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

October 20, 1988

MEMORANDUM FOR: William C. Parler, General Counsel
FROM: Samuel J. Chilk, Secretary
SUBJECT: STAFF REQUIREMENTS: SECY-88-236 -
MEMORANDUM OF UNDERSTANDING WITH THE
DEPARTMENT OF JUSTICE

This is to inform you that the Commission, with all Commissioners agreeing, has approved the adoption of the subject attached Memorandum of Understanding with the Department of Justice. Accordingly, you may submit the appropriate MOU to the Chairman for his signature.

(OGC) (SECY SUSPENSE: 10/24/88)

Attachment:
As Stated

cc: Chairman Zech
Commissioner Roberts
Commissioner Carr
Commissioner Rogers
EDO

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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 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

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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 to 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

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typically developed and brought to the attention of DOJ by law enforcement or investigative agencies such as the Federal Bureau of Investigation, th

e Postal
Inspection Service, and the various Treasury enforcement agencies. Si
milarly,
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 NR
C
investigations and referred to DOJ for prosecutive determination.

Thus, both the NRC and DOJ have authority and responsibility to invest
igate
and take action for certain violations that may arise out of the same
factual
matters. Although each agency will carry out its statutory responsibi
lities
independently, the agencies agree that the public health and safety wo
uld be
enhanced by cooperation and timely consultation on proposed enforcemen
t
actions where both civil and criminal violations appear to exist, and
by the
timely exchange of information of mutual interest. As an example, it
may be
appropriate in some cases for the NRC to stay its hand pending a crimi
nal
prosecution. Conversely, in other cases the public health and safety
may
require immediate NRC action which 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, w
ith due
regard, however, for the views of the other.

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111. Areas of Cooperation:

A. DOJ Notification to 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 alread
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reasonably known to the NRC, DOJ shall communicate such information to
the NRC
as soon as practicable, unless such information is determined by DOJ t

o 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.

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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 viola

tion 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 circumstances, 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;

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- (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:

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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 which 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 shall, at the staff level, include the seeking of a stay, upon DOJ's request, for a reasonable period of time of discovery and hearing rights during the regulatory proceeding to accommodate the needs of a criminal investigation or prosecution, provided that DOJ supports such action w

ith 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

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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, for a reasonable period of time of discovery and hearing rights during the civil penalty proceeding.

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

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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

t, as
appropriate.

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V. Effective Date:

This agreement is effective when signed by both parties.

Chairman
U.S. Nuclear Regulatory Commission
Date:

Assistant Attorney General
Criminal Division
U.S. Department of Justice
Date: