

May 2, 1997  
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SECY-97-

FOR: The Commissioners

FROM: L. Joseph Callan /s/  
Executive Director for Operations

SUBJECT: MEMORANDUM OF UNDERSTANDING AND INTERAGENCY  
AGREEMENT BETWEEN THE U.S. DEPARTMENT OF ENERGY  
AND THE U.S. NUCLEAR REGULATORY COMMISSION ON THE  
CLOSURE OF HIGH-LEVEL WASTE STORAGE TANKS AT THE  
SAVANNAH RIVER SITE

PURPOSE:

To transmit to the Commission, for review and approval, the attached draft Memorandum of Understanding (MOU), and the attached draft Interagency Agreement (IA), between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy (DOE).

BACKGROUND:

In memoranda dated September 13, 1996, and February 18, 1997, staff informed the Commission of DOE's program to retrieve and process defense high-level wastes (HLWs) stored in 51 tanks at the Savannah River site and of DOE's plans to close the tanks once they are emptied of their contents. The memoranda also described the key issue with respect to tank closure, which is whether DOE effectively removes essentially all the HLW from the tanks such that the residual wastes can be classified as "incidental" and thus not subject to NRC's licensing authority under the Energy Reorganization Act of 1974.

In response to the December 20, 1996, letter from L. Watkins, DOE, to C. Paperiello, NRC, staff plans to review DOE's waste classification methodology and to advise DOE on appropriate criteria for the classification of the residual waste in the tanks as incidental, after waste removal operations. Staff will seek Commission review and approval of the results of these reviews before their transmittal to DOE.

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The staff has been working closely with DOE staff to develop an MOU that establishes the framework for the NRC to provide technical assistance to DOE in regard to the tank closure program. This technical assistance is conceptually similar to technical assistance currently being provided to DOE Hanford staff with respect to classification of wastes removed from Hanford HLW tanks for subsequent treatment and disposal. The staffs have also cooperated in development of an IA to implement the MOU. Consistent with the resource estimates provided in the September 13, 1996, memorandum, staff believes that a review of DOE's methodology will necessitate approximately 1 to 1.5 full-time equivalents over a period of 6 to 7 months, including time for Commission review of the results of the staff's evaluation.

This MOU is entered into under the broad umbrella of the January 15, 1997, MOU between NRC and DOE on "Cooperation in Support of Significant Projects and Activities." The January 15, 1997, MOU established the following funding policy: "NRC generally will not participate in projects and activities pertaining to DOE's responsibilities unless Congress appropriates resources to NRC for such activities. Exceptions will be considered by NRC on a case-by-case basis and only if DOE reimburses NRC for its full agency cost."

In SECY-95-012, "Reimbursement for Work Performed for Other Agencies," the Commission established a policy of charging full Agency costs in performing work for others that is not a part of NRC's statutory mission and for which NRC receives no appropriations. Recovery of full costs requires charging the license fee rate in effect at the time the work is performed to recover direct salary, benefits, travel, and an appropriate share of Agency overhead costs. Full cost recovery also requires charging for direct contractual support costs.

#### DISCUSSION:

The staff has provided, for the Commission's review, the attached draft MOU and draft IA. The MOU and IA are the result of a cooperative effort between DOE and NRC technical and general counsel staffs. The MOU establishes a basic framework for NRC to provide technical assistance to DOE in regard to DOE's HLW storage tank closure program at the Savannah River site, specifically-- DOE's determination and classification of the residual waste in the tanks, after waste removal operations, as incidental waste. The IA implements the MOU.

Provision of NRC technical assistance to DOE in regard to DOE's HLW storage tank closure program at the Savannah River site is not included in NRC's FY 1997 or FY 1998 budgets. Therefore, the IA associated with this MOU provides for NRC to be reimbursed for

its full costs. Should funds to support this project be appropriated to the NRC in the future, then the terms of the IA will be reassessed.

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, and it has no legal objection. The Office of the Chief Financial Officer has also reviewed the paper and concurs.

RECOMMENDATION:

It is recommended that the Commission approve the signing of the attached MOU and IA.

L. Joseph Callan  
Executive Director  
for Operations

Attachments:

1. MOU
2. IA

