

August 22, 1997

SECY-97-194

FOR: The Commissioners

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

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE NUCLEAR
REGULATORY COMMISSION AND THE DEPARTMENT OF ENERGY
ON COOPERATION REGARDING THE GASEOUS DIFFUSION PLANTS

PURPOSE:

To inform the Commission of the planned issuance of a Memorandum of Understanding (MOU), between the Nuclear Regulatory Commission and the Department of Energy (DOE), for cooperation regarding the two gaseous diffusion plants (GDPs) after NRC assumed regulatory oversight on March 3, 1997.

BACKGROUND:

The Commission issued a Certificate of Compliance and a compliance plan approval to the United States Enrichment Corporation (USEC) for the Paducah and Portsmouth GDPs on November 26, 1996. The Certificate of Compliance became effective and NRC assumed regulatory oversight of the GDPs following a transition period on March 3, 1997.

CONTACT: Rocio Castaneira, NMSS/FCSS
(301) 415-8103

DISCUSSION:

NRC assumed regulatory oversight for nuclear safety, safeguards, and security of the portions of the GDPs leased from DOE by USEC, with the exception of the Highly Enriched Uranium Refeed activity in buildings X-326 and X-705 at the Portsmouth GDP. DOE retains regulatory oversight of these areas until the refeed activity is complete. All DOE activities in DOE areas and shared areas are governed by DOE requirements. DOE has representatives at each GDP site to oversee their activities.

The staff is providing, for the Commission's review, the attached MOU between NRC and DOE. This MOU is a result of a cooperative effort between NRC and DOE technical and general counsel staffs. It establishes the responsibilities of NRC and DOE at the GDPs.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

This paper was not coordinated with the Offices of the Chief Financial Officer and the Chief Information Officer because the paper does not involve budget, resource impacts, financial management or information management.

RECOMMENDATIONS:

The staff believes that the attached MOU effectively encompasses the staff's goal of delineating the responsibilities of NRC and DOE at the GDPs. Unless otherwise directed within ten working days of the date of this paper, the staff will execute the MOU with DOE and publish it in the Federal Register.

L. Joseph Callan

Executive Director

for Operations

Attachment:

Proposed Federal Register

Notice with MOU

7590-01

U.S. NUCLEAR REGULATORY COMMISSION

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF ENERGY
AND
THE NUCLEAR REGULATORY COMMISSION
ON
COOPERATION REGARDING THE
GASEOUS DIFFUSION PLANTS

[DOCKET NOS. 70-7001; 70-7002]

AGENCIES: Nuclear Regulatory Commission and Department of Energy

ACTION: Publication of Memorandum of Understanding between the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC).

SUMMARY: NRC and DOE have entered into a Memorandum of Understanding (MOU) on cooperation regarding the gaseous diffusion plants. The MOU is intended to describe the various responsibilities with respect to continued cooperation between NRC and DOE, and to set forth a framework for coordination of issues now that NRC has assumed regulatory oversight. The text of the MOU is set forth below.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert C. Pierson, telephone 301-415-7192, Office of Nuclear Material Safety and Safeguards, MS T-8A-33, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The Commissioners

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Dated at Rockville, Maryland, this day of August 1997.

FOR THE NUCLEAR REGULATORY COMMISSION

Elizabeth Q. Ten Eyck, Director

Division of Fuel Cycle Safety

and Safeguards, NMSS

Dated at Rockville, Maryland, this day of August 1997.

FOR THE NUCLEAR REGULATORY COMMISSION

Elizabeth Q. Ten Eyck, Director

Division of Fuel Cycle Safety

and Safeguards, NMSS

Docket Nos. 70-7001 & 70-7002

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The Commissioners

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DEPARTMENT OF ENERGY
AND THE NUCLEAR REGULATORY COMMISSION

COOPERATION REGARDING THE
GASEOUS DIFFUSION PLANTS

I. BACKGROUND

The Atomic Energy Act of 1954 (the Act), as amended by the Energy Policy Act of 1992 (42 U.S.C. §2297 *et seq.*), created the United States Enrichment Corporation (USEC), a government corporation, for the purpose of managing and operating the uranium enrichment enterprise owned and previously operated by the Department of Energy (DOE). The Act also required that the Nuclear Regulatory Commission (NRC) establish standards for regulation of the gaseous diffusion plants (GDPs) located in Paducah, Kentucky, and Piketon, Ohio, in order to protect the worker and public health and safety and to provide for the common defense and security. NRC published its final standards, 10 CFR Part 76, "Certification of Gaseous Diffusion Plants," on September 23, 1994 (59 Fed. Reg. 48944). The Act also directed NRC to establish and implement an annual¹ certification process by which the gaseous diffusion plants would be certified by NRC for compliance with these standards. For areas where plant operations are not yet in compliance, the Act provided that DOE will prepare compliance plans. Based upon a review of the certification applications and the DOE-prepared compliance plans submitted by USEC, on September 16, 1996, a Notice of Certification Decision for the U.S. Enrichment Corporation to operate the GDPs and a Finding of No Significant Impact (the Notice) was issued by NRC, 61 Fed. Reg. 49360 (September 19, 1996). After disposition of public comments received in response to NRC's Notice of Certification Decision, NRC issued a Certificate of Compliance and a compliance plan approval for each plant on November 26, 1996. The Certificates of Compliance became effective and NRC assumed regulatory oversight of the GDPs on March 3, 1997.

This Memorandum of Understanding (MOU) is designed to supplement the "Agreement Defining Security Responsibilities at the Paducah and Portsmouth Gaseous Diffusion Plants Between the Department of Energy's Office of Safeguards and Security and the Nuclear Regulatory Commission's Division of Security," dated March 10, 1995, and replace the "Agreement Establishing Guidance for NRC Inspection Activities at the Paducah and Portsmouth Gaseous Diffusion Plants between Department of Energy Regulatory Oversight Manager and Nuclear Regulatory Commission," dated August 11, 1994.

¹The USEC Privatization Act, Public Law 104-134, amends §1701(c)(2) of the Atomic Energy Act, by replacing the requirement for an annual application for a certificate of compliance with a requirement for an application to be filed "periodically, as determined by the Commission, but not less than every five years."

II. AUTHORITY AND SCOPE

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 MOU to describe the various responsibilities with respect to continued cooperation between NRC and DOE, and to set forth a framework for coordination of issues after NRC assumes regulatory oversight.

- A. NRC assumed regulatory oversight for nuclear safety, safeguards, and security at the leased portions of the GDPs on March 3, 1997, with the exception of the Highly Enriched Uranium (HEU) Refeed activity in Buildings X-326 and X-705 at the Portsmouth Gaseous Diffusion Plant.
- B. The Regulatory Oversight Agreement (ROA), Exhibit D to the Lease Agreement between DOE and USEC, sets forth the requirements and safety basis for the operation of DOE activities in the leased areas of the GDPs. The activities governed by the ROA consist of HEU Refeed activity in Buildings X-326 and X-705 at the Portsmouth Gaseous Diffusion Plant. Nothing in this MOU is intended to restrict or expand the authority of DOE or to affect or otherwise alter the terms of the ROA until by its terms it ceases to apply to facilities or activities for which NRC assumes regulatory oversight.
- C. NRC certification of the GDPs is in part conditioned upon USEC adherence to a Compliance Plan prepared and approved by DOE for each GDP in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Part 76. Modification(s) to the Compliance Plan requires DOE approval prior to submittal to NRC for final approval.
- D. Nothing in this MOU is intended to restrict or otherwise limit the authority of NRC to exercise its full regulatory authority, including both inspection and enforcement authority.

III. INTERFACES BETWEEN DOE AND NRC

- A. Exchange of Information and Technical Staff Support
 - 1. DOE and NRC agree to make available to each other information and technical support concerning matters of common interest². DOE and NRC agree to meet, as necessary, at mutually agreeable times and locations to exchange information on matters of common interest.

²Matters of common interest concern modifications to GDP site areas, railways, roadways, structures, systems, components, hazards, activities, tenant mix, population, etc., which can impact safety, safeguards or security risks (likelihood or consequence) under DOE or NRC jurisdiction during normal, off-normal or emergency conditions. The tenant mix includes multiple organizations other than DOE and USEC with GDP site space leased from DOE. These organizations are not staffed with GDP workers, i.e. National Guard, Defense Logistic Agency, etc.

2. DOE agrees to notify NRC of the following:

- a. Substantial proposed changes to the GDP site involving matters of common interest.
- b. Substantial proposed changes to the Lease Agreement between the Department of Energy and the United States Enrichment Corporation, dated July 1, 1993.
- c. Substantial proposed changes to the DOE Regulatory Oversight Agreement between DOE and USEC.
- d. Substantial proposed changes to "USEC AND DOE Resolution of Shared Site Issues at the Gaseous Diffusion Plants," dated January 24, 1996.
- e. Substantial proposed changes to the HEU Refeed Program.

3. NRC agrees to notify DOE of substantial proposed changes in USEC's operations potentially impacting safety, safeguards and/or security on site.

4. NRC and DOE will share all audit, assessment, and inspection reports on shared systems or areas.

5. DOE and NRC will coordinate with each other for proposed enforcement actions involving those shared systems or areas in Buildings X-326 and X-705 at the Portsmouth GDP where there is HEU activity. USEC is responsible for all system components required for USEC LEU/GDP operability. These components are subject to NRC inspection and enforcement, although they may be physically located in DOE controlled space.

