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NOTES:

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Carl Hertz

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47607

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10

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INFORMATION COPY?

YES

NO

PRELIMINARY DRAFT?

YES

NO

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120

FORM 121a (12-84)

United States Government

Department of Energy

memorandum

DATE: JAN 28 1987

REPLY TO
ATTN OF: RW-223

SUBJECT: Memorandum of Understanding

TO: Distribution

ACTION _____

CC: WELL

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REC'D IN WMPO 1-13-87

Attached for your information is a Memorandum of Understanding between the Department of Energy and the Department of Labor regarding the Mine Safety and Health Administration's mining health and safety requirements. The Department is now subject to the full range of mine safety regulations as required under the Federal Mine Safety and Health Act of 1977.

If you have any questions, contact Ed Regnier on (202) 586-4959 or FTS 896-4959.

Allen Benson
Economic and Intergovernmental
Analysis Branch
Office of Civilian Radioactive
Waste Management

Attachment

ACTION WMPO
INFO _____
R.F. _____
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**Memorandum of Understanding
Between the
U.S. Department of Energy
and the
U.S. Department of Labor**

I. Introduction

A. Background

The Department of Energy's (DOE's) Office of Civilian Radioactive Waste Management (OCRWM) is involved in activities that will lead to the construction of underground facilities from approximately 1400 to 3400 feet underground and involving a substantial expanse of horizontal drifts. The current OCRWM program will be evaluating the suitability of three different sites, in bedded salt, tuff and basalt to determine suitability for use as a repository for spent nuclear fuel and high-level radioactive waste. One of the sites evaluated may subsequently be developed into an operating repository.

A major concern of DOE in carrying out these activities is the safety and health protection of all underground workers at the sites, both for the personnel involved in extractive processes (who will number in the hundreds at each site during construction) as well as for the underground operating personnel (who will probably number from 35 to approximately 200 at the various sites during much of the 25 to 50 years the facilities could be in operation).

Under the Federal Mine Safety and Health Act of 1977 (the Mine Act), the Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor (DOL) is responsible for conducting mine inspections and investigations and developing and enforcing regulations and standards to protect the safety and health of miners. In the course of carrying out this responsibility, MSHA has developed technical expertise in mine safety and health.

B. Purpose

The purpose of this Memorandum of Understanding (MOU) is to accomplish the following:

1. To formalize a working arrangement whereby MSHA inspects operations of OCRWM to determine compliance with MSHA standards. The results of these inspections will be furnished to DOE so that DOE can implement its policy of

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compliance with MSHA standards as though repositories were commercial mines by taking the necessary actions with the DOE contractors to assure the prompt and effective correction of any deficiencies and to otherwise ensure general compliance with MSHA's mining health and safety requirements, and

2. To establish a procedural framework for the furnishing of MSHA technical assistance and consultation services to DOE with respect to mine geology, underground construction techniques, and related matters concerning the protection of life, the promotion of health and safety, and the prevention of accidents in DOE's underground repository operations.

C. Authorities

This MOU is consistent with and is entered into under the following statutory authorities: Section 601 of the Economy Act of 1932, as amended (31 U.S.C. 1535); Section 161 (f) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201 (f)); Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256); the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et. seq.); the Federal Mine Safety and Health Act of 1977, as amended (30 USC 801 et. seq.); and Section 100 of the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act 1986 (30 USC 062).

II. Inspections, Investigations and Technical Assistance

- A. MSHA will conduct periodic, health and safety compliance assistance inspections of OCRWM program mining operations to assess the conformance of such operations with MSHA standards.
- B. The following MSHA standards are relevant to underground operations conducted by the OCRWM program:

30 CFR Parts 31, 32, 36, 48, 49 and 57.

In addressing those standards, DOE may encounter situations in which DOE considers that an alternative approach to that specified in the standards is required. In those instances, DOE will consult with MSHA to arrive at a mutually agreeable solution.

- C. The results of all compliance assistance inspections will be furnished to the applicable OCRWM project office in writing at

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the conclusion of each inspection with a copy to the Office of Geologic Repositories, and DOE will thereafter take the necessary actions to assure the timely correction of any deficiencies. In the results of inspections forwarded to DOE, MSHA will indicate conditions which would constitute a violation of MSHA standards and also, where appropriate, will include recommendations for remedial actions.

- D. DOE's health and safety program encourages its contractors' employees to bring any health or safety complaints to either the employer or to DOE directly. Any such complaint or other information received by MSHA while performing work under this MOU will be transmitted to DOE and DOE will inform MSHA of its disposition of the complaint.
- E. When requested by DOE, MSHA will participate in any accident or fatality investigation at an OCRWM program site.
- F. In addition to inspections, MSHA will provide technical assistance as well as review and consultation services regarding mine safety and health matters for the OCRWM projects when requested by DOE via the Office of Geologic Repositories, subject to the availability of MSHA manpower.

G. Property

When available, DOE shall furnish the use of working space and other equipment (e.g. office equipment) required for the performance of this MOU, except such types of equipment as MSHA normally furnishes in connection with its regular mission.

H. Radiological Safety and Health, and Security

MSHA agrees to conform to all radiological safety and health, and security regulations and requirements of DOE while performing services in connection with this agreement.

III. Administration

This MOU will be administered on behalf of DOE by the Office of Geological Repositories in OCRWM. Normal working contacts with DOE shall be with the Project Office Managers, or by such other representative(s) as the Project Office Managers shall designate in written notice to MSHA. Administration on the behalf of MSHA will be by the Administrator for Metal and Nonmetal Mine Safety and Health, or by such other representative(s) as he/she shall designate in written notice to DOE.

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IV. Reimbursement

Subject to future specific agreement of the parties, DOE will reimburse MSHA for the cost of services provided under this MOU.

V. Public Release of Information

MSHA and DOE shall consult with each other before release of information under the Freedom of Information Act, 5 U.S.C. 552, regarding activities carried out pursuant to this MOU.

VI. Effective Date, Amendment and Termination

This MOU shall become effective when signed by both parties. It may be modified or amended by written agreement between DOE and MSHA. It shall continue in effect until terminated by either party upon 30 days written notice to the other.

The following signatures constitute acceptance of this MOU for the Department of Energy and the Department of Labor.

U.S. DEPARTMENT OF LABOR

U.S. DEPARTMENT OF ENERGY

BY:


DAVID A. ZEGER
BEN C. RUSCHETitle: Assistant Secretary for
Mine Safety and HealthDirector Office of
Civilian Radioactive
Waste Management

Date:

12-23-86

Date:

12-23-86