

3. NRC shall assist EPA in standards development by:

a. Providing EPA with available data and information on NRC-licensed sources and facilities as needed, including information on radionuclide air emissions, the environmental impact of these emissions, and control technology for reducing these emissions;

b. Participating with EPA in carrying out any necessary special studies at NRC-licensed sources and facilities; and

c. Providing recommendations and reviewing and commenting on EPA's proposed standards.

II. Implementation and Enforcement of Standards

1. NRC, using its own regulatory program and statutory and regulatory authorities, shall have the primary role in implementing and enforcing EPA's Clean Air Act radionuclide standards for sources and facilities licensed by NRC.

2. During the development of Clean Air Act radionuclide standards for NRC-licensed sources and facilities, EPA and NRC shall work together to establish mutually acceptable procedures implementing and enforcing these standards. These procedures will be consistent with the provisions of the Clean Air Act and will allow both EPA and NRC to fulfill their statutory responsibilities with a minimum of duplication of effort. These procedures and the specific roles of each agency in carrying out these procedures will be defined in a revision to this agreement which should be completed before EPA proposes its first standards applicable to sources and facilities l ensed by NRC.

III. Effective Date, Revision, and Termination

This Memorandum shall be effective immediately, and shall continue in effect until revised by mutual agreement, unle minated by either party upon 120 tice in writing.

D October 17, 1980.

David G. Hawkins,

Assistant Administrator for Air, Noise, and Radiation, U.S. Environmental Protection Agency.

Dated: October 24, 1980.

William J. Dircks,

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

45 FR 75033
Published 11/13/80

Nuclear Safety Information and Activities; Memorandum of Understanding Between the Nuclear Safety Oversight Committee and the Federal Emergency Management Agency with Respect to the Acquisition of Information and the Monitoring of Activities

1. The Nuclear Safety Oversight Committee (NSOC) was established pursuant to Executive Order 12202 (March 18, 1980) to advise "on the progress of Federal and State authorities and the nuclear power industry in improving the safety of nuclear power and in implementing the approved recommendations of the President's Commission on the Accident at Three Mile Island (Kemeny Commission)" set forth in the President's announcement and White House Fact Sheet of December 7, 1979 (copy attached to this memorandum). On September 26, 1980 the President issued Executive Order 12240, which extended the life of NSOC to September 30, 1981.

NSOC is responsible for the preparation and periodic submission of reports to the President, the Secretary of Energy, and the Secretary of Health and Human Services on the progress being made in each area. In addition, NSOC is specifically responsible to advise on the progress and activities of the Federal Emergency Management Agency (FEMA) in a variety of substantive and procedural areas identified in the Executive Order, Sec. 1-2. These include, but are not limited to, the following:

- The Federal program in safety research (Sec. 1-204);
- A coordinated program to improve worker and public health and safety (Sec. 1-205);
- A review of state and local off-site emergency planning and preparedness, service civilian related radiological emergencies; and (6) assure the development of programs to address the recommendations for additional research and public education needs.

3. The Federal Emergency Management Agency, in recognition of NSOC's responsibility and essential need for information as described in paragraph 1, above, agrees to cooperate fully to assure that NSOC has complete and full access to all information, facilities, and personnel NSOC determines is required to fulfill its responsibility in an effective and timely manner. In order to effectuate this agreement in an orderly fashion, the NSOC and FEMA also agree to the following principles and arrangements:

a. *Informal and Formal Arrangements*

The NSOC, its staff and its properly designated consultants may regularly contact FEMA personnel at all levels to develop and implement informal or formal arrangements for complete and full access and/or acquisition to all information, facilities and personnel in the general and specific areas identified in paragraph 1, above. To the extent possible, the use of informal arrangements to implement this provision is preferred.

b. *Designated Information Coordinator*

FEMA shall designate a person to serve as information coordinator who will be directly responsible for providing, or for causing others to provide, the information requested by NSOC personnel. Contacts described in a. above shall be made only after the FEMA Information Coordinator has been informed that such a contact will be made. Any formal arrangements for providing FEMA information to NSOC shall be coordinated through the Designated Information Coordinator.

c. *"Legal" Information Defined*

The term "legal," as used in paragraph 1 of this memorandum includes, but is not limited to, (1) all briefs or memoranda filed by FEMA and the United States, in any Federal or state judicial proceeding, in a controversy involving nuclear safety, emergency planning or preparedness, or a subject matter which, in FEMA's view, relates to the responsibilities of NSOC, (2) opinions or memoranda issued by any Federal or state judicial tribunal in a controversy in which FEMA is a party and which involves the subject matter identified in subparagraph c (1), above; and (3) proposed legislation affecting FEMA's responsibility. FEMA agrees to arrange for the regular transmission of these materials to NSOC.

d. *Operation not Materially Affected*

and the progress of state and local governments in establishing emergency response plans (Sec. 1-206); and

• Improving public information on nuclear safety and FEMA's progress in coordinating any Federal response to potential nuclear emergencies (Sec. 1-207).

NSOC's acquisition or inspection of technical, scientific, legal and policy related information in FEMA's possession, the monitoring of FEMA's functions and activities, the availability and responsiveness of FEMA personnel, and NSOC's access to FEMA operated, financed or approved facilities or programs are essential to the effective and timely preparation and submission of its reports (see Sec. 1-206, and 1-304). Additionally, the President has directed NSOC to "include in its reports the Committee's advice as to the adequacy of the information it has received from Federal . . . agencies . . . ; and, its assessment of the cooperation it has received from them." (Sec. 1-201).

2. The Federal Emergency Management Agency, pursuant to Reorganization Plan No. 3 of 1978, Executive Order 12148 of July 20, 1979 and other laws and regulations, is responsible for, and coordinates civil emergency planning, management, mitigation and assistance functions of the executive agencies of the United States, and it works with state and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response and recovery programs.

In the President's announcement and White House Fact Sheet of December 7, 1979, referred to in paragraph 1 above and attached to this memorandum, the FEMA was directed to, *inter alia*, address the need for improved advance preparation for emergencies and public education programs in the context of state emergency response plans. Specifically, FEMA was directed to: (1) take the lead in off-site emergency planning and response; (2) complete by June 1980 the review of state emergency plans in those states with operating reactors; (3) complete as soon as possible the review of state emergency plans in those states with plants scheduled for operation in the near future; (4) develop and issue an updated series of interagency assignments which would delineate respective agency capabilities and responsibilities and clearly define procedures for coordination and direction for both emergency planning and response; (5) assure that DOE resources and capabilities for responding to radiological emergencies are made available and augmented as needed to

The implementation of this memorandum shall not materially impede or disrupt the operation, routine or regularized conduct of FEMA procedures and programs.

e. *Authority not Affected*

Nothing in this memorandum, or in its implementation, or in any subsequent formal or informal arrangement is intended to restrict, modify or limit the authority of FEMA or the responsibility of the NSOC under Executive Order 12202, Executive Order 12240 and other applicable laws.

f. *Classified Documents, Devices or Facilities*

Nothing in this memorandum, or in its implementation, is intended to alter, modify or change applicable requirements concerning the personal security clearance of individuals or the informational or physical security of classified documents, devices or facilities.

g. *Responsible Agency Official and the Process of Amendment*

The General Counsel of the FEMA and the General Counsel of the NSOC will periodically review the effectiveness of this memorandum of understanding, particularly as it relates to NSOC's fulfillment of its responsibilities under Executive Order 12202 and Executive Order 12240 and develop formal and informal arrangements to correct any impediments, deal with problem areas or resolve disputes. The responsibilities agreed to in this memorandum may be amended by the exchange of letters between the General Counsel of NSOC and the General Counsel of FEMA.

4. This memorandum of understanding shall take effect upon its signing by authorized representatives of the respective agencies.

For the Nuclear Safety Oversight Committee.

Dated: November 7, 1980.

Bruce Babbitt,

Chairman, Nuclear Safety Oversight Committee.

For the Federal Emergency Management Agency.

Dated: October 28, 1980.

John W. Macy, Jr.,

Director, Federal Emergency Management Agency.

46 FR 56960
Published 11/19/81

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Energy; Implementation of the West Valley Demonstration Project Act of 1980

The Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) have entered into a Memorandum of Understanding concerning the Western New York Nuclear Service Center (the Center) at West Valley, New York. This Memorandum establishes procedures for review and consultation by the NRC with respect to activities at the Center under the West Valley Demonstration Project Act of 1980.

The text of this Memorandum is set out below.

WEST VALLEY DEMONSTRATION PROJECT, MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF ENERGY AND THE U.S. NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding West Valley Demonstration Project

I. Purpose and Scope

This Agreement, mandated by the West Valley Demonstration Project Act of 1980, (the Act), Pub. L. No. 96-368, establishes procedures for review and consultation by the U.S. Nuclear Regulatory Commission (NRC) with respect to activities conducted at the Western New York Nuclear Service Center, West Valley, New York (the Center) by the U.S. Department of Energy (the Department) under the Act. This agreement encompasses those development, design, construction, operation, and decontamination and decommissioning activities that are associated with the project as described in the Act.

II. Responsibilities of Parties

A. Department of Energy

1. The Act directs the Department to carry out a high-level radioactive waste management demonstration project (the project) at the Center. Under the Act, the Department is responsible for demonstrating the solidification and preparation of the liquid high-level radioactive wastes stored at the Center in a form suitable for transportation and disposal. The Department has responsibility for the public health and safety associated with this project. The Department agrees to provide the NRC information required to identify any potential radiological danger to public health and safety and to provide access

to the Center to NRC for the monitoring of project activities to further assure the public health and safety from a radiological standpoint.

2. The Department's Deputy Assistant Secretary for Nuclear Waste Management and Fuel Cycle Programs, or his successor, is responsible for ensuring the implementation of the terms of this Agreement. The Department's West Valley Project Manager (Project Manager) will be the Department's point of contact for all communications relating to carrying out the provisions of this Agreement. The Department's Project Manager will coordinate all interactions with the NRC and, on a timely basis, provide the NRC the information, reports, and access as provided in this Agreement. The Department's Project Manager will consult with the NRC on matters within the scope of this Agreement. This consultation includes the exchange of information and opinion, in person, and in writing, between personnel of both the Department and the NRC.

B. Nuclear Regulatory Commission

1. The Act requires that the Department enter into an agreement with the NRC to establish arrangements for review and consultation by the NRC with respect to the project. The review and consultation shall be conducted informally and, in accordance with the Act, shall not be subject to formal Commission procedures or actions required by law for licensed activities. The NRC review, consultation, and monitoring established by this Agreement will provide the Department with independent analyses to assist the Department in fulfilling its responsibility for public health and safety. The NRC has the responsibility to carefully review, critique, and analyze, in a timely manner, the information provided to identify to the Department any potential radiological danger to the public health and safety which may be presented by the project.

2. The NRC's Director of Nuclear Material Safety and Safeguards (NMSS), or his successor, is responsible for ensuring the implementation of the terms of this Agreement. The NRC's West Valley Project Manager (Project Manager) will be the NRC point of contact for all communications relating to carrying out the provisions of this Agreement. NMSS, or any office to whom its functions may be transferred, is responsible for reviewing, consulting with respect to, and commenting upon project activities to identify any potential radiological danger to the public health and safety. The NRC's Project Manager will receive and coordinate the review of project information submitted by the Department. The NRC's Project Manager will provide the Department with comments as appropriate or required by this Agreement. The NRC's Project Manager will consult with the Department on matters within the scope of this Agreement. This consultation includes the exchange of information, opinion and advice, in person and in writing, between personnel of both the Department and the NRC.

III. Agreements Between Parties

A. General Provisions

1. The purpose of this Agreement is to promote the timely and orderly completion of the project mandated by the Act with due regard for the public health and safety. Essential to this timely and orderly completion is a relationship between the agencies marked by open and candid communications at all levels and prompt resolution of any issues which may arise.

2. Insofar as practicable, the NRC agrees to receive and use information and reports developed in the course of the Department's routine operations, and in accordance with Department administrative rules, regulations, procedures and orders which apply to its management and control of the project. The Department will, however, provide the NRC such additional information as the NRC may require to identify any potential radiological danger to the public health and safety which may be presented by the project. To the extent not subject to the exemptions contained in 5 U.S.C. 552(b), information or reports required under this agreement to be submitted by the Department to the NRC, for review and any comments provided by the NRC to the Department in response thereto, shall be available for public inspection.

3. NRC comments resulting from its review and consultation will be discussed between the respective Project Managers and confirmed in writing. The Department will inform the NRC in writing of the disposition of such comments upon NRC's request.

4. Should an activity be identified by NRC as posing an immediate radiological threat to public health and safety, the NRC's Director, NMSS, will so notify the Department's Project Manager. The Department will promptly review the activity and take appropriate action. The NRC and the Department agree that a high priority will be given such resolutions.

5. The Department will transport, in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal repository for permanent disposal.

6. The Department will, in accordance with applicable licensing requirements, dispose of low-level radioactive and transuranic waste produced by the solidification of the liquid high-level waste under the project.

7. For those portions of the Center in the possession of the Department which are not used in connection with the project, the Department will provide the Commission information to identify any potential radiological danger to the public health and safety and access to monitor the activities.

8. To the extent that detailed working procedures are necessary to implement the provisions of the Act and of this Agreement, the Department and the NRC agree to establish such procedures by the exchange of letters between the Department's Project Manager and the NRC's Chief, Advanced Fuel and Spent Fuel Licensing Branch, or his successor.

9. If an issue should arise which cannot be promptly resolved between Project Managers, the NRC and the Department agree to refer the matter to appropriate management levels for resolution.

10. Nothing in this Agreement shall derogate from the statutory authority of the Department or the NRC.

B. Specific Provisions

1. Waste Solidification, Disposal, and Decontamination Plan (the Project Plan). a. The Department will submit to the NRC, for review and comment, a plan for the solidification of the high-level waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities used in solidifying the waste.

Before the submission of the plan, the Department may consult with the NRC, in person or in writing, with respect to the development of such plan or any issues that may be presented by it, including decisions which the Department proposes to make in accordance with the process contemplated by the National Environmental Policy Act. NRC will respond to a Department request for such consultation, in person or in writing, as the case may be.

b. The Project Plan will contain the level of detail generally associated with conceptual design of structures, systems and components. As the project continues and more precise information is developed, that information will be submitted to the NRC prior to the beginning of project activities for which the information is relevant.

c. The Project Plan will be submitted as soon as practicable prior to major construction or modification of structures, systems and components at the project facilities. The Project Plan will discuss the Department's approach for the conduct of the project by describing what is going to be done and how it will be accomplished, and will include:

(1) A description of what is to be developed, constructed, or used including the major systems or elements of the project and facilities, whether existing, modified, or new.

(2) A description of the status of technology for implementing the project including a description of any ongoing or planned supporting development work upon which the project is dependent.

(3) A description of the specific scientific, technological, or engineering approaches or processes to be used in meeting the project objectives.

(4) A preliminary project schedule and a description of each phase of the project including the work to be accomplished and products developed, including major project events, technical activities, and decision points.

d. Upon submission of the Project Plan to the NRC, the Department will publish in the **Federal Register** a notice of the submission and the plan's availability for public inspection.

e. The NRC will review the Plan and provide written comments to the Department. In preparing its comments, the NRC will specify with precision its objection to any provision of the plan.

f. Upon receipt of Commission comments, the Department will publish in the **Federal Register** a notice of receipt and of the availability of the comments for public inspection.

g. If the Department does not revise the plan to meet objections specified in the Commission's comments, the Department will so notify the Commission and publish in the Federal Register a detailed statement for not so revising the plan.

h. The Department will inform the Commission of significant changes in the plan as the project proceeds.

2. Waste Form and Containers. a. The Department will consult with the NRC with respect to the form in which the high-level radioactive waste at the Center will be solidified and with respect to the containers to be used in the permanent disposal of this waste.

b. As the basis for this consultation, the Department will provide the NRC a description and an analysis of the extent to which the final waste form and container complies with any NRC technical regulations (or proposed regulations) regarding disposal of high-level radioactive waste in geologic repositories.

c. Upon receipt the NRC will review the information and provide written comments and recommendations to the Department. As a basis for its comments and recommendations, the NRC will use any technical criteria issued with respect to the waste form and containers that may be emplaced in geologic repositories that are subject to the licensing jurisdiction of the NRC.

3. Safety Analysis Reports and Other Information. a. Before substantial construction or modification of structures, systems or components, the Department will prepare a safety analysis report (SAR) that will assure that: (1) Potential hazards are systematically identified; (2) potential impacts are analyzed; and (3) reasonable measures to eliminate, control or mitigate the hazards have been taken. The Department will submit the SAR to the NRC for independent review. The SAR will contain design descriptions, safety operating limits, and minimum conditions for operation.

The safety analysis will address in appropriate detail the following topics: (1) A description and evaluation of the project facilities and processes; (2) design criteria for systems, components, and structures; (3) normal and emergency operating procedures to be used; (4) identification of hazards; (5) physical design features and administrative controls provided to prevent or mitigate potential accidents; (6) potential accidents and consequences including those resulting from natural phenomena; (7) operational limitations; and (8) means for controlling effluents and minimizing radiation exposures.

A quality assurance plan and a safeguards and security plan will be prepared by the Department and provided to the NRC with the SAR or in advance of the SAR if they are available earlier.

b. Before solidification of the waste, the Department will provide to the NRC information updating the SAR which will describe the project facilities as actually constructed or modified where such construction or modification does not conform to the description contained in the SAR. The SAR updates will address changes in design, safety operating limits, and minimum conditions for operation and will be similar in form to the SAR.

4. Decontamination and Decommissioning. a. The Department will perform an analysis of impacts and risks of potential disposition modes for the tanks and other facilities of the Center in which the high-level radioactive waste solidified under the project was stored, and facilities, material, and hardware used in connection with the project. The NRC and Department project managers will consult on requirements and disposition modes to be analyzed.

b. Upon receipt of the Department analysis, the NRC will prescribe decontamination and decommissioning (D&D) requirements in accordance with the Act.

c. The Department will prepare a Project Decommissioning Plan which includes a description of engineering and operating activities to be performed. This plan will be reviewed by the NRC and comments provided to the Department. The Department will review and consider the comments provided prior to initiation of D&D operations.

d. The Department will prepare a Site Status Report. The report will provide:

(1) A statement of the D&D requirements prescribed by NRC and an analysis of the extent to which such requirements have been satisfied for those portions of the Center required to be decontaminated and decommissioned by the Act; and

(2) A description of those portions of the Center in the possession of the Department with particular reference to physical and radiological conditions.

5. Monitoring. a. The Department will afford the NRC such access as necessary to monitor project activities to further assure the public health and safety. The NRC will use the descriptions, operating limits, minimum conditions, and technical specifications included in the SAR as the criteria for conduct of its monitoring program.

The monitoring results will be discussed between the respective Project Managers and provided to the Department in the form of a written monitoring report. The Department will inform the NRC in writing of the disposition of such comments upon NRC's request.

b. *Records Examination.* For the purposes of further assuring the public health and safety, the Department will make available to the NRC for examination and copying, upon reasonable notice, records kept by the Department pertaining to the project.

IV. Effective Date

This agreement shall take effect upon the signing by the Deputy Assistant Secretary for Nuclear Waste Management and Fuel Cycle Programs of the U.S. Department of Energy, and the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, and shall continue in effect until revised by mutual agreement unless terminated by either party, for good cause upon 120 days notice in writing.

For the United States Department of Energy.

Sheldon Meyers,

Dated: September 22, 1981.

For the United States Nuclear Regulatory Commission.

John G. Davis,

Dated: September 23, 1981.

Dated at Silver Spring, Maryland, this 13th day of November, 1981.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

47 FR 16229
Published 4/15/82

Three Mile Island Unit 2; Solid Nuclear Wastes; Revision of a Memorandum of Understanding Between Nuclear Regulatory Commission and Department of Energy

The U.S. Nuclear Regulatory Commission (the Commission) has recently signed the attached revised version of its Memorandum of Understanding with the Department of Energy (the Department) concerning removal and disposition of solid nuclear wastes from cleanup of the Three Mile Unit 2 nuclear plant.

The revised MOU alters the original (46 FR 38614; July 28, 1981) in two areas, the TMI–2 reactor fuel and the makeup and purification system demineralizers. Instead of taking only samples of the damaged fuel, the DOE has now agreed to accept the entire core for R&D and storage at a DOE facility. The terms of ultimate core disposal will be negotiated between DOE and the owner. Additionally, the DOE has agreed to take possession of and retain the highly radioactive purification system resins on a reimbursable basis. This was presented as an option in the original version of the MOU.

Dated at Bethesda, Maryland, this 6th day of April 1982.

For the Nuclear Regulatory Commission.

Bernard J. Snyder,

Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy Concerning the Removal and Disposition of Solid Nuclear Wastes from Cleanup of the Three Mile Island Unit 2 Nuclear Plant

I. Objective

This memorandum of understanding specifies interagency procedures for the removal and disposition of nuclear waste resulting from cleanup of the Three Mile Island Unit 2 plant. This will help to ensure that the TMI Site does not become a long-term waster disposal facility.

II. NRC Roles and Responsibilities

The NRC has the responsibility under the Atomic Energy act of 1954 as amended (42 U.S.C. 2011 *et seq.*), to regulate all licensee activities at the TMI–2 site, including waster management, and ensure these activities are carried out in accordance with the requirements of applicable rules and regulations and the requirements of Facility Operating License Number DPR–73, as modified by amendments or orders issued by the NRC. NRC will carry out its responsibilities by onsite observation of licensee activities. As required, policy, and technical support will be provided to the NRC TMI Site Office by NRC Headquarters and Regional Office(s).

NRC will work cooperatively and closely with the DOE, and will keep DOE fully and currently informed of NRC's activities.

NRC will continue to keep public, state and local officials informed of NRC's activities. When appropriate, NRC will involve DOE in these information exchanges with the public, state and local officials.

III. DOE Role and Responsibilities

Where DOE determines that generally beneficial research, development and testing of the TMI–2 accident generated solid wastes can be carried out, DOE will perform such activities at appropriate DOE facilities. For those other wastes that cannot be disposed of in commercial low level waste facilities, DOE may also assume responsibility for removal, storage, and disposal to the extent that the licensee provides reimbursement to the DOE. These activities will be undertaken to the extent consistent with appropriate statutory authority. NRC licensing of DOE facilities that are utilized for storage, processing or disposal of TMI–2 accident generated wastes will not be required since these facilities have primary uses other than for receipt and storage of wastes resulting from licensed activities.

The DOE will provide technical support to the licensee and the NRC as deemed appropriate.

DOE will work closely with the NRC and keep NRC informed of DOE's activities.

IV. Currently Identified TMI–2 Accident Generated Solid Radioactive Wastes

The following lists those TMI–2 accident generated solid radioactive wastes which currently exist or are planned to be generated. This listing may be modified in the future as the cleanup progresses.

1. *EPICOR–II System Wastes.*—Forty-nine ion exchange resin liners with loadings up to 1500 curies/liner are in temporary storage at the TMI–2 site. DOE plans to develop a prototype high integrity container (HIC), production units of which, if utilized by the licensee, may allow these liners to be acceptable for licensed disposal in commercial land burial facilities some 1–2 years from now. DOE is also performing characterization experiments on one of these liners and may find it desirable to extend its R&D program to other liners. Should a more expeditious handling of these wastes be required due to the potential for a limited release to the storage environment (which could cause public concern), a contingency plan will be implemented wherein DOE would at its discretion take receipt of these EPICOR liners on a reimbursable basis from the licensee for storage or disposal. Future EPICOR–II liners are anticipated to be loaded to allow commercial shallow land disposal offsite by the licensee.

2. *Submerged Demineralizer System Wastes.*—It is anticipated that the dispersed radioactivity in accident generated water will be deposited on zeolite in submerged demineralizer system (SDS) liners. Due to the unique character and nature of these wastes, DOE will take possession of and retain these liners to conduct a waste immobilization research and development and testing program.

3. *Reactor Fuel.*—Following removal of the damaged core from the reactor vessel, the entire core will be shipped to a DOE facility to survey and select those portions most appropriate for DOE's R&D program. Information obtained from detailed examinations is expected to be of generic benefit to design, fabrication and operation of reactor cores in a safe and efficient manner for current and future nuclear power plants. The remainder of the core will remain in storage at the DOE facility and will be ultimately disposed of under an agreement to be negotiated between DOE and the owner.

4. *Transuranic Contaminated Waste Materials.*—As the cleanup progresses, some waste materials (e.g., sludges) may be found to be contaminated with transuranics at levels above which commercial low level burial facilities are authorized to accept. Alternatives for such material will be considered on a case-by-case basis and could include archiving, R&D evaluation or temporary storage onsite, or at a DOE facility awaiting further processing and/or disposal in a permanent repository offsite. Depending on the nature of these materials, DOE's activities could either take the form of an R&D program of generic value, or would be subject to reimbursement by the licensee.

5. *Makeup and Purification System Resins and Filters.*—During the TMI–2 accident, the makeup and purification system demineralizer vessels and filters were highly contaminated by letdown of reactor coolant through the system. These resins and filters have not been characterized, however, based on radiation measurements, the resins and filters are believed to have specific activities well in excess of the loadings on the high specific activity EPICOR–II prefilters and are considered unsuitable for commercial land disposal. Due to the generic value of the information to be obtained and the very high specific activities of the filters, DOE will take possession and retain these filters for research and development activities. DOE will also take possession of and retain purification system resins either for an R&D program of generic value or for storage or disposal on a reimbursable basis.

6. *Other Solid Radioactive Wastes.*—The low-level wastes associated with decontamination (e.g., some ion exchange media, booties, gloves, trash) will be disposed of by the licensee in licensed commercial low level burial facilities.

V. This Memorandum of Understanding will take effect when it has been signed by the authorized representative indicated

below for each agency. DOE and NRC shall each have the right with the consent of the other party to modify this agreement.

For the U.S. Nuclear Regulatory Commission.

Dated: March 15, 1982.

Bernard J. Snyder,

Program Director, TMI Program Office, Office of Nuclear Reactor Regulations.

For the U.S. Department of Energy.

Dated: March 15, 1982.

Franklin E. Coffman,

Deputy Assistant Secretary for Nuclear Waste Management and Fuel Cycle Programs, Office of Nuclear Energy.

47 FR 54585
Published 12/3/82

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF LABOR

Wage and Hour Division

Memorandum of Understanding Between NRC and Department of Labor; Employee Protection

1. Purpose

The U.S. Nuclear Regulatory Commission (NRC) and the Department of Labor (DOL) enter into this agreement to facilitate coordination and cooperation concerning the employee protection provisions of Section 210 of the Energy Reorganization Act of 1974 (Reorganization Act), as amended, 42 U.S.C. 5851.

2. Background

Section 210 of the Reorganization Act prohibits any employer, including a Nuclear Regulatory Commission licensee, applicant or a contractor or subcontractor of a Commission licensee or applicant, from discriminating against any employee with respect to his or her compensation, terms, conditions or privileges of employment because the employee assisted or participated, or is about to assist or participate, in any manner in any action to carry out the purposes of either the Reorganization Act or the Atomic Energy Act of 1954 (Atomic Energy Act), as amended, 42 U.S.C. 2011 *et seq.*

The NRC and DOL have complementary responsibilities in the area of employee protection. DOL has the responsibility under section 210 of the Reorganization Act to investigate employee complaints of discrimination and may, after an investigation and hearing, order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with backpay, and award compensatory damages, including attorney fees. NRC, though without direct authority to provide a remedy to an employee, has independent authority under the Atomic Energy Act to take appropriate enforcement action against Commission licensees that violate the Atomic Energy Act, the Reorganization Act, or Commission requirements. Enforcement action may include license denial, suspension or revocation or the imposition of civil penalties.

Although each agency will carry out its statutory responsibilities independently, the agencies agree that administrative efficiency and sound enforcement policies will be maximized by cooperation and the timely exchange of information in areas of mutual interest.

3. Areas of Cooperation

a. DOL agrees to promptly notify NRC of any complaint filed with DOL alleging discrimination within the meaning of Section 210 of the Energy Reorganization Act. DOL will promptly provide NRC a copy of the complaint, decisions and orders associated with the investigation and any hearing on the complaint.

DOL will also keep NRC currently informed on the status of any judicial proceedings seeking review of an order of the Secretary of Labor issued pursuant to Section 210 of the Reorganization Act.

b. NRC and DOL agree to cooperate with each other to the fullest extent possible in every case of alleged discrimination involving employees of Commission licensees, applicants, or contractors or subcontractors of Commission licensees or applicants. NRC will take all reasonable steps to assist DOL in obtaining access to licensed facilities and any necessary security clearances. Each agency agrees to share and promote access to all information it obtains concerning a particular allegation and, to the extent permitted by law, will protect the confidentiality of information identified as sensitive that has been supplied to it by the other agency.

4. Implementation

The NRC official responsible for implementation of this agreement is the Executive Director for Operations; the DOL official responsible for implementation of this agreement is the Administrator, Wage and Hour Division. Working level point of contacts shall be established and identified within 10 days after the effective date of this agreement for both headquarters and field operations.

5. Amendment and Termination

This Agreement may be amended or modified upon written agreement by both parties to the Agreement. The Agreement may be terminated upon ninety (90) days written notice by either party.

6. Effective Date

This agreement is effective when signed by both parties.

Dated: July 29, 1982.

William J. Dircks,

Executive Director for Operations, Nuclear Regulatory Commission.

Dated: October 25, 1982.

William M. Otter,

Administrator, Wage and Hour Division, Department of Labor.

47 FR 55444
Published 12/9/82

Memorandum of Understanding Between the Nebraska Department of Environmental Control and the Nuclear Regulatory Commission for In Situ Uranium Mining

The U.S. Nuclear Regulatory Commission (NRC) and the Nebraska Department of Environmental Control have signed a memorandum of understanding for the purpose of providing effective communication and coordination between their respective staffs for the regulation of the concentration of uranium from in situ mining in Nebraska.

The State of Nebraska has authority to regulate the water quality aspects of in situ uranium mining, while the NRC has sole authority for the milling and concentration of source material in Nebraska and concurrent authority over the environmental impacts of in situ uranium mining on groundwater in Nebraska. Under the memorandum, the State and NRC will cooperate in using procedures to minimize duplication of effort, avoid delays in decisionmaking and ensure the exchange of needed information during the regulatory process for in situ uranium mining.

The memorandum of understanding became effective when signed by the Director, Nebraska Department of Environmental Control, on November 10, 1982. The text is published below.

For further information contact: Robert J. Doda, telephone 817/860-8139, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

Dated at Arlington, Tex., this 30th day of November 1982.

For the Nuclear Regulatory Commission.

John T. Collins,

Regional Administrator, Region IV.

Memorandum of Understanding Between the Nebraska Department of Environmental Control and the U.S. Nuclear Regulatory Commission for in situ Uranium Mining

Whereas, the State of Nebraska, through the Department of Health, and by virtue of Neb. Rev. Stat. § 71-3510 (Reissue 978) is an Agreement State with the U.S. Nuclear Regulatory Commission; and

Whereas, the U.S. Nuclear Regulatory Commission (NRC) has, at the request of the Governor of the State of Nebraska, reasserted its authority over the milling of uranium and the concentration of uranium from in situ mining in the State of Nebraska; and

Whereas, the NRC has the sole authority to issue licenses for the milling and concentration of source material in Nebraska by virtue of the Atomic Energy Act of 1954, as amended, 68 Stat. 923, and concurrent authority over the environmental impacts of in situ uranium mining on groundwater; and

Whereas, the Nebraska Department of Environmental Control (NDEC), pursuant to Neb. Rev. [illegible] 71-1505(9) (Supp. 1981) and the Federal Safe Drinking Water Act (42 U.S.C. 300(f) et seq.) has adopted Regulations Governing Underground Injection Control in Nebraska effective February 16, 1982, with authority to regulate the water quality aspects of in situ uranium mining in Nebraska.

Now, therefore, it is agreed by and between the NRC and NDEC, as follows:

1. In order to help avoid duplication of effort by the regulatory agencies and the applicant, both agencies agree that effective communication and coordination shall be maintained at the staff level between them and that there shall be prompt and efficient concurrent licensing and permit review for in situ uranium mining. Each agency will bear its own costs of review and permitting provided, however, that the NRC may, in its discretion, utilize the services of the State agency in the NRC's licensing process under an agreement pursuant to Section 274i of the Atomic Energy Act.

2. NRC and NDEC shall consult and coordinate on conditions of any permit or license including sureties pertaining to groundwater restoration and surface decontamination and reclamation.

3. If either party concludes that a meeting between the respective staffs of each agency is necessary, both parties shall cooperate in arranging such a meeting as soon as possible.

4. When a public hearing is determined to be necessary by NRC or NDEC on its license or permit, the other will be given written notice and opportunity to participate according to the established rules of the agency holding the hearing.

5. All information received will be shared between the technical staffs of the agencies and the applicant shall be required to furnish copies of its application and supporting information to each party, unless some information is relevant to one of the agencies only. Sharing of information pertaining to pending enforcement actions and investigations will be determined on a case-by-case basis.

6. The principal NDEC contact under this memorandum shall be the Director of the Department of Environmental Control or his authorized representative. The principal NRC contact under this memorandum shall be the Director, Uranium Recovery Field Office, Denver, Colorado.

7. This memorandum of understanding shall take effect immediately upon signing by the State and the Regional Administrator, Region IV, U.S. Nuclear Regulatory Commission, and may be terminated upon thirty (30) days written notice by either party.

For the Nebraska Department of Environmental Control.

Dan T. Drain,
Director.

Dated at Lincoln, Nebr., this 10th day of November 1982.

For the United States Nuclear Regulatory Commission.

John T. Collins, *Regional Administrator, Region IV.*

Dated at Arlington, Tex., this 8th day of November 1982.

48 FR 38358
Published 8/23/83

Memorandum of Understanding Concerning Public Information

The Memorandum of Understanding published below establishes a framework for cooperation and coordination in the area of emergency public information among the following parties:

Washington Public Power Supply System (Supply System)
State of Washington
Benton and Franklin Counties, Washington
Nuclear Regulatory Commission (NRC)
Federal Emergency Management Agency (FEMA)

It outlines the manner in which the parties will cooperate in the dissemination of emergency information to the news media concerning a radiological emergency at the Washington Public Power Supply System's Nuclear Power Plants 1 and 2. It does not address emergency warning systems (i.e., direct notification of the public via the Emergency Broadcast System or otherwise) which are addressed in the Emergency Plans of various parties.

For further information contact: James G. Hazlett, Public Affairs Officer, Telephone 415-943-3712, U.S. Nuclear Regulatory Commission, Region V, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596.

Signed at Walnut Creek, California this 12th day of August, 1983.

For the Nuclear Regulatory Commission.

B. H. Faulkenberry,
Acting Regional Administrator.

Memorandum of Understanding Among State of Washington, Benton-Franklin Counties, Washington; Washington Public Power Supply System, U.S. Nuclear Regulatory Commission, and Federal Emergency Management Agency; Public Information

1. Background and Purpose

Protection of the public health and safety in the event of a radiological emergency at the Washington Public Power Supply System's Nuclear Power Plants 1 and 2 imposes upon the utility operator and local, state and federal government agencies the responsibility to provide complete, accurate, timely, and understandable information to the public. In the absence of an effective public information program during an emergency, unfounded rumors proliferate, public alarm is increased, confidence in government agencies is eroded, and the overall effectiveness of emergency response is diminished.

An effective emergency public information program requires cooperation by and advance planning among potential emergency response organizations. Recognizing the unique and separate responsibilities and jurisdictions of the organizations involved in radiological emergency response, the planning for emergency public information must emphasize inter-agency coperation and coordination.

This memorandum of understanding establishes a framework for cooperation and coordination in the area of emergency public information among the following parties:

Washington Public Power Supply System (Supply System)
State of Washington
Benton and Franklin Counties, Washington
Nuclear Regulatory Commission (NRC)
Federal Emergency Management AGency (FEMA)

2. Scope

This memorandum of understanding defines the manner in which the parties will cooperate in the dissemination of emergency information to the news media concerning a radiological emergency at the Washington Public Power Supply System's Nuclear Power Plants 1 and 2. It does not address emergency warning systems (i.e., direct notification of the public via the Emergency Broadcast System, or otherwise), which are addressed in the Emergency Plans of various parties.

3. Coordination of Emergency Public Information

In the event of a radiological emergency at the Washington Public Power Supply System's Nuclear Power Plants 1 and 2, classified as an Alert, Site Area Emergency, or General Emergency, the parties to this agreement will coordinate their respective public information programs and cooperate to the maximum degree feasible to assure that the news media and the public are provided with complete, accurate, timely, and understandable information about the nature of actions by the individual organizations.

Specifically, the parties agree as follows:

a. Each party agrees to keep the other parties fully and currently informed concerning information released to the news media. To the extent possible, each party will endeavor to notify the others in advance concerning the text or general outline of information to be released.

b. Each party agrees to focus its public information releases and public statements on those matters within the scope of its jurisdiction and responsibility. To the extent possible, news media inquiries should be directed to the appropriate response agency for reply unless subsequent agreements among the parties provide for a pooling of resources.

c. To the extent possible, each party will release official public information to the news media through a designated spokesperson, normally a responsible senior official with decision-making authority or his/her designee; e.g., a public information officer.

d. When regional response teams from NRC Region V and FEMA Region X are en route to the Supply System's site, public information releases about the nature of the emergency and the federal response will be made from the NRC and FEMA Headquarters offices, as appropriate. When the regional response teams arrive on site and the Joint Information Center is established, the NRC and FEMA Headquarters offices will begin referring media inquiries to the Joint Information Center and will coordinate any official statements with the Joint Information Center, as provided in Item e.

e. When a Joint Information Center is established, the parties agree to release all official public information through this facility, either directly or simultaneously with its release from some other location; e.g., a state EOC or the NRC and FEMA Headquarters offices.

f. When the Joint Information Center is established, the news media will be notified that, for the duration of the emergency, official public information and press briefings from the signatory agencies to this agreement will be released from the Joint Information Center.

g. When the Joint Information Center is established, each party will refer news media inquiries to the Joint Information Center or each party's official spokesperson, as appropriate.

h. While reaffirming the intent to provide public information from a single platform, extreme circumstances may preclude that, and nothing in this agreement shall limit the authority of any party to publicly and separately release any information that it believes is within the scope of its jurisdiction and responsibility and that it believes is complete, accurate, and timely. In the event of separate release by a party to this agreement, the party agrees to provide the Joint Information Center with a copy of the material before or simultaneously with its release.

i. Within the limits of its manpower and priorities, each party agrees to provide public information assistance to other parties, as needed, toward the common goal of protecting the public health and safety.

j. The Washington Public Power Supply System agrees to provide the physical location, communications and reproduction equipment, furniture, supplies, and administrative services for the support of all parties operating from the Joint Information Center.

k. The Washington Public Power Supply System will develop procedures for partial activation of the Joint Information Center within one hour after declaration of a Site Area Emergency or General Emergency and complete activation within two hours.

l. The Joint Information Center shall be equipped with dedicated telephone lines between the center, the licensee's near-site emergency operations facility, the Washington EOC, and the Benton-Franklin County EOC, including capability for live broadcast to the Joint Information Center from these locations.

m. The Joint Information Center will be staffed by public information representatives from the Washington Public Power Supply System, the Nuclear Regulatory Commission, the Federal Emergency Management Agency, the state of Washington, and other parties as personnel and priorities permit.

n. Each party agrees to provide current copies of its emergency public information plan and procedures to the other parties.

This agreement will become effective upon signature and continue until cancelled by any party upon written notice to the others. Amendments or modifications to this agreement may be made upon written agreement by all parties to the agreement.

The parties hereto executed this agreement this 24th day of February 1983.

May 6, 1983. Governor John Spellman, *State of Washington*. April 5, 1983. J. B. Martin, *U.S. Nuclear Regulatory Commission*. March 25, 1983. William H. Mayer, *Regional Director, Federal Emergency Management Agency, Region X*. February 28, 1983. W. H. Sebero, *Benton County, Washington*. February 28, 1983. Chet Bailie, *Franklin County, Washington*. March 21, 1983. Robert L. Ferguson, *Managing Director, Washington Public Power Supply System*.

Approved as to Form: Kevin M. Ryan, *Assistant Attorney General, Washington State*.

48 FR 49562

Published 10/26/83

Comments are due 11/30/83

Request for Comments on Proposed 274i and Memorandum of Understanding for States Participating in Low-Level Waste Compacts

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of 274i. Memorandum of Understanding for Public Comment.

SUMMARY: On December 22, 1980, Congress enacted the Low-Level Radioactive Waste Policy Act of 1980 (Pub. L. 96–573), which makes each State responsible for providing for the availability of disposal capacity for commercial low-level radioactive wastes generated within its borders. The Act also states that low-level waste can be most safely and efficiently managed on a regional basis, and encourages the formation of interstate compacts.

In the process of maintaining safe and effective waste handling techniques within their regions some States feel they need to inspect waste generators for compliance with packaging and shipping requirements to effectively carry out their responsibilities under Pub. L. 96–573. On-side inspection of certain NRC licenses can be satisfactorily included in a State inspection program under a Memorandum of Understanding (MOU), between NRC and each of the States in the compact. NRC has the authority to enter into such MOUs with States under Section 274i. of the Atomic Energy Act of 1954, as amended. Section 274i. MOUs differ from agreements entered into between NRC and a State under the "Agreement State" regulatory program; the latter is accomplished only by entering into an agreement under Section 274b. of the Atomic Energy act. A 274i. MOU can be entered into by a State whether or not it has a 274b. agreement.

The proposed MOU, shown below, would authorize a State to inspect waste packaging on the premises of certain NRC licenses. State enforcement based on findings from these inspections would be under State law, not the Atomic Energy Act; however, States would notify the NRC of any violations.

Because the MOU affects NRC licenses and we anticipate that some States will seek it, NRC is publishing this MOU for public comment. While individual MOUs might differ slightly in detail, the NRC does not intend to publish them for further comment.

The Commission has found that a review of license procedures for quality assurance, packaging, marking, labeling, and loading of vehicles is usually adequate for its inspection program regarding packaging and shipping supplemented by on-site inspections during regularly scheduled inspections. While the Commission does not normally conduct inspections of individual low-level waste shipments, it wishes to encourage the goals of the compacts and to make it possible for the inspections to be carried out by the compact States. The Commission will

make no preevaluation of the State's ability to carry out such a program nor will it conduct any implementation review process to determine the effectiveness of the States' programs.

DATE: Comments are due by November 30, 1983.

ADDRESSES: Written comments should be addressed to Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments can be examined at the Public Document Room at 1717 H Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mindy Landau, Office of State Programs, U.S. Nuclear Regulatory Commission, Wasington, DC 20555, (Telephone: (301) 492-9880).

Dated at Bethesda, MD this 21st day of September 1983

For the U.S. Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Proposed 274i. Memorandum of Understanding

The State of ——— (State) is a member of the ——— Compact which was ratified by Congress on ——— pursuant to the Low-Level Radioactive Waste Policy Act, (Waste Policy Act) P.L. 96-573. The Waste Policy Act was enacted by Congress to provide for and encourage States to manage low-level radioactive waste on a regional basis, and to this end authorizes States to enter into such compacts as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste. The ——— Compact contemplates that the State will make periodic unannounced inspections of the premises of low-level radioactive waste packaging and transport activities and areas of generators located within its borders if shipments of such waste are destined for a low-level waste facility located in a Compact State.

The United States Nuclear Regulatory Commission (NRC or Commission) has the statutory responsibility to inspect its licensees to determine compliance with NRC requirements, including requirements pertaining to the shipment, packaging and transportation of low-level radioactive waste. In the exercise of this responsibility, the Commission regularly conducts a review of the transportation programs of its licensees including the licensees' procedures for quality assurance, packaging, marking, labeling and loading of vehicles. This transportation program review usually has been found adequate to ensure licensee compliance with the Commission's regulations regarding low-level radioactive waste packaging and transportation without the need for Commission inspection of each individual shipment.

Under Section 274i. of the Atomic Energy Act of 1954, as amended, the Commission in carrying out its licensing and regulatory responsibilities under the Act is authorized to enter into Memoranda of Understanding (agreements) with any State to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. While the Commission does not normally conduct on-site inspections of individual low-level waste shipments of its licensees, it desires to foster the goals of the Waste Policy Act and the ——— Compact.

Accordingly, this Memorandum of Understanding between the State of ——— and the NRC establishes mutually agreeable procedures whereby the State may perform inspection functions for and on behalf of the Commission at certain NRC reactor and materials licensees' facilities which generate low-level radioacive waste.

It is hereby agreed between the Commission and the State as follows:

1. The Commission hereby authorizes the State to perform, for and on behalf of the Commission, the following functions with respect to low-level radioactive waste, as defined in Section 2(2) of the Waste Policy Act, in the possession of Commission licensees located within the State:

(a) Inspections to determine compliance with the Commission's rules and regulations regarding the packaging and transportation of low-level waste destined for disposal at a commercial low-level radioactive waste disposal site, and

(b) Notification of Commission licensees and the Commission in writing of any violation of Commission regulations disclosed by such inspections, and to request the licensees concerned to advise the State and the Commission of corrective action taken or to be taken.

The Commission will not evaluate the State's ability to perform such functions. Such functions as are performed by the State pursuant hereto shall be performed without cost or expense to the Commission.

2. The authority to inspect NRC licensees pursuant to the preceding paragraph is limited to the licensee's low-level waste packaging, packaging procedures, and transport vehicles.

3. In taking any action authorized hereunder, the State shall not undertake to amend or revoke Commission licenses. This Memorandum, however, shall not be construed to preclude the State from exercising any authority lawfully available to it under its own laws.

4. Efforts will be made by both parties to avoid duplicative enforcement action against an NRC licensee for the same violation. However, this is not meant to preclude appropriate complementary actions for the same violation, such as termination of a user permit by the State and NRC enforcement action.

5. Nothing herein shall be deemed to authorize the State to inspect or otherwise enter the premises of any licensee of the Commission which is a Federal instrumentality without the prior consent of the licensee.

6. Nothing herein shall be deemed to preclude or affect in any manner the authority of the Commission to perform any or all of the functions described herein.

7. Nothing herein is intended to restrict or expand the statutory authority of NRC or the State or to affect or vary the terms of any agreement in effect under the authority of Section 274b. of the Atomic Energy Act of 1954, as amended.

8. Nothing herein shall be deemed to permit the State to impose packaging or transport standards beyond those contained in Federal standards.

9. The principal NRC contact under this Memorandum of Understanding shall be ———, the principal State contact shall be ———

10. This MOU shall become effective upon signing by the ———, State of, ——— and ———, Nuclear Regulatory Commission and shall remain in effect so long as the State remains a member of the ——— Compact unless sooner terminated by either party on thirty days, prior written notice.

For the Nuclear Regulatory Commission.

Regional Administrator

For the State of ———

48 FR 51875

Published 11/14/83

Spent Fuel and High-Level Waste Transportation Packaging; NRC/DOE Procedural Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of NRC/DOE procedural agreement.

SUMMARY: The Nuclear Regulatory Commission and the Department of Energy have signed a Procedural Agreement concerning planning assumptions and procedures that the Nuclear Regulatory Commission and the Department of Energy will observe in connection with the development of

transportation packaging under the provisions of the Nuclear Waste Policy Act of 1982. The text of this agreement is published below.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Cunningham, Director, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, MS 396 SS, Washington, DC 20555; (301) 427-4485.

Dated at Silver Spring, Maryland, this 4th day of November 1983.

For the Nuclear Regulatory Commission.

Donald R. Chapell,

Deputy Director, Division of Fuel Cycle and Material Safety.

Procedural Agreement Between NRC and DOE Concerning Certification of Spent Fuel and High Level Waste Transportation Packaging Under NWPA

This Agreement establishes common planning assumptions and outlines procedures which the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) will observe in connection with the development of transportation packaging (packaging) to be used for transportation of spent fuel and high-level waste under the provisions of the Nuclear Waste Policy Act of 1982 (NWPA). In this agreement, transportation refers to the physical movement of spent fuel and high level waste to a geologic repository, a test and evaluation facility, a monitored retrievable storage (MRS) facility, or an interim storage facility. The purpose of this agreement is to: (1) Define the principal policy assumptions which will be used by each agency for planning purposes; (2) assure adequate procedures for consultation and exchange of information; (3) assure that DOE and NRC exchange adequate information about plans for and results from the design, development, and testing programs and certification requirements for packaging related to this agreement; and (4) establish a coordination framework for transportation related activities covered by this agreement.

1. *NRC Approval of Packaging.* Pursuant to the Hazardous Materials Regulations of the Department of Transportation (DOT), all persons other than DOE (and the Department of Defense under certain circumstances) who ship high level radioactive waste or spent nuclear fuel must ship such materials in NRC-certified packaging.

Pursuant to the DOT regulations (49 CFR Section 173.7(d)), DOE certifies its packaging for radioactive materials against standards that are equivalent to 10 CFR Part 71. However, in light of the NWPA provisions regarding nuclear fuel under the NWPA interim storage program (Section 137(a)), and taking into account the commercial source of materials being transported to other NWPA facilities, DOE plans to use packaging that has been approved by NRC in accordance with 10 CFR Part 71 (rather than DOE-certified packaging) for DOE shipments performed under the NWPA from NRC-licensed facilities to an NRC-licensed repository, MRS or interim storage facility. While DOE recognizes that it may need to re-examine this intent, if it appears that such packaging will not be available or if it cannot accomplish its mandate under NWPA using NRC-certified packaging, it believes that all affected parties should maximize the use of NRC-certified packaging in this commercial related program.

2. *Basis for Regulations.* DOE will provide, to the extent practicable, information which would be of assistance in providing sound technical bases for regulations. NRC will exert its best efforts to continue to provide stable regulations which have a sound technical basis for the orderly design and development of packaging.

3. *Packaging Designs.* DOE will inform NRC of and coordinate with it packaging design, development, and testing activities at an early stage and periodically thereafter as progress is made. NRC, in turn, will inform DOE of potential issues related to certification of packaging of a specific design. Both agencies will exert best efforts to resolve the issues.

4. *Schedules.* Within 180 days of the date of this agreement DOE will develop, in coordination with NRC, projected schedules for the design and testing of packaging. DOE and NRC will develop schedules for timely decisions on certification of packaging and will define to the extent practicable major milestones related to these objectives.

5. *Meetings.* NRC and DOE will schedule and conduct periodic meetings to review information and discuss and resolve issues related to packaging design, testing and certification, and other matters of mutual interest under the scope of this agreement. A written report agreed to by both NRC and DOE will be prepared for each meeting.

a. Technical meetings will be held between NRC and DOE staff to assess the feasibility and utility of development projects in meeting packaging safety and certification objectives. Unresolved issues will be elevated promptly to management for resolution.

b. Periodic management meetings will be held, as necessary, to review the status of the program; to discuss regulatory concerns and issues; and to consult on policy matters.

6. *Limitations.* (a) Nothing in this agreement is intended to limit or expand the responsibility or authority of either DOE or NRC as established by law.

(b) This agreement is limited to matters of health and safety incident to packaging. Other matters, including design features related to the storage or disposal, or other use of packaging after transport will be managed under applicable regulations and agreements.

(c) This agreement is intended to facilitate the effective discharge by NRC and DOE of their respective responsibilities and shall not be construed to give rise to any private rights of action.

(d) Nothing in this agreement limits informal consultation not mentioned in this agreement.

Dated: November 3, 1983.

Robert L. Morgan,

Project Director, Nuclear Waste Policy Act Project Office, U.S. Department of Energy.

Dated: October 26, 1983.

John G. Davis,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission.

49 FR 20586
Published 5/15/84

Memorandum of Understanding (MOU) Between U.S. NRC and the State of Illinois

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Publication of Memorandum of Understanding (MOU) between U.S. NRC and the State of Illinois.

SUMMARY: Section 274i. of the Atomic Energy Act of 1954, as amended, allows the Commission to enter into agreements with the States "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." Section 274i. MOUs differ from agreements entered into 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 274i. MOU can be entered into by a State whether or not it has a 274b. agreement.

This MOU, signed by the NRC and the State of Illinois, provides principles of cooperation between the State and NRC in areas of concern to the State.

The MOU provides the basis for detailed subagreements in areas such as low-level radioactive waste treatment, storage and disposal, emergency preparedness, nuclear facility siting and operation, and decommissioning of nuclear facilities.

Under MOU, the State and NRC have committed to consult regularly and cooperate in devising procedures to

minimize duplication of effort and avoid delays in decisionmaking.

Broad agreements such as this have been entered into by other States in the past: Washington (9/78), Oregon (1/80), Indiana (11/78), and New York (3/78).

FOR FURTHER INFORMATION CONTACT:

Mindy Landau, Office of State Programs, U.S. NRC, Washington, DC 20555, (Telephone (301) 492-9880).

Dated at Bethesda, MD this 4th day of May, 1984.

For the U.S. Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Memorandum of Understanding Between the State of Illinois and the U.S. Nuclear Regulatory Commission

This Memorandum of Understanding between the State of Illinois (hereafter "State") and the U.S. Nuclear Regulatory Commission (hereafter "NRC") expresses the desire of the parties to cooperate in the regulation of nuclear activities; it sets forth mutually agreeable principles of cooperation between the State and NRC in areas subject to the jurisdiction of the State or the NRC or both. This agreement is intended to provide the basis of subsequent detailed subagreements between the parties.

Close cooperation between the signatories will help assure that the goals and policies of State and Federal law will be carried out efficiently and expeditiously without diminishing the responsibilities or authorities of either party.

With the execution of the Memorandum, the State and NRC agree regularly to consult and cooperate in exploring and devising appropriate procedures to minimize duplication of effort to the extent permitted by State and Federal law, to avoid delays in decisionmaking and to ensure the exchange of information that is needed to make the most effective use of the resources of the State and NRC in order to accomplish the purpose of both parties.

Principles of Cooperation

1. The State and NRC agree to explore together the development of detailed subagreements in areas of mutual concern, including siting of nuclear facilities;* water quality; confirmatory radiological and environmental monitoring around nuclear facilities; decommissioning of nuclear facilities; emergency preparedness planning; response to radiological incidents; security planning; personnel training and exchange; low-level radioactive waste packaging, treatment, storage and transport; transport of irradiated fuel; and radioactive material transportation monitoring.

2. Subagreements under this Memorandum may provide for activities to be perfomed by either party under mutually acceptable guidelines and criteria which assure that the needs of both are met. For activities performed by one party at the request of the other party under specific subagreements to this Memoradum, either party may explore means by which compensation can be made available to the other party or by which the costs may be shared by the parties.

3. NRC agrees to explore with the State the possibility of sharing with the State proprietary and other information in NRC's possession that is exempt from mandatory public disclosure.

4. Nothing in this Memorandum is intended to restrict or extend the constitutional or statutory authority of either NRC or the State or to affect or vary the terms of a future agreement between the State and NRC under Section 274b of the Atomic Energy Act of 1954, as amended.

5. The principal NRC contact under this Memoranum shall be the Director of the Office of State Programs. The principal State contact shall be the Director of the Illinois Department of Nuclear Safety or his or her designee. Subagreements will name appropriate individuals, agencies or offices as contacts.

6. This Memorandum shall take effect upon signing by the Governor of the State of Illinois and the Chairman of the Nuclear Regulatory Commission, and may be terminated upon 30 days written notice by either party.

For the State of Illinois.

James R. Thompson,

Governor.

Dated at Springfield, IL, this 27th day of April, 1984.

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino,

Chairman.

Dated at Washington, D.C. this 13th day of April, 1984.

49 FR 27861
Published 7/6/84

Publication of Subagreement No. 1 Between U.S. NRC and the Illinois Department of Nuclear Safety

SUMMARY: Section 274i. of the Atomic Energy Act of 1954, as amended, allows the Commission to enter into agreements with the States "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." Section 274i MOUs differ from agreements entered into 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 274i. MOU can be entered into by a State whether or not it has a 274b. agreement.

In April of 1984, an "umbrella" MOU was signed by the NRC and the State of Illinois, providing principles of cooperation between the State and NRC in areas of concern to the State.

Subagreement #1 provides 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.

FOR FURTHER INFORMATION CONTACT:

Roland Lickus,
Director, State and Government Affairs, U.S. NRC, Region 111, 799 Roosevelt Road, Glen Ellyn, Illinois 60137 (Telephone 312/790-5666).

Dated at Glen Ellyn, IL this 15th day of June 1984.

For the U.S. Nuclear Regulatory Commission.

R. L. Spessard,

Acting Regional Administrator.

Subagreement 1 Pertaining to Low-Level Radioactive Waste Inspection Between the State of Illinois and the U.S. Nuclear Regulatory Commission

The State of Illinois, in fulfilling its obligations under the Low-Level Radioactive Waste Policy Act (Waste Policy Act) Pub. L. 96-573, contemplates that it will make periodic inspections of the areas of low-level radioactive waste packaging and transport activities and premises of generators located within its borders if shipments of such waste are destined for low-level waste disposal facility.

The United States Nuclear Regulatory Commission (NRC or Commission) has the statutory responsibility to inspect its licensees to determine compliance with NRC requirements, including requirements pertaining to the shipment, packaging and transportation of low-level radioactive waste. In the exercise of this responsibility, the Commission regularly conducts a review of the transportation programs of its licensees including the licensees' procedures for quality assurance, packaging, marking, labeling and loading of vehicles. This transportation program review usually has been found adequate to ensure licensee compliance with the Commission's regulations regarding low-level radioactive waste packaging and transportation without the need for Commission inspection of each individual shipment.

Under Section 274i. of the Atomic Energy Act of 1954, as amended, the Commission in carrying out its licensing and regulatory responsibilities under the Act is authorized to enter into Memoranda of Understanding (agreements) with any State to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. While the

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* For the purpose of this Memorandum of Understanding, the term nuclear facilities is defined to include the following plants or facilities within Illinois to the extent that these facilities are not covered by a future NRC-State agreement referenced in paragraph 4:

a. Nuclear power, research, and test facilities, and associated facilities;

b. Nuclear fuel reprocessing facilities;

c. Uranium isotope enrichment facilities;

d. Nuclear fuel fabrication plants;

e. Nuclear waste treatment, storage, and disposal plants;

f. Uranium milling plants and uranium mill tailings; and

g. Uranium hexafluoride conversion plants.

Commission does not conduct on-site inspections of every low-level waste shipment of its licensees, it desires to foster the goals of the Waste Policy Act and the State of Illinois.

Accordingly, this Memorandum of Understanding between the State of Illinois and the NRC establishes mutually agreeable procedures whereby the State may perform inspection functions for and on behalf of the Commission at certain NRC reactor and materials licensees' facilities which generate low-level radioactive waste.

It is hereby agreed between the Commission and the State as follows:

1. The Commission hereby authorizes the State to perform, for and on behalf of the commission, the following functions with respect to low-level radioactive waste, as defined in Section 2(16) of the Nuclear Waste Policy Act of 1982, in the possession of Commission licensees located within the State:

(a) Inspections to determine compliance with the Commission's rules and regulations regarding the packaging and transportation of low-level waste destined for disposal at a commercial low-level radioactive waste disposal site, and

(b) Notification of Commission licensees and the Commmission in writing of any violation of Commission regulations disclosed by such inspections. All enforcement action pursuant to this Subagreement resulting from such inspections will be undertaken by the Commission.

The Commission does not normally evaluate the State's ability to perform such functions, however, the State agrees to utilize personnel knowledgeable in radiation safety, waste packaging requirements and packaging and transportation regulations. Such functions as are performed by the State pursuant to hereto shall be performed without cost or expense to the Commission, except for situations where NRC finds it appropriate to provide training to the State.

2. The authority to inspect NRC licensees pursuant to the preceding paragraph is limited to the licensee's low-level waste packaging and transportation procedures.

3. In taking any action authorized hereunder, the State shall not undertake to amend or revoke Commission licenses. This Memorandum, however, shall not be construed to preclude the State from exercising any authority lawfully available to it under its own laws.

4. Efforts will be made by both parties to avoid duplicative enforcement action against an NRC licensee for the same violation. However, this is not meant to preclude appropriate complementary actions for the same violation, such as termination of a user permit by the State and NRC enforcement action.

5. Nothing herein shall be deemed to authorize the State to inspect or otherwise enter the premises of any licensee of the Commission which is a Federal instrumentality without the prior consent of licensee.

6. Nothing herein shall be deemed to preclude or affect in any manner the authority of the Commission to perform any or all of the functions described herein.

7. Nothing herein is intended to restrict or expand the statutory authority of NRC or the State or to affect or vary the terms of any agreement in effect under the authority of Section 274b. of the Atomic Energy Act of 1954, as amended.

8. Nothing herein shall be deemed to permit the State to impose packaging or transport standards beyond those contained in Federal regulations.

9. The principal NRC contact under this Memorandum of Understanding shall be the Emergency Preparedenss and and Radiological Safety Branch Chief for reactor licensees and the Materials and Safeguards Branch Chief or materials licensees. The principal State contact shall be the Manager, Office of Waste and Transportation Management.

10. This MOU shall becoms effective upon signing by the Director, Department of Nuclear Safety, State of Illinois, and the Regional Administrator, Region III, Nuclear Regulatory Commission and shall remain in effect permanently unless terminated by either party on thirty days prior written notice.

Date this 7th day of June 1984 at Glen Ellyn, IL.

James G. Keppler,

Regional Administrator.

For the State of Illinois:

Don Etchison.

Dated this 11th day of June 1984 at Springfield, IL.

50 FR 14782
Published 4/15/85

Publication of Subagreement No. 3 Between the U.S. NRC and the Washington State Energy Facility Site Evaluation Council

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Subagreement No. 3 Between the U.S. NRC and the Washington State Energy Facility Site Evaluation Council [1].

[1] The Nuclear Regulatory Commission published this notice in the Federal Register of March 28, 1985 (50 FR 11982), but inadvertantly ommitted the attachment. This notice includes the complete text.

SUMMARY: On September 6, 1978, an "unbrella" memorandum of understanding was signed by the NRC and the State of Washington, providing principles of cooperation between the State and NRC is areas of concern to the State.

Subagreement No. 3 identifies specific areas of information exchange and cooperation which are mutually acceptable to the State of Washington, its agent the Energy Facility Site Evaluation Council (EFSEC), and the United States Nuclear Regulatory Commission.

FOR FURTHER INFORMATION CONTACT: Dean Kunihiro, Region V, U.S. Nuclear Regulatory Commission, 1450 Maria Lane, 210, Walnut creek, California 94596, (Telephone: (415) 943–3714).

Dated at Walnut Creek, CA this 10th day of April, 1985.

For the U.S. Nuclear Regulatory Commission.

John B. Martin,

Regional Administrator.

Subagreement 3 Between the United States Nuclear Regulatory Commission and the Washington State Energy Facility Site Evaluation Council Regarding the Inspection and Operation of Nuclear Powered Steam Electric Generating Stations Located in the State of Washington

This Subagreement is promulgated under the provisions of the Memorandum of Agreement between the state of Washington and the United States Nuclear Regulatory Commission, dated September 6, 1978.

Purpose

The objective of this Subagreement is the establishment of a procedure mutually acceptable to the State of Washington (hereafter "State"), its agent the Energy Facility Site Evaluation Council (EFSEC), and the United States Nuclear Regulatory Commission (hereafter NRC) for the exchange of information concerning maintenance, engineering, quality assurance, security, emergency planning and operation of nuclear powered steam electric generating stations located in the State of Washington.

It is the intent of this Subagreement that cooperative efforts should enhance understanding, reduce duplication of effort and provide wherever possible a unified position on matters of joint concern.

Implementation

1. The NRC conducts its inspection program through resident inspectors and special inspections originating from Region V, Walnut Creek, California, and NRC Headquarters, Washington, D.C. EFSEC conducts its inspection through

Council members and staff and agency inspectors operating under interagency agreements.

2. EFSEC and NRC ag[illegible]o the greatest extent possib[illegible]d in good faith to provide the oth[illegible] party with information relative to the spirit of this Memorandum.

3. EFSEC and NRC agree to meet at the call of either party at mutually agreeable times and places to exchange information on matters of common concern. Regardless of intervening meetings the parties agree to meet annually to keep each other apprised of planned activity for the ensuing year.

4. The EFSEC inspectors will not duplicate the regulatory activities of the NRC. To the extent possible EFSEC inspectors will coordinate their schedules and inspection activities with NRC so that their on-site activities avoid interruption to normal plant operations and maintenance.

5. EFSEC agrees to share with NRC information relative to its water chemistry, radiological, industrial safety and environmental monitoring programs. Consistent with requirements to protect confidential, proprietary, predecisional, and safeguards information, NRC agrees to share with EFSEC information relative to its plant construction and operation, radiological, health and safety monitoring programs. Each agency agrees to be sensitive to the needs of the other when designing its respective monitoring programs.

6. To the extent practicable EFSEC inspectors may observe NRC audits, reviews, inspections, drills and meetings. In the same way, the NRC inspectors may observe EFSEC audits, reviews, inspections, drills and meetings. The parties recognize that there will be occasions when, because of the sensitive nature of certain meetings, it may be necessary for the parties to conduct their activities privately and separately.

7. The parties agree as a routine procedure to provide the other party with information copies of inspection reports and final enforcement actions conducted under the authority of either party.

8. EFSEC and NRC agree to work cooperatively and to share information during actual emergency response events and during all emergency response drills and exercises. Upon arrival at the site, each party will advise the other of its presence and confer upon the status and adequacy of emergency response operations.

9. The N[illegible] will use its best efforts to make ava[illegible]e space in [illegible] inspector training courses, seminars and special orientation programs to accommodate the training needs of the EFSEC inspectors.

10. Nothing in this Subagreement is intended to restrict or extend the st[illegible]utory or regulatory authority of e[illegible]er EFSEC or NRC.

11. This Subagreement shall take effect immediately upon signing by the Chairman of EFSEC and the Regional Administrator, NRC Region V and may be terminated upon 30 days written notice by either party.

12. The principal NRC point of contact for this Subpagreement shall be the Regional Administrator, NRC Region V. The principal Washington State contact shall be the Chairman of EFSEC.

13. If any provision of this Subagreement, or the application of any provision to any person or circumstance is held invalid, the remainder of this Subagreement and the application of such provisions to other persons or circumstances shall not be affected.

For the U.S. Nuclear Regulatory Commission.

John B. Martin,

Regional Administrator.

Dated: March 7, 1985.

For the Washington Energy Facility Site Evaluation Council.

Curtis Eschles,

Chairman.

Dated: February 19, 1985.

51 FR 5265
Published 2/12/86

DEPARTMENT OF THE INTERIOR

Bureau of Mines

NUCLEAR REGULATORY COMMISSION

Nuclear Waste Repository Programs; Standard Operating Procedure

AGENCY: Nuclear Regulatory Commission and Bureau of Mines Interior.

ACTION: Standard Operating Procedure for BOM Interagency Agreement With DOE/NRC.

SUMMARY: The purpose of this notice is to advise interested persons that a protocol has been proposed in order to provide a standard operating procedure (SOP) for Bureau of Mines (BOM) support to the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) to avoid a possible conflict of interest in specialized activities pertinent to Nuclear Waste Repository (NWR) programs. This SOP will formally go into effect April 2, 1986. The text of the SOP is published below.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Tiktinsky, Project Manager, MS 623-SS, Division of Waste Management, NMSS, Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

A Protocol

To provide a Standard Operating Procedures (SOP) for Bureau of Mines (BOM) Support to the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) in Specialized Activities Pertinent to Nuclear Waste Repository (NWR) Programs.

Concern of Possible Conflicts of Interest

The NRC and the DOE have requested the services of the BOM relative to development and approval of Office of Civil Radioactive Waste Management Programs (OCRWMP). Because of the unique geotechnical and mining expertise of the BOM it is in the National interest to make this expertise available to ensure state-of-the-art development of NWR technology. The three principal types of activities where the BOM expertise is essential, and the agency likely to be in need of such expertise are:

Activity	Agency
Generic research	NRC, DOE
Site specific characterization or design	DOE
Technical assessment of a specific site and/or review of a design for same	NRC

It is generally agreed that generic research as it relates to OCRWMP and the results of such research are of general public interest. BOM, NRC, and DOE agree to meet periodically to review proposed generic research to be undertaken by the BOM under the provisions of this Agreement to ensure that no conflict of interest exists with site-specific work.

Relative to site specific activities, if the same technical specialists were to be involved in the design and the review there could be concern over possible conflicts of interest. Fortunately the BOM has the requisite skills at a number of field Research Centers and hence has the ability to designate that specific Centers be assigned responsibility to assist DOE and NCR respectively on site specific problems. This separation of activities as enumerated below will provide the necessary isolation of DOE and NRC concerns as regards site specific activities to avoid the perception of conflicts of interest.

Steps Taken To Avoid Possible Conflicts of Interest

- BOM will dedicate personnel at their Pittsburgh (PRC) and Twin Cities (TCRC) Research Centers to work on DOE's OCRWMP.
- BOM will dedicate personnel at their Denver (DRC) and Spokane (SRC) Research Centers to work on NRC's High-Level Waste Repository (HLWR) program.
- Any nondedicated Bureau employee from either PRC or TCRC can work on NRC generic, nonsite specific research.
- Any nondedicated Bureau employee from DRC or SRC can work on DOE generic, nonsite specific research.
- BOM will maintain a record of which employes are dedicated to DOE and NRC site specific programs.
- BOM, Mining Research Directorate, will not work on other interagency agreements with DOE (OCRWMP) outside of this SOP.

To Further Avoid Possible Conflicts of Interest BOM Personnel Dedicated to Work on the New Repository Program for NRC Shall Not:

- Discuss unpublished information on NRC's HLWR program with Bureau personnel working on DOE's OCRWMP; unpublished information will not include *draft documents* submitted to NRC because this output is routinely made available by NRC as public information.
- Discuss unpublished information on NRC's HLWR program with contractors working on DOE's OCRWMP at PRC and TCRC.

To Further Avoid Possible Conflicts of Interest BOM Personnel Dedicated to Work on the OCRWMP for DOE Shall Not:

- Discuss unpublished information on DOE's OCRWMP with Bureau personnel working on NRC's HLWR program; unpublished information will not include

draft documents submitted to DOE because this output is regarded as public information.

• Discuss unpublished information on DOE's OCRWMP with contractors working on NRC's HLWR program at DRC and SRC.

Discussion of Conflicts of Interest:

BOM, Mining Research Directorate, will have two responsibilities: to monitor administrative activities pertinent to the HLWR program with NRC and the OCRWMP with DOE and to propose modification of this SOP when potential problems are perceived in order to assure no actions will take place that could be perceived as a conflict of interest. All SOP's will be listed in the **Federal Register** for public comment before implementation.

NRC and DOE will issue their tasks through BOM, Assistant Director—Mining Research, as approved by BOM, Division of Procurement, under an interagency agreement. Research center reports and recommendations will be made directly to NRC and DOE. BOM may also provide additional technical comment to DOE and NRC on work performed by the research centers.

BOM, NRC (Office of Nuclear Material Safety and Safeguards), and DOE (Office of Geologic Repositories) will be included on the distribution lists for review of all BOM *draft* documents pertinent to the Nuclear Waste Repository program.

The undersigned agree.

David R. Forshey,

Assistant Director—Mining Research.

Robert E. Browning,

Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

William J. Purcell,

Associate Director, Office of Geologic Repositories.

EFFECTIVE DATE: The SOP will formally go into effect April 2, 1986

Dated: January 14, 1986.

Robert C. Horton,

Director, Bureau of Mines.

Dated: January 31, 1986.

R.E. Browning,

Director, Division of Waste Management, Office of Nuclear Materials and Safety and Safeguards.

51 FR 43487
Published 12/2/86

Memorandum of Understanding (MOU) Between NRC and the Commonwealth of Pennsylvania

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Memorandum of Understanding (MOU) between NRC and the Commonwealth of Pennsylvania.

SUMMARY: Section 274i. of the Atomic Energy Act of 1954, as amended, allows the Commission to enter into agreements with the States "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." Section 274i. MOUs differ from agreements entered into 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 274i. MOU can be entered into by a State whether or not it has a 274b. agreement.

This MOU, signed by the NRC and the Commonwealth of Pennsylvania, provides principles of cooperation between the State and NRC in areas of interest to the Commonwealth.

The MOU provides the basis for detailed subagreements in areas such as transportation regulation at a low-level disposal site, low-level waste packaging and shipping inspections, confirmatory environmental monitoring and emergency information exchange.

Under the MOU, the State and NRC have committed to consult regularly and cooperate in devising procedures to minimize duplication of effort and avoid delays in decisionmaking.

Broad agreements such as this have been entered into by other States in the past—Washington (9/78), Oregon (1/80), Indiana (11/78), New York (3/78), and Illinois (4/84). The Memorandum of Understanding between the Commonwealth of Pennsylvania and the Nuclear Regulatory Commission is printed in its entirety below.

FOR FURTHER INFORMATION CONTACT: Paul H. Lohaus, State Liaison Officer, Region I, NRC, 631 Park Avenue, King of Prussia, PA 19406, Telephone (215) 337-5246.

Dated at King of Prussia, PA this 19th day of November 1986.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Regional Administrator, Region I.

Memorandum of Understanding Commonwealth of Pennsylvania and the U.S. Nuclear Regulatory Commission

This Memorandum of Understanding between the Commonwealth of Pennsylvania (hereafter "Commonwealth") and the U.S. Nuclear Regulatory Commission (hereafter "NRC") expresses the desire of the parties to cooperate in the regulation of nuclear activities; it sets forth mutually agreeable principles of cooperation between the Commonwealth and NRC in areas subject to the jurisdiction of the Commonwealth or the NRC or both. This Memorandum is intended to provide the basis of subsequent detailed subagreements between the parties.

Close cooperation between the signatories will help assure that the goals and policies of Commonwealth and Federal law will be carried out efficiently and expeditiously without diminishing the responsibilities or authorities of either party.

With the execution of the Memorandum, the Commonwealth and NRC agree to consult regularly and to cooperate in exploring and devising appropriate procedures to minimize duplication of effort to the extent permitted by Commonwealth and Federal law, to avoid delays in decisionmaking, and to ensure the exchange of information that is needed to make the most effective use of the resources of the Commonwealth and the NRC in order to accomplish the purpose of both parties.

Principles of Cooperation

1. Toward these goals, the State and NRC agree to explore together the development of detailed subagreements in areas of mutual concern including, but not necessarily limited to, transportation regulation, at a low-level waste disposal site, low-level waste packaging and shipping inspections, confirmatory environmental monitoring and emergency information exchange.

2. Subagreements under this Memorandum may provide for activities to be performed by either party under mutually acceptable guidelines and criteria which assure that the needs of both are met. For activities performed by one party at the request of the other party under specific subagreements to this Memorandum, either party may explore means by which compensation can be made available to the other party or by which the costs may be shared by the parties.

3. NRC agrees to explore with the Commonwealth the possibility of sharing with the Commonwealth proprietary and other information in NRC's possession that is exempt from mandatory public disclosure.

4. Nothing in this Memorandum is intended to restrict or extend the constitutional or statutory authority of either NRC or the Commonwealth or to affect or vary the terms of a future agreement between the Commonwealth and the NRC under section 274b. of the Atomic Energy Act of 1954, as amended.

5. The principal NRC contact under this Memorandum shall be the Director of the Office of State Programs. The principal Commonwealth contact shall be the Director of the Pennsylvania Bureau of Radiation Protection or his or her designee. Subagreements will name appropriate individuals, agencies or offices as contacts.

6. This Memorandum shall take effect upon signing by the Governor of the Commonwealth of Pennsylvania and the Chairman of the Nuclear Regulatory Commission, and may be terminated by either party upon 30 days of written notice.

For the Commonwealth of Pennsylvania

Dated at Harrisburg, Pa. This 4th day of November, 1986.

Dick Thornburgh,

Governor.

For The United States Nuclear Regulatory Commission.

Dated at Washington, DC. This 27th day of June.

Nunzio J. Palladino,

Chairman.

52 FR 43695
Published 11/13/87

Subagreement No. 1 Between U.S. Nuclear Regulatory Commission and Commonwealth of Pennsylvania

AGENCY: Nuclear Regulatory Commission

ACTION: Publication of Subagreement No. 1

SUMMARY: In November 1986, and "umbrella" MOU was signed by the NRC and the Commonwealth of Pennsylvania, providing principles of cooperation in areas of concern to the Commonwealth.

Subagreement No. 1 provides the basis for mutually agreeable procedures whereby the Commonwealth may perform inspection functions for and on behalf of the Commission at certain reactor and material licensees' facilities in the areas of low-level radioactive waste packages and low-level radioactive waste transportation for waste destined for disposal in a low-level waste disposal facility. Subagreement No. 1 is printed in its entirety below.

FOR FURTHER INFORMATION CONTACT: Marie T. Miller, Regional State Liaison Officer, U.S. Nuclear Regulatory Commission Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406. (Telephone (215) 337-5246).

Dated at King of Prussia, Pennsylvania, this 4th day of November 1987.

For the U.S. Nuclear Regulatory Commission.

William T. Russell,

Regional Administrator.

Subagreement 1 Pertaining to Low-Level Radioactive Waste Package and Transportation Inspections Between the Commonwealth of Pennsylvania and U.S. Nuclear Regulatory Commission

This Subagreement is entered into under the provisions of the Memorandum of Understanding between the Commonwealth of Pennsylvania and the United States Nuclear Regulatory Commission effective November 4, 1986.

The Commonwealth of Pennsylvania, in fulfilling its obligations under the Low-Level Radioactive Waste Policy Amendments Act of 1985 contemplates that it will make periodic inspections of the areas of low-level radioactive waste packages and transport activities of generators located within its borders if shipments of such waste destined for disposal at a low-level radioactive waste disposal facility.

The United States Nuclear Regulatory Commission (NRC or Commission) has the statutory responsibility to inspect its licensees to determine compliance with NRC requirements, including requirements pertaining to the shipment, packaging and transportation of low-level radioactive waste destined for disposal. In the exercise of this responsibility, the Commission regularly conducts a review of the waste packaging and transportation programs of its licensees including the licensees' procedures for quality assurance, packaging, marking, labeling and loading of vehicles. These programs reviews usually have been found adequate to ensure licensee compliance with the Commission's regulations regarding low-level radioactive waste packaging and transportation without the need for Commission inspection of each individual shipment.

Under section 274i. of the Atomic Energy Act of 1954, as amended, the Commission in carrying out its licensing and regulatory responsibilities under the Act is authorized to enter into a Memorandum of Understanding (agreement) with any State to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. While the Commission does not conduct on-site inspections of every low-level radioactive waste shipment of its licensees, it desires to foster the goals of the Low-Level Radioactive Waste Policy Amendments Act of 1985, the Commonwealth of Pennsylvania, and the Appalachian Compact.

Accordingly, this Subagreement between the Commonwealth of Pennsylvania and the NRC establishes mutually agreeable procedures whereby the Commonwealth may perform inspection functions for and on behalf of the Commission at certain NRC reactor and materials licensees' facilities which generate low-level radio-active waste.

It is hereby agreed between the Commission and the Commonwealth as follows:

1. The Commission hereby authorizes the Commonwealth to perform, for and on behalf of the Commission, the following functions with respect to low-level radioactive waste, as defined in section 2(9) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, in the possession of Commission licensees located within the Commonwealth:

(a) Inspections to determine compliance with the Commission's rules and regulations regarding waste packages and transportation of low-level radioactive waste destined for disposal at a commercial low-level radioactive waste disposal site; and

(b) Notification of Commission licensees and the Commission in writing of any findings disclosed by such inspections. All enforcement actions (such as Notices of Violations, Civil Penalties or Orders) pursuant to this Subagreement resulting from such inspection findings will be undertaken by the Commission.

The Commonwealth agrees to utilize personnel knowledgeable in radiation safety, waste packaging requirements, and packaging and transportation regulations. The Commonwealth agrees to perform its functions under this Subagreement at no cost or expense to the NRC. NRC may provide training to employees of the Commonwealth at no expense to the Commonwealth (except travel and per diem). The Commission does not normally evaluate the Commonwealth's ability to perform such functions; however, prior to Commonwealth qualification of inspectors, Commonwealth management, accompanied by an NRC representative, will assess its inspectors preparedness to conduct independent inspections.

2. The authority to inspect NRC licensees pursuant to the preceding paragraph is limited to the licensees' low-level waste packages and low-level transportation activities. Specifically, this authority is limited to:

(a) Review, for understanding, the licensee's written procedures;

(b) Inspection of the licensee's written records; and

(c) Inspection of completed packages and transportation activities.

The authority does not include assessment of the adequacy of the licensee's written procedures, plant equipment, quality control programs, training programs or staffing. Specific implementing procedures are attached hereto which may be modified, as required.

3. In taking any action authorized hereunder, the Commonwealth shall not undertake to amend or revoke Commission licenses. This Subagreement, however, shall not be construed to preclude the Commonwealth from exercising any authority lawfully available to it under its own laws.

4. Efforts will be made by both parties to avoid duplicative enforcement action against an NRC licensee for the same inspection finding. However, this is not meant to preclude appropriate complementary actions for the same inspection findings such as termination of a user permit by the Commonwealth and NRC enforcement action.

5. Nothing herein shall be deemed to authorize the Commonwealth to inspect or otherwise enter the premises of any licensee of the Commission which is a Federal instrumentality without the prior consent of the licensee.

6. Nothing herein shall be deemed to preclude or affect in any manner the authority of the Commission to perform any or all of the functions described herein.

7. Nothing herein is intended to restrict or expand the statutory authority of NRC or the Commonwealth or to affect or vary the terms of any agreement in effect under the authority of section 274b. of the Atomic Energy Act of 1954, as amended.

8. Nothing herein shall be deemed to permit the Commonwealth to impose packaging or transport standards beyond those contained in Federal regulations.

9. The principal NRC contacts under this Subagreement shall be the Emergency Preparedness and Radiological Protection Branch Chief for reactor licensees and the Nuclear Materials Safety and Safeguards Branch Chief for materials licensees, both of whom are located in the Division of Radiation Safety and Safeguards, Region I, NRC. The principal Commonwealth contact shall be the Chief, Division of Nuclear Safety, Pennsylvania Bureau of Radiation Protection.

10. This Subagreement shall become effective upon signing by the Secretary, Department of Environmental Resources, Commonwealth of Pennsylvania, and the Regional Administrator, Region I, Nuclear Regulatory Commission and shall remain in effect permanently unless terminated by either party on thirty days prior written notice.

Dated this 17th day of August 1987 at King of Prussia, Pa.

For the Nuclear Regulatory Commission.

William T. Russell,

Regional Administrator.

For the Commonwealth of Pennsylvania.

Dated: September 11, 1987.

Arthur A. Davis,

Secretary, Department of Environmental Resources.

Implementing Procedures—Subagreement I Pertaining to Low-Level Radioactive Waste Package and Transportation Inspections Between the Commonwealth of Pennsylvania and the NRC

I. Training

A. Pennsylvania staff attendance at NRC Sponsored Courses

1. Pennsylvania staff may attend NRC sponsored training courses when mutually agreed upon by Pennsylvania and NRC.

2. Attendance at any particular course will be scheduled on a space available basis.

3. Staff applying for attendance must fulfill any necessary course prerequisites.

4. Attendance will normally be limited to 1–2 individuals at any one particular course.

5. Pennsylvania will pay any transportation and per diem expenses except for courses offered in connection with the Agreement State Program where NRC pays for travel and per diem of State personnel selected to attend.

B. On-the-Job Training

1. On-the-job training will be provided to the Pennsylvania staff in the conduct of inspections to determine compliance with the requirements in 10 CFR Parts 20, 61 and 71.

2. The training accompaniments will normally be limited to NRC licensees located in the Commonwealth of Pennsylvania.

3. The training accompaniments will follow the protocol set out in Mr. Haynes' November 5, 1982 letter to Mr. Gerusky. Under the protocol, the activities of the individual accompanying the NRC inspector will be limited to observation and familiarization with plant activities and the NRC inspection process. The NRC inspector will be responsible for initiating action to correct any program deficiencies identified during the inspection through NRC's normal inspection and enforcement process.

4. Commonwealth of Pennsylvania staff accompanying the NRC inspector will normally be limited to two persons—the senior staff member responsible for the program and the cognizant inspector for the plant being inspected.

5. Emphasis will be placed on training two senior Pennsylvania staff who can learn this area quickly and who, in turn, can begin to train other Pennsylvania staff.

6. The training may also involve pre-inspection planning at the Regional office or in the NRC resident inspection office prior to the inspection. The Commonwealth inspection staff is expected to have reviewed prior inspection reports, inspection findings and enforcement actions for the facility inspected. It is also expected that the Commonwealth inspectors are thoroughly knowledgeable of the NRC inspection procedures and reference material cited in those procedures. These are important parts of preparing for the inspection.

7. The training accompaniments will be provided by a Region based inspector who routinely inspects waste packaging and transportation activities, not the resident inspector or TMI-2 inspection staff.

8. The contact for the training accompaniment inspections at reactors will be the Chief, Emergency Preparedness and Radiological Protection Branch, Division of Radiation Safety and Safeguards. The similar contact for materials inspections will be the Chief, Nuclear Materials Safety and Safeguards Branch, Division of Radiation Safety and Safeguards. If either of the above are not available the contact will be the Regional State Liaison Officer.

C. Initiation of Independent Inspections by Pennsylvania Staff

1. The Commonwealth will ensure that its inspectors are qualified in accordance with NRC Inspection and Enforcement Manual Chapter 1245, or its equivalent, and will keep NRC informed of the Commonwealth inspectors that have been so qualified and certified. Prior to Commonwealth qualification of inspectors, Commonwealth management, accompanied by an NRC representative, will assess the performance of its inspectors during an inspection to determine their preparedness to conduct independent inspections. Following the accompaniment, the NRC representative will provide a critique to the inspector and his supervisor. Periodically, Commonwealth management will accompany its inspectors during the performance of inspections to verify the inspector's continued effectiveness. Finally, NRC will inform Commonwealth management of problems identified during the NRC review of Commonwealth inspection findings for appropriate corrective action.

2. Commonwealth inspectors may periodically accompany NRC inspectors during NRC's programmatic waste package and transportation inspections to maintain familiarity with a licensee's program and NRC inspection requirements. The Commonwealth and NRC may also meet periodically to exchange information and discuss changes in procedures. Commonwealth inspectors may also contact the region based and resident inspectors prior to or during the Commonwealth's independent inspection at the site.

3. Arrangements to gain access to any licensee's facility are a responsibility of the Commonwealth. Specifically, individuals planning to conduct inspections at reactor facilities should meet all licensee requirements for site access.

II. Procedures to be Followed by Pennsylvania for Inspections Conducted Under the Subagreement

A. Pennsylvania will perform the following inspection activities relating to 10 CFR Part 71:

1. Examine the licensee's written waste shipment records. As the situation allows, observe completed packages so as to:

a. Verify that the licensee has marked the package with the applicable general and specific package markings which are required (49 CFR 172.300 through 172.310).

Verify that for NRC-certified packages, or DOT-revalidated packages of foreign origin, the outside of the package is durably and legibly marked with the package identification marking indicated in the COC or the DOT Competent Authority Certificate.

b. Verify that for non-exempted packages, the licensee provides for and accomplishes labeling of each package with the appropriate category of RADIOACTIVE (White-I, Yellow-II, or Yellow-III) label, one each on two opposite sides of the package, and accurately completes the entry of the required information in the blank spaces thereon (49 CFR 172, Subpart E).

c. Verify that the licensee provides for and accomplishes monitoring of each completed package to assure that external radiation and removable surface contamination are within the allowable limits (49 CFR 173.475(i), 49 CFR 173.411, 49 CFR 173.443, and 10 CFR 71.87 (i) and (j)).

2. Examine the licensee's written waste shipment records. As the situation allows, observe actual transport operations so as to:

a. Verify whether the licensee prepared the required shipping paper documentation, so as to accurately include all of the applicable required elements of information, including the shiper's certificate. [Note: for licensee private motor vehicle shipments, the certificate is not required (49 CFR 172, Subpart C).]

b. For non-exclusive use shipments, verify that the licensee provides to a highway carrier or applies directly to a rail vehicle, the required placards whenever he delivers any quantity of RADIOACTIVE-Yellow-III labeled packages to such carrier for transport (49 CFR 172.506 and 508).

c. For exclusive use shipments, verify that the licensee assures that the package and vehicle radiation/contamination levels are within the regulatory limits (49 CFR 173.475(i) and 10 CFR 71.87 (i) and (j)).

Verify that except for uranium or thorium ores, the transport vehicle is placarded by the licensee when delivering to a carrier any exclusive-use shipment for which placarding is required (49 CFR 172, Subpart F, and 49 CFR 173.425(b)(7)).

For exclusive use shipments, verify that shipping paper documentation provided by the licensee to the carrier contains satisfactory instructions for maintenance of exclusive-use shipment controls (49 CFR 173.441(c) and 49 CFR 173.425(b)(9)).

Verify that for exclusive-use shipments of low-specific activity materials, the licensee has provided for three additional specific requirements (49 CFR 173.425 (b)(1) through (9)).

d. Verify that the licensee provides for notification to the consignee before shipment: the dates of shipment and expected arrival, any special loading unloading or operating instructions whenever any non-exempt fissile material and/or packages containing "highway route controlled quantities" are involved (49 CFR 173.22(b) and 10 CFR 71.89).

e. Verify that the licensee provides for advance notification to the Governor of a State, or his designee, of any shipment of radioactive waste requiring Type B packaging through, to, or across a state boundary (10 CFR 71.97). [Note: This requirement is not the same as that required for safeguards purposes pursuant to 10 CFR 73.72.]

3. Review the licensee's records and reports to verify that a system is in place to:

a. Maintain on file for two years after shipment a record of each shipment of licensed material (which is not exempt therefrom) and that such records contain the required information (10 CFR 71.87 and 10 CFR 71.91(a)).

b. Report to the Director, NMSS, within 30 days, any instances where there has been a significant reduction in the effectiveness of any packaging during its use; providing additionally the details of any defects of safety significance to the packaging after first use and the means employed to repair such defects to prevent their recurrence (10 CFR 71.95).

c. Immediately report to DOT, when transporting licensed materials as a private carrier, any incident that occurs in which as a direct result of the radioactive material: any person is killed, receives injuries requiring hospitalization, property damage exceeds $50,000, or fire, breakage, spillage, or suspected radioactive contamination occurs (49 CFR 171.15 and 49 CFR 171.16).

B. Pennsylvania will perform the following inspection activities relating to 10 CFR Parts 20 and 61:

1. Review the licensee's records and, as the situation allows, observe actual packages and transport activities to verify that each shipment of radioactive waste intended for off-site disposal to a broker or a licensed land disposal facility is accompanied by a shipment manifest which includes all of the required information (10 CFR 20.311 (b) and (c)).

2. Review the licensee's documentation and records to determine whether procedures have been established and are being maintained to properly classified all low-level wastes according to 10 CFR 61.55.

3. Review the licensee's documentation and records to determine whether procedures have been established and are being maintained, to properly characterize low-level waste in conformance with the requirements of 10 CFR 61.56).

4. Review the licensee's records and as the situation allows, observe actual packages and transport activities to verify that each package of low-level waste intended for shipment to a licensed land disposal facility is labeled, as appropriate, to identify it as Class A, B, or C waste in accordance with the classification criteria of 10 CFR 61.55 (10 CFR 20.311(d)(2)).

5. Review the licensee's records and, as the situation allows, observe actual packages and transport activities to verify that the licensee has forwarded to recipients or delivered to waste collectors at the time of shipment, a copy of the waste manifest. Verify that acknowledgement of receipt of the manifest is obtained. Verify that the license has a procedure in place to effect an investigation in any instances wherein acknowledgement of receipt of the shipment has not been received within the specified period. Verify that procedures are in place to report such investigations to the appropriate NRC Regional Office and file the required written report (10 CFR 20.311(d), (e), (f), and (h)).

6. Review the licensee's records to verify that the applicable disposal site license conditions are being met. Verify that the licensee has on file a current version of the disposal site license.

C. Inspections performed by the Commonwealth for and on behalf of the Commission are not to include those elements of NRC inspection procedures dealing with evaluation of the licensee's written procedures, equipment, quality control programs, training programs or staffing.

III. Documentation of Inspection Findings

Following each inspection, the Commonwealth will document the areas covered and findings of the inspection in an inspection report in accordance set out in NRC Inspection and Enforcement manual Chapters 0610 and 0611. Following Commonwealth management approval, the report will be sent to the NRC contact listed in section 9 of the Subagreement with copies to the licensee. The Commonwealth will complete and forward the inspection report to the NRC within 30 days of completion of the inspection. Following appropriate NRC review, the report will be placed in the Public Document Room and a request sent to the licensee by the NRC for proper corrective action if

deemed necessary. For those inspections performed by the Commonwealth which result in deficiencies in compliance with NRC regulations, the Commonwealth shall identify the deficiencies in a cover letter transmitting the report and specify that any enforcement action is a responsibility of the NRC. In addition, when any findings which would become a violation once the shipment departs the plant gate are identified, such findings should be furnished to the licensee and the NRC Resident Inspector before the shipment departs the licensee's site. It is the Commission's sole discretion as to whether the licensee will be requested or required to take corrective action or to respond to discrepancies in compliance with NRC regulations as a result of findings from these inspections. Commonwealth inspectors will provide support to NRC during any hearings and other meetings relating to their inspections, as required.

IV. Changes to Implementing Procedure

These implementing procedures may be changed by mutual written agreement between the Director, Division of Radiation Safety and Safeguards, NRC, and the Chief, Division of Nuclear Safety, Commonwealth of Pennsylvania.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Division of Radiation Safety and Safeguards.

Dated: August 17, 1987.

For the Commonwealth of Pennsylvania.

William P. Dornsite,

Division of Nuclear Safety.

Dated: September 16, 1987.

53 FR 28923
Published 8/1/88

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

AGENCY: Nuclear Regulatory Commission.

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

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

FOR FURTHER INFORMATION CONTACT: Ronald M. Scroggins, Deputy Director for Financial Management & Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-4750.

Samuel J. Chilk,

Secretary of the Commission.

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

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

I. Introduction

A. Background

In section 111 of the Nuclear Waste Policy Act of 1982, as amended (NWPA), Congress made clear that while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and spent nuclear fuel, the costs of disposal should be borne by the generators and owners of the waste and spent fuel. To implement this policy, Congress in section 302 of the NWPA established the Nuclear Waste Fund. The Fund consists of payments from the owners and generators of high-level radioactive waste and spent nuclear fuel. Section 302 authorizes the Secretary of Energy to make expenditures from the Fund for activities under Titles I and II of the NWPA. This would include appropriate reimbursement of NRC costs.

B. Purpose

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

C. Authority

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

D. Policy

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

Office of Governmental and Public Affairs related to NWPA issues. In carrying out its responsibilities covered by this Memorandum of Understanding, the NRC will avoid unnecessary duplication of activities performed by DOE.

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

II. Management and Program Guidelines

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

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

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

III. Administration

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

The following signatures constitute acceptance of this agreement.

Nuclear Regulatory Commission

Date: July 20, 1988.

Victor Stello, Jr.,

Executive Director of Operations.

Department of Energy.

Date: July 18, 1988.

Charles E. Kay,

Acting Director, Office of Civilian Radioactive Waste Management.

53 FR 37887
Published 9/28/88
Comment period expires 11/28/88.

Memorandum of Understanding Between U.S. Nuclear Regulatory Commission and U.S. Environmental Protection Agency

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Memorandum of Unde. itanding.

SUMMARY: On August 26, 1988, the Administrators of the U.S. Nuclear Regulatory Commission's (NRC's) Region IV and the U.S. Environmental Protection Agency's (EPA's) Region VI signed a Memorandum of Understanding (MOU) concerning the Churchrock, New Mexico uranium mill site.

The Churchrock site is licensed by the NRC and is also on EPA's National Priority List for remedial action under Superfund. The MOU provides the procedures which the two agencies will follow to help assure that remedial actions at the site occur in a timely and effective manner.

The MOU is printed in its entirety below.

DATE: If any member of the public would like to submit comments on the MOU for consideration in any future amendments of the document, they would be most helpful if submitted by November 28, 1988.

ADDRESS: Mail comments to: Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand-delivered to 7920 Norfolk Avenue, Bethesda, Maryland between the hours of 7:45 a.m. and 4:15 p.m. weekdays except Federal holidays. Comments received may be viewed at NRC's Public Document Room in the Gelman Building, 2120 L Street, NW., Washington, DC, between the hours of 7:45 a.m. and 4:15 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Harry J. Pettengill, Uranium Recovery Field Office, 730 Simms Street, Suite 100A, Golden, Colorado 80401 (Telephone (303) 236–2810).

Dated at Rockville, Maryland, this 19th day of September 1988.

For the Nuclear Regulatory Commission.

Michael J. Bell, Chief,

Regulatory Branch.

Memorandum of Understanding Between Region VI of The U.S. Environmental Protection Agency and Region IV of The U.S. Nuclear Regulatory Commission for Remedial Action at the UNC-Churchrock Uranium Mill in McKinley County, NM

I. Purpose

This document establishes the roles, responsibilities, and relationship between Region VI of the U.S. Environmental Protection Agency ("EPA") and Region IV of the U.S. Nuclear Regulatory Commission ("NRC"), hereinafter collectively referred to as the "Parties," regarding remedial action at the UNC-Churchrock uranium mill in McKinley County, New Mexico. The Parties have overlapping authority in connection with this site, and this Memorandum of Understanding ("MOU") will help assure that remedial actions occur in a timely and effective manner.

II. Basis For Agreement

NRC will assume the role of lead regulatory agency for the byproduct material disposal area reclamation and closure activities and EPA will monitor all such activities and provide review and comments directly to NRC. The objective of EPA's review and comment will be to assure that activities to be conducted under NRC's regulatory authority allow attainment of applicable or relevant and appropriate requirements under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq* outside of the byproduct material disposal site. NRC will require the Licensee to implement an approved disposal site reclamation plan which meets the requirements of 10 CFR Part 40, Appendix A, as amended at 52 FR 433553 through 43568, "Uranium Mill Tailings Regulations; Groundwater Protection and other Issues," which conforms with the EPA 40 CFR 192, Subpart D. EPA development and implementation of its own site action requirements for groundwater contamination outside of the disposal area will be conducted in accordance with CERCLA and the National Oil and Hazardous Substances Contingency Plan ("NCP") 40 CFR 300 including any revisions thereto. The EPA and NRC agree that the groundwater protection requirements of 10 CFR Part 40, Appendix A are the Federal environmental and public health requirements applicable or relevant and appropriate to the disposal site. The EPA and NRC believe that conformance with 10 CFR Part 40, Appendix A (with the possible exception of nitrate), will generally assure conformance with CERCLA requirements. However, each Party will be responsible for assuring compliance with it's specific regulatory requirements as discussed in this section. The parties believe that the U.S. Department of Energy or another responsible State or Federal authority will assume responsibility for long-term care of the byproduct material disposal site, following remediation of the site.

III. Background

The State of New Mexico was responsible as an "Agreement State" for licensing and regulating uranium mills within the State until June 1, 1986, at which time the NRC resumed this authority at the request of the Governor of New Mexico. Prior to this change, EPA had placed the UNC-Churchrock site on the National Priority List ("NPL") of sites for response action under CERCLA. EPA's policy is to list only those uranium mills meeting criteria for placement on the NPL which are located in Agreement States, that is States which have entered into agreements with the NRC pursuant to section 274 of the Atomic Energy Act of 1954, as amended, to regulate certain nuclear activities in a manner compatible with the NRC's program. Mills in states where NRC has direct licensing authority have not been placed on the list. Although New Mexico is no longer an Agreement State insofar as uranium recovery operations are concerned and the NRC has reassumed primary jurisdiction, the site was properly placed on the NPL and the physical conditions resulting in that placement are still present. Therefore, EPA has no intention of recommending delisting the site from the NPL until all authorized EPA and NRC controlled remedial activities, addressing releases or threats thereof, at this facility are completed.

IV. Agreement

In order to achieve satisfactory cleanup of the UNC site, the NRC and the EPA agree to do the following:

1. The Parties shall cooperate with each other in the oversight of reclamation and remedial activity at the UNC site.

2. Upon submittal by UNC of a proposed site reclamation plan ("the plan"), NRC and EPA will begin concurrent reviews of the proposed plan. EPA will review the plan and will provide comments to the NRC. NRC will review and, if necessary, require revisions to the plan to assure conformance to 10 CFR Part 40, Appendix A, as amended, prior to approving the plan via license amendments. If EPA cannot conclude that the plan approved by NRC meets CERCLA requirements, then EPA may initiate separate actions as may be necessary to ensure conformance with CERCLA requirements outside of the disposal area site. NRC will not approve any specific components of the groundwater protection and recovery aspects of UNC's proposed reclamation plan until EPA has determined, in a Record of Decision or by review of the UNC plan an statement to NRC, that it is consistent with CERCLA requirements and/or remedial actions required under CERCLA. NRC does not intend to approve any specific aspects of UNC's groundwater protection and recovery actions contained in UNC's proposed reclamation plan until such time as any inconsistencies have been resolved. If remedial action is determined in a Record of Decision to be necessary, EPA intends to either enter into a Consent Decree with UNC under which UNC will conduct, with EPA oversight, remedial actions equal to or exceeding those outlined in an EPA Record of Decision, to take appropriate enforcement action, or perform remedial action itself pursuant to section 104 of CERCLA, reserving all rights to seek cost recovery under section 107 of CERCLA. Such actions may be conducted as part of the NRC's approval of the UNC plan or separately; but in any event EPA intends to coordinate its actions first with the NRC.

3. If either Party determines that remedial actions are deficient or unsatisfactory, then that Party shall provide notice to the other Party of the deficiency. The NRC shall assume the lead role for notification to UNC, except for such notification as EPA might statutorily be required to provide in certain events. The notification shall specify a time period in which regulatory compliance is expected to be achieved. Should compliance not be achieved in this time period, EPA will assume the lead for taking or seeking any enforcement action necessary for off-site groundwater and NRC will assume the lead for any other enforcement actions necessary within its area of regulatory responsibility. Both Parties reserve all rights under this MOU to take whatever actions are determined to be necessary, including the conduct of remedial actions on and off-site in order to fulfill their regulatory requirements. In any event no action will be taken by either party without prior consultation with the other Party.

4. Both Parties shall appoint a facility coordinator who shall be responsible for oversight of the implementation of the MOU and the activities required herein. The facility coordinators shall be appointed by each Party within seven (7) days of the effective date of this MOU. The Parties each have the right to appoint a new facility coordinator at any time. Such change shall be accomplished by notifying the Party, in writing, at least five (5) days prior to the appointment of the name, telephone number, and mailing address of said facility coordinator.

5. The Parties will meet periodically at the request of either Party and at least semiannually insofar as it is necessary to accomplish the objectives of the MOU. The facility coordinators should communicate with each other on a routine basis by telephone.

6. The Parties will provide technical advice and any necessary regulatory consultation to one another upon request.

7. The Parties will generally provide each other with copies of all official correspondence and documents related to remedial actions at the site. The Parties will also normally provide copies of other information upon request. In the event that one of the parties does not wish to furnish certain specific information, documents, or corresondence to the other, then said material shall be identified to the other party along with the reasons for withholding it.

8. Whenever notice or information is required to be forwarded by one party to another under the terms of this MOU, it shall be given by and directed to the individuals at the addresses specified below:

EPA: Allyn M. Davis, Director, Hazardous Waste Management Division, Region VI, U.S. EPA, 1445 Ross Ave., Dallas, Texas 75202.

NRC: Dale Smith, Director, Uranium Recovery Field Office, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado 80225.

9. Routine communications may be exchanged verbally, in person, or by telephone between the Parties to facilities the orderly conduct of work contemplated by this MOU.

10. Enforcement documentation provided under this MOU will be kept as exempt material by EPA and NRC, to the extent legally possible, according to the policies and procedures under 40 CFR Part 2 and 10 CFR Part 2.790, respectively.

V. Agency Responsibilities

A. NRC responsibilities

1. The NRC will require the owners/operators of the UNC Churchrock mill (UNC) to implement an approved on-site reclamation plan that meets all relevant NRC requirements, including 10 CFR Part 40, Appendix A, as amended. If any such plan is not complied with by UNC, NRC will take whatever actions it deems appropriate to ensure compliance.

2. The NRC will direct UNC to provide both parties with copies of major work product submittals as they become available. Such work products will include, but not be limited to, an adequate overall reclamation plan, and any other plans and specifications for assessment, remediation, and monitoring, including all analytical data.

3. The NRC agrees to provide progress reports on UNC remediation on a quarterly basis.

4. The NRC will assist in the development of information to support EPA's deletion of the site from the NPL upon completion of the remedial action.

5. The NRC shall notify EPA of all pending visits to the Churchrock property which relate to the site closure plan and shall afford EPA and its

consultants opportunity to accompany NRC personnel on such visits.

B. EPA Responsibilities

1. EPA will provide formalized review, consultation and comment throughout the entire project.

2. EPA will review and provide comments on the site reclamation plan, and other associated deliverables, within timeframes as agreed to between NRC and EPA. In the event that EPA determines that the implementation of the site reclamation plan has not resulted in, or may not result in, cleanup conditions that meet applicable or relevant and appropriate requirements under CERCLA, then EPA may take whatever action it deems appropriate.

3. EPA intends to pursue and complete a Remedial Investigation and Feasibility Study, public comment and agency response process, and Record of Decision (ROD) directed at off-site groundwater contamination, with the intention of completing this process by October 1, 1988. EPA intends to implement, or require UNC or other potentially responsible parties to implement, any EPA selected remedial actions set forth in a ROD. Any remedial actions conducted by UNC or other potentially responsible parties to implement an EPA selected remedy will be done under EPA oversight and in accordance with the terms of any Consent Decree entered into with EPA. EPA intends that any such Consent Decree would cover actions outside the byproduct material disposal site needed to implement the ROD remedy.

VI. Dispute Resolution

In the event of dispute between EPA and the NRC concerning site activities, the persons designated by each Agency as primary or, in their absence, alternate contact points will attempt to promptly resolve such disputes. If disputes cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further consultation. The supervisory referral and resolution process will continue, if necessary to resolve the dispute, to the level of the Regional Administrators of the NRC and EPA.

Both Parties shall continue to maintain their respective rights or responsibilities under the MOU during the dispute resolution process.

VII. Execution and Modification

This agreement shall take effect upon execution by EPA and the NRC. It shall remain in effect for the duration of the program addressed herein unless terminated by mutual agreement by the two Agencies; or, the MOU may be terminated unilaterally if any of the conditions set forth below are present.

1. The planning or conduct of groundwater cleanup actions fail to meet standards set forth in the Basis for Agreement (Section II) of this MOU.

2. The site is deleted from the NPL.

3. The site is turned over to the Department of Energy or other responsible State or Federal authority for long term care.

4. Regulatory, Statutory, or other events occur which make this MOU unnecessary, illegal, or otherwise inappropriate.

VIII. Modification

The Parties may modify this MOU from time to time in order to simplify and/or define the procedures contained herein. Each Party shall keep the other informed of any relevant proposed modifications to its basic statutory or regulatory authority, forms, procedures, or priorities. This MOU shall be revised, as necessary, by the adoption of such modifications. The MOU should be reviewed on an annual basis by both the Director-URFO, Region IV, NRC, and the Director-Hazardous Waste Management Division, Region VI, EPA or their designated representatives.

IX. Reservation of Rights

The Parties reserve any and all rights or authority that they may have, including but not limited to legal, equitable, or administrative rights. This specifically includes EPA's and NRC's authority to conduct, direct, oversee, and/or require environmental response in connection with the site, as well as the authority to enter the site and require the production of information, within each of their own areas of responsibility.

Executed and agreed to:

Dated: August 26, 1988.

Robert D. Martin,

Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, Arlington, Texas.

Dated: August 28, 1988.

Robert E. Layton, Jr., P.E.,

Regional Administrator, U.S. Environmental Protection Agency, Region VI, Dallas, Texas.

53 FR 43950
Published 10/31/88

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding Between The Nuclear Regulatory Commission and the Occupational Safety and Health Administration; Worker Protection at NRC-licensed Facilities

The Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) have entered into a Memorandum of Understanding (MOU) to provide general guidelines for interface activities between the two agencies. The MOU is designed to ensure that there will be no gaps in the protection of workers at NRC-licensed facilities where the OSHA also has health and safety jurisdiction. At the same time, the MOU is designed to avoid duplication of effort on the part of the two agencies in those cases where it is not always practical to sharply identify boundaries between the NRC's responsibilities for nuclear safety and the OSHA's responsibilities for industrial safety.

The MOU, which replaces an existing procedure for interagency activities, defines the general areas of responsibilities of both agencies, describes generally the efforts of each to achieve worker protection at NRC-licensed facilities, and provides general procedures for the coordination of interface activities and exchange of information between the NRC and OSHA. The text of the MOU is set out below.

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 licenses 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 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."

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, c). NRC does not have statutory authority for the fourth hazard described in paragraph 3 (d).

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 (OSHA 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.

October 21, 1988.

For the Occupational Safety and Health Administration.

John A. Pendergrass,

Assistant Secretary.

53 FR 47279
Published 11/22/88
Comment period expires 12/22/88.

Memorandum of Understanding (MOU) Between the NRC and the Illinois Department of Nuclear Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Draft Subagreement No. 2 between NRC and the Illinois Department of Nuclear Safety for public comment.

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

Draft Subagreement No. 2 under this MOU provides the basis for mutually agreeable procedures whereby the Illinois Department of Nuclear Safety (IDNS) may perform inspection, audit, and similar functions for nuclear power plants together with and for and on behalf of the Commission under a program created pursuant to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) and accepted by NRC and IDNS. The Commission is in the process of finalizing the Policy Statement on NRC cooperation with States and the Subagreement may require revisions, in order to conform to the final Policy Statement.

DATE: Submit comments by December 22 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESEE: Mail written comments to: Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Deliver comments to 7920 Norfolk Avenue, Bethesda, Maryland between 7:45 a.m. and 4:15 p.m. weekdays except Federal holidays. Copies of comments received may be examined at the NRC Public Document Rom at 2120 L Street, NW., Washington, DC lower level.

FOR FURTHER INFORMATION CONTACT: Roland Lickus, Chief, State and Government Affairs, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Building #4, Glen Ellyn, Illinois, 60137, (312) 790-5666.

SUPPLEMENTARY INFORMATION: NRC regulation (10 CFR 50.55a) requires the application of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME) Code to certain pressure vessels, piping, pumps and valves of nuclear power reactors. As discussed more fully in the text of the Subagreement which follows, a State role is contemplated in the ASME system as it pertains to certain nuclear power plant components. This Subagreement is intended to formalize and define the manner in which the NRC and the Illinois Department of Nuclear Safety (IDNS) will cooperate in the planning and conducting of ASME Code related inspections at nuclear power plants in Illinois to ensure compliance with NRC regulations. The objective of the Subagreement is to provide a framework for IDNS to assist NRC in performing safety inspections under 10 CFR § 50.55a. The NRC will take appropriate enforcement actions for joint inspections conducted under this Subagreement. Key features of the Subagreement include provisions for (1) ensuring IDNS's activities supplement but do not duplicate the NRC's activities; (2) joint team inspections of ASME related matters led by NRC; (3) documentation by IDNS of its inspection efforts for inclusion into the final NRC inspection report; (4) availability of NRC training for IDNS inspectors; and (5) timely exchange of information between NRC and IDNS.

Dated at Rockville, Maryland, this 15th day of November 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations

Subagreement 2 Between the Nuclear Regulatory Commission and the Illinois Department of Nuclear Safety

I. Authority

The Nuclear Regulatory Commission (NRC) and the Illinois Department of Safety (IDNS) entered into this Subagreement under the authority of the Memorandum of Understanding (MOU) of April 1984, between Illinois and NRC (49 FR 20586; 5/15/1984) and under section 274i of the Atomic Energy Act of 1954, as amended.

II. Background

A. NRC and ASME Code

1. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, require the Nuclear Regulatory Commission (NRC) (previously the Atomic Energy Commission (AEC)) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure the common defense and security and to

protect the health and safety of the public. Under these statutes, the NRC has the ultimate responsibility to regulate nuclear power plant safety.

2. In June 1971, AEC promulgated regulations which established minimum quality standards for the design, fabrication, erection, construction, testing, and inspection of boiling and pressurized water-cooled nuclear power plants by requiring conformance with appropriate editions and addenda of specified published industry codes and standards. These regulations, 10 CFR 50.55a (and the now revoked § 115.43a), have provided specific guidance to manufacturers and users of structures, systems and components of nuclear power plants for meeting Criterion 1 of the NRC's "General Design Criteria for Nuclear Power Plants" in Appendix A of 10 CFR Part 50 (See 36 FR 11423; 6/12/71). That criterion requires that structures, systems and components of nuclear power plants important to safety be designed, fabricated, erected, and tested to quality standards that reflect the importance of the safety functions to be performed. In particular, these regulations have required pressure vessels, piping, pumps, and valves that were part of a reactor's coolant pressure boundary to be constructed (e.g., designed, fabricated, inspected, and tested) in accordance with ASME Code Editions and Addenda.

3. The AEC stated in the preamble of the regulations, among other things, that:

i. It accepted the ASME inspection process;

ii. Licensees, vendors and others could use the ASME inspection and survey systems in partial fulfillment of its requirements to the extent that they were shown by the description of the quality assurance program required by § 50.34(a)(7) to satisfy the applicable requirements of Appendix B of 10 CFR Part 50;

iii. Section 50.55a(b)(2) (now § 50.55a(a)(3)) provides a basis for the authorization of alternatives to the requirements of the specified ASME Code sections and other standards if it can be shown that an acceptable level of safety will be provided; and

iv. It is considered that a significant improvement in the level of quality in construction of structures, systems and components important to safety would be afforded by compliance with the requirements of more recent versions of an ASME Code than those specified in the amendments and it encouraged such compliance whenever practicable, regardless of the date of purchase of equipment or the provisions of the amendments.

4. Presently, to promote the safe operation of nuclear components, NRC requires use of Section III, Division 1, of the ASME Code for construction of Class 1, 2, and 3 components, and Section XI, Division 1, of the ASME Code for inservice inspections of these components.

5. In March of 1981, NRC, ASME, and the National Board of Boiler and Pressure Vessel Inspectors (NB) entered into an "Exchange of Correspondence" that set forth "Principles" for "The Accreditation and Inspection of Nuclear Supplier Quality Assurance Programs." These Principles define the NRC's, the ASME's, and the NB's responsibilities and actions with respect to the ASME/NB accreditation program and third party inspection of Certificate Holders providing products and services to nuclear facilities in accordance with ASME Code, Section III (Divisions 1 and 2). The key objective of the Exchange of Correspondence was to provide NRC licensees and license applicants with a non-duplicative, efficient and effective procedure for implementing the ASME/NB nuclear accreditation program and the monitoring of supplier quality assurance (QA) activities to ensure compliance with NRC, ASME, and NB programmatic QA requirements.

6. On March 31, 1986, the NRC's Office of Inspection and Enforcement distributed Information Notice No. 86-21 informing NRC licensees, construction permit holders and vendors of NRC's recognition of ASME's Accreditation Program for holders of N, NPT, NA, and NV stamps and Certificates of Authorization.

7. NRC's endorsement of the system established under ASME has followed a detailed assessment of the ASME's infrastructure from which, among other things, NRC has determined that it provides an effective inspection program that NRC can accept to carry out its mission.

B. Illinois, IDNS, and the ASME Code

1. The ASME Code provides rules for the construction of heating boilers, power boilers, pressure vessels and nuclear power plant components. Also, the ASME Code provides recommended rules for the care and operation of heating boilers, recommended guidelines for the care of power boilers, and rules for the inservice inspection of nuclear power plant components. The ASME has an Accreditation System that is used to ensure the quality of construction of ASME Code components. The ASME Accreditation System is based on a program of authorized inspection, which requires an Authorized Inspector (AI) (an Authorized Nuclear Inspector (ANI) in the case of the nuclear sections of the ASME Code), designated or approved by an Authorized Inspection Agency (AIA) to inspect independently the activities of a Certificate Holder during construction under the ASME Code. In addition, Section XI of the ASME Code has an inservice inspection system, also based on a program of authorized inspection, which requires that an Authorized Nuclear Inservice Inspector (ANII) from an AIA independently inspect the performance of the owner's In-Service Inspection (ISI) program.

2. In accordance with the provisions of Section 2 of the Illinois Boiler and Pressure Vessel Safety Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par. 3202) the Illinois Board of Boiler and Pressure Vessel Rules adopted the ASME Boiler and Pressure Vessel Code.

3. In pertinent part, Section 2a of the Illinois Boiler and Pressure Vessel Safety Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par. 3202a) provides that IDNS shall have sole State jurisdiction with respect to ASME Code compliance over all boilers and pressure vessels contained within or upon or in connection with any nuclear facility within the State of Illinois and that IDNS shall have the same authority and shall have and exercise the same powers in relation to such boilers and pressure vessels as the Board or the State Fire Marshal has and exercises in relation to other boilers and pressure vessels within the State of Illinois.

4. Illinois also enters into this Subagreement to faciliate implementing its responsibilities with respect to ASME Code compliance under the Illinois Boiler and Pressure Vessel Safety Act.

III. Scope

A. This Subagreement defines the way in which the NRC and IDNS will cooperate in the planning and conducting of inspections of nuclear power plants to ensure compliance with NRC's regulations and the Exchange of Correspondence on ASME Section III and Section XI components. This Subagreement does not apply to investigations or inquiries conducted by the NRC. Except as provided in VII.B.13., this Subagreement does not apply to IDNS's inspections of, and enforcement actions regarding boilers, pressure vessels and appurtenances not covered in a Final Safety Analysis Report (FSAR)/Updated Safety Analysis Report (USAR).

B. For the purpose of this MOU, "Inspection" is defined as an audit, observation, examination, review and related functions to verify whether an item, component, or activity conforms to specified requirements of the ASME Code Sections III and XI. The scope of these inspections shall be limited to those systems described in the FSAR/USAR.

C. Nothing in this Subagreement is intended to restrict or expand the statutory authority of NRC, Illinois or IDNS, or to affect or vary the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended, nor is anything in this Subagreement intended

to restrict or expand the authority of Illinois and IDNS on ASME Code matters not within the scope of this Subagreement.

IV. Purpose and Intent

A. Although NRC has the ultimate responsibility to regulate nuclear power plant safety under the Atomic Energy Act and Energy Reorganization Act, noted above, NRC recognizes the interest of Illinois in the overall safety and health of its citizens. For this reason, NRC and IDNS agree to cooperate in implementation of NRC's safety programs related to nuclear power plants. Further, NRC recognizes that, to the extent that IDNS supports NRC's safety mission, additional resources are applied to overall nuclear safety. Thus, NRC recognizes IDNS's desire to participate in NRC's inspections of nuclear power plants.

B. The objective of this Subagreement is to provide a framework for IDNS to assist NRC in performing safety inspections under 10 CFR 50.55a. IDNS intends to verify owner's compliance with sections III and XI of the ASME Code for all safety-related systems, applicable nonsafety-related systems, components, and supports of these systems and components, as described in the FSAR/USAR of nuclear power plants. It is intended that these verifications will apply to section III construction activities and to section XI inservice inspection activities after section III requirements have been met. The NRC will take appropriate enforcement actions for joint inspections conducted under this Subagreement.

C. Within this framework, NRC and IDNS intend that IDNS's role in ASME Code activities not only help maintain safety, enhance joint understanding, reduce duplication of effort, and provide a unified position on matters of joint concern, but also that it be well-defined, appropriately controlled and agreed to in advance by NRC and IDNS to minimize potential jurisdictional and technical disputes.

D. IDNS inspection may accompany NRC personnel inspecting nuclear power plant components manufactured outside Illinois but intended to be used within it.

V. NRC's General Responsibilities

NRC is responsible for conducting safety inspections of nuclear power plants to assure that the plants are designed, constructed, tested, and operated in accordance with pertinent NRC regulatory requirements. These inspections are conducted in accordance with the NRC Inspection Manual using personnel appropriately qualified to perform the necessary task. The NRC will take appropriate enforcement actions for joint inspections conducted under this Subagreement.

VI. IDNS's General Responsibilities

A. Assist the NRC when requested in performing planned NRC safety inspections under 10 CFR 50.55a.

B. Cooperate with the NRC in such inspections to assure that those components meet the requirements of the ASME Code as adopted and endorsed by the NRC.

C. Conduct inspections at manufacturing facilities, materials suppliers, AIAs, architect/engineers and other ASME related activities not covered in this Subagreement to verify ASME Code compliance. IDNS will provide the results of these activities to NRC for information.

D. Inspect boilers and pressure vessels in nuclear facilities within the State of Illinois and issuing Inspection Certificates as required by Sections 10 and 11 of the Illinois Boiler Pressure Vessel Safety Act, provided that IDNS's activities under this paragraph shall not be inconsistent with Federal law and the rules, policies, and practices of the NRC.

VII. Implementation—NRC's and IDNS's Specific Responsibilities

IDNS and NRC agree to work in concert to assure that the following training, inspection and enforcement, and information exchange protocol are followed.

A. Training

1. IDNS's inspectors accompany NRC's inspectors will be qualified and certified by IDNS in accordance with the NRC Inspection Manual, or its equivalent. Based on IDNS inspector performance, NRC reserves the right to revoke IDNS inspector certification under this Subagreement and it shall provide the reasons for the action in writing to IDNS.

2. NRC will use its best efforts to make space available in its inspector training courses, seminars, and special orientation programs to accommodate the training needs of IDNS inspectors.

3. IDNS will pay the travel and per diem expenses of its inspectors attending training courses. Where NRC establishes special training classes, IDNS agrees to reimburse NRC for its costs of training IDNS inspectors.

4. IDNS personnel who inspect vessels and appurtenances not covered in an FSAR/USAR shall meet the qualification requirements under Illinois State law and are not required to be qualified and certified in accordance with the NRC Inspection Manual or its equivalent.

B. Inspections and Enforcement

1. IDNS's activities are not intended to duplicate NRC's regulatory activities.

2. IDNS's inspectors are responsible for meeting all requirements of an NRC licensee related to personal safety and access at the plant site.

3. Before IDNS's inspectors are qualified and certified under this Subagreement, they may participate with NRC inspectors as observers at safety inspections or work under the guidance and direction of NRC's inspectors.

4. To facilitate cooperation and efficient use of resources, NRC and IDNS inspectors will conduct joint team safety inspections under this Subagreement. An NRC inspector will lead the team and be in charge of the inspection.

5. For these joint team safety inspections, NRC and IDNS will work together to develop inspection plans. For reactive inspections in which a quick response is necessary, time may not permit the joint development of an inspection plan or IDNS's participation in such an inspection. NRC will involve IDNS to the maximum extent possible consistent with protection of the public health and safety.

6. IDNS will use NRC to channel any IDNS information request to a licensee which is made to support the planning and implementation of the joint team safety inspections.

7. NRC and IDNS will perform safety inspections in accordance with the inspection plans using applicable procedures in the NRC Inspection Manual.

8. Should IDNS develop inspection findings or otherwise identify problems about ASME Code compliance, it will identify these promptly to the NRC inspection team leader.

9. IDNS may attend and participate in the NRC's inspection entrance and exit meetings with licensees of nuclear power plants in Illinois or with vendors fabricating systems or components for use in Illinois on matters within the scope of this Subagreement.

10. Within 15 working days after completing its portion of a safety inspection, IDNS will document to NRC its inspection's scope, details and results in a report written in the format described in the NRC Inspection Manual. The NRC team leader will use the information in preparation of the NRC's final report.

11. If, based on its review of the IDNS report, NRC identifies potential violations of NRC regulatory requirements, NRC will take appropriate enforcement action as prescribed in Appendix C of 10 CFR Part 2. If NRC proposes escalated enforcement action, based on IDNS findings, it will give IDNS reasonable notice of the time and place of the enforcement conference, and IDNS may attend that conference. At NRC request, IDNS will assist NRC during any enforcement conferences or hearings at which NRC takes enforcement action as a result of a violation identified by an IDNS inspector.

12. IDNS will be given reasonable notification of and the opportunity to participate in NRC inspections of a licensee's corrective action(s) resulting from a joint team safety inspection.

13. IDNS will give reasonable notification to NRC of its inspections of boilers, pressure vessels, and appurtenances not covered in an FSAR/USAR.

14. IDNS will inform NRC if it is unable to participate in an NRC inspection activity.

C. Information Exchange

1. IDNS and NRC agree to the greatest extent possible and in good faith to make available to each other information within the intent and scope of this Subagreement. Specifically, NRC recognizes the value of IDNS's data acquisition system and IDNS agrees to make available to NRC data in this system related to activities under this Subagreement.

2. IDNS and NRC agree to meet periodically at mutually agreeable times and places to exchange information on matters of common concern pertinent to this Subagreement.

3. IDNS and NRC agree to consider each other's identified information needs and concerns, as well as those of the licensee, when developing inspection plans.

4. NRC agrees to make available to IDNS inspection-related documentation for inspections conducted under this Subagreement.

5. IDNS will not publicly disclose inspection findings prior to the release of the NRC inspection report.

6. To preclude the premature public release of sensitive information, IDNS and NRC shall protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Illinois Freedom of Information Act and other applicable authority. IDNS and NRC shall consult with each other before releasing sensitive or proprietary information related to findings under this Subagreement.

VIII. Contacts

A. The principal contacts for this Subagreement will be the Director, Division of Reactor Safety, NRC, Region III, and the Manager, Office of Nuclear Facility Safety, IDNS. These individuals may designate appropriate staff representatives for the purpose of administering this Subagreement.

B. Identification of these contacts is not intended to restrict communication between NRC and IDNS staff members on technical and other day-to-day activities.

IX. Resolution of Conflicts

If disagreements arise about ASME Code related issues, NRC or IDNS may consult ASME or the National Board, as necessary. ASME is the final authority on such issues concerning ASME Code compliance regarding ASME Code stamped components. Should conflicts or disagreements occur between NRC and IDNS, NRC and IDNS will jointly work together to resolve these differences. The NRC's General Counsel is the final authority to interpret the Commission's regulations.

X. Effective Date

This Subagreement will take effect after it has been executed by both parties.

XI. Duration, Termination, and Modification

This Subagreement may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party.

XII. Severability

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

For the Nuclear Regulatory Commission.

Executive Director for Operations
Date: _____

FOR THE ILLINOIS DEPARTMENT OF NUCLEAR SAFETY,

Director
Date: _____

53 FR 50317
Published 12/14/88

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Justice

The Nuclear Regulatory Commission and the United States Department of Justice have entered into a Memorandum of Understanding to provide general procedures for the coordination of enforcement activities and exchange of information between the two agencies. The text of the Memorandum of Understanding is set out below.

Samuel J. Chilk,

Secretary of the Commission.

Dated at Rockville, Maryland, this 8th day of December, 1988.

Memorandum of Understanding Between the Nuclear Regulatory Commission And the Department of Justice

I. Purpose

The Nuclear Regulatory Commission (NRC) and the Department of Justice (DOJ) enter into this agreement (1) to provide for coordination of matters that could lead both to enforcement action by the NRC as well as criminal prosecution by DOJ, and (2) to facilitate the exchange of information relating to matters within their respective jurisdictions. This agreement does not affect the procedures and responsibilities set forth in the April 23, 1979 Memorandum of Understanding between the NRC and the Federal Bureau of Investigation regarding cooperation concerning threats, theft, or sabotage in the U.S. nuclear industry. Similarly, this agreement does not apply to those matters arising from internal investigations conducted by the NRC Office of Inspector and Auditor.

This Memorandum of Understanding is not intended to, does not, and may not be relied upon to, create any rights or benefits, substantive or procedural, enforceable at law by a party to litigation with the United States. Nor are any limitations hereby placed by on otherwise lawful litigative prerogatives of DOJ.

II. Background

Under federal statutes, the NRC has the responsibility to protect the radiological health and safety of the public, the public interest, the common defense and security, and the environment (hereinafter collectively referred to as public health and safety), from hazards that might arise from the material and facilities which it regulates. The enforcement program of the NRC is designed to fulfill these responsibilities by ensuring compliance with NRC requirements, obtaining prompt correction of violations and adverse conditions affecting safety, encouraging improvement of licensee performance, and deterring future violations. In contrast, criminal prosecutions for willful violations of NRC requirements are the responsibility of the DOJ. Such prosecutions provide an additional tool to assure compliance and to deter future violations. Therefore, it is useful and desirable for the NRC and the DOJ to coordinate to the maximum practicable extent their different responsibilities.

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to conduct such investigations as it may deem necessary or proper to assist it in determining whether enforcement or other regulatory action is required under the Act, or any regulations, licenses, or orders issued thereunder.

Enforcement actions within NRC authority include license revocations,

suspensions and modifications, cease and desist orders, civil penalties, and notices of violation. The NRC has the authority to take such action as it deems necessary to protect the public health and safety, including the authority, when appropriate, the take immediate action.

The Department of Justice has the responsibility to determine whether to institute criminal prosecution for violations of all federal statutes, including the Atomic Energy Act of 1954, as amended. Such violations are typically developed and brought to the attention of DOJ by law enforcement or investigative agencies, such as the Federal Bureau of Investigation, the Postal Inspection Service, and the various Treasury enforcement agencies. Similarly, suspected criminal violations of the Atomic Energy Act, as amended, or Title 18 of the United States Code may be identified during the course of NRC investigations and referred to DOJ for prosecutive determination.

Thus, both the NRC and DOJ have authority and responsibility to investigate and take action for certain violations that may arise out of the same factual matters. Although each agency will carry out its statutory responsibilities independently, the agencies agree that the public health and safety would be enhanced by cooperation and timely consultation on proposed enforcement actions where both civil and criminal violations appear to exist, and by the timely exchange of information of mutual interest. As an exmaple, it may be appropriate in some cases for the NRC to stay its hand pending a criminal prosecution. Conversely, in other cases the public health and safety may require immediate NRC action that could impact a potential criminal prosecution. Both agencies recognize that these enforcement decisions are inherently matters of judgment for each agency to decide for itself, with due regard, however, for the views of the other.

III. Areas of Cooperation

A. DOJ Notification to NRC of Information Concerning Public Health and Safety

Should DOJ learn of or discover health or safety related information concerning a matter within the jurisdiction of the NRC, and not already reasonably known to the NRC, DOJ shall communicate such information to the NRC as soon as practicable, unless such information is determined by DOJ to be grand jury material. *See* Rule 6(e) of the Federal Rules of Criminal Procedure.

Should DOJ, during grand jury proceedings, discover health or safety related information concerning a matter within the jurisdiction of the NRC, and not already reasonably known to the NRC, which may warrant immediate regulatory action to protect the public health and safety, DOJ promptly will seek a court order, pursuant to the inherent authority of the court to supervise the grand jury, for disclosure of such information to the NRC for use in connection with its safety enforcement responsibilities.

B. NRC Notification to DOJ of Suspected Criminal Violations

If NRC learns of or develops information regarding suspected criminal violations on matters not within the regulatory jurisdiction of the NRC, the NRC will provide the information regarding such suspected criminal violations to the appropriate investigative agency having jurisdiction over the matter.

Should NRC learn of or develop information regarding any suspected criminal violations, including Atomic Energy Act violations, on matters within the regulatory jurisdiction of NRC, it will notify DOJ in the following manner. With respect to matters not involving special circumstances, as described below, the NRC's Director, Office of Investigations (OI), will formally refer the matter to DOJ for prosecutive determination if, on completion of its investigation, the Director, OI, has determined that sufficient evidence has been developed to support a reasonable suspicion that a criminal violation has occurred. Whenever any of the special circumstances listed below occurs, and the Director, OI, has a reasonable suspicion that a criminal violation has occurred, the Director of OI will promptly notify the DOJ of a matter involving such special circumstance(s), notwithstanding the fact that an investigation has not yet been completed by NRC. The special circumstances involve:

(1) A matter where death or serious bodily injury is involved;

(2) A matter under investigation which is likely to generate substantial national news media attention;

(3) A matter where there is evidence of ongoing activity designed to obstruct the investigation;

(4) A matter which may require extraordinary investigative measures which require legal assistance from DOJ.

When a matter arises in which the NRC concludes that regulatory action is necessary to protect the public health and safety, or that it is necessary to propose a civil penalty, and the Director, Office of Enforcement (OE), has been informed by the Director, OI, that there is a reasonable suspicion that a criminal violation has occurred, the Director of OE will promptly notify the DOJ of such matter, notwithstanding the fact that an investigation has not yet been completed by NRC. Any action by the NRC is to be coordinated with DOJ as prescribed in Section C. below.

Notification to DOJ will not normally result in cessation of the NRC investigation.

C. Procedure When NRC Regulatory Activities Run Parallel to or May Affect Future DOJ Activity

NRC regulatory activities with respect to matters that have been referred to DOJ for criminal prosecution, or to which the notification provisions of Section B. apply, shall be coordinated as follows:

1. If the NRC concludes at any time that it lacks reasonable assurance that activities authorized by a license are being conducted without endangering the health and safety of the public and the NRC concludes that immediate action is required to protect the public health, safety, or interest, it will proceed with such action as is necessary to abate the immediate problem. If time permits, the NRC shall notify DOJ of its proposed action prior to acting, but, in any event, shall notify DOJ of its action as soon as practicable. This paragraph shall apply only to those situations that do not allow sufficient time for reasonable consultation.

2. If the NRC concludes that regulatory action is necessary in the public interest, other than the actions described in paragraphs 1 and 3 herein, the NRC shall first consult with DOJ concerning its contemplated action. The NRC shall take into account the views and concerns of DOJ and proceed in a manner that accommodates such views and concerns to the fullest extent possible, consistent with the regulatory action required. Such cooperation at the staff level shall include the seeking of a stay, upon DOJ's request, of discovery and hearing rights during the regulatory proceeding for a reasonable period of time to accommodate the needs of a criminal investigation or prosecution, provided that DOJ supports such action with appropriate affidavits or testimony as requested by the presiding officer.

3. If the NRC concludes that it is necessary to propose a civil penalty, it shall notify DOJ of its contemplated action, and shall defer the initiation of such proceeding until DOJ either concludes its criminal investigation/prosecution or consents to the action, except that if a statute of limitations bar to a civil penalty proceeding is imminent, the NRC may initiate such proceeding after consultation with DOJ. In such event, the NRC staff shall accommodate the needs of DOJ by seeking a stay, upon DOJ's request and with DOJ support as described in paragraph 2 above, of discovery and hearing rights during the civil penalty proceeding for a reasonable period of time.

D. Time Frame for Notification in Matters Referred to DOJ

1. If, on completion of its investigation, the NRC concludes that civil enforcement action is appropriate, it will notify DOJ of its contemplated action normally within 45 days of its referral to DOJ.

2. DOJ will notify the NRC, normally within 60 days of the referral, of its preliminary decision as to whether a criminal investigation or prosecution is warranted.

E. NRC Assistance to DOJ

The NRC will make reasonable efforts, at DOJ's request, to provide informal assistance regarding applicable NRC requirements, technical issues, and factual circumstances. Such assistance should be requested directly from the Director, Office of Investigations, who will forward requests for technical assistance to the Deputy Executive Director for Regional Operations. A request that one or more NRC investigators be assigned to the DOJ investigation or that NRC technical experts be assigned to assist DOJ and the grand jury should be made in writing. Such requests must bear the signature of a United States Attorney or Deputy Assistant Attorney General, as appropriate. These requests will be considered by NRC on a case-by-case basis.

F. Exchange of Information Related to Civil or Criminal Enforcement

Following a DOJ decision not to prosecute a referred case, or at the conclusion of a criminal proceeding, DOJ will provide NRC, upon its request, information not protected from disclosure by Rule 6(e), Fed.R.Crim.P., relevant to the associated civil case. Similarly, NRC will provide information to DOJ, upon its request, on matters being considered by DOJ.

IV. Implementation

The DOJ official responsible for implementation of the notification responsibilities of this agreement is the Chief, General Litigation and Legal Advice Section, Criminal Division; the NRC official responsible for implementation of the notification responsibilities of this agreement with respect to information regarding suspected criminal violations is the Director, Office of Investigations; the NRC official responsible for the notification responsibilities of this agreement with respect to enforcement action is the Director, Office of Enforcement, or the Assistant General Counsel for Enforcement, as appropriate.

V. Effective Date

This agreement is effective when signed by both parties.

Lando W. Zech, Jr.

Chairman, U.S. Nuclear Regulatory Commission.

Date: October 31, 1988.

Edward S.G. Dennis,

Assistant Attorney General, Criminal Division, U.S. Department of Justice.

Date: November 23, 1988.

55 FR 11275
Published 3/27/90
Comment period expires 4/26/90

55 FR 12576
Published 4/4/90.
Comment period expires 4/27/90.

55 FR 13679
Published 4/11/90
Comment period expires 4/27/90.

55 FR 14528
Published 4/18/90
Comment period expires 4/27/90.

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Draft Subagreement No. 3 between NRC and the State of Illinois for public comments.

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 November 22, 1988, NRC published draft Subagreement No. 2 (53 FR 47279) regarding ASME Code inspections, for public comment. That subagreement is undergoing final review by the staff.

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." The policy also requires that proposed agreements entered into under the provisions of the policy be published in the **Federal Register** for public comment.

DATES: Submit comments by April 26, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Deliver comments to: 7920 Norfolk Avenue, Room P-216, Bethesda, MD between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comment received may be examined at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frederick C. Combs, Assistant Director of State, Local and Indian Relations, State Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-0325.

Dated at Rockville, MD this 21st day of March 1990.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Governmental and Public Affairs.

Agreement Pertaining to State Resident Engineers Between the U.S. Nuclear Regulatory Commission and the State of Illinois

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Illinois enter into this Agreement under the authority of the Memorandum of Understanding (MOU) dated April 27, 1989, between NRC and the State, secton 274i of the Atomic Energy Act of 1954, as amended, and section 4 of the Illinois Nuclear Facility Safety Act.

The State recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the NRC to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure the common defense and security and to protect the public health and safety. Under these statutes, NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC. NRC will only consider State proposals for instruments of cooperation to conduct inspection programs of NRC-regulated activities that provide for close cooperation with, and oversight by, the NRC.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, conducting safety inspections of nuclear power plants to assure that the plants are designed, constructed, tested, maintained, operated, and decommissioned in accordance with NRC regulatory requirements.

The NRC operating reactor inspection program is conducted by Headquarters personnel, region-based inspectors, and Resident Inspectors. NRC Resident Inspectors are located at each nuclear power plant site. Resident Inspectors provide the major onsite NRC presence for direct observation and verification of licensee activities. The NRC Resident Inspector also acts as the primary onsite

evaluator for the NRC inspection effort related to such items as Licensee Event Reports, events, and incidents. NRC Resident Inspectors also interact with local officials, the press, and the public.

D. This Agreement is intended to be consistent with and implement the provisions of the NRC's policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989) which relates to State proposals to enter into instruments of cooperation with the NRC concerning State participation in NRC inspections at operating commercial nuclear power plants.

III. Scope

A. This Agreement defines the way in which NRC and the State, with the assistance of State Resident Engineers, will cooperate in planning and conducting inspections of nuclear power plants in the State to ensure compliance with NRC regulations. This Agreement does not apply to investigations or inquiries conducted by NRC.

B. For the purpose of this Agreement, inspection is defined as the examination, review, or evaluation of any program or activity of a licensee to determine the effectiveness of the program or activity in ensuring that the health and safety of the public and plant personnel are adequately protected and that the facility is operated safely; and to determine compliance with any applicable NRC rule, order, regulation, or license condition pursuant to the Atomic Energy Act of 1954, as amended, and commitments made to NRC.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC or the State or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State or State Resident Engineers authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; and (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

E. Under this Agreement, one State Resident Engineer may be assigned to each nuclear power plant site in the State.

IV. NRC's General Responsibilities

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

V. The State's General Responsibilities

A. The State, through its State Resident Engineer, will cooperate with NRC in performing safety inspections. Such inspections shall be conducted in accordance with NRC regulatory requirements and procedures governing operating nuclear power plants in the State and under the oversight of an authorized NRC representative.

B. The State will cooperate with the NRC in such inspections as necessary for the NRC to ensure that power reactors in the State continue to be operated without undue risk to the public health and safety and the environment.

C. State activities will be performed in accordance with Federal standards and requirements and NRC practices, with no undue burden on the NRC or its licensees.

VI. Implementation

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

A. Staffing

1. The State will select its State Resident Engineers in accordance with its own procedures and qualifications, patterned after those for NRC Resident Inspectors.

2. State Resident Engineers will have education and experience equivalent to that required for an NRC Resident Inspector.

3. The State is responsible for obtaining security clearances for State Resident Engineers that are acceptable to the nuclear power plant licensee.

4. The State is responsible for ensuring that State Resident Engineers comply with all requirements established by the nuclear power plant licensee, including fitness for duty, site access, and onsite space and support. NCR is not responsible for ensuring access or space for State personnel.

5. The State will certify to NRC that each State Resident Engineers 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. NCR will use its best efforts to make space available in its inspector training courses and special orientation programs to accommodate the training needs of State Resident Engineers.

3. The State will pay the travel and per diem expenses of State Resident Engineers attending training courses. Where NRC establishes special training classes, the State agrees to reimburse NRC for its costs of training State Resident Engineers, if requested.

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

5. Information acquired by NRC relating to the ability of a State Resident Engineer to perform inspections satisfactorily in accordance with NRC regulations, requirements, standards, and procedures will be provided to the State for appropriate action.

C. Inspections and Enforcement

1. The State Resident Engineer's activities are intended to assist NRC in the conduct of its regulatory activities.

2. The State Resident Engineers are responsible for meeting all requirements imposed by a licensee related to personal safety, radiological protection, and access at the plant site.

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 Engineers. In accordance with section VI.C.1 above, such recommendations shall be designed to assist NRC site inspection activities. NRC shall take such recommendations into account in formulating its Master Inspection Plans.

5. The State will submit the monthly inspection recommendations to the NRC Resident Inspector in sufficient time to allow NRC review before preparation of the inspection plan. NRC will review the State's inspection recommendations and will inform the State of any activities that appear inappropriate, untimely, or impose an undue burden on NRC or the licensee, such as schedular conflicts with NRC special inspections, management meetings, or INPO visits. The State will make adjustments to the State inspection recommendations, as necessary, to address NRC comments. Taking into account recommendations made by the State, NRC will be responsible for developing a single site inspection plan. NRC staff inspection activity will not be reduced for a facility below minimum program requirements on the basis of the availability of State's inspection resources.

6. NRC will coordinate with the State Resident Engineers, to the extent practicable, unscheduled inspections conducted in response to events, issues, and allegations.

7. An NRC Resident Inspector will initially accompany each State Resident Engineer on at least two inspections to review the performance of the State Resident Engineer. On the basis of these reviews, an NRC Resident Inspector will make recommendations to the State Resident Engineer regarding the preparation, conduct, and technical adequacy of the inspections. On a monthly basis, the NRC Senior Resident Inspector shall determine and authorize which, if any, inspections may be conducted by the State Resident Engineer on an unaccompanied basis. Such inspections shall be conducted in accordance with sections VI.C.4 and VI.C.5. State Resident Engineers may perform as members of NRC inspection teams, provided State Resident Engineers are qualified in the activity to be examined by the NRC inspection team and the NRC inspection team leader authorizes the State Resident Engineer's participation. All inspections performed by State Resident Engineers shall be in accordance with the NRC site inspection plans and NRC inspection practices.

8. The NRC Resident Inspectors may accompany the State Resident Engineers on any inspection. The State Resident Engineers may, at the NRC's discretion, accompany the NRC Resident Inspectors on inspections, at inspection entrance and exit interviews, and at enforcement meetings. The State recognizes that there may be occasions when, because of the sensitive nature of certain inspections and meetings, it will be necessary for NRC, at its discretion, to conduct such activities privately and separately.

9. NRC will provide the State with a copy and current updates of the NRC Inspection Manual and Master Inspection Plan (MIP) for each reactor site in the State at which a State Resident Engineer is stationed. The State will hold the MIP in confidence and will not release it to the public or licensees except in accordance with section VI.D.6 of this Agreement.

10. Allegations received by the State Resident Engineers will be provided to the NRC Resident Inspectors and processed in accordance with NRC procedures. Upon request by NRC, the State Resident Engineers will be made available to assist the NRC in addressing allegations.

11. The results of all State Resident Engineers' inspections will be discussed in a timely manner with the NRC Resident Inspectors. Matters that may require action by the licensee will be discussed with licensee management by the NRC Resident Inspectors, or by the State Resident Engineers in the presence of the NRC Resident Inspectors, except as may be necessary under section VI.C.12.

12. If a State Resident Engineer identifies situations with immediate safety significance, he or she will immediately communicate this information to the licensee and the NRC Resident Inspectors. It is essential that this information be discussed with an NRC representative immediately upon discovery so that NRC may take prompt action as dictated by the situation. If the NRC Resident Inspectors are unavailable, a State Resident Engineer will transmit this information immediately to NRC, Region III (the Regional Duty Officer during non-business hours).

13. All written communications with the licensee will be made through NRC. If a State Resident Engineer prepares a written report of the results of an inspection activity covered by this Agreement, the report will not be sent directly to the licensee, but will be sent to the NRC designated Regional office and to the NRC Resident Inspectors. The State is responsible for the technical adequacy of State Resident Engineers' inspection reports. NRC will forward a cover letter discussing the issues, if any, that the NRC believes warrant action by the licensee.

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

D. Communications and Information Exchange

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

2. NRC and the State agree to meet periodically, at least annually, at mutually agreeable times to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Region III Offices or at the NRC Resident Inspector's Office.

3. 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 NRC determines should be closed as provided in section VI.C.8 of this Agreement.

4. The State and NRC agree to consider each other's identified information needs and concerns when developing inspection plans.

5. The State will conform to NRC practices regarding information disclosure.

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 Illinois Freedom of Information Act and other applicable authority. The State and NRC shall consult with each other before releasing sensitive or proprietary information related to this Subagreement.

7. Press releases regarding State's activities or NRC inspections in which the State has been involved under this Agreement which are prepared by one party will be provided to the other party before issuance. Press releases are to conform to information disclosure restraints of sections VI.D.5 and VI.D.6.

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

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Reactor Projects, Region III, NRC, and the Manager, Office of Nuclear Facility Safety, Illinois Department of Nuclear Safety. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and State staff members on technical and other day-to-day activities.

VIII. Resolution of Conflicts

A. If disagreements or conflicts arise about matters within the scope of this Agreement, 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 NRC Region Division of Reactor Projects management.

C. Differences that cannot be resolved in accordance with sections VIII.A and VIII.B will be reviewed and resolved by the Regional Administrator and the Director, Illinois Department of Nuclear Safety. 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 Agreement shall become effective upon signing by the Director, Illinois Department of Nuclear Safety, and the Regional Administrator, Region III, NRC, and shall remain in effect permanently unless terminated by either party on thirty days written notice.

X. Duration, Termination, and Modification

A formal review, not less than 6 months after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected.

For the U. S. Nuclear Regulatory Commission.

_____

Regional Administrator

Date: _____

For the State of Illinois

_____

For Illinois Department of Nuclear

_____

55 FR 11459
Published 3/28/90.
Comment period expires 4/27/90.

State of Illinois; Staff Assessment of Proposed Amendment Number One to the Agreement Between the Nuclear Regulatory Commission and the State of Illinois

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Proposed Amended Agreement with State of Illinois.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment the NRC staff assessment of a proposed amendent to the existing section 274b agreement between the NRC and the State of Illinois which became effective June 1, 1987. The request dated April 11, 1989 from Governor James R. Thompson of the State of Illinois, if approved, would permit Illinois to regulate byproduct materials as defined in section 11e.(2) of the Atomic Energy Act, as amended, (uranium or thorium mill tailings) in conformance with the requirements of section 274O of the Atomic Energy Act of 1954, as amended (the Act).

A staff assessment of the State's proposed radiation control program to implement the amended ageement is set forth below as supplementary information ot this notice. A copy of the complete program description submitted by Illinois, including a program statement prepared by the State

describing the State's proposed program for control over byproduct materials as defined in section 11e.(2) of the Act, State legislation, and Illinois regulations, is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington DC, the Commission's Region III Office at 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety at 1035 Outer Park Drive, Springfield, Illinois. Exemptions from and reservations of the Commission's regulatory authority, which would implement this proposed amendment to the existing 274b agreement, have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before April 27, 1990.

ADDRESSES: Submit written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Assistant Director for State Agreements Program, U.S. Nuclear Regulatory Commission, Washington, DC. Telephone: 301–492–0326.

SUPPLEMENTARY INFORMATION: Assessment of proposed amended Illinois Program to regulate certain radioactive materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended (the Act).

The Commission has received a proposal from the Governor of Illinois for the State to amend its agreement with the NRC whereby the NRC would relinquish and the State would assume regulatory authority for byproduct material, as defined in section 11e.(2) of the Act, pursuant to section 274 of the Act.

Section 274e of the Act requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the **Federal Register**.

1. Background

A. Section 274 of the Act provides a mechanism whereby the NRC may transfer to the State certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

The Uranium Mill Tailings Radiation Control Act of 1978 amended the requirements of section 274 of the Atomic Energy Act, by adding section 274o which imposed certain requirements that must be met by Agreement States in order to regulate uranium and thorium mill tailings after November 8, 1981.

B. On May 18, 1987, the Governor of Illinois signed an agreement with the NRC for the assumption of regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material, special nuclear material in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons. This agreement became effective on June 1, 1987. In a letter dated April 11, 1989, Governor James R. Thompson of the State of Illinois requested that the Commission entered into an amended agreement with the State pursuant to section 274 of the Act under which the State would assume responsibility for regulating uranium and thorium mill tailings (11e.(2) byproduct material) and the operations that generate such material. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed amendment to the agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed amendment to the agreement is shown in Appendix A.

[1] A. Byproduct materials as defined in 11e.(1).
B. Byproduct materials as defined in 11e.(2).
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass.

The specific authority requested is for source material recovery activities including the uranium and thorium mill tailing (byproduct material as defined in section 11e.(2) of the Act). The proposed amemdment to the agreement covers the following areas:

1. Amending Article I of the Agreement of May 18, 1987 to add the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting by product material as defined in section 11e.(2) of the Act to the list of materials covered by the agreement.

2. Amending Article II of the Agreement of May 18, 1987 by inserting "A." before "This Agreement," by redesignation paragraphs A. thorugh D. as subparagraphs 1. through 4., by deleting paragraph E. releating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B. relating to authorities pertaining to byproduct as defined in section 11e.(2) of the Act that will by retained by the Commission.

3. Amending Article IX by redesignating it Article X and by inserting a new Article IX which requires compliance with 274o of the Act and specifies certain financial surety requirements in subparagraphs A. and B.

4. States that the Agreement of May 18, 1987 remains in effect except as modified by the above amendments.

5. Specifies the effective date of Amendment Number One.

The State has no active uranium or thorium mills processing ore for its source material content. However, one facility exists under an NRC license at West Chicago, Illinois. This mill began operation in 1931 to process ore containing thorium and rare earth metals.

Kerr-McGee Chemical Corporation (Kerr-McGee) acquired the facility in 1967 and operated it until closing the plant in 1973. In 1979 Kerr-McGee submitted a plan to the NRC for decommissioning the West Chicago site and stabilizing the accumulated waste and tailings. The plan was modified and the most recent version submitted to NRC in 1986. Besides onsite wastes and ore residuals, wastes are known to exist offsite as well. On August 5, 1988, the Commission issued a decision on the regulatory aspects of the radiologically contaminated material on and offsite. The Commission held: (1) The radiologically contaminated material in and along Kress Creek and the West

Branch of the DuPage River was 11e.(2) byproduct material and, therefore, not within the scope of the section 274b agreement into which the Commission entered with Illinois in 1987, and remained within the regulatory authority of the Commission; and (2) the radiologically contaminated material in Reed-Keppler Park and certain residential areas of DuPage County, and the radiologically contaminated material returned from the West Chicago Sewage Treatment Pland and residential areas within the City of West Chicago to the West Chicago Rare Earths Facility Site, was source material that is within the scope of the agreement and was, therefore, under the regulatory authority of the State of Illinois.

In rendering this decision, the Commission upheld the position that the thorium-contaminated materials described in (2) above should be classified as source material. It further held that the thorium-contaminated material in Kress Creek should be classified as 113.(2) byproduct material. Consequently, in order for the State of Illinois to regulate the latter, the State of Illinois would need to have its existing Agreement amended to demonstrate compliance with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. Details relating to the Rare Earths Facility are contained in the Final Environmental Statement (NUREG–0904, 1983) and the Supplement to the Final Envionmental Statement (NUREG–0904, Supplement No. 1, 1989) related to the decommissioning of the Rare Earths Facility, West Chicago, Illinois.

On February 13, 1990, the Atomic Safety and Licensing Board (Licensing Board) issued a decision directing the staff to issue a license amendment authorizing Kerr-McGee to dispose of the 11.e(2) byproduct material as proposed by Kerr-McGee in its application. The staff issued the amendment on February 23, 1990. The State of Illinois and the City of West Chicago each filed a Notice of Appeal before the Atomic Safety and Licensing Appeal Board (Appeal Board). The State of Illinois and the City of West Chicago also requested the Appeal Board to stay the Licensing Board's decision. The Appeal Board issued an Order on March 13, 1990 denying the State's and the City's requests for a stay.

C. Ill. Rev. Stat. 1985, ch. 127, par. 63b17, the enabling statute for the Illinois Department of Nuclear Safety (IDNS) and Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, the Illinois Radiation Protection Act authorize the Department to issue licenses to, and perform inspections of, users of radioactive materials under the Agreement and otherwise carry out a total radiation control. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. These standards and procedures became effective on June 1, 1987, the effective date of the Agreement. As amended by P.A. 85–1160, effective August 5, 1988, the Illinois Radiation Protection Act authorizes the IDNS to regulate byproduct material as defined in section 11e.(2) of the Act. To provide for licensing of 11e.(2) byproduct material and source material recovery facilities which generate 11e.(2) byproduct material, a new Part 332 has been added to the Illinois Administrative Code (32 Ill. Adm. Code 332). These regulations were finalized on January 4, 1990 and will become effective when the Amendment Number One becomes effective. On February 8, 1990, Kerr-McGee sought judicial review of the final regulations in the Illinois courts (Kerr-McGee Chemical Corp. v. IDNS, No. 90MR49; Ill. Cir. Ct., Sangmon County). This proceeding is still pending.

On January 10, 1990, the Illinois General Assembly Joint Committee on Administrative Rules (JCAR) met and issued 13 objections to the final regulations for source material recovery and 1e.(2) byproduct material (32 Ill. Adm. Code 332). These objections were published in the Illinois Register on February 2, 1990. In accordance with Section 7.07 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1007.07), IDNS has 90 days to respond to the objections and, if IDNS does not respond within 90 days, the lack of response will constitute a refusal to amend or repeal this rule. Unless the JCAR drafts and introduces legislation requiring IDNS to implement the recommendations, no futher actions are required of IDNS.

D. On June 1, 1987, Illinois assumed regulatory authority for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass, and (4) permanent disposal of low-level radioactive waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(a) of the Act). The program audits conducted since that time have resulted in NRC findings that the Illinois radiation control program is compatible with that of the NRC and is adequate to protect public health and safety.

Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulations for radioactive materials and machine produced radiation, lasers, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government functions concerning nuclear power and emergency preparedness.

E. The proposed amendment to the Illinois agreement will cover the regulation of source material extraction from ores processed primarily for their source material content and the management and disposal of the resulting tailings and other wastes (byproduct material as defined in section 11e.(2) of the Act). The State's proposed program for the regulation of source material extraction and 11e.(2) byproduct material is assessed under Criteria 29 through 36 of the guidelines published by NRC, Criteria for Guidance of States and NRC is Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[3] These criteria are specifically identified as "Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981" and addressed the Statutes, Regulations, Organizational Relationships Within the States, Personnel, Functions To Be Covered, and Instrumentation. Prior evaluation of the Illinois program in accordance with Criteria 1 through 28, was addressed in the staff assessment of the original Illinois proposed agreement published in the Federal Register on January 21, 1987 (52 FR 2309–2324).

II. NRC Staff Assessment of the Proposed Illinois' Radiation Control Program for Control of Uranium and Thorium Processors and the Waste Resulting Therefrom

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and

Assumption Thereof by States Through Agreement.[2]

A. Statutes

29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Public Law 95–604, Uranium Mill Tailings Radiation Control Act, as amended (UMTRCA).

Based on the analysis of the State's revised statutes, regulations, and the State's program statement, the staff concludes that the Illinois Radiation Protection Act and the State's implementing regulations provide adequate authority for Illinois to regulate section 11e.(2) byproduct material in accordance with the requirements of the Uranium Mill Tailings Radiation Control Act, as amended. The Radiation Protection Act requires the IDNS to provide, by rule or regulation, standards for the protection of the public health and safety and the environment that are equivalent, to the extent practicable, or more stringent than, the standards adopted and enforced by NRC for 11e.(2) byproduct material, including standards issued by the Environmental Protection Agency (EPA). The Illinois Radiation Protection Act also authorizes IDNS to require licensees to provide adequate financial surety to assure that all of the IDNS requirements for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in connection with the generation or disposal of section 11e(2) byproduct material have been met. Authority is also provided to transfer to the Federal government funds which have been collected by the State for long-term surveillance and maintenance if custody of the byproduct material and its disposal site is transferred to the Federal government. Provisions of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1005) and Illinois regulations (32 Ill. Adm. Code Parts 200 and 332) implement the procedural requirements for the issuance of licenses and rules prescribed in sections 274o(3) (A) and (B) of the Act, and identified in Criterion 29d., e., and g. These requirements relate to such matters as opportunity for written comments, public hearings, cross examination, and judicial review.

Reference: Ill. Rev. Stat. 1985, ch. 127, par. 63b17 and 1005; Ill. Reve. Stat. 1987, ch. 111½, par. 211–229, as amended by P.A. 85–1160; 32 Ill. Adm. Code Parts 200 and 332.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the Commission UMTRCA as stated in 10 CFR 150.15a.

The staff has reviewed the Illinois Radiation Protection Act, as amended, and has determined that these reservations of authority to the Commission are incorporated in the Illinois statute and are adequately discussed in the program statement.

References: Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, as amended; Illinois Program Statement: Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission.

31. Section 274o(3)(C) of the Act requires that in the licensing and regulation of ores processed primarily for their source material content and for the disposal of the resulting byproduct material, States shall establish procedures which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and,

d. Consideration of long-term impacts of licensed activities.

The State's statutes and its implementing regulations provide sufficient authority for the IDNS to comply with the environmental assessment procedures required by UMTRCA. Part 332 of Illinois regulations (section 332.100) addresses the procedural requirements for environmental assessments and defines the scope of assessments and associated administrative procedures. In accordance with Criterion 29f., section 332.100 of the Illinois regulations bans major construction prior to completion of the environmental analysis.

References: Illinois Program Statement, Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission; Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, as amended by P.A.85–1160; 32 Ill. Adm. Code Part 332.

B. Regulations

32. State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent, to the extent practicable, or more stringent than regulations and standards adopted and enforced by the Commission, as required by section 274o (see 10 CFR 40, Appendix A, and 10 CFR 150.31(b)).

On January 10, 1990 (effective date: January 4, 1990), final Illinois regulations (32 Ill. Adm. Code Part 332) were submitted to NRC completing the Governor's package submitted April 11, 1989. These final regulations establish State regulations that are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Environmental Protection Agency. It is the staff's opinion that these rules have, to the maximum extent practicable, achieved the same objective as the NRC's Part 40 regulations except that certain parts of the State regulations are more stringent than the NRC regulations and are, therefore, more restrictive than NRC regulations. The staff has identified State requirements which NRC does not address in its regulations that may also be considered to be more stringent than NRC requirements. The sections are identified below. The staff is proposing to find the following sections more stringent and in accord with section 274o of the Act only for the purpose of finding the Illinois program adequate, compatible and in compliance with statutory requirements so that authority may be relinquished lawfully to the State. The staff offers no opinion whether, as applied to any particular site, the findings required by the last paragraph of section 274o can be made.

Criteria which are more stringent than 10 CFR part 40:

1. Part 332—This part of the Illinois regulations is considered more stringent in that it does not contain a specific exemption provision such as 10 CFR 40.14(a.) or a provision for approving alternatives to these regulations such as provided for in the Introduction of appendix A to 10 CFR part 40.

2. Section 332.70—This section is considered more stringent in that the NRC performance standards have been written as technical criteria thereby eliminating the flexibility inherent in NRC regulations.

3. Section 332.170c)—This section is considered more stringent in that the annual average total radon release rate of 2 picocurie per square meter per second flux limit is more stringent than the 20 picocurie per meter square per second limit in criterion 6 of appendix A to 10 CFR part 40.

[2] NRC Statement of Policy published in the **Federal Register** January 23, 1981 (46 FR 7540–7548), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the **Federal Register** July 21, 1983 (48 FR 33378).

4. Subsection 332.210b)1)—This subsection banning disposal sites within a distance of 2.5 km of any municipality without the consent of the municipality is more stringent than NRC's performance objective of locating disposal sites in remote areas.

5. Section 332.220b)1)—This section is considered more stringent in that it does not allow slopes steeper than 10h:1v.

6. Section 332.240—This section is considered more stringent in that the licensee must defend its design as a 1000 year design. This section does not have the flexibility of criterion 6 of appendix A to 10 CFR part 40 that states following the 1000-year criterion, "to the extent reasonably achievable, and, in any case, for at least 200 years."

7. Section 332.250 b) and c)—subsection b) is considered more stringent in that it requires chemical treatment of the tailings which is not required in Appendix A to 10 CFR Part 40. Subsection c) is considered more stringent in that it requires groundwater restoration to levels consistent with those before operations. NRC Criterion 5B(5)(b) and (c) allows concentration values up to EPA drinking limits.

Criteria which are not in NRC's 10 CFR part 40 regulations:

1. *Section 332.20*—Definition of Buffer Zone.

2. *Section 332.20*—Definition of Minor Custodial Activities.

3. *Section 332.20*—Definition of Postclosure.

4. *Section 332.20*—Definition of Reclamation. This term is used in 10 CFR Part 40; however, this definition is not in NRC's regulations.

5. *Section 332.140*—This criterion is not in 10 CFR part 40; however, it is generally consistent with NRC's licensing practice.

6. *Section 332.170 b)*—This criterion is not in 10 CFR part 50; however, it is consistent with 10 CFR 20.106(a).

7. *Section 332.180*—This criterion is not in 10 CFR part 40.

8. *Section 332.210*—The siting criteria in subparts (b) (1), (2), (3), (6), and (7) are not contained in 10 CFR part 40.

9. *Section 332.250 (a)*—Such a ban of release of liquids is not in NRC's regulations.

10. *Section 332.290 (e)*—No annual financial report is required by NRC.

Reference: 32 Ill. Adm. Code part 332.

C. Organizational Relationships Within the State

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings. Charts should be developed which show the management organization and lines of authority. These charts should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of source material processing and disposal of the resulting tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between other agencies and/or regions and the program director should be clearly drawn.

Organizational charts outlining the IDNS structure have been included in the application. From these organizational charts, it has been determined that the IDNS has a structure capable of regulating all phases of source material milling activities including the preparation of environmental assessments. This conclusion is based on the following findings: (1) The Office of Radiation Safety has been designated as the lead office within IDNS for regulating uranium and thorium processing and the resulting 11e.(2) byproduct material; and (2) the administrative, technical, legal and emergency support functions will be provided from other offices within IDNS, i.e., Office of Legal Counsel, Office of Environmental Safety, Office of Nuclear Facility Safety, and Office of Administrative Services.

Internal responsibilities have been described by the IDNS to be as follows: (1) overall program management will be implemented by the Director; (2) the Office of Radiation Safety is responsible for the licensing of radioactive materials and will be the lead office for processing all license applications and preparation of environmental assessments; (3) the Office of Environmental Safety is to assist in the evaluation of environmental impacts and to provide support for all laboratory analysis and environmental monitoring; (4) the Office of Nuclear Facility Safety will assist in the evaluation of potential radiological accidents; (5) the Office of Legal Counsel will provide assistance in all legal matters; and (6) the Office of Administrative Services will assist in budgeting and personnel management. IDNS has further stated that for those areas of environmental assessments that IDNS believes consultation to be appropriate, other State agencies or private consultants will be contracted to help in the environmental assessment. IDNS has indicated that assistance from the Illinois Department of Energy and Natural Resources and the State Water Survey Division may be sought for hydrologic assessments. NRC staff notes that the IDNS did not provide any formal agreements, such as MOUs with any of these other organizations that, if put in place, would assure their availability in a timely manner. However, IDNS has previously executed contracts with other State agencies. As an example, IDNS has executed an MOU with the Illinois Environmental Protection Agency regarding the disposal of water treatment wastes. Although the program statement did not specifically identify the source or amount of funds, it did state that IDNS will provide for funding if consultants are deemed necessary and the Office of Administrative Services will assist in contract preparation and fiscal management. For those situations where consultants are used, IDNS stated that they will seek assistance from their legal counsel to avoid conflicts of interest. IDNS has not provided any specific information about the budget or proposed budget for the portion of the radiation control program allocated to the regulation of uranium and thorium mills and 11e.(2) byproduct material. However, the IDNS has committed to the allocation of sufficient staff time to handle the uranium and thorium mills and 11e.(2) byproduct material currently in the State.

The program statement reveals that IDNS has not identified any specific medical consultants that would be available for medical questions that may be encountered with the uranium or thorium milling industry and its 11e.(2) byproduct material. The program statement states that, should medical assistance be needed, IDNS will seek assistance from a national laboratory such as Argonne National Laboratory. Such assistance has been requested and provided in the past.

Experience has shown that a scoping document is a valuable tool for bringing an environmental assessment to a satisfactory conclusion. IDNS indicated that if assistance is requested through contracts or MOUs adequate guidance such as a scoping document will be prepared by the IDNS. This document will delineate areas and scope of work to be performed within a given time constraint by each participating agency or contractor.

Reference: Illinois Program Statement, Section III.

D. Personnel

34. Personnel needed in the processing of the license application can be identified or grouped according to the following skills: Technical, Administrative, and Support

In order to meet the requirements of UMTRCA, it is estimated that on the order of 2 to 2.75 total professional person-years' effort is necessary to process and evaluate a new conventional mill license, in-situ license, or major license renewal. A complete review of in-plant safety, completion of an environmental assessment, and use of consultants in these assessments are primary considerations in the the total professional effort for each licensing case. With respect to clerical support, one secretary is usually required to process two conventional milling applications. Legal support is also an essential element of the mill program, and the effort is believed to be a minimum of one-half staff year. In addition, consideration must be given to such post-licensing activities as issuance of munor amendments, mill inspection, and environmental monitoring. Professional staff effort for these activities is estimated at 0.5 to 1.0 person-years for each year of post-licensing activities.

Currently there are no active uranium or thorium mills processing ore for its source material content in the State of Illinois. However, as identified in the introduction, one facility located at West Chicago has been identified as a closed facility which has associated with it radiologically contaminated material on and offsite. As stated earlier, the radiologically contaminated material in and along Kress Creek and the West Branch of the DuPage River is 11e (2) byproduct material in addition to the material on the West Chicago site. This material would come under the regulatory authority of the IDNS upon consummation of Illinois request for an amended agreement. The regulatory activities assumed by the IDNS upon execution of the amended agreement would center mainly around decommissioning and reclamation of the West Chicago site and its associated wastes.

In the application for amendment of the agreement as updated March 14, 1990, the IDNS had identified 11 key technical personel for use in regulation uranium and thorium processing facilities and their associated 11e.(2) byproduct material. A review of these staff resumes shows that they have the necessary education, training, and experience to ensure effective implementation of a regulatory program.

Seven key administrative personnel have been identified by the IDNS who will provide the necessary management guidance and policy direction necessary to assure completion of the licensing action. The positions of the seven personnel in the IDNS structure are the director, four office managers, one assistant office manager, and one division chief.

Four key persons have been identified as providing operational support, legal support, and laboratory services. The positions of these four people are one chief legal counsel, one senior staff attorney, one section chief of radioecology, and one division chief of radiochemistry.

The NRC staff has concluded that the total professional staff-years effort which is available within the IDNS and will be directly responsible for regulating uranium and thorium mills and 11e.(2) byproduct material is within the guidelines and consists of the necessary specialities for evaluating license applications. Additionally, IDNS has states that consultants will be utilized, if necessary.

Abridged versions of the curricula vitae for key IDNS personnel involved in the regulation of source material milling facilities and 11e.(2) byproduct material are as follows (as updated by IDNS on March 14, 1990):

Administrative Personnel:

T.L. Lash, Ph.D.—Director, IDNS; Ph.D. Molecular Biophysics and Biochemistry, Yale University; M.Ph. Molecular Biophysics and Biochemistry, Yale University; B.A. Physics, Reed College. Work Experinece, 1970 to present, held positions as Postdoctoral Fellow, Yale University; Staff Scientist, NRDC; Director, Science and Public Policy, the Keystone Center; Science Director, Scientists' Institute for Public Information; Deputy Director, IDNS, and Director, IDNS.

P.D. Eastvold—Manager, Office of Radiation Safety; B.S. General Science/ Nuclear Medical Technology, University of Iowa. Work Experience, 1970 to present, held positions in the Radiation Protection Office, University of Iowa; Illinois Department of Public Health; and as Manager, Office of Radiation Safety, IDNS.

G.W. Kerr, CHP—Assistant Office Manager, Office of Radiation Safety; M.A. Economics, Trinity College; B.A. Biology, Peru State College. Work Experience, 1958 to present, held positions as Senior Industrial Hygienist, Pratt and Whitney Aircraft; Technical staff positions, Atomic Energy Commission; Manager and Assistant Director for State Agreements, USNRC; Director, Office of State Programs, USNRC; Independent Consultant; and Assistant Office Manager, Office of Radiation Safety, IDNS.

C.W. Miller, Ph.D—Manager, Office of Environmental Safety; Ph.D. Bionucleonics/Health Physics, Purdue University; M.S. Meteorology, University of Michigan; B.S. Physics/Math, Ball State University. Work Experience, 1967 to present, held positions in Anderson College in Physics; Health and Safety Research Division, Oak Ridge National Laboratory; and as Nuclear Safety Scientist, Office of Nuclear Facility Safety; and Manager, Office of Environmental Safety, IDNS.

R.R. Wright—Manager, Office of Nuclear Facility Safety; Master of Public Administration, American University; B.S. Engineering, U.S. Naval Academy; Undergraduate Studies, Geology, Oklahoma University. Work Experience, 1954 to present, held positions in U.S. Navy, Nuclear Propulsion plants, Nuclear Submarines and Nuclear Weapons; Advance Science and Technology Associates Inc.; and as Manager, Office of Nuclear Facility Safety, IDNS.

D.A. Joswiak—Manager, Office of Administrative Services; M.S. Business Public Management, University of Wisconsin; M.A. Public Policy and Administration, University of Wisconsin; B.A. Political Science and Economics, University of Wisconsin. Work Experience, 1973 to present, held positions as Research Assistant, Public Expenditure Survey of Wisconsin, Inc.; Budget Analyst and Management Systems Specialist, Illinois Department of Transportation; Chief Fiscal Officer, Illinois Department of Financial Institutions; Associate Director for Administration, Illinois Emergency Services and Disaster Agency; and Manager, Office of Administrative Services, IDNS.

S.C. Collins—Chief, Division of Radioactive Materials; M.S. Radiation Science (health physics), Unversity of Arkansas School of Medical Sciences; B.A. Mathematics/Chemistry, Arkansas Tech University. Work Experience, 1967 to present, held positions as laboratory assistant and instructor, Arkansas Tech University; Health Physicist II, Arkansas State Department of Health; Nuclear Medical Science Office, U.S. Army Reserve; Public Health Physicist II, Florida Division of Health; Radiation Specialist IV, Louisiana Nuclear Energy Division; Environmental Program Manager, Louisiana Nuclear Energy Division; Nuclear Medical Science Instructor, U.S. Army Academy of Health Sciences; Radiation Protection Program Manager, Louisiana Nuclear Energy Division; and Chief, Division of Radioactive Materials, IDNS.

Administrative Support Personnel:

S.J. England—Chief Legal Counsel, Office of Legal Counsel; J.D. Boston

University School of Law; B.A. University of Illinois. Work Experience, 1976 to present, held positions in City of Joliet, Illinois; Illinois Attorney General's office; Illinois Department of Transportation; and as Chief Legal Counsel, Office of Legal Counsel, IDNS.

B.P. Salus—Senior Staff Attorney, Office of Legal Counsel; J.D. Washington University School of Law; B.S. Vanderbilt University. Work Experience, 1984 to present, positions as Research Assistant, Washington University School of Law; Law Clerk to Chief Judge, U.S. District Court; and Staff Attorney, Office of Legal Counsel, IDNS.

R.A. Allen—Office of Environmental Safety; B.A. Biological Sciences, Rutgers University. Work experience, 1976 to present, held positions as Health Physicist and R.S.O., Roche Medi + Physics; Environmental Protection Group Leader, Fermi National Accelerator Laboratory; and Radioecology Section Head, Office of Environmental Safety, IDNS.

Lih-Ching Chu, Ph.D.—Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety; Ph.D, Chemistry, Washington University; M.A. Chemistry, Washington University; M.S. Chemistry, East Texas State University; B.S. Chemistry, Tankang College of Arts and Sciences. Work Experience, 1971 to present, held positions in Taiwan Military, ROC; Young-Ho Middle School, Taiwan; East Texas State University; Washington University, St. Louis; Illinois Department of Energy and Natural Resources; and as Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety, IDNS.

Technical Personnel:

J.G. Klinger—Head, Licensing Section, IDNS; M.S. Health Care Management and Public Administration, Southwest Texas State University; B.A. Microbiology and Chemistry, University of Texas; A.A. Glendale Community College. Work Experience, 1966 to present, held positions in U.S. Marine Corps and U.S. Naval Reserve Medical Service Corps; Algebra Tutor, Glendale; Laboratory Assistant, University of Texas; Food and Drug Inspector, Texas Department of Health; Regional Food and Drug Supervisor, Texas Department of Health; Chief of Food Control, Division of Food and Drugs, Texas Department of Health; Special Assistant to the Commissioner for Board of Health Affairs, Texas Department of Health; Administrator, Licensing Branch, Bureau of Radiation Control, Texas Department of Health; and Head, Licensing Section, IDNS.

D.F. Harmon—Licensing, Office of Radiation Safety, IDNS; M.S. Physics, Vanderbilt University; B.S. Physics, Tennessee Technological University. Work Experience, 1954 to present, held positions in Military Service, U.S. Army; Ballistics Research Laboratory, Aberdeen Proving Ground, Maryland and Camp Mercury, Nevada Test Site; Chemistry Department, Vanderbilt University; Radiation Safety Branch, Division of Licensing and Regulations, U.S. NRC; Source and Special Nuclear Materials Branch, Division of Materials Licensing, U.S. NRC; Materials Branch, Division of Materials Licensing, U.S NRC; Fuels and Materials Standards Branch, Directorate of Regulatory Standards, U.S. NRC; Fuels Process System Standards Branch, Office of Standards Development, U.S. NRC; Waste Management Branch, Office of Nuclear Regulatory Research, U.S. NRC; Health Effects Branch, Office of Nuclear Regulatory Research, U.S. NRC; and Licensing, Office of Radiation Safety, IDNS.

M.H. Momeni, Ph.D.—Office of Radiation Safety, IDNS; Ph.D., Biophysics/Radiation Biology, University of Iowa; M.S. Nuclear Physics, University of Iowa; B.A. Physics/Mathematics, Luther College. Work Experience, 1962 to present, held positions as Science Teacher, Urbana Consolidated Schools; Biophysicist-Lecturer, University of California, Davis; Senior Scientist, Argonne National Laboratory; Professor and Director of Health Physics Program, San Diego State University; Scientist, Oak Ridge Associated Universities; and Health Physicists, Office of Radiation Safety, IDNS.

D.J. Scherer—Licensing, Office of Radiation Safety; M.S. Physics, Virginia Polytechnic Institute and State University; B.S. Physics, Virginia Military Institute. Work Experience, 1980 to present, held positions as graduate Teaching Assistant, VPISU; Graduate Research Assistant, Stanford Linear Accelerator Center; Nuclear Medical Science Officer, U.S. Environmental Hygiene Agency; Medical Plans Officer, Officer of the Surgeon, XVIII Airborne Corps; Chief, Health Physics Section, Womback Army Community Hospital; Assistant Health Physicist, Princeton University; Senior Health Physicist and Radiation Safety Officer, Albany Medical Center; and Health Physicist, Office of Radiation Safety, IDNS.

D.A. Huckaba, P.E.— Office of Radiation Safety; B.S. Civil Engineering, University of Missouri. Work Experience, 1969 to present, held positions as Highway Engineer, Missouri Department of Transportation; Chief Highway Engineer, MTA, Inc.; and Engineer, Office of Radiation Safety, IDNS.

G.N. Wright, P.E.—Office of Nuclear Facility Safety; Degree Work in Public Administration, Sangamon State University; M.S. Nuclear Engineering, University of Illinois; B.S. Physics/Mathematics, Milliken University. Work experience, 1965 to present, held positions in Westinghouse Electric Company; Sangamo-Weston Electronics Company; Illinois Department of Public Health; and as Senior Nuclar Engineer, Office of Radiation Safety, IDNS.

D.D. Ed—Office of Environmental Safety; B.S. Chemistry, University of Illinois. Work experience, 1972 to present, held positions in Illinois Environmental Protection Agency, Illinois Department of Public Health; and as Nuclear Safety Scientist, Office of Environmental Safety, IDNS.

T.A. Kerr—Chief, Division of Low-Level Waste Management, Office of Environmental Safety; Business Administration, University of North Carolina. Work Experience 1973 to present, held positions in U.S. Navy, Electronics Technician-Reactor operator; Supervisor Solidification Services, Chem-Nuclear Systems, Inc.; Associate Instructor, Duke Power Co.; and as Chief, Division of Low-Level Waste Management, IDNS.

M.E. Klebe, P.E.—Office of Environmental Safety; M.S. Mining Engineering, Montana College of Mineral Science and Technology; B.S. Mining Engineering, Montana College of Mineral Science and Technology. Work Experience, 1982 to present, held positions as Mining Engineer, Shell Mining Co; and Nuclear Safety Engineer, Office of Environmental Safety, IDNS.

C.G. Vinson—Office of Radiation Safety; B.S. Biology, Furman University. Work Experience, 1983 to present, held positions as Industrial Hygiene Technician, J.P. Stevens Textile Company; Environmental Engineering Specialist, Union Camp Corporation; Health Physicist and Section Manager, Bureau of Radiological Health, South Carolina Department of Health and Enironmental Control; and Health Physicist, Office of Radiation Safety, IDNS.

M. Walle—Office of Radiation Safety; B.S. Earth Sciences, Unviversity of New Orleans; ARRT, Mercy Hospital School of X-Ray Technology. Work Experience, 1965 to present, held positions as Radiological Technologist, Mercy Hospital; Nuclear Medicine Technologist, Pathology Medical Services, PC; Engineering-Geologist, U.S.

Army Corps of Engineers; Civil Materials Technican, Geo, International; Civil Construction Inspector, Minority Engineers of Louisiana; Project Manager, Nuclear Gauge Radiation Safety Officer, U.S. Testing Co., Inc.; and Health Physicist, Office of Radiation Safety, IDNS.

IDNS recognizes that a skilled and experienced staff is essential to accomplishing its mission. Consequently, technical training is a high priority for the IDNS. The IDNS training coordinator is developing a comprehensive technical and managerial training program, using a wide variety of professional seminars and courses. Courses may be sponsored by either government or private sector organizations. In addition, in-house courses to supplement outside training are arranged as necessary. These in-house courses are presented either by IDNS staff or outside contractors.

The IDNS has stated that for active extraction and concentration facilities it will allocate from 2.5 to 5.75 person-years for each major licensing action. This time will be apportioned as follows: 2 to 2.75 staff years effort for technical and administrative activities; 0.5 to 1 staff year effort for legal support; and 2 staff years effort for clerical support.

Following initial licensure, IDNS plans to assign an annual average of from 0.5 to 1 full-time equivalent staffing for each license. This allocation is for inspections, environmental assessments, minor amendments and environmental surveillance. IDNS anticipates that less time might be required to administer a license authorizing only decontamination, decommissioning, disposal, or post-closure monitoring. This appears to be a reasonable assumption on the part of IDNS.

Many of these key personnel have complementary training to their profession and several have been identified as having training in uranium mill related topics. Some of those individuals have written or published articles on uranium mill topics. The IDNS has stated that it will consult with other State agencies. Two State agencies have been identified by the IDNS at this time as providing the IDNS assistance in reviewing the impact of byproduct material on the environment. They are the Illinois Department of Energy and Natural Resources and the Illinois Environmental Protection Agency. However, the scope and depth of work to be completed by these agencies has not been identified. Because there are no indications that any uranium milling facilities are planning to operate in Illinois at this time, and because much environmental assessment work has been completed for the Kerr-McGee site, the lack of MOUs with other State agencies is not considered a matter of paramount importance at this time. The IDNS can pursue this matter at some point in the future upon first indication that such MOUs will be necessary.

References: Illinois Program Statement, Section IV, "Personnel," Section VI, "Implementation of the Regulatory Program," and Appendices F. and G.

E. Functions to be Covered

35. The State should develop procedures for licensing, inspection, preparation of environmental assessments, and operational data review.

The IDNS has stated that regulation of recovery and processing of uranium and thorium and management of 11e.(2) byproduct material may be divided into four stages: licensing, environmental assessments, inspection and enforcement, and review of operational data.

a. Licensing

The licensing evaluation or assessment should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the facility. It is expected that the State will review, evaluate and provide documentation of these evaluations.

The IDNS has stated in its program statement that the IDNS licensing evaluations or assessments will include radiological safety aspects in occupational or restricted areas and environmental impacts to population in unrestricted areas surrounding the facilities. IDNS has stated that they will review and evaluate license applications and prepare documentation of the evaluations. The IDNS evaluation will include, as necessary, pre-licensing visits to obtain relevant information directly. Items to be evaluated include, but are not limited to, the following: general statement of proposed activities; scope of the proposed action; specific activities to be conducted; administrative procedures; facility organization and radiological safety responsibilities, authorities, and personnel qualifications; licensee audits and inspections, radiation safety program, control and monitoring; radiation safety training programs for workers; restricted area markings and access control; at existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills; environmental monitoring; radiological emergency procedures; product transportation; tailings management facilities and procedures; site and physcial plant decommissioning procedures other than tailings; and employee exposure date and bioassay programs.

b. Environmental Assessments

The environmental evaluation should consist of a detailed and documented evaluation of the items listed in subsection 274o of the Act.

IDNS regulations, part 332, establish requirements for environmental assessments that define the scope of the assessments and specify associated administrative procedures. Part 332 requires that the following topics be included in the environmental assessment: an analysis of the radiological and nonradiological public health impacts; an analysis of any impact on surface water or groundwater; consideration of alternatives to the licensed activities; and consideration of long-term impacts of licensed activities. The IDNS has stated in their program statement that environmental assessments will consist, at a minimum, of detailed and documented evaluations of the following items: Topography; Geology; Hydrology and water quality; Meteorology; Background radiation; Tailings retention system; Interim stabilization, Reclamation; Site decommissioning programs; Radiological dose assessment which addresses source terms, exposure pathways, dose commitment to individuals, dose commitment to the population, evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisons with background values, occupational dose, and radiological impact to biota other than man; Radiological monitoring programs to include pre-operational, operational, and post-operational monitoring; Impacts to quality and quantity of surface and groundwater; Environmental effects of accidents; and Evaluation of tailings management alternatives in terms of Illinois Regulations, part 332.

IDNS has also stated in their program statement that they will also examine the following items during preparation of environmental assessments: Ecology; Environmental effects of site preparation and facility construction; Environmental effects or use and discharge of chemicals and fuels; and Economic and social effects

Although the IDNS regulations do not explicitly request the licensee to prepare a document called an Environmental Report, the regulations do require the licensee to provide the information in and to perform the anlayses normally done in an Environmental Report.

c. Inspection and Enforcement

As a minimum, items which should be covered during the inspection of a uranium or thorium mill should be those items evaluated in the in-plant safety review, the environmental monitoring programs, and the byproduct material management plan. In addition, the inspector should perform independent surveys and sampling. A complete inspection should be performed at least once per year.

The IDNS has stated items examined during inspections will be consistent with items evaluated during licensing. IDNS will use appropriate NRC regulatory and inspection guides for guidance. A complete inspection is to be performed at least annually. As part of the IDNS inspection program, the inspectors will perform independent surveys and sampling in addition to examining aspects of licensee performance in: Administration; Mill processes including any additions, deletions, or operational changes; Accidents/incidents; Notices, instructions, and reports to workers in accordance with 32 Ill. Adm. Code 400; Action taken on previous findings; A tour of the facilities at the mill including tailings and waste management to determine compliance with regulations and license conditions; Records; Respiratory protection and bioassay to determine compliance with license conditions and 32 Ill. Adm. Code 340; Effluent and environmental monitoring; Training programs; Transportation and shipping; and Internal review and audit by management. Following each inspection, the inspector will confer with licensee representatives to inform them of the inspection results. The inspectors will submit a comprehensive written report to the Springfield headquarters describing inspection findings and detailing any apparent violations.

The IDNS enforcement policy is described as follows: The IDNS states that the purpose of the enforcement program is to: ensure compliance with Departmental regulations and license conditions; obtain prompt correction of violations and adverse conditions that may affect safety; deter future violations and occurrences of conditions inimical to safety; and encourage improvement of licensee performance, including prompt identification and reporting of potential safety problems.

The IDNS enforcement procedures have been described as follows: If IDNS discovers any deficiencies during an inspection, IDNS will send the licensee a written notice itemizing the area(s) of deficiency and will require the licensee to submit within 30 days of the date of the notice a written response which will state the corrective steps that have been taken by the licensee and the results achieved; the corrective steps that will be taken; and the date when full compliance will be achieved. If the licensee fails to provide an adequate response to the written notice, the IDNS normally holds a management conference with the licensee prior to taking enforcement action. The purpose of these conferences is to discuss items of deficiency or nonconformance, their significance and causes, and the licensee's corrective action. If compliance cannot be achieved through these informal conferences, IDNS will take more formal enforcement action. All non-emergency enforcement actions will be initiated by the issuance of a Preliminary Order and Notice of Opportunity for Hearing as afforded by Code 200 of the Illinois' regulations. The Order will itemize the alleged violations and direct the licensee to remedy these violations within a given time unless a hearing is requested within 10 days of the date of the Preliminary Order. In addition, the licensee may request an informal conference prior to or during the hearing. In cases where there is an imminent threat to public health and safety, IDNS has stated it is prepared to take immediate action in accordance with State law. State law provides that, if the IDNS finds that a condition exists which constitutes an immediate threat to public health due to the violation of any provisions of the Radiation Protection Act or any code, rule, regulation or order promulgated under the Radiation Protection Act and requires immediate action to protect the public health or welfare, IDNS may issue an order reciting the existence of such an immediate threat and the findings of the IDNS pertaining to the threat. The IDNS may summarily cause the abatement of such violation or may direct the Attorney General to obtain an injunction against such violator. An abatement order will be effective immediately; will include notice of the time and place of a public hearing before the Board to be held within 30 days of the date of such order to assure the justification of such order. The IDNS has exercised this authority on two occasions since becoming an Agreement State. The first was in response to widespread facility contamination from leaking static eliminators, and the second was to remediate a health and safety hazard caused by inadequate radiation safety practices of a licensee.

Other remedial actions available to IDNS include orders to modify, suspend, or revoke licenses, assessment of civil penalties, and impoundment of radiation sources. Also, licenses may be modified, suspended or revoked to remove a threat to public health and safety and the environment and for any reason for which license modification, suspension, or revocation is legally authorized.

No order of the IDNS, except an order to abate an immediate threat to health, will take effect until the IDNS has found upon conclusion of such hearing that a condition exists which constitutes a violation of any provision of the Radiation Protection Act or any code, rule or regulation promulgated under the Radiation Protection Act except in the event that the right to public hearing has been waived by the licensee, in which case the order shall take effect immediately. Follow-up inspections are to be conducted as necessary by IDNS staff to verify compliance with IDNS rules and enforcement orders and to rule out willful or flagrant violations, repeated poor performance in areas of concern, and serious breakdown in management controls. All previous areas of deficiency will also be given special attention by the inspector during the following routine inspection of the facility.

As a result of program reviews conducted on December 7-18, 1987 and January 29 through February 9, 1990, the NRC staff concluded that the IDNS has an acceptable licensing program which is capable of determining whether a licensee or applicant can operate safely and in compliance with the regulations and license conditions. Likewise during these program reviews, the NRC staff concluded that the IDNS has an acceptable compliance program which assures that licensee activities are being conducted in compliance with regulatory requirements and consistent with good safety practices.

d. Operational Data Review

To enhance radiological assessment capability and to confirm doses to receptors in unrestricted areas, States should require the semiannual reports, preferably within 60 days after January 1, and July 1, of each year, specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of

operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation does to the public. Additionally, all data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to confirm the dose to receptors.

IDNS has stated that according to 32 Ill. Adm. Code 332, IDNS will require licensees to submit written reports at least semiannualy that identify quantities of redionuclides released to unrestricted areas in liquid, gaseous, and particulate effluents during specified periods of operation. IDNS will also require submission of data from licensee environmental monitoring programs. Written reports and data must be for identical periods and frequencies and in a form permitting confirmation of potential annual radiation doses to the public.

Section 332.290f of 32 Ill. Adm. Code 332 requires semiannual reports to be filed within 60 days after January 1 and July 1 of each year covering the previous six months.

References: Illinois Program Statement, Section VI, "Implementation of the Regulatory Program" and 32 Ill. Adm. Code Parts 200, 332, and 340.

F. Instrumentation

36. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

IDNS has available an extensive inventory of field and laboratory instrumentation for radiation detection and measurment. A fully equipped radiochemistry facility has been established for performing radiochemical analysis of radioactive samples. Additionally, the IDNS has a well equipped mobile field laboratory which can be used for routine sample analysis while in a standby mode for emergency response. IDNS has also reported that they have twenty-two portable instrumentation kits available for use. Appendix H to the program statement provides an overview of the laboratory and instrument capabilities and lists the instrumentation available to the State.

IDNS has participated in a cross-comparison study on analysis of radionuclides in drinking water. The study has been completed and IDNS is expecting certification at time of this analysis.

Athough IDNS did not provide any information on Equipment Calibration procedures, the program reviews conducted December 7-19, 1987 and January 29 through February 8, 1990 found that the State had adequate instrumentation for surveying licensee operations and satisfied the requirements for calibrating its radiation detection equipment.

References: Illinois Program Statement, Section V, "Instrumentation," and Appendix H.

III. Staff Conclusion

Section 274d of the Atomic Energy of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this section with any State if—

(1) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection 0, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

The amendment to the State of Illinois agreement is for source material milling activities including the resulting 11e.(2) byproduct material to which section 274o of the Act applies. Section 274o provides that the State may adopt standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose. The staff has identified some sections of the State's regulations that are considered to be more stringent than NRC's regulations. The NRC staff has concluded that the program of the State of Illinois is in accordance with the requirements of section 274o of the Act and meets the NRC criteria for an amended agreement. The State's statutes, regulations, personnel, and licensing, inspection, and administrative procedures are compatible with, or more stringent than, those of the Commission and are adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

Dated at Rockville, Maryland, this 23d day of March 1990.

For the U.S. Nuclear Regulatory Commission.

Fred Combs,

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

Appendix A—Proposed Amendment Number One to the Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111½, par. 216b and ch. 111½; par., 241-19 to enter into this Agreement with the Commission; and,

Whereas, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which transferred regulatory authority over byproduct material as defined in section 11.e(1) of the act, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and spcial nuclear material received from other persons; and,

Whereas, Article III of that Agreement provides that the Agreement may be amended, upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and,

Whereas, Governor of the State of Illinois certified on _____ that the State of Illonois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, the Commission found on _____ that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and

Whereas, Amendment Number One to the Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. As amended, Article I now reads as follows:

Article I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 8, 7, and 8, and Section 161 of the Act with respect to the following:

A. Byproduct material as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to Article III, and subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under Chapters 8, 7, and 8, and Section 161 of the Act with respect to the following:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act.

2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

1. The construction and operation of any production or utilization facility;

2. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

3. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; and

4. The disposal of such other byproduct, source, or special nuclear materials as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the license shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to paragraph 2.b. of this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. of this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance of such disposal sites on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

3) Article IX of the Agreement is hereby amended by redesignating it Article X and by inserting a new Article IX. As amended, Articles IX and X now read as follows:

Article IX

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in the production of such material, the State shall comply with the provisions of section 274o of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custory of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term surveillance of such byproduct material and its disposal site.

Article X

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in Paragraphs 1), 2), and 3) of this Amendment Number One.

5) This Amendment Number one to the June 1, 1987 Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this ____ day of _____

For the United States Nuclear Regulatory Commission.

Chairman.

Done at Springfield, Illinois, in triplicate, this ___ day of _____.
For the State of Illinois.

Governor.

55 FR 23317
Published 6/7/90

Memorandum of Understanding; Subagreement #2 Between NRC and Illinois Department of Nuclear Safety on ASME Code Activities

ACTION: Publication of Subagreement #2 between U.S. NRC and the Illinois Department of Nuclear Safety on ASME Code Activities.

SUMMARY: Section 274i. of the Atomic Energy Act of 1954, as amended, allows the Commission to enter into agreements with the States "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." Section 274i. MOUs differ from agreements entered into 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 274i. MOU can be entered into by a State whether or not it has a 274b. agreement.

This Subagreement, signed by the NRC and the Illinois Department of Nuclear Safety, provides for cooperation between the State and NRC regarding ASME Code activities.

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 #1 which provided the basis for mutually agreeable procedures whereby the State may perform inspection functions for and on behalf of the NRC at certain reactors and materials licensees' facilities which generate low-level waste.

Subagreement #2 under this MOU provides the basis for mutually agreeable procedures whereby the Illinois Department of Nuclear Safety (IDNS) may perform inspection, audit and similar functions for nuclear power plants together with and for and on behalf of the Commission under a program created pursuant to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) and accepted by NRC and IDNS.

This Subagreement was published for public comment on November 22, 1988. NRC's summary of and response to these comments are as follows:

Summary of Comments—One letter was received from the American Society of Mechanical Engineers stating they had no comment on the Subagreement. Commonwealth Edison Company (CECo) provided comments on the proposed Subagreement, while indicating they supported the language in the proposed MOU. The majority of the CECo comments were actually requests for or recommendations that additional clarification be made regarding certain issues. The CECo comments and NRC responses are as follows:

NRC Participation in IDNS Rulemaking: CECo requested NRC's views as to what extent NRC intends to participate in State rulemaking proceedings related to ASME Code activities. Prior to the negotiation of this Subagreement, IDNS requested NRC views on a proposed rule. NRC provided comments as requested. Should a similar request be received in the future, NRC would consider performing such a review. In addition, NRC reserves the right to comment on any proposed State rules on its own initiative, consistent with applicable State or federal law.

State Verification of Compliance: CECo requested a clarification of the role of IDNS in verifying compliance with Section III and XI of the ASME Code for safety-related systems described in the FSAR/USAR. The NRC intends that inspections that are performed by State inspectors under the terms of this agreement will be done in cooperation with and on behalf of the NRC and that the NRC is repsonsible for conducting safety inspections of nuclear power plants to assure that the plants are designed, constructed, tested, and operated in accordance with pertinent NRC regulatory requirements.

NRC Expectations for IDNS Personnel: CECo believes the NRC should clarify the extent to which federal protocol would apply to State inspectors; that is, whether State inspectors should be considered agents of the NRC or the State. Under the Subagreement, IDNS inspectors will participate in NRC ASME Code inspections, and inspections conducted by IDNS under the Subagreement will be performed in cooperation with and on behalf of the NRC.

NRC Expectations of State Notice: CECo believes NRC should clarify the type of notice that IDNS inspectors are expected to give when acting under this Subagreement. Notice of inspection intentions is not normally given to NRC licensees prior to the conduct of the

inspection. IDNS inspectors will be required to not divulge unannounced inspections. When State inspectors are conducting ASME Code inspections of areas that fall under NRC jurisdiction, it should be asumed that these inspections are being performed under the terms of this Subagreement. Notice of IDNS inspections that fall outside the scope of this Subagreement have no applicability to the NRC.

Enforcement Actions: CECo requested that NRC clarify the assumption that NRC enforcement actions will be the only enforcement actions which will be taken as a result of joint inspections. The NRC intends that enforcement actions not be duplicated by the State when enforcement action is taken by NRC, and the Subagreement clearly states that the NRC controls enforcement actions. NRC will coordinate with the State to ensure that this occurs.

Resolution of Conflicts: CECo requested that NRC clarify its understanding of the relationship between IDNS, ASME and the National Board of Boiler and Pressure Vessel Inspectors. The NRC understanding is that the ASME is the final arbitrator over any interpretation of ASME requirements.

In view of the comments received and NRC's response, which satisfactorily addresses the comments, the Commission sees no need to revise the Subagreement as published.

FOR FURTHER INFORMATION CONTACT: Roland Lickus, Chief, State and Government Affairs, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Building 4, Glen Ellyn, Illinois 60137 (telephone 312/790-5500).

Dated at Rockville, MD, this 1st day of June 1990.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Governmental and Public Affairs.

SUBAGREEMENT #2 BETWEEN THE NUCLEAR REGULATORY COMMISSION AND THE ILLINOIS DEPARTMENT OF NUCLEAR SAFETY

I. Authority

The Nuclear Regulatory Commission (NRC) and the Illinois Department of Nuclear Safety (IDNS) entered into this Subagreement under the authority of the Memorandum of Understanding (MOU) of April 1984, between Illinois and NRC (19 FR 20586; 5/15/84) and under section 274i, of the Atomic Energy Act of 1954, as amended.

II. Background

A. NRC and ASME Code

1. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, require the Nuclear Regulatory Commission (NRC) (previously the Atomic Energy Commission (AEC)) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure the common defense and security and to protect the health and safety of the public. Under these statutes, the NRC has the ultimate responsibility to regulate nuclear power plant safety.

2. In June 1971, AEC promulgated regulations which established minimum quality standards for the design, fabrication, erection, construction, testing, and inspection of boiling and pressurized water-cooled nuclear power plants by requiring conformance with appropriate editions and addenda of specified published industry codes and standards. These regulations, 10 CFR § 50.55a (and the now revoked § 115.43a), have provided specific guidance to manufacturers and users of structures, systems and components of nuclear power plants for meeting Criterion 1 of the NRC's "General Design Criteria for Nuclear Power Plants" in Appendix A of 10 CFR part 50 (See 36 FR 11423; 6/12/71). That criterion requires that structures, systems and components of nuclear power plants important to safety be designed, fabricated, erected, and tested to quality standards that reflect the importance of the safety functions to be performed. In particular, these regulations have required pressure vessels, piping, pumps, and valves that were part of a reactor's coolant pressure boundary to be constructed (e.g., designed, fabricated, inspected, and tested) in accordance with ASME Code Editions and Addenda.

3. The AEC stated in the preamble of the regulations, among other things, that:

i. It accepted the ASME inspection process;

ii. Licensees, vendors and others could use the ASME inspection and survey systems in partial fulfillment of its requirements to the extent that they were shown by the description of the quality assurance program required by § 50.34(a)(7) to satisfy the applicable requirements of Appendix B of 10 CFR part 50;

iii. Section 50.55a(b)(2) (now § 50.55a(a)(3)) provides a basis for the authorization of alternatives to the requirements of the specified ASME Code sections and other standards if it can be shown that an acceptable level of safety will be provided; and

iv. It is considered that a significant improvement in the level of quality in construction of structures, systems and components important to safety would be afforded by compliance with the requirements of more recent versions of an ASME Code than those specified in the amendments and it encouraged such compliance whenever practicable, regardless of the date of purchase of equipment or the provisions of the amendments.

4. Presently, to promote the safe operation of nuclear components, NRC requires use of Section III, Division 1, of the ASME Code for construction of Class 1, 2, and 3 components, and Section XI, Division 1, of the ASME Code for inservice inspections of these components.

5. In March of 1981, NRC, ASME, and the National Board of Boiler and Pressure Vessel Inspectors (NB) entered into an "Exchange of Correspondence" that set forth "Principles" for "The Accreditation and Inspection of Nuclear Supplier Quality Assurance Programs." These principles define the NRC's, the ASME's, and the NB's responsibilities and actions with respect to the ASME/NB accreditation program and third party inspection of Certificate Holders providing products and services to nuclear facilities in accordance with ASME Code, Section III (Divisions 1 and 2). The key objective of the Exchange of Correspondence was to provide NRC licensees and license applicants with a non-duplicative, efficient and effective procedure for implementing the ASME/NB nuclear accreditation program and the monitoring of supplier quality assurance (QA) activities to ensure compliance with NRC, ASME, and NB programmatic QA requirements.

6. On March 31, 1988, the NRC's Office of Inspection and Enforcement distributed Information Notice No. 88-21 informing NCR licensees, construction permit holders and vendors of NRC's recognition of ASME's Accreditation Program for holders of N, NPT, NA, and NV stamps and Certificates of Authorization.

7. NRC's endorsement of the system established under ASME consisted of a detailed assessment of the ASME infrastructure from which, among other things, NRC has determined that it provides an effective inspection program that NRC can accept to carry out its mission.

B. Illinois, IDNS, and the ASME Code

1. The ASME Code provides rules for the construction of heating boilers,

power boilers, pressure vessels and nuclear power plant components. Also, the ASME Code provides recommended rules for the care and operation of heating boilers, recommended guidelines for the care of power boilers, and rules for the inservice inspection of nuclear power plant components. The ASME has an Accreditation System that is used to ensure the quality of construction of ASME Code components. The ASME Accreditation System is based on a program of authorized inspection, which requires an Authorized Inspector (AI), (an Authorized Nuclear Inspector (ANI) in the case of the nuclear sections of the ASME Code), designated or approved by an Authorized Inspection Agency (AIA) to inspect independently the activities of a Certificate Holder during construction under the ASME Code. In addition, Section XI of the ASME CODE provides the rules and requirements for inservice inspection, including inservice testing, of nuclear power plants. Section XI is also based on a program of authorized inspection which requires that an Authorized Nuclear Inservice Inspector (ANII) from an AIA independently review the owner's inservice inspection plan, verify that the required tests and inspections have been performed, the requirements met, and the results correctly recorded.

2. In accordance with the provisions of Section 2 of the Illinois Boiler and Pressure Vessel Safety Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par. 3202) the Illinois Board of Boiler and Pressure Vessel Rules adopted the ASME Boiler and Pressure Vessel Code.

3. In pertinent part, Section 2a of the Illinois Boiler and Pressure Vessel Safety Act (Ill. Rev. Stat. 1985, ch. 111 1/2 par. 3202a) provides that IDNS shall have sole State jurisdiction with respect to ASME Code compliance over all boilers and pressure vessels contained within or upon or in connection with any nuclear facility within the State of Illinois and that IDNS shall have the same authority and shall have and exercise the same powers in relation to such boilers and pressure vessels as the Board or the State Fire Marshal has and exercises in relation to other boilers and pressure vessels within the State of Illinois.

4. Illinois also enters into this Subagreement to facilitate implementing its responsibilities with respect to ASME code compliance under the Illinois Boiler and Pressure Vessel Safety Act.

III. Scope

A. This Subagreement defines the way in which the NRC and IDNS will cooperate in the planning and conducting of inspections of nuclear power plants to ensure compliance with NRC's regulations and the Exchange of Correspondence on ASME Section III and Section XI components. This Subagreement does not apply to investigations or inquiries conducted by the NRC. Except as provided in VII.B.13., this Subagreement does not apply to IDNS's inspections of, and enforcement actions regarding boilers, pressure vessels and appurtenances not covered in a Final Safety Analysis Report (FSAR)/Updated Safety Analysis Report (USAR).

B. For the purpose of this MOU, "Inspection" is defined as an audit, observation, examination, review, and related functions to verify whether an item, component, or activity conforms to specified requirements of the ASME Code Sections III and XI. The scope of these inspections shall be limited to those systems described in the FSAR/USAR.

C. Nothing in this Subagreement is intended to restrict or expand the statutory authority of NRC, Illinois, or IDNS, or to affect or vary the terms of agreement in effect under the authority of Section 274b. of the Atomic Energy Act of 1954, as amended; nor is anything in this Subagreement intended to restrict or expand the authority of Illinois and IDNS on ASME Code matters not within the scope of this Subagreement.

IV. Purpose and Intent

A. Although NRC has the ultimate responsibility to regulate nuclear power plant safety under the Atomic Energy Act and Energy Reorganization Act, noted above, NRC recognizes the interest of Illinois in the overall safety and health of its citizens. For this reason, NRC and IDNS agree to cooperate in implementation of NRC's safety programs related to nuclear power plants. Further, NRC recognizes that, to the extent that IDNS supports NRC's safety mission, additional resources are applied to overall nuclear safety. Thus, NRC recognizes IDNS's desire to participate in NRC's inspections of nuclear power plants.

B. The objective of this Subagreement is to provide a framework for IDNS to assist NRC in performing safety inspections under 10 CFR § 50.55a. IDNS intends to verify owner's compliance with Sections III and XI of the ASME Code for all safety-related systems, applicable nonsafety-related systems, components, and supports of these systems and components, as described in the FSAR/USAR of nuclear power plants. It is intended that these verifications will apply to Section III construction activities and to Section XI inservice inspection activities after Section III requirements have been met. The NRC will take appropriate enforcement actions for joint inspections conducted under this Subagreement.

C. Within this framework, NRC and IDNS intend that IDNS's role in ASME Code activities not only help maintain safety, enhance joint understanding, reduce duplication of effort, and provide a unified position on matters of joint concern, but also that it be well-defined, appropriately controlled and agreed to in advance by NRC and IDNS to minimize potential jurisdictional and technical disputes.

D. IDNS inspectors may accompany NRC personnel inspecting nuclear power plant components manufactured outside Illinois but intended to be used within it.

V. NRC's General Responsibilities

NRC is responsible for conducting safety inspections of nuclear power plants to assure that the plants are designed, constructed, tested, and operated in accordance with pertinent NRC regulatory requirements. These inspections are conducted in accordance with the NRC Inspection Manual using personnel appropriately qualified to perform the necessary tasks. The NRC will take appropriate enforcement actions for joint inspections conducted under this Subagreement.

VI. IDNS's General Responsibilities

A. Assist the NRC when requested in performing planning NRC safety inspections under 10 CFR 50.55a.

B. Cooperate with the NRC in such inspections to assure that these components meet the requirements of the ASME Code as adopted and endorsed by the NRC.

C. Conduct inspections at manufacturing facilities, materials suppliers, AIAs, architect/engineers and other ASME related activities not covered in this Subagreement to verify ASME Code compliance; IDNS will provide the results of these activities to NRC for information.

D. Inspect boilers and pressure vessels in nuclear facilities within the State of Illinois and issue Inspection Certificates as required by sections 10 and 11 of the Illinois Boiler Pressure Vessel Safety Act, provided that IDNS's activities under this paragraph shall not be inconsistent with Federal law and the rules, policies, and practices of the NRC.

VII. Implementation—NRC's and IDNS's Specific Responsibilities

IDNS and NRC agree to work in concert to assure that the following training, inspection and enforcement,

and information exchange protocol are followed.

A. Training

1. IDNS's inspectors accompanying NRC's inspectors will be qualified and certified by IDNS in accordance with the NRC Inspection Manual, or its equivalent. Based on IDNS inspector performance, NRC reserves the right to revoke IDNS inspector certification under this Subagreement and it shall provide the reasons for the action in writing to IDNS.

2. NRC will use its best efforts to make space available in its inspector training courses, seminars, and special orientation programs to accommodate the training needs of IDNS inspectors.

3. IDNS will pay the travel and per diem expenses of its inspectors attending training courses. Where NRC establishes special training classes, IDNS agrees to reimburse NRC for its costs of training IDNS inspectors.

4. IDNS personnel who inspect vessels and appurtenances not covered in an FSAR/USAR shall meet the qualification requirements under Illinois State law and are not required to be qualified and certified in accordance with the NRC Inspector Manual or its equivalent.

B. Inspections and Enforcement

1. IDNS's activities are not intended to duplicate NRC's regulatory activities.

2. IDNS's inspectors are responsible for meeting all requirements of an NRC licensee related to personal safety and access at the plant site.

3. Before IDNS's inspectors are qualified and certified under this Subagreement, they may participate with NRC inspectors as observers at safety inspections or work under the guidance and direction of NRC's inspectors.

4. To facilitate cooperation and efficient use of resources, NRC and IDNS inspectors will conduct joint team safety inspections under this Subagreement. An NRC inspector will lead the team and be in charge of the inspection.

5. For these joint team safety inspections, NRC and IDNS will work together to develop inspection plans. For reactive inspections in which a quick response is necessary, time may not permit the joint development of an inspection plan or IDNS's participation in such an inspection. NRC will involve IDNS to the maximum extent possible consistent with protection of the public health and safety.

6. IDNS will use NRC to channel any IDNS information request to a licensee which is made to support the planning and implementation of the joint team safety inspections.

7. NRC and IDNS will perform safety inspections in accordance with the inspection plans using applicable procedures in the NRC Inspection Manual.

8. Should IDNS develop inspection findings or otherwise identify problems about ASME Code compliance, it will identify these promptly to the NRC inspection team leader.

9. IDNS may attend and participate in the NRC's inspection entrance and exit meetings with licensees of nuclear power plants in Illinois or with vendors fabricating systems or components for use in Illinois on matters within the scope of this Subagreement.

10. Within 15 working days after completing its portion of a safety inspection, IDNS will document to NRC its inspection's scope, details and results in a report written in the format described in the NRC Inspection Manual. The NRC team leader will use the information in preparation of the NRC's final report.

11. If, based on its review of the IDNS report, NRC identifies potential violations of NRC regulatory requirements, NRC will take appropriate enforcement action as prescribed in Appendix C of 10 CFR part 2. If NRC proposes escalated enforcement action, based on IDNS findings, it will give IDNS reasonable notice of the time and place of the enforcement conference, and IDNS may attend that conference. At NRC request, IDNS will assist NRC during any enforcement conferences or hearings at which NRC takes enforcement action as a result of a violation identified by an IDNS inspector.

12. IDNS will be given reasonable notification of and the opportunity to participate in NRC inspections of a licensee's corrective action(s) resulting from a joint team safety inspection.

13. IDNS will give reasonable notification to NRC of its inspections of boilers, pressure vessels, and appurtenances not covered in an FSAR/USAR.

14. IDNS will inform NRC if it is unable to participate in an NRC inspection activity.

C. Information Exchange

1. IDNS and NRC agree to the greatest extent possible and in good faith to make available to each other information within the intent and scope of this Subagreement. Specifically, NRC recognizes the value of IDNS's data acquisition system and IDNS agrees to make available to NRC data in this system related to activities under this Subagreement.

2. IDNS and NRC agree to meet periodically at mutually agreeable times and places to exchange information on matters of common concern pertinent to this Subagreement.

3. IDNS and NRC agree to consider each other's identified information needs and concerns, as well as those of the licensee, when developing inspection plans.

4. NRC agrees to make available to IDNS inspection-related documentation for inspections conducted under this Subagreement.

5. IDNS will not publicly disclose inspection findings prior to the release of the NRC inspection report.

6. To preclude the premature public release of sensitive information, IDNS and NRC shall protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Illinois Freedom of Information Act and other applicable authority. IDNS and NRC shall consult with each other before releasing sensitive or proprietary information related to findings under this Subagreement.

VIII. Contacts

A. The principal contacts for this Subagreement will be the Director, Division of Reactor Safety, NRC, Region III, and the Manager, Office of Nuclear Facility Safety, IDNS. These individuals may designate appropriate staff representatives for the purpose of administering this Subagreement.

B. Identification of these contacts is not intended to restrict communication between NRC and IDNS staff members on technical and other day-to-day activities.

IX. Resolution of Conflicts

If disagreement arise about ASME Code related issues, NRC or IDNS may consult ASME or the National Board, as necessary. ASME is the final authority on such issues concerning ASME Code compliance regarding ASME Code stamped components. Should conflicts or disagreements occur between NRC and IDNS, NRC and IDNS will jointly work together to resolve these differences. The NRC's General Counsel is the final authority to interpret the Commission's regulations.

X. Effective Date

This Subagreement will take effect after it has been executed by both parties.

XI. Duration, Termination, and Modification

This Subagreement may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party.

XII. Separability

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

Dated: April 9, 1990.

For the Nuclear Regulatory Commission,

James M. Taylor,

Executive Director of Operations.

Dated: May 15, 1990.

For the Illinois Department of Nuclear Safety,

Thomas W. Ortciger,

Director.

55 FR 33969
Published 8/20/90

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and Defense Nuclear Facilities Safety Board

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of memorandum of understanding.

SUMMARY: On June 22, 1990, the Nuclear Regulatory Commission (NRC) and the Defense Nuclear Facilities Safety Board (the Board) entered into a Memorandum of Understanding. The purpose of the MOU is to provide the basis for the Board to obtain assistance from the NRC on matters pertaining to the Board's responsibilities as well as administrative support for the Board's activities.

FOR FURTHER INFORMATION CONTACT: James L. Blaha, Assistant for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–1703.

Dated at Rockville, Maryland, this 13th day of August 1990.

For the Nuclear Regulatory Commission.

James L. Blaha,

Assistant for Operations.

Purpose

The purpose of this Memorandum of Understanding is to provide the basis for the Defense Nuclear Facilities Safety Board (hereafter referred to as the Board) to obtain assistance from the U.S. Nuclear Regulatory Commission (NRC) (other than assistance from the ACRS) on matters pertaining to the Board's responsibilities as well as administrative support for the Board's activities.

Authority and Background

The National Defense Authorization Act for FY 1989, Public Law 100–456, added chapter 21 to the Atomic Energy Act of 1954, as amended, and established the Board to review and evaluate Department of Energy defense nuclear facilities. Section 1441 of the Act authorizes the Board to obtain advice of the staff of the NRC and the Advisory Committee on Reactor Safeguards on matters pertaining to the Board's responsibilities, with the consent of and under appropriate support arrangements with the NRC. In addition, the NRC will, consistent with the NRC's mission, provide the Board with requested administrative support. These technical and administrative support services will also be provided under the authority of the Economy Act of 1932, as amended.

Execution

Technical and administrative support services will be provided as agreed upon to the Board to meet the requirements of the National Defense Authorization Act for FY 1989. Each organization will designate a liaison officer who will direct and monitor all interactions between the two organizations. The NRC liaison is James L. Blaha, Assistant for Operations, Office of the Executive Director for Operations. The Board liaison is Kenneth M. Pusateri, General Manager.

1. All requests for NRC assistance will be directed to the NRC liaison officer.

2. Requests for support of an on-going nature to be provided by NRC (e.g., contractual support) will be covered by an appendix to this MOU which must be approved by the Commission.

3. Request for support of an ad hoc or one-time nature will be handled as follows:

a. Informational requests or briefings requiring four staff hours or less may be made orally to the NRC liaison officer. When such support exceeds a total of 16 hours in any one month, additional requests for support must be submitted in writing.

b. Requests for assistance which are likely to require more than four hours, but less than 100 hours will be submitted in writing and must be approved by the Executive Director for Operations (EDO).

c. Requests for assistance which are likely to exceed 100 hours must be submitted in writing and approved by the Chairman, NRC.

4. The NRC will evaluate all requests to determine the amount of time needed to fulfill each request and so advise the Board. The NRC will make every attempt to fulfill each request within the Board's requested timeframe.

Amendments and Appendices

The NRC and the Board, by mutual agreement, may amend this document or enter into any supplementary agreement as they deem appropriate.

Limitations

The provisions of this document shall go into effect when signed by both the NRC and the Board, and shall remain in effect unless amended by mutual agreement or terminated by either party by providing 90 days written notice to the other party.

Dated: June 22, 1990.

John T. Conway,

Chairman, Defense Nuclear Facility Safety Board.

Dated: June 21, 1990.

James M. Taylor,

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

55 FR 50790
Published 12/04/90

Appendix A to the Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Defense Nuclear Facilities Safety Board

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of appendix A to memorandum of understanding.

SUMMARY: On November 28, 1990, the Nuclear Regulatory Commission (NRC) and the Defense Nuclear Facilities Safety Board (the Board) approved Appendix A to the Memorandum of Understanding between the parties dated June 22, 1990. Appendix A outlines the Employee Assistance Program (EAP) support services which NRC will provide to the Board.

FOR FURTHER INFORMATION CONTACT: James L. Blaha, Assistant for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–1703.

Dated at Rockville, Maryland, this 3rd day of December, 1990.

For the Nuclear Regulatory Commission.

James L. Blaha,

Assistant for Operations.

Appendix A to the Memorandum of Understanding Between the Defense Nuclear Facilities Safety Board and the Nuclear Regulatory Commission

Employee Assistance Program

This appendix sets forth an understanding of the Employee Assistance Program (EAP) support services which the Nuclear Regulatory Commission (NRC) will provide to the Defense Nuclear Facilities Safety Board (Board).

Authority and Background

This agreement is entered into pursuant to Section 114 of the National Defense Authorization Act for FY-1989 (Public Law 100–456). The NRC considers employees to be the agency's most valuable resource. For this reason, their health and safety are of paramount concern. The agency also has a major responsibility for protecting the health and safety of the public and national security. Consistent with these dual concerns, the agency has established a policy of zero tolerance for illegal drug use and encourages employees with an alcohol or drug abuse problem to seek assistance. Executive Order 12564 mandates that all Federal agencies establish Employee Assistance Programs to accomplish these goals.

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; the NRC Drug Testing Plan (NUREG-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.

FOR FURTHER INFORMATION CONTACT: Frederick C. Combs, Assistant Director of State, Local and Indian Relations, State Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-0325.

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.

Subagreement No. 3 Pertaining to State Resident Engineers Between the U.S. Nuclear Regulatory Commission and the State of Illinois

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Illinois (State) enter into this Subagreement under the authority of the Memorandum of Understanding (MOU), dated April 27, 1989, between NRC and the State, section 274i of the Atomic Energy Act of 1954, as amended, and section 4 of the Illinois Nuclear Facility Safety Act.

The State recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the NRC to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure the common defense and security and to protect the public health and safety. Under these statutes, NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC. NRC will only consider State proposals for instruments of cooperation to conduct inspection programs of NRC-regulated activities that provide for close cooperation with, and oversight by, the NRC.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, conducting safety inspections of nuclear power plants to assure that the plants are designed, constructed, tested, maintained, operated, and decommissioned in accordance with NRC regulatory requirements.

The NRC operating reactor inspection program is conducted by Headquarters personnel, region-based inspectors, and Resident Inspectors. NRC Resident Inspectors are located at each nuclear power plant site. Resident Inspectors provide the major onsite NRC presence for direct observation and verification of licensee activities. The NRC Resident Inspector also acts as the primary onsite evaluator for the NRC inspection effort related to such items as Licensee Event Reports, events, and incidents. NRC Resident Inspectors also interact with local officials, the press, and the public.

D. This Subagreement is intended to be consistent with and implement the provisions of the NRC's policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989) which relates to State proposals to enter into instruments of cooperation with the NRC concerning State participation in NRC inspections at operating commercial nuclear power plants.

III. Scope

A. This Subagreement defines the way in which NRC and the State, with the assistance of State Resident Engineers, will cooperate in planning and conducting inspections of nuclear power plants in the State to ensure compliance with NRC regulations. This Subagreement does not apply to investigations or inquiries conducted by NRC.

B. For the purpose of this Subagreement, inspection is defined as the examination, review, or evaluation of any program or activity of a licensee to determine the effectiveness of the program or activity in ensuring that the health and safety of the public and plant personnel are adequately protected and that the facility is operated safely; and to determine compliance with any applicable NRC rule, order, regulation, license condition pursuant to the Atomic Energy Act of 1954, as amended, and commitments made to NRC.

C. Nothing in this Subagreement is intended to restrict or expand the statutory authority of NRC or the State or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Subagreement intended to restrict or expand the authority of the State on matters not within the scope of this Subagreement.

D. Nothing in this Subagreement confers upon the State or State Resident Engineers authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; and (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

E. Under this Subagreement, one State Resident Engineer may be assigned to each nuclear power plant site in the State.

IV. NRC's General Responsibilities

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

V. The State's General Responsibilities

A. The State, through its State Resident Engineer, will cooperate with NRC in performing safety inspections. Such inspections shall be conducted in accordance with NRC regulatory requirements and procedures governing operating nuclear power plants in the State and under the oversight of an authorized NRC representative.

B. The State will cooperate with the NRC in such inspections as necessary for the NRC to ensure that power reactors in the State continue to be operated without undue risk to the public health and safety and the environment.

C. State activities will be performed in accordance with Federal standards and requirements and NRC practices, with no undue burden on the NRC or its licensees.

VI. Implementation

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

A. Staffing

1. The State will select its State Resident Engineers in accordance with its own procedures and qualifications, patterned after those for NRC Resident Inspectors.

2. State Resident Engineers will have education and experience equivalent to that required for an NRC Resident Inspector.

3. The State is responsible for obtaining security clearances for State Resident Engineers that are acceptable to the nuclear power plant licensee.

4. The State is responsible for ensuring that State Resident Engineers comply with all requirements established by the nuclear power plant licensee, including fitness for duty, site access, and onsite space and support. NRC is not responsible for ensuring access or space for State personnel.

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

B. Training

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

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

2. NRC will use its best efforts to make space available to its Inspector training courses and special orientation programs to accommodate the training needs of State Resident Engineers.

3. The State will pay the travel and per diem expenses of State Resident Engineers attending training courses. Where NRC establishes special training classes, the State agrees to reimburse NRC for its costs of training State Resident Engineers, if requested.

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

5. Information acquired by NRC relating to the ability of a State Resident Engineer to

perform inspections satisfactorily in accordance with NRC regulations, requirements, standards, and procedures will be provided to the State for appropriate action.

C. Inspections and Enforcement

1. The State Resident Engineer's activities are intended to assist NRC in the conduct of its regulatory activities.

2. The State Resident Engineers are responsible for meeting all requirements imposed by a licensee related to personal safety, radiological protection, and access at the plant site.

3. To the extent practicable, it is intended that the State Resident Engineers will arrange their schedules of inspection activities in coordination with NRC personnel in order to provide the widest possible coverage of the plant and its operations.

4. If the State intends to participate in the inspection process, the State will provide recommendations for the NRC inspection plan, consistent with NRC Inspection Manual chapter 2515, generally describing proposed inspection activities for the upcoming month. These recommendations will include a schedule of the inspections and a listing of NRC procedures to be used by the State Resident Engineer. In accordance with section VI.C.1 above, such recommendations shall be designed to assist NRC site inspection activities. NRC shall take such recommendations into account in formulating its Master Inspection Plans.

5. The State will submit the monthly inspection recommendations to the NRC Resident Inspector in sufficient time to allow NRC review before preparation of the inspection plan. NRC will review the State's inspection recommendations and will inform the State of any activities that appear inappropriate, untimely, or impose an undue burden on NRC or the licensee, such as schedular 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. NRC staff inspection activity will not be reduced for a facility below minimum program requirements on the basis of the availability of State's inspection resources.

6. NRC will coordinate with the State Resident Engineers, to the extent practicable, unscheduled inspections conducted in response to events, issues, and allegations.

7. An NRC Resident Inspector will initially accompany each State Resident Engineer on at least two inspections to review the performance of the State Resident Engineer. On the basis of these reviews, the NRC Resident Inspector will make recommendations to the State Resident Engineer regarding the preparation, conduct, and technical adequacy of the inspections. On a monthly basis, the NRC Senior Resident Inspector shall determine and authorize which, if any, inspections may be conducted by the State Resident Engineer on an unaccompanied basis. Such inspections shall be conducted in accordance with sections VI.C.4 and VI.C.5. State Resident Engineers may perform as members of NRC inspection teams, provided State Resident Engineers are qualified in the activity to be examined by the NRC inspection team and the NRC inspection team leader authorizes the State Resident Engineer's participation. All inspections performed by State Resident Engineers shall be in accordance with the NRC site inspection plans and NRC inspection practices.

8. The NRC Resident Inspectors may accompany the State Resident Engineers on any inspection. The State Resident Engineers may, at the NRC's discretion, accompany the NRC Resident Inspectors on inspections, at inspection entrance and exit interviews, and at enforcement meetings. The State recognizes that there may be occasions when, because of the sensitive nature of certain inspections and meetings, it will be necessary for NRC, at its discretion, to conduct such activities privately and separately.

9. NRC will provide the State with a copy and current updates of the NRC Inspection Manual and Master Inspection Plan (MIP) for each reactor site in the State at which a State Resident Engineer is stationed. The State will hold the MIP in confidence and will not release it to the public or licensees except in accordance with section VI.D.8 of this Subagreement.

10. Allegations received by the State Resident Engineers will be provided to the NRC Resident Inspectors and processed in accordance with NRC procedures. Upon request by NRC, the State Resident Engineers will be made available to assist the NRC in addressing allegations.

11. The results of all State Resident Engineers' inspections will be discussed in a timely manner with the NRC Resident Inspectors. Matters that may require action by the licensee will be discussed with licensee management by the NRC Resident Inspectors, or by the State Resident Engineers in the presence of the NRC Resident Inspectors, except as may be necessary under section VI.C.12.

12. If a State Resident Engineer identifies situations with immediate safety significance, he or she will immediately communicate this information to the licensee and the NRC Resident Inspectors. It is essential that this information be discussed with an NRC representative immediately upon discovery so that NRC may take prompt action as dictated by the situation. If the NRC Resident Inspectors are unavailable, a State Resident Engineer will transmit this information immediately to NRC, Region III (the Regional Duty Officer during non-business hours).

13. All written communications with the licensee will be made through NRC. If a State Resident Engineer prepares a written report of the results of an inspection activity covered by this Subagreement, the report will not be sent directly to the licensee, but will be sent to the NRC Region III office and to the NRC Resident Inspectors. The State is responsible for the technical adequacy of State Resident Engineers' inspection reports. NRC will forward the report to the licensee with a cover letter discussing the issues, if any, that the NRC believes warrant action by the licensee.

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

D. Communications and Information Exchange

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

2. NRC and the State agree to meet periodically, at least annually, at mutually agreeable times to exchange information on matters of common concern pertinent to this Subagreement. Unless otherwise agreed, such meetings will be held in the NRC Region III Office or at the NRC Resident Inspector's Office.

3. 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 NRC determines should be closed as provided in section VI.C.8 of this Subagreement.

4. The State and NRC agree to consider each other's identified information needs and concerns when developing inspection plans.

5. The State will conform to NRC practices regarding information disclosure. For instance, the State must abide by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.

6. To preclude the premature public release of sensitive information, the State and NRC shall protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Illinois Freedom of Information Act and other applicable authority. The State and NRC shall consult with each other before releasing sensitive or proprietary information related to this Subagreement.

7. Press releases regarding State's activities or NRC inspections in which the State has been involved under this Subagreement which are prepared by one party will be provided to the other party before issuance. Press releases are to conform to information disclosure restraints of sections VI.D.5 and VI.D.6.

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

VII. Contacts

A. The principal senior management contacts for this Subagreement will be the Director, Division of Reactor Projects, Region III, NRC, and the Manager, Office of Nuclear Facility Safety, Illinois Department of Nuclear Safety. These individuals may designate appropriate staff representatives for the purpose of administering this Subagreement.

B. Identification of these contacts is not intended to restrict communication between NRC and State staff members on technical and other day-to-day activities.

VIII. Resolution of Conflicts

A. If disagreements or conflicts arise about matters within the scope of this Subagreement, 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 III, NRC.

C. Differences that cannot be resolved in accordance with sections VIII.A and VIII.B will be reviewed and resolved by the Regional Administrator, Region III, NRC and the Director, Illinois Department of Nuclear Safety. 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 Subagreement shall become effective upon signing by the Director, Illinois Department of Nuclear Safety, and the Executive Director for Operations, NRC, and shall remain in effect permanently unless terminated by either party on 30 days written notice.

X. Duration, Termination, and Modification

A formal review, not less than six months after the effective date, will be performed by the NRC to evaluate implementation of the Subagreement and resolve any problems identified. This Subagreement 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 Subagreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Subagreement and the application of such provisions to other persons or circumstances shall not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: November 14, 1990.

James M. Taylor,

Executive Director for Operations.

For the State of Illinois.

Dated: November 20, 1990.

Thomas W. Ortciger,

Illinois Department of Nuclear Safety

56 FR 37243
Published 8/5/91

First Memorandum of Understanding Between the Office of the Nuclear Waste Negotiator and the Nuclear Regulatory Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of a memorandum of understanding.

SUMMARY: On July 26, 1991, the Office of the U.S. Nuclear Waste Negotiator (ONWN) and the U.S. Nuclear Regulatory Commission (NRC) signed a Memorandum of Understanding (MOU) outlining the initial procedures for interactions between the two Offices. The text of the MOU is printed below.

FOR FURTHER INFORMATION CONTACT: Robert M. Bernero, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3352.

Dated in Rockville, Maryland, this 30th day of July, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

First Memorandum of Understanding Between the Office of the U.S. Nuclear Waste Negotiator and the U.S. Nuclear Regulatory Commission

I. Introduction

This Memorandum of Understanding (MOU) outlines the initial procedures for interactions between the Office of the U.S. Nuclear Waste Negotiator (ONWN) and the U.S. Nuclear Regulatory Commission (NRC) in carrying out the Nuclear Waste Policy Amendment Act of 1987 (title V of Pub. L. 100-203),[1] which amended the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425) (the Act) and, *inter alia*, created the ONWN. The ONWN is an independent establishment in the Executive Branch, separate from NRC and all other operating departments and agencies of the Federal Government. This independence facilitates the mission of the ONWN to find States or Indian Tribes willing to negotiate regarding the siting of a monitored retrievable storage facility or a permanent repository within their jurisdictions as part of an integrated waste management system for the disposal of spent nuclear fuel and high-level radioactive waste.

II. Purpose

The purpose of this MOU is to establish a working relationship between the ONWN and NRC that assures a timely flow of information between the parties; provides the ONWN with use of such NRC services, facilities, and personnel as the Commission determines appropriate and consistent with the scope described in Section V, and maintains each party's independence.

III. Authority

This MOU is entered into under the authority of section 409 of the Act (42 U.S.C. 10249), which provides that each department, agency, and instrumentality of the United States may furnish the Negotiator such information as he determines to be necessary to carry out the functions of the ONWN, and under the authority of section 408 of the Act (42 U.S.C. 10248(4)), which specifies that the Negotiator may utilize the services, personnel, and facilities of other Federal agencies, subject to the consent of the head of any such agency.

IV. Matters Not Addressed

Subsequent MOU's between the parties addressing procedures and relations regarding other provisions of the Act may be entered into at a later date.

V. Policy

The working relationship of the parties under this MOU will be consistent with the provisions of the Act related to high-level nuclear waste regulatory matters associated with a monitored retrievable storage facility and a geologic repository including transportation and safeguards. The NRC will respond in a timely manner to all written requests made by the ONWN to NRC for services, personnel, facilities, or information, subject to the discretion of the Commission and as permitted by law. The scope of the NRC activity generally will be limited to pre-licensing consultations and discussion with the Office of the Nuclear Waste Negotiator, a potential applicant, or a potential host State or Indian tribe.

Information made available to the ONWN under this agreement may be used at that agency's option in carrying out its responsibilities under the Act. The ONWN and NRC contemplate that all information requested and provided

[1] 42 U.S.C. 10241 *et seq.*

would be information that may be released to the public.

VI. Points of Contact

The points of contact for routine daily communication between the ONWN and NRC will be Counsel for the ONWN located in the Washington, DC liaison office and the Director of the Office of Nuclear Material Safety and Safeguards within NRC.

VII. Supplemental Interagency Agreements

Unless otherwise agreed by the Commission and the Negotiator, when requested by the Negotiator to provide services, personnel, facilities or information, NRC shall determine whether compliance with such requests will be in furtherance of its purposes, responsibilities, and obligations. To the extent NRC determines that compliance is in furtherance of such purposes, responsibilities, and obligations, it will assume the costs of such compliance.

If it is determined that a commitment, obligation, or transfer of funds is required, the details of the levels of support to be furnished by one organization to the other, with respect to funding, will be developed in specific interagency agreements.

All obligations or expenditures emanating from activities conducted under this MOU or any subsequent interagency agreements are subject to the availability of appropriated funds.

VIII. Amendment or Termination

This MOU may be modified, amended, or terminated by mutual written agreement, or may be terminated unilaterally by either part upon thirty (30) days written notice to the other party.

IX. Effective Date

This MOU shall be effective upon execution by the Negotiator and the NRC's Chairman.

Dated: July 26, 1991.

United States Nuclear Regulation Commission.

Ivan Selin,

Chairman.

Office of the United States Nuclear Waste Negotiator.

David H. Leroy,

Negotiator.

57 FR 5022
Published 2/11/92

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Michigan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission and the State of Michigan. The Memorandum of Understanding provides the basis for mutually agreeable procedures whereby the Michigan Department of State Police may utilize the NRC Emergency Response Data System to receive data during an emergency at a commercial nuclear power plant in the State of Michigan.

EFFECTIVE DATE: This Memorandum of Understanding is effective immediately.

ADDRESSEES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

For Further Information Contact: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

SUPPLEMENTARY INFORMATION: Section 274i. of the Atomic Energy Act of 1954, as amended allows the U.S. Nuclear Regulatory Commission (Commission or NRC) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." A 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.

Background

As a result of the accident at Three Mile Island, Unit 2, on March 28, 1979, the Nuclear Regulatory Commission (NRC) and others recognized a need to improve the NRC's ability to acquire accurate and timely data on plant conditions during emergencies. The Emergency Response Data System (ERDS) has been developed to respond to this need. ERDS is a direct computer link between licensee computers at commercial nuclear power plants and computers at the NRC Operations Center at Bethesda, Maryland. The system allows for direct electronic transmission of a limited set of data points from the licensee computers to ERDS. Data transmitted over ERDS provides information concerning (1) core and coolant system conditions, needed to assess the extent or likelihood of core damage, (2) conditions inside the containment building needed to assess the likelihood and consequences of containment failure, (3) radioactivity release rates, needed to assess the immediacy and degree of public danager, and (4) data from the plant meteorological tower needed to assess the likely patterns of potential or actual impact on the public

The ERDS design provides for access to ERDS data by State governments which have jurisdiction over any area which falls within the 10-mile plume exposure Emergency Planning Zone around each nuclear power plant.

On May 7, 1991 (56 FR 21178), the NRC published a proposed MOU between the NRC and the State of Michigan. The MOU defines the manner in which the NRC and the State of Michigan will cooperate in planning and maintaining the capability to transfer data relating to plant conditions during emergencies at nuclear power plants located in Michigan through ERDS.

Public Comments

Interested parties were invited to submit comments on the proposed MOU. Comments were received from five State governments and the Federal Emergency Management Agency. Comments received on the proposed MOU were docketed and may be examined at the Commission's Public Document Room located at 2120 L Street NW (Lower Level), Washington, DC. Upon consideration and disposition of comments received as set forth below, the Nuclear Regulatory Commission has entered into the Memorandum of Understanding with the State of Michigan without modification. Although some comments received may provide the basis for discussion of potential modification in the standard MOU on a State by State basis, no cause was found in the comments to modify the MOU in question prior to issuance.

Analysis of Public Comments

1. *Comment.* In the case of nuclear power plants which lie within ten miles of a State border, will the NRC transmit ERDS data to bordering States which include a portion of the ten mile Emergency Planning Zone.

Response. The ERDS can be configured to send data to all States which are included within the ten mile plume exposure emergency planning zone around a nuclear power plant.

2. *Comment.* Two States commented on Section III D. (5). One State while recognizing that the States do not have the regulatory authority to direct or recommend licensees to take or not take an action, noted that State governments are not precluded from making recommendations and suggestions to the licensee in the interest of consequence mitigation protective action recommendations, and other issues of great interest to the State. Another State commented that they believed that NRC intends that State authorities not make technical recommendations with regard to plant recovery from an accident, but did not intend to restrict the ability of a State to coordinate activities with utility responders during nuclear emergencies to effect the maximum use of limited resources.

Response. While the State does have an interest in the areas of consequence mitigation and protective action mitigation, entering into a Memorandum of Understanding with the NRC to receive ERDS data does not confer upon the State the ability to direct the licensee to take any action. The NRC agrees with the second comment concerning this section of the MOU.

3. *Comment.* It is possible that a State may require more than one ERDS terminal, located at difference facilities at difference times during a response to a nuclear accident.

Response. There is no limit to the number of ERDS terminals that a State may install. The only limit is that only one terminal per State may access ERDS at any one time. This limitation is a hardware limitation based on the number of communication ports available for State access on the ERDS computers.

4. *Comment.* One State commented that they looked to ERDS to correct widespread and long standing difficulties in acquiring information on plant parameters in the early stages of exercises and accidents. If through the MOU, the State were required to surrender a right to all voice communications with the licensee related to ERDS, and be required to converse with the utility only through NRC Liaison or the Region or Headquarters, they would be entertaining errors and delays.

Response. This provision was placed in the MOU to mitigate a potential adverse impact on licensee accident response due to ERDS data transfer. ERDS is an NRC system, therfore, it is appropriate that NRC bear the burden of responding to questions about ERDS data. Note that the restriction on the State is against questioning plant operators about ERDS data. This does not preclude the normal discussion of plant conditions with emergency response personnel when the licensee emergency response facilities are activated. Another State noted that one of the strengths of the MOU as written was that it does an excellent job of preventing State personnel from distracting the plant operator in his duties to recover from the emergency.

5. *Comment.* One State commented that the State already has access to plant data at the licensee's emergency response facilities and that access to data by personnel outside the emergency response facilities would not contribute to the State's emergency response because the officials with the technical expertise to properly analyze the ERDS data will be at the licensee's emergency response facilities. This could potentially result in a conflict between the assessment of the plant conditions between the on-site State officials and those with access to ERDS data.

Response. ERDS data transfer is intended to be used at States that request it to provide plant parameter data to State Incident Response Centers at which event assessment is conducted. This process takes place at various places depending on the State in question. It is not recommended that States subscribe to ERDS just for the purpose of having it. The ERDS may be of value at the location where the State government conducts its assessment of reactor conditions. If this occurs at the licensee's emergency response facilities, ERDS would be of little value because plant data is readily available.

6. *Comment.* One State commented that since ERDS includes radiological and meteorological data, the system would also be very beneficial to those States responsible for ingestion pathway protection actions and recommended the ERDS be made available to all States in the 50-mile ingestion pathway emergency planning zone (EPZ).

Response. While there is data available on ERDS which could possibly be of use to States within the 50-mile EPZ, as noted earlier, system constraints require that the numbers of users on the system be limited to preclude excessive demand for communication ports on the computer. Because access to the system is by dial up telephone line, access is necessarily first come first served. The decision to limit ERDS data to the States within the ten mile EPZ was based on the immediacy of the need for data to those responsible for protective actions close in during an emergency.

It is recognized that there is need for event consequence data in the ingestion pathway EPZ, however, there is sufficient time to allow the use of other methods of data transfer for this purpose.

7. *Comment.* One State noted that since emergencies require prompt significant interaction with the public, it is unclear what is intended by the Section VI.C restrictions against premature public release of sensitive information.

Response. It is important to note that while ERDS represents a significant increase in the information available to Federal and State authorities during an accident, it does not augment the quality

or quantity of information available to the licensee at the site. ERDS presents one of many information paths throughout the plant. The data presented is directly transmitted from the licensee computer to the NRC computer, and therefore, has not been analyzed or verified. It is important that ERDS data and assessments based on ERDS data not be directly transmitted to the public or the media until it has been properly verified. Again, the responsibilities of the various parties involved in an emergency at a nuclear power plant are not intended to be changed based on the existence of ERDS. The licensee still bears the primary responsibility for accident assessment and mitigation.

This Memorandum of Understanding (Attachment 1) is intended to formalize and define the manner in which the NRC will cooperated with the State of Michigan to provide data related to plant conditions during emergencies at commercial nuclear power plants in Michigan.

Dated at Rockville, Maryland, this 29th day of January, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Michigan and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Michigan enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

Michigan recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain program when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Michigan fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Emergency Management Division, Department of State Police as described in the Emergency Management Act of 1990.

III. Scope

A. This Agreement defines the way in which NRC and Michigan will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System During emergencies at nuclear power plants, in the State of Michigan.

B. It is understood by the NRC and the State of Michigan that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Michigan, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Michigan on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Michigan 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Michigan during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Michigan. The NRC will provide any software which is not commercially available and is necessary for configuring an ERDS workstation.

V. Michigan's General Responsibilities

A. Michigan will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Michigan will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Michigan agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the utility provided technical liaison personnel or the NRC.

VI. Implementation

Michigan and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Michigan and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Michigan agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Michigan will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic test of licensee ERDS data links. A copy of the test schedule will be provided to Michigan by the NRC. Michigan may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Michigan will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data and the Governor-appointed State Director of Emergency Management. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Michigan staff members on technical and other day-to-day matters.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Michigan will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: November 20, 1991.

James M. Taylor,

Executive Director for Operations.

For the State of Michigan.

Dated: December 17, 1991.

Col. Michael D. Robinson,

Director, Department of State Police.

57 FR 18531
Published 4/30/92
Effective 3/23/92

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Washington

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Washington. The MOU provides the basis for mutually agreeable procedures whereby Washington may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in the State of Washington.

EFFECTIVE DATE: March 23, 1992.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-4155 or (301) 492-7836.

SUPPLEMENTARY INFORMATION: Section 274i. of the Atomic Energy Act of 1954, as amended allows the U.S. Nuclear Regulatory Commission (Commission or NRC) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." A section 274i. agreement, typically in the form of a 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.

Background

As a result of the accident at Three Mile Island, Unit 2, on March 28, 1979, the NRC and others recognized a need to improve the NRC's ability to acquire accurate and timely data on plant conditions during emergencies. The Emergency Response Data System (ERDS) has been developed to respond to this need. ERDS is a direct computer link between licensee computers at commercial nuclear power plants and computers at the NRC Operations Center at Bethesda, Maryland. The system allows for direct electronic transmission of a limited set of data points from the licensee computers to ERDS. Data transmitted over ERDS provides information concerning (1) core and coolant system conditions, needed to assess the extent or likelihood of core damage, (2) conditions inside the containment building, needed to assess the likelihood and consequences of containment failure, (3) radioactivity release rates, needed to assess the immediacy and degree of public danger, and (4) data from the plant meteorological tower, needed to assess the likely patterns of potential or actual impact on the public.

The ERDS design provides for access to ERDS data by State governments which have jurisdiction over any area which falls within the 10-mile plume exposure Emergency Planning Zone (EPZ) around each nuclear power plant.

On May 7, 1991 (56 FR 21178) the NRC published a proposed MOU between the NRC and the State of Michigan. This MOU was designed to be generic in nature. It was to be used as the foundation on which all MOU's with other States on ERDS would be based. The MOU defines the manner in which the NRC and the State of Michigan will cooperate in planning and maintaining the capability to transfer data relating to plant conditions during emergencies at nuclear power plants located in Michigan through ERDS.

Public Comments

Interested parties were invited to submit comments on the proposed MOU. Comments were received from five State governments and one local

Emergency Management Agency. Comments received on the proposed MOU were docketed and may be examined at the Commission's Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC. Upon consideration and disposition of comments received as set forth below, the NRC has entered into the MOU with the State of Michigan without modification. Although some comments received may provide the basis for discussion of potential modification in the standard MOU on a State by State basis, no cause was found in the comments to modify the MOU in question prior to issuance.

Analysis of Public Comments

1. *Comment:* In the case of nuclear power plants which lie within ten miles of a State border, will the NRC transmit ERDS data to bordering States which include a portion of the ten-mile EPZ.

Response: The ERDS can be configured to send data to all States which are included within the ten-mile plume exposure EPZ around a nuclear power plant.

2. *Comment:* Two States commented on Section III D. (5). One State while recognizing that the States do not have the regulatory authority to direct or recommend licensees to take or not take an action, noted that State governments are not precluded from making recommendations and suggestions to the licensee in the interest of consequence mitigation protection action recommendations, and other issues of great interest to the State. Another State commented that they believed that NRC intends that State authorities not make technical recommendations with regard to plant recovery from an accident, but did not intend to restrict the ability of a State to coordinate activities with utility responders during nuclear emergencies to effect the maximum use of limited resources.

Response: While the State does have an interest in the areas of consequence mitigation and protection action mitigation, entering into a MOU with the NRC to receive ERDS data does not confer upon the State the ability to direct the licensee to take any action. The NRC agrees with the second comment concerning the section of the MOU.

3. *Comment:* It is possible that a State may require more than one ERDS terminal, located at different facilities at different times during a response to a nuclear accident.

Response: There is no limit to the number of ERDS terminals that a State may install. The only limit is that only one terminal per State may access ERDS at any one time. This limitation is a hardware limitation based on the number communication ports available for State access on the ERDS computers.

4. *Comment:* One State commented that they looked at ERDS to correct widespread and long standing difficulties in acquiring information on plant parameters in the early stages of exercises and accidents. If through the MOU, the State were required to surrender a right to all voice communications with the licensee related to ERDS, and be required to converse with the utility only through NRC Liaison or the Region or Headquarters, they would be entertaining errors and delays.

Response: This provision was placed in the MOU to mitigate a potential adverse impact on licensee accident response due to ERDS data transfer. ERDS is an NRC system, therefore, it is appropriate that NRC bear the burden of responding to questions about ERDS data. Note that the restriction on the State is against questioning plant operators about EDRS data. This does not preclude the normal discussion of plant conditions with emergency response personnel when the licensee emergency response facilities are activated. Another State noted that one of the strengths of the MOU as written was that it does an excellent job of preventing State personnel from distracting the plant operator in his duties to recover from the emergency.

5. *Comment:* One State commented that the State already has access to plant data at the licensee's emergency response facilities and the access to data by personnel outside the emergency response facilities would not contribute to the State's emergency response because the officials with the technical expertise to properly analyze the ERDS data will be at the licensee's emergency response facilities. This could potentially result in a conflict between the assessment of the plant conditions between the on-site State officials and those with access to ERDS data.

Response: ERDS data transfer is intended to be used at States that request it to provide plant parameter data to State Incident Response Centers at which event assessment is conducted. This process takes place at various places depending on the State in question. It is not recommended that States subscribe to ERDS just for the purpose of having it. The ERDS may be of value at the location where the State government conducts its assessment of reactor conditions. It this occurs at the licensee's emergency response facilities, ERDS would be of little value because plant data is readily available.

6. *Comment:* One State commented that since ERDS includes radiological and meteorological data, the system would also be very beneficial to those States responsible for ingestion pathway protection actions and recommended that ERDS be made available to all States in the 50-mile ingestion pathway EPZ.

Response: While there is data available on ERDS which could possibly be of use to States within the 50-mile EPZ, as noted earlier, system constraints require that the numbers of users on the system be limited to preclude excessive demand for communication ports on the computer. Because access to the system is by dial up telephone line, access is necessarily first come first served. The decision to limit ERDS data to the States within the ten-mile EPZ was based on the immediacy of the need for data to those responsible for protective actions close in during an emergency.

It is recognized that there is a need for event consequence data in the ingestion pathway EPZ, however, there is sufficient time to allow the use of other methods of data transfer for this purpose.

7. *Comment:* One State noted that since emergencies require prompt significant interaction with the public, it is unclear what is intended by the section VI.C restrictions against premature public release of sensitive information.

Response: It is important to note that while ERDS represents a significant increase in the information available to Federal and State authorities during an accident, it does not augment the quality or quantity of information available to the licensee at the site. ERDS presents one of many information paths throughout the plant. The data presented is directly transmitted from the licensee computer to the NRC computer, and therefore, has not been analyzed or verified. It is important that ERDS data and assessments based on ERDS dated not be directly transmitted to the public or the media until it has been properly verified. Again, the responsibilities of the various parties involved in an emergency at a nuclear power plant are not intended to be changed based on the existence of ERDS. The licensee still bears the primary responsibility for accident and mitigation.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Washington to provide data related to plant conditions during

emergencies at commercial nuclear power plants in Washington.

Dated at Rockville, Maryland, this 15th day of April, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Washington and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Washington enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Washington recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Washington fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Division of Radiation Protection, Department of Health as described in the Washington State Comprehensive Emergency Management Plan.

III. Scope

A. This Agreement defines the way in which NRC and Washington will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants.

B. It is understood by the NRC and the State of Washington that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Washington, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Washington on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Washington 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; 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 to the NRC.

IV. NRC'S General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Washington during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Washington. The NRC will provide any software which is not commercially available and is necessary for configuring an ERDS workstation.

V. Washington's General Responsibilities

A. Washington will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Washington will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Washington agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the utility provided technical liaison personnel or the NRC.

VI. Implementation

Washington and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Washington and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Washington agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Washington will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Washington by the NRC. Washington may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Washington will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director, Division of Radiation Protection, Washington State Department of Health. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict the communication between NRC and Washington staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about the matters within the scope of this Agreement, NRC and Washington will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII A and VIII B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect when it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the

Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: March 3, 1992.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: March 23, 1992.

For the State of Washington.

T.R. Strong,

Director, Division of Radiation Protection.

57 FR 20856
Published 5/15/92
Effective 3/9/92

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Ohio

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Ohio. The MOU provides the basis for mutually agreeable procedures whereby the Ohio Emergency Management Agency may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in the State of Ohio.

EFFECTIVE DATE: This MOU is effective March 9, 1992.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-4155 or (301) 492-7838.

SUPPLEMENTARY INFORMATION: Section 274i of the Atomic Energy Act of 1954, as amended allows the U.S. Nuclear Regulatory Commission (Commission or NRC) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." A section 274i agreement, typically in the form of a 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.

Background

As a result of the accident at Three Mile Island, Unit 2, on March 28, 1979, the NRC and others recognized a need to improve the NRC's ability to acquire accurate and timely data on plant conditions during emergencies. The Emergency Response Data System (ERDS) has been developed to respond to this need. ERDS is a direct computer link between licensee computers at commercial nuclear power plants and computers at the NRC Operations Center at Bethesda, Maryland. The system allows for direct electronic transmission of a limited set of data points from the licensee computers to ERDS. Data transmitted over ERDS provides information concerning (1) core and coolant system conditions, needed to assess the extent or likelihood of core damage, (2) conditions inside the containment building, needed to assess the likelihood and consequences of containment failure, (3) radioactivity release rates, needed to assess the immediacy and degree of public danger, and (4) data from the plant meteorological tower, needed to assess the likely patterns of potential or actual impact on the public.

The ERDS design provides for access to ERDS data by State governments which have jurisdiction over any area which falls within the 10-mile plume exposure Emergency Planning Zone (EPZ) around each nuclear power plant.

On May 7, 1991 (56 FR 21179), the NRC published a proposed MOU between the NRC and the State of Michigan. This

MOU was designed to be generic in nature. It was to be used as the foundation on which all MOUs with other States on ERDS would be based. The MOU defines the manner in which the NRC and the State of Michigan will cooperate in planning and maintaining the capability to transfer data relating to plant conditions during emergencies at nuclear power plants located in Michigan through ERDS.

Public Comments

Interested parties were invited to submit comments on the proposed MOU. Comments were received from five State governments and the Federal Emergency Management Agency. Comments received on the proposed MOU were docketed and may be examined at the Commission's Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC. Upon consideration and disposition of comments received as set forth below, the NRC has entered into the MOU with the State of Michigan without modification. Although some comments received may provide the basis for discussion of potential modification in the standard MOU on a State by State basis, no cause was found in the comments to modify the MOU in question prior to issuance.

Analysis of Public Comments

1. *Comment.* In the case of nuclear power plants which lie within ten miles of a State border, will the NRC transmit ERDS data to bordering States which include a portion of the ten-mile EPZ.

Response. The ERDS can be configured to send data to all States which are included within the ten-mile plume exposure EPZ around a nuclear power plant.

2. *Comment.* Two States commented on Section III D. (5). One State while recognizing that the States do not have the regulatory authority to direct or recommend licensees to take or not take an action, noted that State governments are not precluded from making recommendations and suggestions to the licensee in the interest of consequence mitigation protection action recommendations, and other issues of great interest to the State. Another State commented that they believed that NRC intends that State authorities not make technical recommendations with regard to plant recovery from an accident, but did not intend to restrict the ability of a State to coordinate activities with utility responders during nuclear emergencies to effect the maximum use of limited resources.

Response. While the State does have an interest in the areas of consequence mitigation and protection action mitigation, entering into a MOU with the NRC to receive ERDS data does not confer upon the State the ability to direct the licensee to take any action. The NRC agrees with the second comment concerning this section of the MOU.

3. *Comment.* It is possible that a State may require more than one ERDS terminal, located at different facilities at different times during a response to a nuclear accident.

Response. There is no limit to the number of ERDS terminals that a State may install. The only limit is that only one terminal per State may access ERDS at any one time. This limitation is a hardware limitation based on the number communication ports available for State access on the ERDS computers.

4. *Comment.* One State commented that they looked at ERDS to correct widespread and long standing difficulties in acquiring information on plant parameters in the early stages of exercises and accidents. If through the MOU, the State were required to surrender a right to all voice communications with the licensee related to ERDS, and be required to converse with the utility only through NRC Liaison or the Region or Headquarters, they would be entertaining errors and delays.

Response. This provision was placed in the MOU to mitigate a potential adverse impact on licensee accident response due to ERDS data transfer. ERDS is an NRC system, therefore, it is appropriate that NRC bear the burden of responding to questions about ERDS data. Note that the restriction on the State is against questioning plant operators about ERDS data. This does not preclude the normal discussion of plant conditions with emergency response personnel when the licensee emergency response facilities are activated. Another State noted that one of the strengths of the MOU as written was that it does an excellent job of preventing State personnel from distracting the plant operator in his duties to recover from the emergency.

5. *Comment.* One State commented that the State already has access to plant data at the licensee's emergency response facilities and the access to data by personnel outside the emergency responce facilities would not contribute to the State's emergency response because the officials with the technical expertise to properly analyze the ERDS data will be at the licensee's emergency response facilities. This could potentially result in a conflict between the assessment of the plant conditions between the on-site State officials and those with access to ERDS data.

Response. ERDS data transfer is intended to be used at States that request it to provide plant parameter data to State Incident Response Centers at which event assessment is conducted. This process takes place at various places depending on the State in question. It is not recommended that States subscribed to ERDS just for the purpose of having it. The ERDS may be of value at the location where the State government conducts its assessment of reactor conditions. If this occurs at the licensee's emergency response facilities, ERDS would be of little value because plant data is readily available.

6. *Comment.* One State commented that since ERDS includes radiological and meterologial data, the system would also be very beneficial to those States responsible for ingestion pathway protection actions and recommended the ERDS be made available to all States in the 50-mile ingestion pathway EPZ.

Response. While there is data available on ERDS which could possibly be of use to States within the 50-mile EPZ, as noted earlier, system constraints require that the numbers of users on the system be limited to preclude excessive demand for communication ports on the computer. Because access to the system is by dial up telephone line, access is necessarily first come first served. The decision to limit ERDS data to the States within the ten-mile EPZ was based on the immediacy of the need for data to those responsible for protective actions close in during an emergency.

It is recognized that there is a need for event consequence data in the ingestion pathway EPZ, however, there is sufficient time to allow the use of other methods of data transfer for this purpose.

7. *Comment.* One State noted that since emergencies require prompt significant interaction with the public, it is unclear what is intended by the section VI.C restrictions against premature public release of sensitive information.

Response. It is important to note that while ERDS represents a significant increase in the information available to Federal and State authorities during an accident, it does not augment the quality or quantity of information available to the licensee at the site. ERDS presents one of many information paths throughout the plant. The data presented is directly transmitted from the licensee computer to the NRC computer, and therefore, has not been analyzed or verified. It is important that ERDS data

and assessments based on ERDS dated not be directly transmitted to the public or the media until it has been properly verified. Again, the responsibilities of the various parties involved in an emergency at a nuclear power plant are not intended to be changed based on the existence of ERDS. The licensee still bears the primary responsibility for accident and mitigation.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Ohio to provide data related to plant conditions during emergencies at commercial nuclear power plants in Ohio.

Dated at Rockville, Maryland, this 29th day of April, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Emergency Response Data System Agreement Between the State of Ohio and U.S. Nuclear Regulatory Commission

I. Authority

A. The U.S. Nuclear Regulatory Commission (NRC) and the State of Ohio enter into this Agreement under the authority of section 274i (Cooperation with States) of the Atomic Energy Act of 1954, as amended.

B. Ohio recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that the NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This Agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Ohio fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Director of the Ohio Emergency Management Agency as described in the Ohio Revised Code 5915.02.

III. Scope

A. This Agreement defines the way in which NRC and Ohio will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System (ERDS) during emergencies at nuclear power plants which have any portion of their 10-mile Emergency Planning Zone within the State of Ohio.

B. It is understood by the NRC and the State of Ohio that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Ohio, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Ohio on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Ohio authority to perform the following:

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.
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.

IV. NRC'S General Responsibilities

Under this Agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Ohio during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of Ohio. The NRC will provide any software which is not commercially available and is necessary for configuring an ERDS workstation.

V. Ohio's General Responsibilities

A. Ohio will cooperate with the NRC to establish a capability to receive ERDS data. Ohio will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Ohio agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10-mile EPZ does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

Ohio will cooperate with the NRC to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Ohio and the NRC agree to make available to each other information within the intent and scope of this Agreement.

B. NRC and Ohio agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Ohio will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, § 149.43 of the Ohio Revised Code, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Ohio by the NRC. Ohio may test its ability to access ERDS data during these

scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Ohio will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Governor-appointed State Liasison Officer to the NRC. These individuals may designated appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Ohio staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Ohio will work together with the utilities involved, as appropriate, to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with sections VIII. A. and VIII. B. will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than one year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: March 3, 1992.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: March 9, 1992.

For the State of Ohio.

Richard C. Alexander,

Major General (OH), The Adjutant General, Director, Ohio Emergency Management Agency.

57 FR 27075
Published 6/17/92
Effective 5/11/92

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of North Carolina

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of North Carolina. The MOU provides the basis for mutually agreeable procedures whereby the North Carolina Division of Emergency Management may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in the State of North Carolina. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register**, Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective May 11, 1992.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-4155 or (301) 492-7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of North Carolina to provide data related to plant conditions during emergencies at commercial nuclear power plants in North Carolina.

Dated at Rockville, Maryland, this 4th day of June 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of North Carolina and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of North Carolina enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

North Carolina recognizes 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 Clear Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety

by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. North Carolina fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the North Carolina Emergency Response Plan for the Brunswick Steam Electric Plant, the North Carolina Emergency Response Plan for the Shearon Harris Nuclear Power Plant, the North Carolina Emergency Response Plan for the McGuire Nuclear Station, and the North Carolina Emergency Response Plan for the Catawba Nuclear Station.

III. Scope

A. This Agreement defines the way in which NRC and North Carolina will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of North Carolina.

B. It is understood by the NRC and the State of North Carolina that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of North Carolina, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of North Carolina on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of North Carolina 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of North Carolina during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of North Carolina. The NRC will provide any software which is not commercially available and is necessary for configuring an ERDS workstation.

V. North Carolina General Responsibilities

A. North Carolina will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, North Carolina will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. North Carolina agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10-mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

North Carolina and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. North Carolina and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and North Carolina agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and North Carolina will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to North Carolina by the NRC. North Carolina may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, North Carolina will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director of the North Carolina Division of Emergency Management. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and North Carolina staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and North Carolina will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to

other persons or circumstances will not be affected.

Dated: May 3, 1992.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: May 11, 1992.

For the State of North Carolina

Joseph F. Myers,

Director, North Carolina Division of Emergency Management.

57 FR 38528
Published 8/25/92
Effective 7/22/92

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Georgia

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Georgia. The MOU provides the basis for mutually agreeable procedures whereby the Georgia Environmental Protection Division may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in the State of Georgia. Public comments were addressed in conjunction with [illegible] with the State of Michigan [illegible]ssued in the **Federal Register** [illegible]57, No. 28, February 11, 199[illegible].

EFFECTIVE DATE: This MOU is effective July 22, 1992.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, W[illegible]hington, DC 20555. Telephone (301) [illegible]-4155 or (301) 492-7838.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Georgia to provide data related to plant conditions during emergencies at commercial nuclear power plants in Georgia.

Dated at Rockville, Maryland, this 14th day of August, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Georgia and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Georgia enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Georgia recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

D. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. [illegible]C fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Georgia fulfills its statutory mandate to provide for preparedness, response, mitigation and recovery in the event of an accident at a nuclear power plant in part through the Georgia Environment Protection Division, as described in the State of Georgia Radiological Emergency Plan (REP) and the Georgia Natural Disaster Operations Plan (NDOP).

III. Scope

A. This Agreement defines the way in which the NRC and Georgia will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of Georgia.

B. It is understood by the NRC and the State of Georgia that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Georgia, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Georgia on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Georgia 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one (1) user terminal for the State of Georgia during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of Georgia. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Georgia's General Responsibilities

A. Georgia will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Georgia will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Georgia agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10-mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

Georgia and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Georgia and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Georgia agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Georgia will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Georgia Open Records Act (O.C.G.A. 50–18–70), 10 CFR 2.790 and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Georgia by the NRC. Georgia may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Georgia will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office of Analysis and Evaluation of Operational Data, and the Environmental Radiation Program Manager, Georgia Environmental Protection Division. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between the NRC and Georgia staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Georgia will work together to resolve these differences.

B. Resolution of differences between Georgia and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than one (1) year after the effective date, will be performed by the NRC to evaluate implementation of this Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon thirty (30) days written notice by either party.

XI. Separability

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

For the U.S. Nuclear Regulatory Commission.

Dated: July 20, 1992.

James M. Taylor,

Executive Director for Operations.

For the State of Georgia.

Dated: July 20, 1992.

Harold F. Reheis,

Director, Georgia Environmental Protection Division.

57 FR 49725
Published 11/3/92
Effective 8/26/92

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Alabama

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Alabama. The MOU provides the basis for mutually agreeable procedures whereby the State of Alabama may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Alabama. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the Federal Register Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective August 26, 1992.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear

Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Alabama to provide data related to plant conditions during emergencies at commercial nuclear power plants in Alabama.

Dated at Rockville, Maryland, this 22nd day of September, 1992.

For the Nuclear Regulatory Commission

James M. Taylor,

Executive Director for Operations

Agreement Pertaining to the Emergency Response Data System Between the State of Alabama and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Alabama enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

Alabama recognizes 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, or other Acts of Congress.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Alabama fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Radiation Control Agency (The Alabama Department of Public Health's Division of Radiation Control) title 22 chapter 14 Code of Alabama, 1975, as Amended.

III. Scope

A. This Agreement defines the way in which NRC and Alabama will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of Alabama.

B. It is understood by the NRC and the State of Alabama that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Alabama, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended: Nor is anything in this Agreement intended to restrict or expand the authority of the State of Alabama on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Alabama 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Alabama during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Alabama. The NRC agrees to provide unique software available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Alabama's General Responsibilities

A. Alabama will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Alabama will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Alabama agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the utility provided technical liasion personnel or the NRC.

VI. Implementation

Alabama and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Alabama and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Alabama agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Alabama will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic test of licensee ERDS data links. A copy of the test schedule will be provided to Alabama by the NRC. Alabama may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise

data to ERDS. For exercises in which the NRC is not participating, Alabama will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director, Division of Radiation Control, Alabama Department of Public Health. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Alabama staff numbers on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Alabama will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with sections VIII.A and VIII.B. will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 the Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: June 26, 1992.

James M. Taylor,

Executive Director for Operations.

For the State of Alabama

Dated: August 26, 1992.

Carole W. Samuelson,

Interim State Health Officer.

57 FR 54127
Published 11/16/92
Effective 3/16/92

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Environmental Protection Agency

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of memorandum of understanding.

SUMMARY: On March 16, 1992, NRC and the Environmental Protection Agency (EPA) signed a Memorandum of Understanding (MOU) to foster cooperation between the two agencies in protecting public health and safety and the environment on issues relating to the regulation of radionuclides in the environment. The MOU establishes a framework for the agencies to resolve issues of mutual concern and sets forth principles and procedures for avoiding unnecessary duplication of regulatory requirements and focusing priorities on the most significant safety and environmental problems.

FOR FURTHER INFORMATION CONTACT: Martin G. Malsch, Deputy General Counsel for Licensing and Regulations, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1740.

SUPPLEMENTARY INFORMATION:

Memorandum of Understanding—Guiding Principles for ERA/NRC Cooperation and Decisionmaking

Introduction

The Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC), in recognition of a mutual commitment to the effective and efficient protection of public health and safety and the environment, have developed this Memorandum of Understanding in order to establish a basic framework within which EPA and NRC will endeavor to resolve issues of concern to both agencies that relate to the regulation of radionuclides in the environment.

Goal

The goal of this Memorandum of Understanding is to foster cooperation in fulfilling the responsibilities of each agency to ensure protection of the public health and safety and the environment in accordance with existing agency responsibilities and authorities.

Principles

EPA and NRC, in carrying out the respective responsibilities of the two agencies in the regulation of radionuclides, will strive to:

1. Base regulatory decisions on a determination that such actions will result in a substantial reduction of significant risk to the public health and safety and the environment, and in making such decisions consider, to the extent permitted by law, the importance of the risk reductions to be achieved when compared to other radiological risks already subject to existing regulations, the overall economic impact on NRC licensees of additional regulatory requirements to achieve such reductions, and pursue the most efficient, cost-effective course in the regulation of those licensees.

2. Focus agency priorities on those significant safety and environmental problems subject to the authority of both agencies that offer the greatest potential for substantial risk reduction;

3. Avoid unnecessary duplicative or piecemeal regulatory requirements for NRC licensees, consistent with the legal responsibilities of the two agencies, and ensure that standards and regulations, when issued, can be effectively implemented; and

4. Effectively and responsibly carry out the provisions of Reorganization

Plan No. 3 of 1970. Under the Plan, EPA issues generally applicable environmental limits on radiation exposure or levels, or concentrations or quantities of radioactive materials, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive materials, and NRC implements these standards by the use of its licensing and regulatory authority

Implementation Guidance

A. Scope

For certain facilities or materials licensed or regulated by the NRC, EPA is required by statute to develop environmental standards for radionuclides which are applicable directly to NRC-regulated facilities or materials. For example, EPA is required to develop generally applicable environmental standards for offsite releases from radioactive material in high-level waste repositories under the Nuclear Waste Policy Act. For other program activities, such standards are authorized but, depending sometimes on the circumstances, are not legally required. With the exception of Section C, below, this Memorandum of Understanding is intended to address issues associated with both types of standards. Section C applies according to its terms where EPA standards are not legally mandated. This MOU does not apply to matters arising under RCRA or CERCLA.

B. General

Each agency will keep the other generally informed of its relevant plans and schedules regarding such activities, will respond to the other agency's requests for information to the extent reasonable and practicable, and will strive to recognize and ameliorate to the extent practicable anticipated problems with regard to implementation and consistency with other program activities.

Each agency will deal with the other in a spirit of cooperation to achieve the goals of this Memorandum of Understanding. Agency management will endeavor, to the maximum possible extent, to resolve informally and in a timely manner those differences identified as a result of the procedures contained in this Memorandum of Understanding. If differences cannot be resolved, the respective General Counsels of each agency will arrange for the matter to be presented by the necessary parties to the heads of both agencies for resolution.

Each agency will keep the other fully informed of its priorities for the development of regulations and will endeavor to develop a common understanding of the priorities and schedules for resolution, with the highest priorities accorded to initiatives which offer the greatest potential for significant risk reduction.

If both agencies agree, in accordance with these principles and guidance, that duplicative regulation in a particular area is undesirable, but nevertheless is required by law, then the agencies will cooperate in considering and, if appropriate, supporting legislative changes.

C. Governing Criteria and Procedures

This Section applies to the issuance of regulations for releases applicable to NRC regulated facilities or activities for releases into the environment of source, byproduct or special nuclear materials under the Clean Air Act. It also applies to the issuance of such regulations under the Atomic Energy Act and other provisions of law which may give rise to duplication of effort and overlapping regulation of NRC regulated facilities or activities, but only to the extent issuance of such standards is authorized but not legally mandated. Subject to the above, EPA and NRC agree as follows:

1. Criteria. EPA's decisions not to impose emission standards for hazardous air pollutants under the Clean Air Act for NRC licensed materials or facilities will, in accordance with 112(d)(9) of the Clean Air Act, be based upon a determination that NRC's regulatory program provides an ample margin of safety to protect the public health. Similarly, EPA's decisions to impose or not impose other regulations regarding NRC licensed materials or facilities will be based upon a determination as to whether NRC's regulatory program achieves a sufficient level of protection of the public health and environment. This determination may be influenced by particular risk reduction or risk prevention goals being pursued and this Memorandum of Understanding does not reflect agreement on such goals at this time. Ideally, agreement on risk reduction or prevention goals for radionuclides will be reached pursuant to paragraph D, below but in a particular case where EPA and NRC cannot agree on such goals, this Memorandum of Understanding is without prejudice to EPA deciding to proceed with regulation, without NRC concurrence, based upon an EPA inability to find that NRC's program provides a sufficient level of protection.

EPA and NRC will jointly seek to minimize unnecessary duplication of effort and overlapping regulation of NRC-licensed materials and facilities.

2. Procedures. In developing regulations in accordance with its authorities, if EPA, after finding that NRC's regulatory program fails to provide a sufficient level of protection of the public health and safety or the environment, identifies an area where it believes that EPA regulation applicable to NRC licensees regarding radionuclides may be necessary, EPA will, before developing and proposing rules in the Federal Register, informally and promptly inform the NRC of the basis for its position. If NRC believes that such direct regulation of its licensees by EPA is unnecessary, the two agencies will endeavor to resolve any issues, including consideration of information from NRC regarding the level of protection achieved by NRC regulatory programs and any necessary modifications to NRC's regulatory program, so that duplicative regulation and implementation are avoided. Decisions rendered pursuant to this paragraph will fully consider the implementation of existing regulatory programs in assessing the level of protection being achieved by regulated facilities. Final EPA conclusions on whether EPA will impose regulations applicable to NRC-licensed materials or facilities, and final NRC conclusions on whether NRC will develop modifications to its program, will be accomplished in a public process based upon a full and public record. Any decision made pursuant to this memorandum is subject to review and modification based upon actual experience with its implementation.

Similarly, if NRC undertakes the development of new regulations that would affect the level of protection of public health and safety and the environment related to an area where EPA has authority to issue regulations applicable to NRC licensees, or if NRC undertakes any rulemaking or other regulatory activity to fulfill its agreements made pursuant to this Memorandum of Understanding, NRC will promptly and informally notify and consult with EPA before developing and proposing rules in the Federal Register, and before any final decision by the Commission on the proposal.

Where either agency is developing new regulations for radionuclides in an area not covered by an existing

regulatory program, the agencies will, before proposing new regulations, consult concerning what the proper division of responsibility should be.

D. Risk Assessment

In carrying out this Memorandum of Understanding, the agencies will actively explore ways to harmonize risk goals and will cooperate in developing a mutually agreeable approach to risk assessment methodologies for radionuclides.

E. Other Provisions

1. Nothing in this Memorandum of Understanding limits the authority of either agency to exercise independently its authorities with regard to matters that are the subject of this Memorandum of Understanding.

2. Nothing in this Memorandum of Understanding shall be deemed to establish any right nor provide a basis for any action, either legal or equitable, by any person or class of persons challenging a government action or a failure to act.

3. This Memorandum of Understanding will remain in effect until terminated by the written notice of either party submitted six months in advance of termination.

Ivan Selin,

Chairman, U.S. Nuclear Regulatory Commission.

William K. Reilly,

Administrator, U.S. Environmental Protection Agency.

This Memorandum of Understanding was signed by the Chairman of the Nuclear Regulatory Commission and the Administrator of the Environmental Protection Agency on March 16, 1992.

Dated at Rockville, Maryland, this 6th day of November 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

57 FR 60778
Published 12/22/92
Effective 9/4/92

Memorandum of Understanding Between the Environmental Protection Agency and Nuclear Regulatory Commission Concerning Clean Air Act Standards for Radionuclide Releases from Facilities Other Than Nuclear Power Reactors Licensed by NRC or Its Agreement States

Subpart I, 40 CFR Part 61

In accordance with sections 112(d)(9) and 122(c)(2) of the Clean Air Act, as amended in 1990, and in order to minimize regulatory duplication and conserve resources in the control of radionuclide emissions to air from facilities other than nuclear power reactors, licensed by the Nuclear Regulatory Commission (NRC) or its Agreement States under the Atomic Energy Act of 1954, as amended, NRC and the Environmental Protection Agency (EPA) agree as follows:

General Goal of Agreement

EPA and NRC are entering into this MOU to ensure that facilities other than nuclear power reactors, licensed by the NRC, will continue to limit air emissions of radionuclides to levels that result in protection of the public health with an ample margin of safety. The guiding objective is that the actions under this MOU provide assurance that public health is being and will continue to be protected with an ample margin of safety.

NRC will ensure that facilities licensed by Agreement States will also continue to limit air emissions of radionuclides to levels that result in protection of the public health with an ample margin of safety. NRC will accomplish this through its established procedures for continuous oversight of Agreement States' radiation control programs. Under the Atomic Energy Act, as amended, NRC is required to periodically review Agreement State programs for adequacy and compatibility with NRC's programs. Routine reviews are complete, in-depth examinations of Agreement State regulatory programs and are conducted every other calendar year. NRC review visits are usually conducted between routine reviews and maintain familiarity with the Agreement State program. Through this established process, NRC can provide adequate assurance that Agreement State-licensed facilities will continue to provide an ample margin of safety in protecting the public from air emissions of radionuclides.

NRC Lead Actions

1. NRC agrees to develop and issue a regulatory guide on designing and implementing a radiation protection program to ensure that doses resulting from effluents from licensed facilities will remain as low as is reasonably achievable (ALARA). The guide will establish a specific goal of 10 millirem per year total effective dose equivalent to the maximally exposed individual from radionuclide air emissions from licensed facilities and operations. The guide will also describe the types of administrative programs and objectives for environmental radiation protection programs that the NRC staff finds to be acceptable in satisfying the requirement in 10 CFR 20.1101(b).

The regulatory guide will be published for public comment and will be revised in response to comments, as appropriate, prior to finalization. NRC will publish a draft of the regulatory guide in October 1992, and after public comments have been incorporated, issue a final guide by April 1993. Once compliance with the revised 10 CFR part 20 is mandatory, and the final guide is available, NRC will review licensee compliance with the revised 10 CFR part 20 radiation protection program requirement through license renewals and ongoing inspection efforts. If any licensee fails to comply with the ALARA requirements of the revised 10 CFR part 20 and license conditions, NRC will take enforcement action in accordance with NRC's Enforcement Policy in Appendix C of 10 CFR part 2.

2. NRC agrees to develop inspection guidance on ALARA considerations for effluents and incorporate ALARA considerations in Standard Review Plans. Thus, license reviewers and inspectors will have comprehensive guidance and review criteria for assessments of ALARA at various licensed facilities. NRC will develop these documents based on the ALARA Regulatory Guide, which will be prepared with the benefit of public comment. NRC intends to complete the inspection guidance and Standard Review Plan shortly after completing the Regulatory Guide on ALARA for environmental effluents of radionuclides.

3. Pursuant to NRC's existing oversight authority for Agreement State programs described in the general goal of this MOU, NRC will work with Agreement States to adopt and implement regulations compatible with NRC's regulations in the revised 10 CFR part 20. These efforts will include maintenance of effluents, including air emissions, at ALARA levels.

4. Five years from the execution of the MOU, NRC will undertake a survey of a subset of NRC-licensees to verify that the NRC regulatory program is continuing to provide an ample margin of safety.

EPA Lead Actions

1. By November 15, 1992, EPA will develop and publish in the **Federal Register** a Notice of Proposed Rulemaking, pursuant to its authority under Clean Air Action Section 112(d)(9), to rescind its existing regulations in 40 CFR part 61, subpart I, as applied to licensed facilities other than nuclear power reactors. This proposal, which will occur only if the purposes and provisions of this MOU are proceeding effectively, requires that the Administrator find that the

regulatory program implemented by NRC will protect public health with an ample margin of safety. It is expected, subject to public notice and comment, that the basis for this finding will ultimately be provided through the final report of EPA's survey of NRC and Agreement State licensees and through implementation of the commitments of this MOU. Final action on the rulemaking will be taken as soon as practicable after completion of the Notice of Proposed Rulemaking to rescind subpart I, as described in this paragraph.

2. In anticipation of issuance of the proposed rescission of 40 CFR part 61, subpart I for licensed facilities other than nuclear powe. reactors, EPA will propose a rule to further stay the effectiveness of subpart I for these facilities during the pendency of the rulemaking on rescission. The final rule staying the effectiveness of subpart I will be issued on or before the date EPA proposes rescission and is contingent upon the provisions of this MOU proceeding effectively.

Effective Date, Revision, and Termination

This memorandum shall be effective immediately and shall continue in effect until revised by mutual agreement, unless terminated by any party after 120 days notice in writing.

Dated: August 28, 1992.

Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

Dated: September 4, 1992.

Environmental Protection Agency.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

58 FR 13510
Published 3/11/93
Effective 1/27/93

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Maryland

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuanc[illegible] a Final Memorandum of Un[illegible]nding (MOU) between the U.S. Nu[illegible] Regulatory Commission (NRC) an[illegible]e State of Maryland. The MOU p[illegible]ovides the basis for mutually agreeable procedures whereby the State of Maryland may uti[illegible] the NRC Emergency Response De[illegible]stem (ERDS) to receive data during an emergency at a commercial nuclear power plant in Maryland. Public comments were addressed in conjunction with the MOU with the State of Michigan pub[illegible]hed in the Federal Register Vol. [illegible] No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective January 27, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Maryland to provide data related to plant conditions during emergencies at commercial nuclear power plants in Maryland.

Dated at Rockville, Maryland, this 1st day of March, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Maryland and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Maryland enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Maryland recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of [illegible]zation facilities (nuclear power plants) in [illegible] to assure common defense and security [illegible] protect the public health and safety. [illegible] these statutes, the NRC is the [illegible]nsible agency regulating nuclear power [illegible]nt safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Fa[illegible]ies" (54 FR 7530, February 22, 1989). The [illegible]olicy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Maryland fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Maryland Emergency Management Agency and [illegible]he Maryland Department of En[illegible]ronment, Radiological Health Program, as [illegible]ribed in the Maryland Emergency M[illegible]ment Agency Act and the Maryland R[illegible]on Act.

III [illegible]pe

[illegible]is Agreement defines the way in which NRC and Maryland will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of Maryland.

B. It is understood by the NRC and the State of Maryland that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Maryland, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended, nor is anything in this Agreement intended to restrict or expand the authority of the State of Maryland on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Maryland with regards to nuclear power production or nuclear utilization facilities, 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Maryland during emergencies at nuclear power plants which have implemented an ERDS interface

and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Maryland. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Maryland's General Responsibilities

A. Maryland will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Maryland will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Maryland agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

Maryland and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Maryland and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Maryland agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Maryland will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Maryland Public Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Maryland by the NRC. Maryland may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Maryland will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director, Radiological Health Program, Maryland Department of Environment (MDE). These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Maryland staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Maryland will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This agreement 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 agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: January 6, 1993.

James M. Taylor,

Executive Director for Operations.

For the State of Maryland.

Dated: January 27, 1993.

Robert Perciasepe,

Secretary, Maryland Department of the Environment.

Dated: January 22, 1993.

Merrylin Zaw-Mon,

Director, Air and Radiation Management Administration.

Dated: January 13, 1993.

Roland G. Fletcher,

Administrator, Radiological Health Program, Maryland Department of Environment.

Approved as to form and legal sufficiency this 13th day of January, 1993.

Neil F. Quinter,

Assistant Attorney General.

58 FR 21603
Published 4/22/93
Effective 3/22/93

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of New Jersey

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of New Jersey. The MOU provides the basis for mutually agreeable procedures whereby the State of New Jersey may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in New Jersey. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register** Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective March 22, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT:

John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of New Jersey to provide data related to plant conditions during emergencies at commercial nuclear power plants in New Jersey.

Dated at Rockville, Maryland, this 9th day of April 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of New Jersey and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of New Jersey enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

New Jersey recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This Agreement is intended to be consistent with, and implement the provisions of, the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's response to emergency situations.

D. New Jersey fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Division of Environmental Safety, Health and Analytical Programs, Department of Environmental Protection and Energy.

III. Scope

A. This Agreement defines the way in which NRC and New Jersey will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System (ERDS) during emergencies at nuclear power plants in the State of New Jersey.

B. It is understood by the NRC and the State of New Jersey that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of New Jersey, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of New Jersey on matters not within the Scope of this Agreement.

D. Nothing in this Agreement confers upon the State of New Jersey 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this Agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of New Jersey during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of New Jersey. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. New Jersey's General Responsibilities

A. New Jersey will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, New Jersey will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. New Jersey agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

New Jersey and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. New Jersey and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and New Jersey agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this agreement.

C. To preclude the premature public release of sensitive information, NRC and New Jersey will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to New Jersey by the NRC. New Jersey may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, New Jersey will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data and the Director, Division of Environmental Safety, Health and Analytical Programs, New Jersey Department of Environmental Protection and Energy. These individuals may designate appropriate staff representatives for the

purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and New Jersey staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and New Jersey will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment Management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: March 2, 1993.

James M. Taylor,

Executive Director for Operations.

For the State of New Jersey.

Dated: March 22, 1993.

Scott A. Weiner,

Commissioner, Department of Environmental Protection and Energy.

58 FR 21605
Published 4/22/93
Effective 3/11/93

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of New York

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of New York. The MOU provides the basis for mutually agreeable procedures whereby the State of New York may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in New York. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the Federal Register Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective March 11, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of New York to provide data related to plant conditions during emergencies at commercial nuclear power plants in New York.

Dated at Rockville, Maryland, this 9th day of April 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of New York and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of New York enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

New York recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorized the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. New York fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear plant through the New York State Radiological Emergency Preparedness Plan for commercial power plants.

III. Scope

A. This Agreement defines the way in which NRC and New York will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants in the State of New York.

B. It is understood by the NRC and the State of New York that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of New York, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of New York on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of New York 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of New York during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of New York. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. New York's General Responsibilities

A. New York will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, New York will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. New York agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the utility provided technical liaison or the NRC.

VI. Implementation

New York and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. New York and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and New York agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and New York will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to New York by the NRC. New York may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercise with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, New York will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director of the New York State Emergency Management Office. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and New York staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and New York will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: March 1, 1993.

James M. Taylor,

Executive Director for Operations.

Dated: March 11, 1993.

Donald A. DeVito,

Director, State Emergency Management Office.

58 FR 26801
Published 5/5/93
Effective 4/9/93

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Arizona

AGENCY: U.S. Nuclear Regulatory Commission.
ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Arizona. The MOU provides the basis for mutually agreeable procedures whereby the State of Arizona may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Arizona. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register** Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective April 9, 1993.

ADDRESSES: Copies of all NRC documents are available for pubic inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Arizona to provide data related to plant conditions during emergencies at commercial nuclear power plants in Arizona.

Dated at Rockville, Maryland, this 23rd day of April, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Arizona and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Arizona enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Arizona recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Arizona fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the State of Arizona/Maricopa County Fixed Nuclear Facility Emergency Response Off-Site Plan.

III. Scope

A. This Agreement defines the way in which NRC and Arizona will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of Arizona.

B. It is understood by the NRC and the State of Arizona that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Arizona, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Arizona on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Arizona 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Arizona during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Arizona. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring the ERDS workstation.

V. State of Arizona General Responsibilities

A. Arizona will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Arizona will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Arizona agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State Boundary.

C. For the purpose of minimizing the impact on plant operators, clarification

of ERDS data will be pursued through the NRC.

VI. Implementation

Arizona and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Arizona and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Arizona agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Arizona will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Arizona by the NRC. Arizona may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Arizona will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director, Arizona Radiation Regulatory Agency. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Arizona Radiation Regulatory Agency staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Arizona will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commissions regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: January 6, 1993.

For The U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: April 9, 1993.

For The State of Arizona.

Aubrey V. Godwin,

Director, Arizona Radiation Regulatory Agency.

58 FR 36710
Published 7/8/93
Effective 5/21/93

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Commonwealth of Massachusetts

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Massachusetts. The MOU provides the basis for mutually agreeable procedures whereby the Commonwealth of Massachusetts may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Massachusetts. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the Federal Register Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective May 21, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the Commonwealth of Massachusetts to provide data related to plant conditions during emergencies at commercial nuclear power plants in Massachusetts.

Dated at Rockville, Maryland, this 25th day of June, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the Commonwealth of Massachusetts and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Massachusetts, acting through Massachusetts Emergency Management Agency, enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

Massachusetts recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under those statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (57 FR 6462, February 25, 1992). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Massachusetts fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Massachusetts Emergency Management Agency ("MEMA"), an agency created by Chapter 639 of the Acts of 1950, as amended.

III. Scope

A. This Agreement defines the way in which NRC and Massachusetts will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants in and adjacent to the Commonwealth of Massachusetts, specifically Pilgrim Station, Seabrook Station, and Vermont Yankee.

B. It is understood by the NRC and the Commonwealth of Massachusetts that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the Commonwealth of Massachusetts, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the Commonwealth of Massachusetts on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the Commonwealth of Massachusetts 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the Commonwealth of Massachusetts during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the Commonwealth of Massachusetts. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Massachusetts' General Responsibilities

A. Massachusetts, acting through MEMA, will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Massachusetts will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Massachusetts agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC and/or the utility provided technical liaison personnel.

VI. Implementation

Massachusetts and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Massachusetts, through MEMA, and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and MEMA agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept

informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Massachusetts will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Massachusetts General Laws Chapter 66A, Fair Information Practices, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to MEMA by the NRC. MEMA may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS, for exercises in which the NRC is not participating, MEMA will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Governor-appointed Director of the Massachusetts Emergency Management Agency. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and MEMA staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and MEMA will work together to resolve these differences.

B. Resolution of differences between MEMA and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office of Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: January 6, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: May 21, 1993.

For the Commonwealth of Massachusetts.

A. David Rodham,

Director, Massachusetts Emergency Management Agency.

58 FR 43920
Published 8/18/93
Effective 7/15/93

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Tennessee

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Tennessee. The MOU provides the basis for mutually agreeable procedures whereby the State of Tennessee may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Tennessee. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the Federal Register Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective July 15, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Tennessee to provide data related to plant conditions during emergencies at commercial nuclear power plants in Tennessee.

Dated at Rockville, Maryland, this 9th day of August 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Tennessee and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Tennessee enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

The State of Tennessee/Division of Radiological Health (TDRH) recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial

Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February [illegible] 1989). The policy statement provides that NRC will consider State applications to enter into instruments of cooperation for certain programs where State programs have provisions that provide close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. TDRH fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the "Tennessee Multi-Jurisdictional Radiological Emergency Response Plan."

III. Scope

A. This Agreement defines the way in which NRC and TDRH will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of Tennessee.

B. It is understood by the NRC and the State of Tennessee that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Tennessee or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Tennessee on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Tennessee 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Tennessee during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Tennessee. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring and ERDS workstation.

V. TDRH's General Responsibilities

A. TDRH will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, TDRH will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. TDRH agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

c. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the liaisons currently established between the State of Tennessee and the Tennessee Valley Authority (TVA) for the interpretation of technical information. Clarification of specific data related to the ERDS system will be pursued through the NRC. TDRH will not request clarification of ERDS data through the plant operators.

VI. Implementation

TDRH and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. TDRH and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and TDRH agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and TDRH will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to TDRH by the NRC. TDRH may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, TDRH will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director, Division of Radiological Health. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and TDRH staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and TDRH will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date will be

performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: July 1, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: July 15, 1993.

For the State of Tennessee.

Michael H. Mobley,

Director, Division of Radiological Health.

≫ 58 FR 47300
Published 9/8/93
Effective 8/26/93

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration.

SUMMARY: The U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration (FDA) signed a Memorandum of Understanding (MOU) on August 26, 1993 which describes the roles of the FDA and NRC, and the coordination between the two agencies. The text of the MOU is set forth below.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6-H-3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-504-3417.

Dated: September 1, 1993.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration

The Nuclear Regulatory Commission (NRC) and the Food and Drug Administration (FDA), Department of Health and Human Services (DHHS) have regulatory responsibilities concerning medical devices, drugs, and biological products utilizing byproduct, source, or special nuclear material. The organizations in FDA that are principally responsible for regulating these products are the Center for Devices and Radiological Health (CDRH), the Center for Drug Evaluation and Research (CDER), and the Center for Biological Evaluation and Research (CBER). The organizations in NRC that are principally responsible for regulating these products are the Office of Nuclear Materials Safety and Safeguards (NMSS), the Office of Nuclear Reactor Regulation (NRR), and the Office of State Programs (OSP). For their respective authorities, the agencies hereto agree as follows:

I. Purpose and Scope

A. The purpose of this Memorandum of Understanding (MOU) is to coordinate existing NRC and FDA regulatory programs for medical devices, drugs, and biological products utilizing byproduct, source, or special nuclear material. These regulatory programs include activities for evaluating and authorizing the manufacture, sale, distribution, licensing, and labeled intended use of such products.

B. This MOU covers only those medical devices (including utilization facilities used for medical therapy), drugs and biological products utilizing byproduct, source, or special nuclear material regulated under the Atomic Energy Act of 1954, as amended. The terms "drug" and "device" are defined in the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 321 (g) and (h)), and "biologic" is used in the Public Health Service Act (42 U.S.C. 262). A biological product is either a drug or a device and is described in Part II, FDA, of this MOU. The terms "byproduct material," "source material," and "special nuclear material" are defined in Section 11 (e), (z), and (aa) of the Atomic Energy Act of 1954, as amended, and described in Part II, NRC, of this MOU.

Medical devices affected by this MOU include, but are not limited to: in vitro diagnostic kits (radioimmunoassay); utilization facilities licensed to perform medical therapy; and teletherapy and brachytherapy sources, systems, and accessory devices. Biologics affected by this MOU include, but are not limited to: licensed in vitro diagnostic kits (i.e., radioimmunoassay), and certain radiolabeled biologics for in-vivo use. Drugs affected by this MOU include all those that contain byproduct, source, or special nuclear material.

II. Authority and Regulatory Program

A. FDA

FDA is responsible for assuring the safety, effectiveness, and proper labeling of medical products, i.e., drugs, devices, and biologics.

1. FDA/CDRH

The principal statute under which FDA/CDRH regulates devices is the Federal Food, Drug, and Cosmetic Act, as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990 and the Medical Devices Act of 1992.

Section 201(h) of the Federal Food, Drug, and Cosmetic Act, as amended, defines "device" as follows:

"The term 'device' * * * means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) Recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) Intended for use in the diagnosis of disease or other conditions, or in the

cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) Intended to affect the structure or any function of the body of man or other animals, and

which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes."

FDA/CDRH programs intended to ensure the safety and effectiveness of devices include, but are not limited to, the following:

(1) Review of investigational device exemptions (IDE), premarket notification (510(k)), premarket approval (PMA);

(2) Review of voluntary and mandatory medical device reports; and

(3) Enforcement activities such as routine and directed inspections, product removals, recalls, warning letters, and case actions such as seizure, injunction, prosecution, and civil penalties.

2. FDA/CDER

The principal statute under which FDA/CDER regulates drugs for human use is the Federal Food, Drug, and Cosmetic Act, as amended.

Section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, as amended, defines "drug" as follows:

The term "drug" means (A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any articles specified in class (A), (B), or (C).

FDA/CDER functions intended to ensure the effectiveness, safety, and quality of drugs for human use include, but are not limited to, the following:

(1) Review of clinical and bioavailability studies, manufacturing processes, and testing methods;

(2) Review of voluntary and mandatory adverse reaction reports and drug product defect reports;

(3) Enforcement activities such as routine and directed inspections, product removals, recalls, warning letters, and case actions such as seizure, injunction, prosecution, and civil penalties.

3. FDA/CBER

The principle statute under which FDA/CBER regulates biological products is the Public Health Service Act.

However, all biological products have also been defined as either drugs or devices under the Federal Food, Drug, and Cosmetic Act, as amended.

As provided in Section 351(a) of the Public Health Service Act, 21 CFR 600.3(h) defines biological products as follows:

"* * * any virus, therapeutic serum, toxin, or antitoxin, or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man * * *"

FDA/CBER functions intended to ensure the effectiveness, safety, and quality of biological products for human use include, but are not limited to, the following:

(1) Review of clinical and bioavailability studies, manufacturing processes, and testing methods;

(2) Review of voluntary and mandatory adverse reaction reports and biological products defect reports;

(3) Enforcement activities such as routine and directed inspections, product removals, recalls, warning letters, and case actions such as seizure, injunction, prosecution, and civil penalties.

B. NRC

NRC is responsible for licensing and regulating nuclear facilities and material 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 in accordance with the National Environmental Policy Act of 1969, as amended, and other applicable statutes. NRC responsibilities include protecting public health and safety, protecting the environment, and safeguarding materials in the interest of national security.

1. NRC/NMSS

NMSS's responsibilities for the medical use of byproduct, source, or special nuclear material include, but are not limited to:

(1) Licensing and inspection of medical, industrial, academic/and commercial uses of byproduct, source, or special nuclear material;

(2) Development and implementation of NRC policy for the regulation of activities involving safety, quality, approval, and inspection and enforcement regarding the use and handling of byproduct, source, or special nuclear material;

(3) Reviewing of sealed sources or devices to provide reasonable assurances that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property; and

(4) Monitoring and investigation, as necessary, of misadministrations as defined in 10 CFR 35.2, which occur during the intentional internal or external administration of byproduct, source, or special nuclear material, or radiation therefrom, to human beings in the practice of medicine.

2. NRC/OSP

OSP's responsibilities for the medical use of byproduct, source, or special nuclear material include, but are not limited to:

(1) Negotiation of Agreements with States under section 274 of the atomic Energy Act of 1954, as amended;

(2) Evaluation of the program of a new Agreement State to determine if it is adequate to protect the public health and safety, and if it is compatible with the NRC program;

(3) Periodic evaluation of the Agreement State programs to determine continued adequacy and compatibility; and

(4) Training of, and consultation with, Agreement States on radiological public health and safety issues.

3. NRC/NRR

NRR's responsibilities for the medical use of utilization facilities, include, but are not limited to:

(1) Licensing and inspection of utilization facilities for medical therapy, pursuant to 10 CFR 50.21 and 10 CFR 50.41; and

(2) Development and implementation of NRC policy for the regulation of activities involving safety, quality, approval, and inspection and enforcement regarding the use of utilization facilities for medical therapy.

4. Agreement States

Under section 274 of the Atomic Energy Act of 1954, as amended, the Commission is authorized to discontinue its regulatory authority for certain radioactive materials if a State has a program that is adequate to protect the public health and safety and compatible with NRC's program. The transfer of this regulatory authority is executed through an Agreement between the Chairman of NRC and the Governor of a State. Agreement States use their own authority to regulate these materials.

III. Elements of Coordination

A. Notification of Product Complaints, Misadministrations, or Emergency Situations

Both agencies agree to promptly inform each other whenever they receive a report or otherwise become aware of a potential public health problem such as a malfunction, failure, reportable event, or a misadministration involving products of mutual regulatory concern. Each agency will assign one or more contact persons in order to ensure that such information is promptly exchanged and that appropriate FDA and/or NRC actions are initiated on the basis of any necessary compliance or follow-up objectives. Each organization will promptly notify the other when there is a change in an assigned contact person.

B. Coordination of Investigations

Upon request, FDA and NRC will assist each other, to the fullest extent possible, in the investigation of incidents or complaints involving products of mutual regulatory concern. For the purposes of this MOU, investigations will be considered to include inspections in response to incidents or events, as well as, formal investigations initiated in accordance with each agency's internal procedures. (Agreement States will be involved as appropriate to the specific situation.) During the term of this agreement, joint inspections or observer invitations can be requested or extended by either agency, when deemed necessary, to ensure that information obtained from an investigation is collected, shared and acted upon in a timely and coordinated manner. Both agencies will make every reasonable effort to accommodate joint inspection or observer requests depending upon availability of personnel and current FDA or NRC priorities. Each agency will assign one or more persons to assure that investigations are coordinated in a manner that maximizes regulatory efficiency and minimizes duplication of effort. Each agency will promptly notify the other when there is a change in an assigned contact person.

1. Investigation Information Exchange

Both agencies agree to an exchange of information with respect to investigations. The purpose of these exchanges is to provide expert technical assistance to either agency and to assist either agency by reducing or eliminating any duplication of effort. The sharing of information between FDA and NRC (and Agreement States as appropriate) will be exercised to the extent authorized by law, and by NRC and FDA directives, statutes, and regulations, and will be consistent with the respective agency's mission.

Both agencies recognize the need to protect from public disclosure, data and information that are exchanged between the agencies and that fall within the definition of trade secret, or confidential commercial or financial information. Both agencies agree to exchange proprietary information in accordance with applicable regulations. If FDA provides NRC with trade secret information, there shall be an additional written agreement in the form of an exchange of letters between the appropriate liaison officers in accordance with 21 CFR 20.90. If a request calls for a disclosure determination regarding proprietary information such as a Freedom of Information Act request, response to a Congressional inquiry, or in cases where either agency must comply with various regulatory or public information responsibilities, for any such information obtained from the other agency, that agency will be notified of the request. The notified agency will be responsible for making any needed contact with the submitter of the protected information and accept the responsibility for evaluating the submitter's comments prior to rendering the disclosure determination.

To reserve the right of maximum control over actual disclosure of its own records, each agency shall retain legal authority and the commensurate responsibility over disclosure of those documents provided to the other agency.

Upon request, FDA and NRC will:

(a) provide copies of Establishment or User Site Inspection Reports;

(b) provide copies of all analytical data and correspondence of significance related to investigations or activities associated with an area of mutual regulatory concern;

(c) provide copies of official legal or compliance actions taken against firms or licensees of mutual interest; and

(d) participate in meetings with regulated industry covering issues of mutual regulatory concern.

2. NRC Licensee and Agreement State Notifications

Upon request, NRC will promptly notify NRC licensees and Agreement State Program Directors of any public health issues or other important user communications initiated by FDA as the result of joint investigations or other activities involving products of mutual regulatory concern.

C. Product Premarketing and Preliminary Information Exchange

To the extent practicable the two agencies will share information concerning new technology or methods under development or review, including devices, drugs, or biologics, for which regulations have not yet been developed, or is related to the mission of the other agency. Both agencies agree to exchange proprietary information in accordance with applicable regulations. If FDA provides NRC with trade secret information, there shall be an additional written agreement in the form of an exchange of letters between the appropriate liaison officers in accordance with 21 CFR 20.90.

This information may include, but is not limited to:

(i) design, chemical and physical form of the material or the device;
(ii) manufacture/preparation;
(iii) prototype testing;
(iv) quality assurance and control;
(v) labeling per regulatory requirements;
(vi) intended use;
(vii) safety analysis;
(viii) installation;
(ix) servicing;
(x) leak testing;
(xi) operating instructions; and
(xii) emergency/safety instructions.

D. Sharing of Other Information

FDA and NRC will offer each other the opportunity to comment on special notifications to manufacturers, operators, licensees, or patients. FDA and NRC will also offer each other the opportunity to comment on regulations, regulatory guides or other communications that refer to activities, policies, or regulations of the other agency. If practicable, the documents will be provided prior to issuance.

Either agency may request additional information when deemed necessary to complete its mission.

E. Advisory Committees

NRC and FDA will make the other agency aware of and, to the extent possible, allow participation by a representative from the other agency in any Advisory Committee which advises on issues related to this MOU.

IV. Name and Address of Participating Agencies

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; and the
Nuclear Regulatory Commission, Washington, D.C. 20555

V. Liaison Officers

Each liaison officer will establish and maintain a call list of responsible

persons within his or her organization. These call lists will designate specific persons for day-to-day contact on matters related to this MOU. These lists with current work and home phone numbers will be exchanged among the liaison officers. The lists will be updated every six months or whenever a liaison officer's or day-to-day contact person's phone number changes.

Liaison officers are as follow:

A. For the Food and Drug Administration

1. Center for Devices and Radiological Health, Director, Office of Compliance and Surveillance, (currently: Mr. Ronald M. Johnson), 1390 Piccard Drive, Rockville, MD 20850, Telephone: 301–594–2100.
2. Center for Drug Evaluation and Research, Director, Office of Compliance, (currently: Charma A. Konnor), 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–594–0054.
3. Center for Biologic Evaluation and Research, Deputy Director, Office of Compliance, (currently: P. Michael Dubinsky), 1401 Rockville Pike, Rockville, MD 20850, Telephone: 301–594–2066.

B. For the Nuclear Regulatory Commission

Director, Office of Nuclear Material Safety and Safeguards, (currently: Robert M. Bernero), OWFN MS–6E–6, 11555 Rockville Pike, Rockville, MD 20852, Telephone: 301–504–3352.

VI. Annual Inter-Agency Meeting

The liaison officers shall meet at least annually to evaluate the activities related to this MOU and make recommendations to agency heads on its effectiveness. FDA and NRC will host the meeting on alternating years.

VII. Other Laws and Matters

Nothing in this Memorandum of Understanding shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor shall anything in the Memorandum be construed as modifying the existing authority of either agency.

VIII. Effective Date, Modification and Termination of MOU

This MOU will take effect when it has been signed by the authorized representatives of FDA and NRC. It may be modified by mutual written consent or terminated by either agency upon a sixty (60) day advance written notice to the other agency. The agencies agree to evaluate the agreement every three (3) years, at which time either agency would have the option of renewing, modifying or canceling the MOU

Approved and accepted for the Nuclear Regulatory Commission.

Ivan Selin,

Chairman, USNRC.

Dated: August 26, 1993.

Approved and accepted for the Food and Drug Administration.

David A. Kessler,

Commission of Food and Drugs.

Dated: August 26, 1993.

≫58 FR 47996
Published 9/14/93
Effective 6/17/93

Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating To Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into on November 1, 1980 (published December 16, 1980, 45 FR 82713), revised April 9, 1985 (published April 18, 1985, 50 FR 15485), and published as Appendix A to 44 CFR part 353. The substantive changes in the new MOU are: (1) Self-initiated review by the NRC; (2) Early Site Permit process; (3) adoption of FEMA exercise time-frames; (4) incorporation of FEMA definition of exercise deficiency; (5) NRC commitment to work with licensees in support of State and local governments to correct exercise deficiencies; (6) correlation of FEMA actions on withdrawal of approvals under 44 CFR part 350 and NRC enforcement actions; and (7) disaster-initiated reviews in situations that affect offsite emergency infrastructures. The text of the MOU follows.

Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness

I. Background and Purposes

This Memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR part 50, appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Preparedness," that was responsive to the President's December 7, 1979, statement. A revised and updated Memorandum of Understanding became effective November 1, 1980. The MOU was further revised and updated on April 9, 1985. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the previous MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergencies and takes the lead for assessing offsite radiological emergency response plans[1] and preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans, and communicates those findings and determinations to the NRC. The NRC reviews those FEMA findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters. However, if FEMA informs the NRC that an emergency, unforeseen contingency, or other reason would prevent FEMA from providing a requested finding in a reasonable time, then, in consultation with FEMA, the NRC might initiate its own review of offsite emergency preparedness.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, roles, and responsibilities of Federal Agencies for responding to accidents involving peacetime nuclear emergencies. On December 1, 1991, the NRC and FEMA also concluded a separate MOU in support of Executive Order 12657 (FEMA Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants).

II. Authorities and Responsibilities

FEMA-Executive Order 12148 charges the Director, FEMA, with the responsibility to "* * * establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies" (Section 2–101) and "* * * represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs" (Section 2–104).

On December 7, 1979, the President, in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning and to review and assess offsite emergency plans and preparedness for adequacy.

2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment). Notwithstanding the procedures which are set forth in 44 CFR part 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings, and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA's procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR part 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

If the review involves an application under 10 CFR part 52 for an early site permit, the NRC will forward to FEMA pertinent information provided by the applicant and consult with FEMA as to whether there is any significant impediment to the development of offsite emergency plans. As appropriate, depending upon the nature of information provided by the applicant, the NRC will also request that FEMA determine whether major features of offsite emergency plans submitted by the applicant are acceptable, or whether offsite emergency plans submitted by the applicant are adequate, as discussed below.

An interim finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the standards and criteria of NUREG–0654/FEMA–REP–1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding will indicate one of the following conditions: (1) Plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment) or (3) plans are inadequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

If, in FEMA's view, the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in timely development and review of the plans.

An interim finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the standards and criteria of NUREG–0654/

[1] Assessments of offsite plans may be based on State and local government plans submitted to FEMA under its rule (44 CFR Part 350), and as noted in 44 CFR 350.3(f), may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

FEMA-REP-1 and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that must be corrected; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State, local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR part 351, March 11, 1982. [47 FR 10758)]

NRC-The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and appendix E to 10 CFR part 50, and 10 CFR part 52) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.

2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).

3. To review the FEMA findings and determinations as to whether offsite plans are adequate and can be implemented.

4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdown of operating reactors.

III. Areas of Cooperation

A. NRC Licensing Reviews

FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include timely submittal of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA routine support will include providing assessments, findings and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearing boards and administrative law judges, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. FEMA is not a party to NRC proceedings and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences will be made by the General Counsel of FEMA and the General Counsel of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this MOU shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

B. FEMA Review of Offsite Plans and Preparedness

NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

C. Preparation for and Evaluation of Joint Exercises

FEMA and NRC will cooperate in determining exercise requirements for licensees, and State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of any deficiencies by the licensee. The failure of a licensee to develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under

44 CFR part 350 and NRC's requirement under 10 CFR part 50, appendix E, Section IV.F. Exercise evaluations will identify one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are deficiencies that must be corrected; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. The schedule for issuance of the draft and final exercise reports will be as shown in FEMA-REP-14 (Radiological Emergency Preparedness Exercise Manual).

The deficiency referred to in (2) above is defined as an observed or identified inadequacy of organizational performance in an exercise that could cause a finding that offsite emergency preparedness is not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of a radiological emergency to protect the health and safety of the public living in the vicinity of a nuclear power plant. Because of the potential impact of deficiencies on emergency preparedness, they should be corrected within 120 days through appropriate remedial actions, including remedial exercises, drills, or other actions.

Where there are deficiencies of the types noted above, and when there is a potential for remedial actions, FEMA Headquarters will promptly (1–2 days) discuss these with NRC Headquarters. Within 10 days of the exercise, official notification of identified deficiencies will be made by FEMA to the State, NRC Headquarters, and the RAC with an information copy to the licensee. NRC will formally notify the licensee of the deficiencies and monitor the licensee's efforts to work with State and local authorities to correct the deficiencies. Approximately 60 days after official notification of the deficiency, the NRC, in consultation with FEMA, will assess the progress being made toward resolution of the deficiencies.

D. Withdrawal of Reasonable Assurance Finding

If FEMA determines under 44 CFR 350.13 of its regulations that offsite emergency plans or preparedness are not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of radiological emergency to protect the health and safety of the public, FEMA shall, as described in its rule, withdraw approval.

Upon receiving notification of such action from FEMA, the NRC will promptly review FEMA's findings and determinations and formally document the NRC's position. When, as described in 10 CFR 50.54(s)(2)(ii) and 50.54(s)(3) of its regulations, the NRC finds the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the NRC will notify the affected licensee accordingly and start the "120-day clock."[2]

E. Emergency Planning and Preparedness Guidance

NRC has lead responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

F. Support for Document Management System

FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

G. Ongoing NRC Research and Development Programs

Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

H. Public Information and Education Programs

FEMA will take the lead in developing public information and educational programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation, and its hazards and information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials.

I. Recovery from Disasters Affecting Offsite Emergency Preparedness

Disasters that destroy roads, buildings, communications, transportation resources or other offsite infrastructure in the vicinity of a nuclear power plant can degrade the capabilities of offsite response organizations in the 10-mile plume emergency planning zone. Examples of events that could cause such devastation are hurricanes, tornadoes, earthquakes, tsunamis, volcanic eruptions, major fires, large explosions, and riots.

If a disaster damages the area around a licensed operating nuclear power plant to an extent that FEMA seriously questions the continued adequacy of offsite emergency preparedness, FEMA will inform the NRC promptly. Likewise, the NRC will inform FEMA promptly of any information it receives from licensees, its inspectors, or others, that raises serious questions about the continued adequacy of offsite emergency preparedness. If FEMA concludes that a disaster-initiated review of offsite radiological emergency preparedness is necessary to determine if offsite emergency preparedness is still adequate, it will inform the NRC in writing, as soon as practicable, including a schedule for conduct of the review. FEMA will also give the NRC (1) interim written reports of its findings, as appropriate, and (2) a final written report on the results of its review.

The disaster-initiated review is performed to reaffirm the radiological emergency preparedness capabilities of affected offsite jurisdictions located in the 10-mile emergency planning zone and is not intended to be a comprehensive review of offsite plans and preparedness.

The NRC will consider information provided by FEMA Headquarters and pertinent findings from FEMA's disaster-initiated review in making decisions regarding the restart or continued operation of an affected operating nuclear power reactor. The NRC will notify FEMA Headquarters, in writing, of the schedule for restart of an affected reactor and keep FEMA Headquarters informed of changes in that schedule.

IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee on Emergency Preparedness will continue to be the focal point for

[2] Per 10 CFR 50.54(s)(2)(ii), the Commission will determine whether the reactor shall be shut down or other appropriate enforcement actions if such conditions are not corrected within four months. The NRC is not limited by this provision of the rule, for, as stated in 10 CFR 50.54(s)(3), "Nothing in this paragraph shall be construed as limiting the authority of the Commission to take action under any other regulation or authority of the Commission *or at any time other than that specified in this paragraph*" (emphasis added).

coordination of emergency planning and preparedness. As discussed in Section I of this agreement, response activities between these two agencies are addressed in a separate MOU. The Steering Committee will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to NRC and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria, as appropriate, in their respective jurisdictions. (See Attachment 1).

V. Working Arrangements

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

VI. Memorandum of Understanding

A. This MOU shall be effective as of date of signature and shall continue in effect unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: June 17, 1993

James M. Taylor,

Executive Director for Operations

Dated: June 17, 1993.

Approved for the Federal Emergency Management Agency

Richard W. Krimm,

Acting Associate Director, State and Local Programs and Support.

Attachment 1—FEMA/NRC Steering Committee

Purpose

Assure coordination of efforts to maintain and improve emergency planning and preparedness for nuclear power reactors as described in the NRC and FEMA rules and the NRC/FEMA MOU on Radiological Emergency Planning and Preparedness. Coordinate consistent criteria for licensee, State and local emergency plans and preparedness.

Membership

The NRC and FEMA consignees of this MOU will designate respective co-chairs for the Steering Committee. The designated co-chairs will, in turn, appoint their respective members to the Committee.

Membership Changes

Changes to the membership of the NRC/FEMA Steering Committee may be made by the co-chairs representing the agency whose member is being changed.

Operating Procedures

The Steering Committee will maintain a record of each meeting to include identification of issues discussed and conclusions reached. No meeting will be held without the attendance and participation of at least the co-chairs or two assigned members of each agency.

Coordination

When items involving responsibilities of other NRC or FEMA offices are discussed, the affected offices will be contacted as appropriate.

Dated: September 7, 1993.

James L. Witt,

Director.

58 FR 65198
Published 12/13/93
Effective 11/17/93

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Arkansas

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Arkansas. The MOU provides the basis for mutually agreeable procedures whereby the State of Arkansas may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Arkansas. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the Federal Register Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective November 17, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT:

John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Arkansas to provide data related to plant conditions during emergencies at commercial nuclear power plants in Arkansas. Data at Rockville, Maryland, this 3rd day of December, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Arkansas and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Arkansas enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Arkansas recognizes 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.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorizes the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial

Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement, the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensees's responses to emergency situations.

D. Arkansas fulfills its statutory mandate to provide for preparedness, response, mitigation and recovery in the event of an accident at a nuclear power plant through:

(1) Maintenance of the *State of Arkansas Emergency Operations Plan (EOP)* and the Emergency Response Plans of the various Counties in the planning zones surrounding Arkansas Nuclear One (ANO);

(2) Operation of an ongoing offsite Environmental Surveillance Program in the area surrounding ANO;

(3) Operation of an ongoing program which provides training for state and local emergency workers;

(4) Participation in emergency drills and exercises; and

(5) Responding to actual emergencies.