6. Each agency recognizes that it is responsible for the identification, protection, control and accounting of information used or otherwise furnished in connection with this MOU in accordance with its established procedures. This information consists of classified, proprietary, Safeguards Information (SGI) and Unclassified Controlled Nuclear Information (UCNI).

B. Emergency Response

1. In accordance with the Federal Radiological Emergency Response Plan (FRERP), the NRC is the Lead Federal Agency (LFA) for an emergency involving DOE-owned GDPs operating under NRC regulatory oversight. If the origin of the emergency is determined to be in the DOE portion of the plant, then the LFA would be transferred to DOE. DOE and NRC will develop appropriate joint procedures which will ensure compatibility in response to emergencies in leased areas under NRC regulatory oversight.

2. The emergency planning requirements for GDPs, including offsite notifications and emergency classification levels and their corresponding emergency action levels, will be in accordance with the site emergency plans and procedures which will be coordinated among shared site regulators and tenants before and during implementation.

C. Referrals

1. DOE will not conduct inspections of nuclear safety, safeguards, and security in leased areas, except where there is a shared safety, safeguards, or security feature in USEC leased space, or as related to the HEU Refeed Program and DOE nuclear material and activities in USEC leased space. However, DOE personnel may, during the course of performing DOE activities, identify nuclear safety, safeguards or security concerns within the area of NRC responsibility. In such instances these and any other nuclear safety, safeguards or security concerns within NRC's purview identified by DOE will be referred to the NRC Resident Inspector for appropriate action. If DOE identifies situations with immediate safety, safeguards, or security significance, it will immediately communicate this information to USEC and the NRC Resident Inspector.

2. Similarly, although NRC will not conduct nuclear safety, safeguards, and security inspections in non-leased areas, NRC personnel may, during the course of performing NRC activities, identify nuclear safety, safeguards or security concerns within the area of DOE responsibility. NRC will refer these concerns to the DOE Site Manager for appropriate disposition.

3. Each agency will be responsible for processing, under its established program(s), allegations -- declarations, statements or assertions of impropriety or inadequacy whose validity has not been established -- and employee complaints or concerns of regulatory significance. Each agency will keep the other agency informed, as appropriate, of the existence, status and resolution of such allegations, complaints, or concerns. Each agency will assure that each allegation, complaint, or concern is promptly referred to the agency or entity that has jurisdiction over the allegation, complaint, or concern.

D. Coordinations

1. DOE will coordinate with USEC to inform NRC of reportable events, under DOE's occurrence reporting system, for which DOE is responsible.

2. DOE and NRC shall consult with each other before disclosure of information related to this MOU to preclude dissemination of information which may be exempt from disclosure under the Freedom of Information Act. It is NRC's practice to place all docket related DOE correspondence that is not classified or proprietary in the Public Document Room, unless DOE specifically requests, with appropriate justification, that the information be withheld.

3. On occasion, DOE may need to move its nuclear materials not in process through USEC areas to another location. NRC will not require DOE to fill out Forms 741 and/or 742 if the nuclear materials not in process only pass through USEC areas, i.e., not normally involving more than one shift, and remaining under DOE's continuous custody.

IV. POINTS OF CONTACT

- A. The principal senior management contacts for this MOU will be the DOE Assistant Manager for Enrichment Facilities, Oak Ridge Operations Office, and the Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, NRC. 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 DOE and NRC staff members on technical and other day-to-day activities.

V. RESOLUTION OF DISPUTES

- A. If disagreements or conflicts about matters within the scope of this MOU arise, DOE and NRC will work together to resolve these differences.
- B. Resolution of differences between DOE and NRC staff will be the initial responsibility of the DOE Site Manager, Portsmouth Site Office, or the DOE Site Manager, Paducah Site Office, and the Chief, of the responsible Branch within the Office of Nuclear Material Safety and Safeguards, NRC.

VI. EFFECTIVE DATE AND MODIFICATION

This MOU shall become effective upon signing by the DOE Assistant Manager for Enrichment Facilities, Oak Ridge Operations, and the Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, NRC, and will be subject to periodic reviews and may be amended or modified upon written agreement by the parties. This MOU may be terminated by mutual agreement or by written notice of either party submitted six months in advance of termination.

VII. 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 provision(s) to other persons or circumstances shall not be affected.

For the Nuclear Regulatory Commission

Elizabeth Q. Ten Eyck, Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety and Safeguards
Nuclear Regulatory Commission

Dated:

For the Department of Energy

Joseph W. Parks
Assistant Manager for
Enrichment Facilities
Oak Ridge Operations Office
Department of Energy

Dated: