

**NUCLEAR REGULATORY
COMMISSION**

[NRC-2009-0008]

**Final Memorandum of Understanding
Between the U.S. Nuclear Regulatory
Commission and the Virginia
Department of Health****AGENCY:** Nuclear Regulatory
Commission.**ACTION:** Notice.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**I. Introduction**

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 Virginia Department of Health,
an agency of the Commonwealth of
Virginia. The MOU provides the basis
for mutually agreeable procedures
whereby the Virginia Department of
Health may utilize the NRC Emergency
Response Data System (ERDS) to receive
data during an emergency at a
commercial nuclear power plant whose
10-mile Emergency Planning Zone lies
within the Commonwealth of Virginia.

II. Effective Date

This MOU is effective November 26,
2008.

III. Further Information

Documents related to this action,
including the application for
amendment and supporting
documentation, are available
electronically at the NRC's Electronic
Reading Room at [http://www.nrc.gov/
reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html). From this site,
you can access the NRC's Agencywide
Documents Access and Management
System (ADAMS), which provides text
and image files of NRC's public
documents. The ADAMS accession
number for the document related to this
notice is: Memorandum of
Understanding Between NRC and the
VA Department of Health ML 08337043.
If you do not have access to ADAMS or
if there are problems in accessing the
documents located in ADAMS, contact
the NRC Public Document Room (PDR)
Reference staff at 1-800-397-4209, 301-
415-4737 or by e-mail to pdr@nrc.gov.

These documents may also be viewed
electronically on the public computers
located at the NRC's Public Document
Room (PDR), O 1 F21, One White Flint
North, 11555 Rockville Pike, Rockville,
MD 20852. The PDR reproduction
contractor will copy documents for a
fee.

Dated at Rockville, Maryland this 8th day
of January, 2009.

For the Nuclear Regulatory Commission.

William A. Gott,

*Chief, Operations Branch, Division of
Preparedness and Response, Office of Nuclear
Security and Incident Response.*

**Memorandum of Understanding
Pertaining to the Emergency Response
Data System Between the U. S. Nuclear
Regulatory Commission and the
Virginia Department of Health****I. Authority**

The U.S. Nuclear Regulatory
Commission (NRC) and the Virginia
Department of Health (VDH), an agency
of the Commonwealth of Virginia, enter
into this Memorandum of
Understanding (MOU) under the
authority of section 274i of the Atomic
Energy Act of 1954, as amended.

The Commonwealth of Virginia
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. Nothing in
this MOU is intended to restrict or
expand the scope of regulatory authority
of either the NRC or the Commonwealth
of Virginia.

In the Commonwealth of Virginia, the
VDH, through its Division of
Radiological Health and Safety
Regulation (a division within VDH's
Office of Epidemiology), is the state
radiation control agency and
implements the program regulating
sources of radiation, not otherwise
regulated by the NRC, for the protection
of public health and safety. The Virginia
Department of Emergency Management
(VDEM) administers emergency services
and disaster preparedness programs in
the Commonwealth of Virginia.

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

common defense and security and to
protect the public health and safety.
Under these statutes, the NRC is the
agency responsible for regulating
nuclear power plant safety.

B. NRC believes that its mission to
protect 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 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 MOU 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 facilities and
monitoring the status and adequacy of
licensees' responses to emergency
situations.

D. The Commonwealth of Virginia
fulfills, through the VDH and VDEM, its
statutory mandate to provide for
preparedness, response, mitigation, and
recovery in the event of an accident at
a nuclear power plant through its
statutes located in Titles 32.1 and 44 of
the Code of Virginia.

III. Scope

A. This MOU defines the way in
which NRC and VDH intend to
cooperate in planning and maintaining
the capability to transfer reactor plant
data via the Emergency Response Data
System (ERDS) during emergencies at
commercial nuclear power plants in the
Commonwealth of Virginia that 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 Virginia.

B. It is understood by the NRC and the
VDH that ERDS data will only be
transmitted to the Commonwealth of
Virginia during emergencies classified
at the Alert level or above, during
scheduled tests, or during exercises
when available.

C. Nothing in this MOU is intended
to restrict or expand the statutory
authority of the NRC, the
Commonwealth of Virginia, VDH, or
VDEM, 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 MOU intended to
restrict or expand the authority of the

Commonwealth of Virginia, VDH, or VDEM, on matters not within the scope of this MOU.

D. Nothing in this MOU confers upon the Commonwealth of Virginia, VDH, or VDEM, the authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by the NRC; or (5) direct or recommend nuclear power plant employees to take, or not take, any action. Authority for all such actions is reserved exclusively to the NRC.

E. This MOU does not confer any binding obligation or right of action on either party. This MOU does not obligate any funds and is subject to the availability of appropriated funds.

IV. NRC's General Responsibilities

Under this MOU, the NRC will maintain 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 the Commonwealth of Virginia, up to 10 digital certificates for use by designated personnel within the VDH and VDEM in accessing ERDS data during emergencies at nuclear power plants which have implemented an ERDS interface, and for which any portion of the plant's 10-mile EPZ lies within the Commonwealth of Virginia. The NRC reserves the right to revoke digital certificates at any time.

V. VDH General Responsibilities

A. VDH, through its lead radiological agency, will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, VDH will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. VDH will provide the NRC with an initial, and periodically updated, list of designated persons serving as holders of ERDS digital certificates.

C. VDH will use ERDS only to access data, at the Alert level or higher, from nuclear power plants for which all or a portion of the 10-mile EPZ falls within the boundaries of the Commonwealth of Virginia.

D. For the purpose of minimizing the impact on plant operators, the Commonwealth of Virginia will seek clarification of ERDS data through the NRC.

VI. Implementation

A. VDH and the NRC agree to work in concert to assure that the following

communications and information exchange protocol regarding ERDS are followed:

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

b. NRC and VDH agree to meet as necessary to exchange information on matters of common concern pertinent to this MOU. Unless otherwise agreed, such meetings will be held in the NRC Headquarters Operations Center. The affected utilities will be kept informed of pertinent information covered by this MOU.

c. To preclude the premature release of sensitive information, NRC will protect sensitive information to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552, Title 10 of the Code of Federal Regulations, Part 2.790, and all other applicable authority. VDH and its Division of Radiological Health and Safety Regulation will protect sensitive information to the extent permitted by the Virginia Freedom of Information Act (Va-Code Ann. 2.2-3700 through 2.2-3715), and all other applicable authority.

d. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to the VDH, through its Division of Radiological Health and Safety Regulation (Virginia's lead radiological agency) by the NRC. The VDH Division of Radiological Health and Safety Regulation 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, the VDH, through its Division of Radiological Health and Safety Regulation will coordinate with the 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 MOU will be Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response for the NRC, and the Director, Division of Radiological Health and Safety Regulation for the VDH. These individuals may designate appropriate staff representatives for the purpose of administering this MOU.

B. Identification of these contacts is not intended to restrict communication between NRC and VDH staff members, in particular those within the Division of Radiological Health and Safety Regulation, on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this MOU, NRC and the VDH will work together to resolve these differences.

B. Differences between the VDH and NRC staff over issues arising out of this MOU will, if they cannot be resolved in accordance with Section VIII.A, be resolved by the Director of the NRC Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the NRC's Director, Office of Nuclear Security and Incident Response.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This MOU 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 MOU and resolve any problems identified. This MOU will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this MOU or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this MOU and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Martin Virgilio for R. William Borchardt,
Executive Director for Operations.

For the Commonwealth of Virginia,
Virginia Department of Health.

Dated: July 9, 2008.

Dr. Carl Armstrong,
Director, Office of Epidemiology, Virginia Department of Health.

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