III. Scope

A. This Agreement defines the way in which NRC and Arkansas will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System (ERDS) during emergencies at nuclear power plants in the State of Arkansas.

B. It is understood by the NRC and the State of Arkansas that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Arkansas, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Arkansas on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Arkansas 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; 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 to the NRC.

IV. NRC's General Responsibilities

Under this Agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Arkansas during emergencies at nuclear power plants which have implemented and ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of Arkansas. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. The State of Arkansas' General Responsibilities

A. The State of Arkansas will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Arkansas will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Arkansas agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

Arkansas and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Arkansas and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Arkansas agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Arkansas will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Arkansas by the NRC. Arkansas may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Arkansas will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director, Division of Radiation Control and Emergency Management, Arkansas Department of Health. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Arkansas' State staff members on technical and other day-to-day activities.

VIII. Resolution Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Arkansas will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel the final authority to provide legal interpretation of the Commissic regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

* * * * *

For the U.S. Nuclear Regulatory Commission.
Dated: November 2, 1993.
James M. Taylor,
Executive Director for Operations.

* * * * *

For the State of Arkansas.
Dated: November 17, 1993.
Greta Joy Dicus,
Director, Division of Radiation Control and Emergency Management, Arkansas Department of Health.

59 FR 3740
Published 1/26/94
Effective 12/14/93

Uranium Recovery Field Office

AGENCY: Nuclear Regulatory Commission.
ACTION: Notice of signing of Memorandum of Understanding (MOU) between the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) concerning the Homestake Uranium Mill.

SUMMARY: On December 14, 1993, the NRC and the EPA signed an MOU delineating agency responsibilities in regulating activities at the Homestake Mining Company's Grants Uranium Mill. The NRC has regulated activities at the site since June 1, 1986, under a source and byproduct material license issued in accordance with title 10 of the Code of Federal Regulations, part 40. Prior to June 1, 1986, activities at the site were regulated under a license issued by the State of New Mexico in accordance with its status as an NRC agreement state. During the period of State regulatory authority, the Homestake site was placed on the EPA's Superfund National Priorities List at the request of the State. A copy of the MOU, which delineates agency responsibilities at the site, is printed following this notice.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225. Telephone: (303) 231-5800.

MEMORANDUM OF UNDERSTANDING BETWEEN REGION 6 OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND REGION IV OF THE U.S. NUCLEAR REGULATORY COMMISSION FOR REMEDIAL ACTION AT THE HOMESTAKE MINING COMPANY URANIUM MILL IN CIBOLA COUNTY, NM

I. Purpose

This document establishes the roles, responsibilities, and relationships between Region 6 of the U.S. Environmental Protection Agency (EPA) and Region IV of the U.S. Nuclear Regulatory Commission (NRC), hereinafter collectively referred to as the "Parties," regarding remedial action at the Homestake Mining Company (HMC) uranium mill in Cibola County, New Mexico. The Parties have overlapping authority in connection with this site and, consistent with the purposes of the March 16, 1992, interegency Memorandum of Understanding between EPA and NRC entitled "Guiding Principles for EPA/NRC Cooperation and Decision Making," this Memorandum of Understanding (MOU) will help assure that remedial actions occur in a timely and effective manner.

II. Basis for Agreement

NRC will assume the role of lead regulatory agency for the byproduct material disposal area reclamation and closure activities and EPA will monitor all such activities and provide review comments directly to NRC. The objective of EPA's review and comment will be to assure that activities to be conducted under NRC's regulatory authority will allow attainment of applicable or relevant and appropriate requirements under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 et seq., outside of the byproduct material disposal site. NRC will require the Licensee to implement an approved disposal site reclamation plan which meets the requirements of 10 CFR part 40, Appendix A, as amended at 52 FR 43553 through 43568 (November 1987), "Uranium Mill Tailings Regulations; Ground Water Protection and other Issues," which conforms with EPA 40 CFR part 192, subpart D. EPA and NRC agree that the requirements of 10 CFR part 40, Appendix A, are the Federal environmental and public health requirements applicable or relevant and appropriate to the disposal site. EPA and NRC believe that conformance with 10 CFR part 40, Appendix A, will generally assure conformance with CERCLA requirements. However, each party will be responsible for assuring compliance with its specific regulatory requirements as discussed in this section. The parties believe that the U.S. Department of Energy or another responsible State or Federal authority will assume responsibility for long-term care of the byproduct material disposal site following remediation of the site.

III. Background

The State of New Mexico was responsible as an "Agreement State" for licensing and regulating uranium mills within the State until June 1, 1986, at which time, NRC reassumed this authority at the request of the Governor of New Mexico. Prior to this change, EPA had placed the HMC site on the National Priority List (NPL) of sites for response action under CERCLA. EPA's policy is to list only those uranium mills meeting criteria for placement on the NPL which are located in Agreement States, i.e., States which have entered into agreements with NRC pursuant to section 274 of the Atomic Energy Act of 1954, as amended, to regulate certain nuclear activities in a manner compatible with NRC's program. Mills in States where NRC has direct licensing authority have not been placed on the list. Although New Mexico is no longer an Agreement State insofar as uranium recovery operations are concerned and NRC has reassumed primary jurisdiction, the site was properly placed on the NPL and the physical conditions resulting in that placement are still present. After completion of the closure of the disposal area and other remedial measures undertaken in full compliance with 10 CFR part 40, Appendix A (the applicable Federal standards for disposal site reclamation), EPA, pursuant to 40 CFR parts 425(e) and 515(c)(3), and in consultation with the State of New Mexico shall determine whether all required response actions with respect to the site have been implemented. Following such a determination, the site may be considered for deletion from the NPL.

IV. Agreement

In order to achieve satisfactory cleanup of the HMC site, NRC and EPA agree to do the following:

1. The Parties shall coordinate with each other in the oversight of reclamation and remedial activity at the HMC site.

2. EPA will review the amendments to the site reclamation plan ("the plan") and will provide comments to NRC. NRC will review and, if necessary, require revisions to the plan to assure conformance to 10 CFR part 40, Appendix A, as amended, prior to approving the plan via license amendments. NRC will provide EPA with copies of all license amendments which affect the site closure plan prior to issuance for comment. If no comments are received within 30 calendar days, NRC will issue the amendment.

3. If EPA determines that remedial actions are deficient or unsatisfactory, then EPA shall provide notice to NRC of the deficiency. NRC shall assume the lead role for notification to HMC, except for such notification as EPA might statutorily be required to provide in certain events. The notification shall specify a time period within which regulatory compliance is expected to be achieved. Should compliance not be achieved in this time period, EPA will assume the lead for taking or seeking any enforcement action within its area of regulatory responsibility and NRC will assume the lead for any enforcement actions necessary within its area of regulatory responsibility. Both Parties reserve all rights under this MOU to take whatever actions are determined to be necessary, including the conduct of remedial actions within and outside the disposal area, in order to fulfill their regulatory requirements. In any event, no actions affecting site remediation will be taken by either Party without prior consultation with the other Party.

4. Both Parties shall appoint a facility coordinator who shall be responsible for oversight of the implementation of this MOU and the activities required herein. The facility coordinators shall be appointed by each Party within seven (7) days of the effective date of this MOU. Each Party has the right to appoint a new facility coordinator at any time. Such a change shall be accomplished by notifying the other Party, in writing, at least five (5) days prior to the appointment, of the name, telephone number, and mailing address of said facility coordinator.

5. The Parties will meet periodically at the request of either Party and at least semiannually insofar as it is necessary to accomplish the objectives of this MOU. The facility coordinators should communicate with each other on a routine basis by telephone.

6. The Parties will provide technical advice and any necessary regulatory consultation to one another upon request.

7. The Parties will generally provide each other with copies of all official correspondence and documents related to remedial actions at the site. The Parties will also normally provide copies of other information upon request. In the event that one of the Parties does not wish to furnish certain specific information, documents, or correspondence to the other, then said material shall be identified to the other Party along with the reasons for withholding it.

8. Whenever notice or information is required to be forwarded by one party to another under the terms of this MOU, it shall be given by and directed to the individuals at the addresses specified as follows:

EPA: Director, Hazardous Waste Management Division (6H), U.S. EPA, Region 6, 1445 Ross Avenue, suite 1200, Dallas, Texas 75202-2733.

NRC: Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado 80225.

9. Routine communications may be exchanged verbally, in person, or by telephone between the Parties to facilitate the orderly conduct of work contemplated by this MOU.

10. EPA enforcement documentation provided under this MOU will be kept as exempt material by EPA and NRC, to the extent legally possible, according to the policies and procedures under 40 CFR part 2 and 10 CFR part 2.790, respectively.

11. The Parties shall notify each other of any pending visits to the HMC property which relate to the site closure plan. To the extent that they are otherwise authorized to do so, either Party and their consultants may, at their option, accompany the other Party on such visits.

V. Agency Responsibilities

A. NRC Responsibilities

1. NRC will ensure that the owners/operators of the HMC uranium mill implement an approved reclamation plan that meets all relevant NRC requirements, including 10 CFR part 40, Appendix A, as amended. The reclamation plan will require HMC to assure long-term stability of the tailings, reduce gamma radiation to background levels, and diminish radon exhalation to appropriate regulatory standards. If any part of such plan is not complied with by HMC, NRC will take whatever actions it deems appropriate to ensure compliance.

2. NRC will ensure that the owners/operators of the HMC uranium mill implement a compliance monitoring program for hazardous constituents that meets all relevant NRC requirements, including 10 CFR part 40, Appendix A, for the establishment of ground water protection standards and points of compliance. NRC will verify implementation by HMC of any required compliance monitoring and/or ground water corrective action at the HMC uranium mill site resulting from the establishment of ground water protection standards as soon as such is reviewed and accepted by NRC. If any ground water requirements are not complied with by HMC, NRC will take appropriate action to ensure compliance.

3. NRC will direct HMC to provide both Parties with copies of major work product submittals as they become available. Such work products will include a reclamation plan and any other plans and specifications for assessment, remediation, and monitoring, including all analytical data.

4. NRC agrees to provide EPA with progress reports on HMC's remediation, semiannually.

5. NRC will assist in the development of information to support EPA's deletion of the site from the NPL upon completion of the remedial action, if appropriate.

B. EPA Responsibilities

1. EPA will provide formalized review, consultation, and comment throughout the entire project.

2. EPA will review and provide comments on the various components of the reclamation plan, groundwater monitoring, and corrective action submittals, and other related documentation, within timeframes as agreed to between NRC and EPA. In the event that EPA determines that the implementation of the site reclamation plan, closure activities, and/or groundwater corrective action has not resulted in, or may not result in, cleanup conditions that meet applicable or relevant and appropriate requirements under CERCLA, then EPA may take whatever action it deems appropriate.

VI. Dispute Resolution

In the event of a dispute between EPA and NRC concerning site activities, the

persons designated by each Agency as facility coordinators, or in their absence, alternate contact points will attempt to promptly resolve such disputes. If disputes cannot be resolved at this level, the problem will be referred to the supervisors of these persons for further consultation. The supervisory referral and resolution process will continue, if necessary to resolve the dispute, to the level of the Regional Administrators of NRC and EPA. Both Parties shall continue to maintain their respective rights or responsibilities under this MOU during the dispute resolution process.

VII. Execution and Termination

This agreement shall take effect upon execution by EPA and the NRC. It shall remain in effect for the duration of the program addressed herein unless terminated by mutual agreement by the two Agencies; or this MOU may be terminated unilaterally if any of the conditions set forth below are present:

1. The planning or conduct of reclamation plan, closure activities, and/or groundwater cleanup actions fail to meet standards set forth in the Basis for Agreement (Section II) of this MOU.
2. The site is deleted from the NPL.
3. The site is turned over to the Department of Energy or other responsible State or Federal authority for long-term care.
4. Regulatory, statutory, or other events occur which make this MOU unnecessary, illegal, or otherwise inappropriate.

VIII. Modification

The Parties may modify this MOU from time to time in order to simplify and/or define the procedures contained herein. Each Party shall keep the other informed of any relevant proposed modifications to its basic statutory or regulatory authority, forms, procedures, or priorities. This MOU shall be revised, as necessary, by the adoption of such modifications. The MOU should be reviewed on an annual basis by both the Director, Uranium Recovery Field Office, Region IV, NRC, and the Director, Hazardous Waste Management Division, Region 6, EPA, or their designated representatives.

IX. Reservation of Rights

The Parties reserve any and all rights or authority that they may have, including but not limited to legal, equitable, or administrative rights. This specifically includes EPA's and NRC's authority to conduct, direct, oversee, and/or require environmental response in connection with the site, as well as the authority to enter the site and require the production of information, within each of their own areas of responsibility.

X. Severability

The nullification of any one or more sections or provisions of a section of this MOU, either by Agreement of the Parties or by Administrative or Judicial Action, shall not affect the other sections/provisions of this MOU.

Executed and agreed to:

Dated: December 14, 1993.

James L. Milhoan,

Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, Arlington, Texas.

Dated: December 14, 1993.

Joe D. Winkle,

Regional Administrator, U.S. Environmental Protection Agency, Region 6, Dallas, Texas.

59 FR 4729
Published 2/1/94

Joint Statement of Understanding Between Nuclear Regulatory Commission and Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Uranium Enrichment Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Joint Statement of Understanding Between the Nuclear Regulatory Commission and the Department of Energy.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) have entered into a Joint Statement of Understanding which describes the roles of the DOE and NRC in implementing the Energy Policy Act of 1992 provisions on the regulation of gaseous diffusion uranium enrichment plants. The text of the Joint Statement of Understanding is set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. S. R. Ruffin, Office of Nuclear Material Safety and Safeguards, MS 4–E–4, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–504–2696.

Dated at Rockville, Maryland, this 26th day of January, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Joint Statement of Understanding

By October 24, 1994, pursuant to Title XI of the Energy Policy Act of 1992 (the "Act"), the Nuclear Regulatory Commission (the "NRC") is directed to establish standards (the "standards") for regulation of the gaseous diffusion uranium enrichment facilities (the "facilities" or "GDPs") owned by the Department of Energy (the "DOE") in order to protect the public health and safety from radiological hazard and provide for the common defense and security. Title XI of the Act also specifies that NRC establish a certification process to ensure that the U.S. Enrichment Corporation (the "Corporation"), which is to lease the facilities from DOE, complies with the NRC standards. After NRC establishes the standards, the Corporation is required to apply at least annually to NRC for a certificate of compliance with the standards. The requirement for a certificate of compliance is in lieu of any requirement for a license for the facilities leased by the Corporation. The Act also provides that the Corporation may not operate the facilities unless the NRC makes a determination that the facilities are in compliance with the NRC standards to be established by October 24, 1994, or NRC approves a plan prepared by DOE for achieving compliance with such standards.

Title XI of the Act also provides that the NRC, in consultation with the Environmental Protection Agency (the "EPA"), shall review the operations of the Corporation to ensure that public health and safety are adequately protected. Further, Title IX of the Act provides the Corporation shall lease the gaseous diffusion facilities of DOE at Paducah, Kentucky and Portsmouth, Ohio for a six-year period, beginning July 1, 1993.

Pursuant to the Atomic Energy Act of 1954, as amended, including in particular the provisions of the Energy Policy Act of 1992 on regulation and certification as generally described above, NRC and DOE are issuing this joint statement of understanding (the "Joint Statement") to address matters relating to the process by which NRC will assume, and DOE will relinquish at the time and to the extent provided by law, responsibility for regulatory oversight under the Act for the DOE facilities leased by the Corporation as specified by the Energy Policy Act of 1992. In view of the explicit framework of the Act under which NRC is to assume responsibility for the radiological protection of the public health and safety and the common defense and security after NRC standards are established and become effective for that purpose, this Joint Statement of Understanding identifies certain responsibilities of NRC and DOE with respect to the process, provides for cooperation between NRC and DOE necessary to the successful implementation of the process, and serves such other purposes as may be related thereto.

In NRC requesting and DOE agreeing to supply information, DOE and NRC understand that the purpose is to help establish NRC's regulatory framework under the Act, not for NRC to establish oversight before NRC assumes regulatory jurisdiction over the facilities.

1. Under the Act, by October 24, 1994, NRC is directed to establish its standards to protect public health and safety and common defense and security for the facilities leased to the Corporation.

2. In order to support NRC in developing the standards identified in paragraph 1, DOE will supply available information, permit site visits, and provide other similar assistance in support of NRC standards development in response to NRC's request. In particular, DOE will provide any available description of the Safety Basis and Framework for DOE Oversight of the Gaseous Diffusion Plants, including:

(i) A description of the safety analyses, operational safety requirements, and the bases for maintaining the safety basis for the GDPs. The description will include the information which DOE relies on to demonstrate that the current regulatory base is adequate to protect the public health and safety and provide for the common defense and security.

(ii) A description of the operational requirements, consisting of the basic operational safety objectives, implementation requirements, implementation measures, status of conformance with the implementation requirements, and the corrective actions being taken to address nonconformances.

(iii) A description of DOE's program for continuing regulatory oversight over the GDPs, including a description of the program for compliance reviews and audits, followup actions to assure that audit findings are addressed, and the status of open audit findings.

At NRC's request, DOE will supply copies of applicable DOE Orders, other documents referenced in the aforementioned descriptions, and such other documents as are necessary to support NRC's standards development.

DOE will also permit NRC to locate observers at the facilities on or after July 1, 1993, to obtain information and knowledge that may be useful to NRC in developing or implementing its standards. Interim guidance for the NRC observers will be established by the DOE Regulatory Oversight Manager and the NRC covering the period before NRC assumes regulatory jurisdiction over the facilities.

3. As indicated above, the Energy Policy Act amendments to the Atomic Energy Act of 1954 condition NRC regulation (through the annual certification process) of the facilities leased to the Corporation on the promulgation of the new NRC standards. NRC anticipates that it will require the Corporation to file the first annual application for a certificate of compliance within six (6) months after promulgation by NRC of the standards. Thus, until such time as NRC has promulgated its standards and they have become effective and the first certification process based on NRC standards has been completed, DOE will continue to exercise its public health and safety and common defense and security regulatory oversight over the operation of the facilities.

4. During the entire period that the facilities are in operation, and thereafter as long as necessary, on a full cost reimbursable basis from the Corporation, DOE will retain responsibility for all access authorization programs with respect to the facilities leased by the Corporation and the Corporation itself. DOE will be responsible for the administrative determinations relating to granting, suspending, adjudicating, or denying a security clearance, and for reinvestigating an individual's background for continued access.

5. At all times during the period the facilities are in operation by the Corporation after NRC assumes responsibility for regulatory oversight, NRC will be responsible for granting security facility approvals and for establishing an information security program to ensure that Restricted Data, including both information and equipment, is appropriately classified and protected with respect to the facilities leased by the Corporation and the Corporation itself.

6. During the entire period that uranium enriched to 20 percent or more U^{235} is located at the Portsmouth facility, DOE will retain title to and possess such uranium and will be solely responsible for providing for, establishing and maintaining nuclear safety, safeguards and security controls applicable to such uranium. This Joint Statement is not a regulation and is not intended to create or alter legal requirements or obligations of NRC, DOE, the Corporation or any other interested person.

Dated: December 7, 1993.

For the Nuclear Regulatory Commission.

Ivan Selin,

Chairman, Nuclear Regulatory Commission.

Dated: December 20, 1993.

For the Department of Energy.

Hazel R. O'Leary,

Secretary of Energy.

≫59 FR 6979
Published 2/14/94
Effective 1/24/94

Final Memorandum of Understanding Between the Nuclear Regulatory Commission and the State of Kansas

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Kansas. The MOU provides the basis for mutually agreeable procedures whereby the State of Kansas may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Kansas. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register** Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective January 24, 1994.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Kansas to provide data related to plant conditions during emergencies at commercial nuclear power plants in Kansas.

Dated at Rockville, Maryland, this 7th day of February, 1994.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

Director, Office for Analysis and Evaluation of Operational Data.

Agreement Pertaining to the Emergency Response Data System Between the State of Kansas and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Kansas enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

Kansas recognizes 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 [illegible] authority over air emissions [illegible] States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction and operation of utilization facilities (nuclear power plants) in order to provide for the common defense and security and to protect the public health and

Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Kansas fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Kansas Department of Health and Environment(KDHE) and the Kansas Division of Emergency Preparedness(KDEP) of the Adjutant General's Department.

III. Scope

A. This Agreement defines the way in which NRC and KDHE and KDEP will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants in the State of Kansas.

B. It is understood by the NRC and the State of Kansas that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Kansas, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Kansas on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Kansas 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; or (5) direct or recommend nuclear power plant employees to take or not take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Kansas during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Kansas. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Kansas General Responsibilities

A. KDHE will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, KDHE will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. KDHE agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

KDHE, KDEP, and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. KDHE, KDEP, and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC, KDHE and KDEP agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC, KDHE and KDEP will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to KDHE by the NRC. KDHE may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, KDHE will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Chief, Environmental Radiation and Emergency Preparedness Section, Bureau of Air and Radiation and the Technological Hazards Administrator, Technological Hazards Program, Kansas Division of Emergency Preparedness, Adjutant General's Department. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC, KDHE and KDEP staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC, KDHE and KDEP will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for

Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement 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 Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission,

Dated: December 29, 1993.

James M. Taylor,

Executive Director for Operations.

For the State of Kansas,

Dated: January 19, 1994.

Harold L. Spiker,

Chief, Environmental Radiation & Emergency, Preparedness Section, KDHE.

Dated: January 20, 1994.

Frank Moussa,

Technical Hazards Administrator, Kansas Division of Emergency Preparedness.

Dated: January 24, 1994.

Robert C. Harder,

Secretary, KDHE.

ENCLOSURE 2

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., m.s.t. January 15, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Abandoned Mine Land Reclamation.

Dated: December 24, 1991.

Allen D. Klein,

Acting Assistant Director, Western Support Center.

[FR Doc. 91-31249 Filed 12-30-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL 4087-5]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to rescind 40 CFR part 61, subpart T (subpart T) as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the Nuclear Regulatory Commission (NRC) or an affected NRC Agreement State (affected Agreement States). Today's proposal does not concern subpart T sites that are under the control of the Department of Energy (DOE). Subpart T, which regulates radon emissions into ambient air, is one of the Agency's National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides, which were promulgated on December 15, 1989 (54 FR 51654) pursuant to Clean Air Act (CAA) Section 112, as it existed prior to the 1990 amendments. EPA is establishing a 60 day period for receipt of comments on this issue. Published elsewhere in today's Federal Register are two related rulemakings: a Notice of a Final Rule which stays the effectiveness of subpart T as it applies to non-operational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State pending completion of this rulemaking, or June 30, 1994, whichever first occurs, and an Advanced Notice of Proposed Rulemaking (ANPR) in which EPA is announcing its intention to enter into a future rulemaking which would amend 40 CFR part 192, subpart D, which was enacted pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978.

DATES: Comments concerning this proposed rule must be received by EPA on or before February 24, 1992. Public hearings will be held on January 15, 1992 in Washington, DC, and in Sante Fe, New Mexico on January 21 and 22, 1992.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Docket No. A-91-67, Washington, DC 20460. Requests to participate in the hearing should be made in writing to the Director, Criteria and Standards Division, ANR-460W, Office of Radiation Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments and requests to participate in the hearings may also be faxed to EPA at (703) 308-8763.

Public hearings will be held on January 15, 1992 at 11 Dupont Circle, 8th Floor, Washington, DC 20036, and on January 21 and 22 at the Inn at Loretto, 211 Old Santa Fe Trail, Sante Fe, New Mexico 87501. Comments concerning this proposed rule must be received by EPA on or before February 24, 1991.

FOR FURTHER INFORMATION CONTACT: Jamie Burnett, Air Standards and Economics Branch, Criteria and Standards Division, ANR-460W, Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

1. Regulatory History

On December 15, 1989, EPA promulgated national standards regulating radionuclide emissions to the ambient air from several source categories, including from non-operational sites used for the disposal of uranium mill tailings. 54 FR 51654. These sites are either under the control of the DOE pursuant to title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, 42 U.S.C. 7901 *et. seq.*, or the sites are under the control of NRC or Agreement State-licensees pursuant to title II of UMTRCA. These standards—subpart T of 40 CFR part 61 (subpart T)—were promulgated pursuant to the authority of Clean Air Act (CAA or Act) section 112 as it existed in 1989, and were part of a larger promulgation of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Radionuclides.

Subpart T requires compliance by owners and operators of uranium mill tailings disposal sites within two years of becoming non-operational (40 CFR 61.22(b)). Pursuant to its authority under then-existing CAA section 112(c)(1)(B)(ii) EPA waived compliance for two years for sites that were non-operational at the time of promulgation. *Id.* Thus, the earliest date by which sites must comply with the subpart T standards is December 15, 1991. Even so, EPA recognized at the time of

promulgation that many sources subject to subpart T might not be able to achieve compliance by December 15, 1991. Because EPA felt constrained by the CAA as it existed at that time, EPA stated that for those sites the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. By so doing, subpart T in effect mandates that the earthen cover to meet that emissions level be installed as expeditiously as practicable considering technological feasibility.

The primary subpart T standard is the requirement that radon-222 emissions not exceed a flux of 20 pCi/m²-s. 40 CFR 61.222(a). In its 1989 action, EPA recognized that even though NRC implements general EPA standards (promulgated under UMTRCA) which also regulate these sites and call for compliance with a 20 pCi/m²-s flux standard (see 40 CFR part 192, subpart D), the UMTRCA regulatory program does not answer the critical timing concern addressed by subpart T.

> The existing UMTRCA regulations set no time limits for disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years.
>
> 54 FR at 51683

In addition to regulating radon emissions, subpart T also requires specific testing and record keeping. See 40 CFR 61.223 and 61.224. The UMTRCA regulations, as currently promulgated by EPA and implemented by NRC, while ultimately limiting emissions to the same level as subpart T, are supported by a variety of design-based substantive and procedural requirements that speak to UMTRCA's unique concern that final site closure occur in a manner that will last at least 1,000 years, but do not require monitoring of emissions to confirm the performance of the earthen cover. See generally 10 CFR part 40, appendix A and 40 CFR part 192.

These CAA and UMTRCA programs duplicate each other by creating dual regulatory oversight, including independent procedural requirements, while seeking to ensure compliance with the identical 20 pCi/m²-s flux standard. Concern over this duplication inspired several petitions for reconsideration, most notably from NRC and the American Mining Congress (AMC). While these petitions remain pending before EPA, today's proposal to rescind subpart T, as well as the companion actions (1) An Advance Notice of Proposed Rulemaking (ANPR) to amend 40 CFR part 192 (UMTRCA regulations) and (2) a Notice of Final Rule to stay subpart T pending the conclusion of today's proposed rescission, comprises EPA's efforts towards addressing the issues they raise. As discussed further below, underlying these actions is a Memorandum of Understanding (MOU) which has been entered into by EPA, NRC, and the affected Agreement States (the MOU is published at the end of this notice, as it was at the end of the notice proposing to stay subpart T (see 56 FR at 55434)).

2. Clean Air Act Amendments of 1990

After promulgation of subpart T (and receipt of reconsideration petitions), in November 1990, the Clean Air Act was substantially amended. Included in the new Act was an amendment that speaks directly to the duplication issue. Newly enacted section 112(d)(9) of the amendments provides:

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is protected with an ample margin of safety.

Moreover, Congress expressed sensitivity to the special compliance problems of uranium mill tailings sites through new section 112(i)(3). This provision provides an additional 3-year extension to mining waste operations (e.g., uranium mill tailings) if the 4 years allowed (including a one-year extension) for compliance with standards promulgated under the amended section 112 is insufficient to dry and cover the mining waste (thereby controlling emissions).

3. Memorandum of Understanding (MOU) between EPA, NRC and the Affected Agreement States

In light of these provisions, and given the express authority of section 112(d)(9), as amended, EPA, NRC and the affected Agreement States, have been meeting to discuss the dual regulatory programs under UMTRCA and the CAA. The result of this intensive inter-agency consultation has been the execution of a Memorandum of Understanding (MOU), a copy of which is attached to this proposal and was also attached to the proposed stay published in the **Federal Register** on October 25, 1991 (56 FR 55434). The purpose of the MOU is to ensure that owners and operators of existing non-operational uranium mill tailings piles licensed by NRC or an affected Agreement State, or owners and operators of piles that will in the future become non-operational, effect site closure—emplacement of an earthen cover to permanently limit radon emissions to a flux of no more than 20 pCi/m²-s—as expeditiously as practicable considering technological feasibility. The goal is that all current and future disposal sites achieve compliance by the end of 1997, or within seven years of when the currently operating and standby sites become non-operational.

B. Discussion of Existing EPA Standard 40 CFR Part 61, Subpart T

As described in section A(1) above, subpart T (of 40 CFR part 61) limits radon-222 emissions to the ambient air from non-operational uranium mill tailings disposal sites licensed by the NRC or an affected Agreement State. Subpart T requires that these sites, which consist of large (i.e., numerous acre) impoundments or piles, comply with a radon flux standard of 20 pCi/m²-s (40 CFR 61.222(a)). Moreover, compliance must be achieved within two years of when the site becomes non-operational. 40 CFR 61.222(b), which for piles which had ceased operation prior to the time of promulgation is December 15, 1991. While at the time of promulgation EPA recognized that many sources might not be able to achieve this date, EPA was constrained by existing CAA section 112(c)(1)(B)(ii)) which allows a maximum of two years for facilities to come into compliance. EPA stated that for those sites which could not meet the two-year date, the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. Subpart T also calls for monitoring and record keeping to establish and demonstrate compliance. See 40 CFR 61.223 and 61.224.

Subpart T is part of a larger promulgation of radionuclide NESHAPs that represent the Agency's application of the policy for regulating CAA section 112 pollutants which was first announced in the benzene NESHAP (54 FR 38044 (Sept. 14, 1989)). The NESHAP policy utilized a two-step approach. In the first step, EPA considered the lifetime risk to the maximally exposed individual, and found that it is presumptively acceptable if it is no higher than approximately one in ten

thousand. This presumptive level provides a benchmark for judging the acceptability of a category of emissions. This first step also considers other health and risk factors such as projected incidence of cancer, the estimated number of persons exposed within each individual lifetime risk range, the weight of evidence presented in the risk assessment, and the estimated incidence of non-fatal cancer and other health effects. After considering all of this information, a final decision on acceptable risk is made. This becomes the starting point for the second step, determining the ample margin of safety.

In the second step, EPA strives to provide protection for the greatest number of persons possible to an individual lifetime risk level no higher than approximately one in one million. In this ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step, as well as additional factors such as costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.

As part of the risk assessment associated with the promulgation of subpart T, EPA examined the doses to the maximally exposed individuals (MEI) from uranium mill tailings disposal sites. In so doing, EPA noted that standards it had already promulgated pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 would eventually limit radon emissions from those sites to a flux of 20 pCi/m^2-s (see 40 CFR part 192, subpart D), and thus EPA referred to that level as "baseline." EPA's risk assessment revealed that compliance with the 20 pCi/m^2-s baseline would result in an MEI of approximately 1 $\times$ 10^{-4}, a level EPA determined to be safe under the first step of the analysis. EPA further concluded in the second step, which considers additional factors such as cost and technological feasibility, that the baseline level also provided an ample margin of safety.

Even though EPA determined that the baseline was protective of public health with an ample margin of safety, EPA still found it was necessary to promulgate subpart T. This was because the baseline assumed compliance with the UMTRCA regulations even though those regulations did not require that compliance occur in the foreseeable future and, in fact, many sites were not proceeding towards the baseline level at the time subpart T was promulgated. In other words, EPA promulgated subpart T to address the timing issue, which was not addressed in the UMTRCA regulations. However, due to then-existing CAA section 112(c)(1)(B)(ii), EPA was constrained to requiring compliance with the 20 pCi/m^2-s baseline within two years, a date the Agency recognized many sites might find impossible to meet. EPA announced that those situations could be dealt with through site-specific enforcement agreements under CAA section 113.

C. Rationale for Proposed Rule to Rescind 40 CFR Part 61 Subpart T for NRC Licensees

In light of the new statutory authority provided EPA by CAA section 112(d)(9) of the Clean Air Amendments of 1990, EPA has been meeting with NRC and the affected Agreement States to determine whether, with certain modifications to its regulatory program under UMTRCA, the NRC regulatory program might provide an ample margin of safety. If so, subpart T would be rendered superfluous and, therefore, needlessly duplicative and burdensome such that rescission pursuant to CAA section 112(d)(9) would be appropriate.

In applying the risk methodology for CAA section 112 to the risk assessment for subpart T, EPA has already determined that the baseline that would result once the 20 pCi/m^2-s UMTRCA standard is met protects public health with an ample margin of safety. Thus, if the regulatory program implemented by NRC assures that sites will achieve the baseline as soon as practicable considering technological feasibility, then subpart T would not be necessary. More specifically, appropriate modifications to the UMTRCA regulatory scheme as implemented by NRC and the affected Agreement States to ensure specific, enforceable closure deadlines and monitoring requirements such that compliance with the baseline will occur as expeditiously as practicable considering technological feasibility, would protect public health with an ample margin of safety. In so concluding, EPA relies wholly upon the risk analysis it conducted in promulgating subpart T. EPA is neither revisiting that analysis here, nor does the Agency seek comment on that analysis.

1. The Regulatory Scheme Under UMTRCA

As a supplement to the Atomic Energy Act of 1954, as amended, the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 (42 U.S.C. 2022, 7901–7942) was enacted to comprehensively address the dangers presented by uranium mill tailings, including their disposal:

> uranium mill tailings located at active and inactive mill operations may pose a potentia and significant radiation health hazard to th public, and * * * the protection of the publi health, safety, and welfare * * * require[s] that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent o minimize radon diffusion into the environment * * *."

42 U.S.C. 7901(a); *see American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985), *cert. denied*, 426 U.S. 1158 (1986). As to uranium mill tailings disposal sites in particular, UMTRCA gives the Department of Energy (DOE) the responsibility to clean up and dispose of certain (i.e., title I) sites, and gives NRC the responsibility for those (i.e., title II) sites that are owned and operated by its licensees. EPA is responsible for promulgating the generally applicable environmental standards to be implemented by both NRC and DOE. 42 U.S.C. 2022(a), 7911–7924; *AMC*, 724 F.2d at 621. EPA promulgated its final UMTRCA regulations on December 15, 1982 for title I sites and on September 30, 1983 for title II sites. 48 FR 590 and 48 FR 45926 (codified at 40 CFR part 192).

Parts of EPA's final UMTRCA regulations are directed to the permanent disposal of uranium mill tailings. See 40 CFR part 192, subpart D (subpart D). Among the requirements of Subpart D is the mandate that radon releases from the disposal sites not exceed a flux of 20 pCi/m^2-s. 40 CFR 192.32 (a) and (b). Other aspects of subpart D pertain to ground water, monitoring, design, and duration of closure. See 40 CFR 192.32 and 192.33. With the exception of the ground water provisions at 40 CFR 192.20(a) (2)–(3), all of subpart D was upheld by the Tenth Circuit in *AMC* v. *Thomas*, 772 F.2d at 640. EPA is currently engaged in rulemaking to address the ground water remand.

Because NRC implements EPA's general UMTRCA standards for its licensees (as do its Agreement States), it has promulgated its own implementing regulations in the form of "criteria." See generally 10 CFR part 40, appendix A. While these criteria set forth a variety of specific requirements—financial, technical, and administrative—to govern the final reclamation (i.e., closure) design for each disposal site, they also provide for "site-specific" flexibility by authorizing alternatives that are at least as stringent as EPA's general standards and NRC's criteria, "to the extent practicable" as provided in Section 84c

above to public comment. However, in so doing, EPA will neither consider novel arguments such as whether public health was significantly threatened by the alleged failure, nor revisit the findings that underlie subpart T. Rather, because the health risk analyses necessary for the original promulgation of subpart T are not being revisited in conducting the rulemaking to rescind subpart T as to NRC or affected Agreement State licensees, such analysis will likewise not be a part of any decision to reconsider or ultimately revoke the recision. All that is at issue is whether the 20 pCi/m^2–s flux standard is being met as expeditiously as practicable considering technological feasibility under the UMTRCA regulatory scheme, thereby supporting the finding that subpart T was unnecessarily duplicative.

F. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this proposed rule.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation, if promulgated, would be a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that rescinding subpart T as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the NRC would not result in one of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule." This regulation would not be major because the nationwide compliance costs would not meet the $100 million threshold, the regulation would not significantly increase prices or production costs, and the regulation would not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this purposed regulation because this action does not constitute a major rule. This regulation has been reviewed by the Office of Management and Budget and their written comments (if any) are available in the public docket.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the proposed rule on small business entities. However, section 604(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule to rescind 40 CFR part 61, subpart T, if promulgated as a final rule, will have the effect of easing the burdens associated with the provisions of subpart T and for those reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and Recordkeeping requirements, Uranium, Vinyl chloride.

Dated: December 19, 1991.

William K. Reilly,

Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.220 is amended by revising paragraph (a) to read as follows:

§ 61.220 Designation of facilities.

(a) The provisions of this subpart apply to owners and operators of all sites that are used for the disposal of tailings, and that managed residual radioactive material during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings, that are listed in, or designated by the Secretary of Energy under title I of the Uranium Mill Tailings Control Act of 1978.

* * * * *

3. Section 61.221 is revised to read as follows:

§ 61.221 Definitions.

As used in this subpart, all terms not defined here have the meanings given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Long term stabilization* means the addition of material on a uranium mill tailings pile for purpose of ensuring compliance with the requirements of 40 CFR 192.02(a). These actions shall be considered complete when the Nuclear Regulatory Commission determines that the requirements of 40 CFR 192.02(a) have been met.

(b) *Operational* means a uranium mill tailings pile that is licensed to accept additional tailings, and those tailings can be added without violating subpart W or any other Federal, state or local rule or law. A pile cannot be considered operational if it is filled to capacity or the mill it accepts tailings from has been dismantled or otherwise decommissioned.

(c) *Residual radioactive materials* means:

(1) Waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(2) Other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low grade materials.

(d) *Tailings* means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

4. Section 61.222 is amended by revising paragraph (b) to read as follows:

§ 61.222 Standard.

* * * * *

(b) Once a uranium mill tailings pile or impoundment ceases to be operational it must be disposed of and brought into compliance with this standard within two years of the effective date of the standard. If it is not physically possible for DOE to complete disposal within that time, EPA shall, after consultation with DOE, establish a compliance agreement which will assure that disposal will be completed as quickly as possible.

5. Section 61.223 is amended by revising paragraph (b)(5) to read as follows:

§ 61.223 Compliance procedures.

* * * * *

(b) * * *

(5) Each report shall be signed and dated by a public official in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL BUREAU OF INVESTIGATION AND THE NUCLEAR REGULATORY COMMISSION REGARDING NUCLEAR THREAT INCIDENTS INVOLVING NRC LICENSED FACILITIES, MATERIALS, OR ACTIVITIES.

I. PURPOSE

In recognition of the responsibilities and functions of the Federal Bureau of Investigation (FBI) and the Nuclear Regulatory Commission (NRC) under the Atomic Energy Act of 1954, as amended, this Memorandum of Understanding (MOU) delineates the responsibilities of each agency regarding nuclear threat incidents involving NRC-licensed facilities, materials, or activities. (This agreement does not affect the procedures and responsibilities set forth in the November 23, 1988, Memorandum of Understanding between the NRC and the Department of Justice (DOJ) regarding cooperation concerning NRC enforcement actions, criminal prosecution by DOJ, and the exchange of pertinent information.)

Having closely related statutory responsibilities with regard to nuclear materials, facilities, and activities in the United States, the FBI and NRC must cooperate fully in carrying out their respective responsibilities in the interest of achieving:

1. Effective communication and exchange of relevant information, and

2. A timely, reliable, and effective response to a nuclear threat incident.

II. DEFINITIONS

For the purpose of this agreement, nuclear threat incidents are defined as threats, or acts of theft or sabotage in the U.S. nuclear industry, including the following:

- Theft or attempted theft of NRC-licensed special nuclear material.

- Sabotage or attempted sabotage of NRC-licensed nuclear facilities or NRC-licensed transportation activities.

- Attacks on NRC-licensed nuclear facilities or activities.

- Credible threats involving NRC licensed facilities, materials, or activities.

III. RESPONSIBILITIES

A. The FBI

The FBI derives the authority to investigate criminal matters related to NRC licensed facilities, materials, or activities from the Atomic Energy Act of 1954, as amended; Title 18, Section 831 "Prohibited transactions involving nuclear materials," and other Federal statutes as may be applicable. The FBI has been designated as the lead agency for coordinating the Federal response to acts of terrorism within the United States by National Security Decision Directive (NSDD) Number 207 and the National System for Emergency Coordination (NSEC).

It is therefore understood that the FBI shall:

1. Provide to NRC, intelligence information concerning possible criminal acts relative to the security of nuclear facilities, materials, or activities.

2. Notify NRC when allegations of a serious nature arise, or derogatory information is developed involving licensee personnel occupying positions considered critical to the safety and security of nuclear facilities or activities.

3. Investigate ongoing nuclear-related threat situations; advise NRC regarding the credibility and danger of such threats.

4. Establish liaison and develop contingency response plans with pertinent local law enforcement agencies to ensure effective and coordinated law enforcement response operations.

5. In accordance with the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986, conduct identification and criminal history records checks on individuals with unescorted access to NRC-licensed nuclear power plants or access to Unclassified Safeguards Information.

6. Establish liaison with pertinent NRC Headquarters staff, NRC regional offices, and licensed facilities to ensure effective information exchange, threat evaluation, and contingency response planning.

In the event of a nuclear threat incident the FBI shall:

7. Coordinate the Federal response to a nuclear threat incident involving NRC-licensed facilities, materials, or activities. The FBI will rely on the NRC on matters concerning public health and safety, as they relate to the nuclear facility, material, or activity.

8. Manage the law enforcement and intelligence aspects of the response to a nuclear threat incident involving NRC-licensed facilities, materials, or activities.

9. Establish and maintain contacts and coordinate the incident response with other Federal and local law enforcement agencies and military authorities, as appropriate.

10. Ensure that all reasonable measures are provided to ensure the physical safety and security of all NRC personnel and equipment to be used in support of the incident.

11. Promptly provide NRC with all information applicable to an assessment of a perpetrator's operational capability to carry out a threat.

12. At the scene of a nuclear threat incident, provide the necessary support, as may be needed by NRC personnel, in carrying out assigned operations and actions to protect the public from radiological hazards.

13. Request Department of Defense (DOD)/Civil Explosive Ordnance Disposal (EOD) resources, as appropriate.

B. The NRC

NRC shall provide, to the extent compatible with its primary mission to protect the public's health and safety, as required by the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and the Omnibus Diplomatic Security Act and Anti-Terrorism Act of 1986, scientific and technical support to the FBI upon notification of the existence of a nuclear threat incident.

It is therefore understood that NRC shall:

1. Review and correlate intelligence information on possible criminal acts received from the FBI; evaluate potential adversary capabilities and trends as a basis for rulemaking, evaluations, and systems design.

2. When informed of an FBI investigation involving an NRC-licensed nuclear facility or activity, will promptly provide to the FBI investigating office a list of all positions considered critical to the safety and security of that facility or activity.

3. Establish liaison with FBI Headquarters staff and field office personnel to ensure effective information exchange, threat evaluation, and contingency response planning.

4. Support joint operational readiness planning between licensees and associated local law enforcement agencies for prompt law enforcement response assistance when needed at licensed facilities or activities.

5. Notify the FBI of threats involving NRC-licensed nuclear facilities, materials, or activities; assist the FBI in evaluating the nuclear aspect and the credibility of such threats, as appropriate.

6. Disseminate, with the approval of the FBI, to the affected licensees, alert and warning information received from the FBI about specific nuclear-related threats.

In the event of a nuclear threat incident, NRC shall:

7. Plan for and manage the public health and safety aspects of the response to a nuclear threat incident involving NRC-licensed facilities, materials, or activities.

8. Provide NRC field liaison and technical assistance to the FBI at the scene of an incident.

9. Evaluate the radiological hazards of the particular incident and provide technical assessment of any potential or actual impact upon the public health and safety.

10. Ensure that all reasonable measures are provided for the health and safety of all FBI personnel and equipment involved in the support of the incident.

11. Provide for the health and safety of the public from radiological hazards.

C. Joint

The FBI and NRC shall:

1. Coordinate all proposed press releases related to nuclear threat incidents involving NRC-licensed facilities, materials, or activities.

2. Identify individuals assigned to fulfill the positions and responsibilities outlined in Section III of this agreement.

3. Handle all threat incident information with adequate security and confidentiality commensurate with national security guidelines and the standards for the preservation of criminal evidence.