

FAX TRANSMITTAL

of pages ▶ 6

To	Chen, Yen-Ju	From	Jim Kiceley
Dept./Agency	NRC	Phone #	708-829-9874
Fax #	301-415-5390	Fax #	
NSN 7540 01-317-7168		5099-101 GENERAL SERVICES ADMINISTRATION	

**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**

I. Authority

The United States Department of Energy (DOE) and the United States Nuclear Regulatory Commission (NRC), Region III, enter into this Agreement under the authority of Section 1701 (c)(4)B of the Atomic Energy Act (AEA) of 1954, as amended and the Joint Statement of Understanding between the Nuclear Regulatory Commission and the Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Uranium Enrichment Plants (Joint Statement), 59 Fed. Reg. 4729 (February 1, 1994).

II. Background

The Atomic Energy Act of 1954, 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 previously owned and operated by the DOE. The Energy Policy Act (the Act) also required that by October 24, 1994, the NRC establish its standards for the regulation of the gaseous diffusion plants leased by the USEC in order to protect the public health and safety and to provide for the common defense and security. After these standards are promulgated, the USEC is required to apply at least annually for a certificate of compliance with the standards. Until such time as the NRC assumes regulatory jurisdiction at the gaseous diffusion plants (GDPs), DOE will exercise nuclear safety and safeguards and security oversight authority at the leased portion of the gaseous diffusion plants located in Paducah, Kentucky, and Piketon, Ohio. The regulatory framework of DOE's authority is contained in the Regulatory Oversight Agreement, Exhibit D to the Lease Agreement between DOE and USEC dated July 1, 1993. Pursuant to the Joint Statement, it is agreed that the NRC will locate observers at the facilities on or after July 1, 1993, to obtain information and knowledge that may be useful to NRC in developing or implementing its standards. The Joint Statement also provides that interim guidance for the NRC inspectors/observers will be established between the DOE Regulatory Oversight Manager and the NRC covering the period before NRC assumes regulatory jurisdiction over the facilities.

NRC/DOE AGREEMENT

- 2 -

III. Scope

- A. This Agreement defines the way in which DOE and NRC will cooperate to facilitate the NRC's obtaining of information and knowledge regarding the gaseous diffusion plants and USEC's operation thereof through routine and special inspection activities during the interim period before NRC assumes regulatory responsibility. The NRC inspection activities will be conducted for the purpose of gathering information useful to the NRC in developing the 10 CFR Part 76 standards and making the initial certification decision for the GDPs as directed in the Atomic Energy Act of 1954, as amended. This Agreement does not apply to investigations or inquiries conducted by DOE.
- B. For the purpose of this Agreement, the term "inspection" as applied to DOE shall mean the examination, review, or evaluation of any program or activity of the USEC with respect to: (1) the effectiveness of the program or activity in ensuring that the health and safety of the public and plant personnel are adequately protected; (2) the safe operation of the facilities; (3) compliance with any applicable DOE Nuclear Safety and Safeguards and Security Requirements as defined in the Regulatory Oversight Agreement (ROA). With respect to the NRC, the term "inspection" is defined as the onsite or Regional/Headquarters Office review of any program or activity of USEC with respect to prospective compliance with proposed NRC standards for the regulation of the leased portions of the gaseous diffusion plants.
- C. Nothing in this Agreement is intended to restrict or expand the authority of DOE or to affect or otherwise alter the terms of the ROA.
- D. Nothing in this Agreement confers upon the NRC Inspectors authority to (1) interpret or modify DOE requirements imposed on the USEC; (2) take enforcement actions; or (3) direct or recommend gaseous diffusion plant employees to take or not to take any actions. Authority for all such actions is reserved exclusively to DOE, until the NRC assumes regulatory oversight for the leased portion of the gaseous diffusion plants in accordance with the Act.
- E. Nothing in this agreement is intended to restrict or otherwise limit the authority of the NRC to exercise its full regulatory authority, including both inspection and enforcement authority, at such time as NRC assumes regulatory authority over the leased portion of the gaseous diffusion plants in accordance with Title II of the Atomic Energy Act of 1954, as amended.
- F. Under this Agreement, up to three NRC Resident Inspectors may be located at each gaseous diffusion plant site with visits from Regional and Headquarters staff to become familiar with plant operations.

NRC/DOE AGREEMENT

- 3 -

IV. DOE's General Responsibilities

DOE is responsible for conducting nuclear safety and safeguards and security inspections of the leased portions of the gaseous diffusion plants to ensure that the plants are designed, constructed, tested, operated, maintained, and decommissioned in accordance with DOE regulatory requirements. These inspections are conducted in accordance with the DOE Regulatory Oversight Inspection and Enforcement Manual (Manual) using personnel appropriately qualified and trained to perform the necessary tasks. Only the DOE may take appropriate enforcement actions for all inspections conducted under this Agreement.

V. NRC's General Responsibilities

- A. The NRC, through its Resident and other inspectors, will conduct inspections and make observations for the purpose of obtaining information and knowledge of the gaseous diffusion plants and USEC's operation thereof. Such inspections shall be coordinated with the authorized DOE representative to ensure that both the scope and findings of the inspections are clearly communicated.
- B. NRC activities will be performed in accordance with Federal standards and requirements and DOE practices, with no undue burden on the DOE or the USEC.

VI. Implementation

The DOE and NRC agree to work in concert to ensure that the following staffing, inspection and enforcement, communications and information exchange, and conflict resolution protocol regarding the NRC Inspector activities are followed.

A. Staffing

- 1. The NRC will select its inspectors in accordance with its own procedures and qualifications.
- 2. The NRC is responsible for obtaining security clearances for its inspectors.
- 3. The NRC is responsible for ensuring that NRC Inspectors comply with safety requirements established by the USEC. The NRC is not required to follow USEC's fitness-for-duty program but will instead follow its own internal fitness-for-duty program. DOE is not responsible for ensuring access or space for NRC personnel. USEC is responsible for ensuring access and space for NRC personnel.
- 4. NRC and Office of Government Ethics Conflict of Interest regulations will be in effect for NRC Inspectors conducting inspection activities related to the Gaseous Diffusion Plants.

NRC/DOE AGREEMENT

- 4 -

B. Inspections and Enforcement

1. The NRC Inspectors' activities are intended to provide information for use in developing standards for the gaseous diffusion plants and in determining whether to issue the initial certificate and/or approve a compliance plan in accordance with the Act. NRC inspection activities are also intended to assist USEC in becoming familiar with NRC practices.
2. The NRC Inspectors are responsible for adhering to safety requirements imposed by USEC related to personal safety and radiological protection.
3. The NRC Inspectors may accompany the DOE Site Safety Representative during inspections, inspection entrance and exit interviews, and enforcement meetings.
4. The DOE will provide the NRC with a copy and current updates of the DOE Manual.
5. Safety/technical allegations or concerns received by the NRC Inspectors will be provided to the DOE for processing in accordance with DOE procedures, including DOE procedures for confidential sources.
6. If an NRC Inspector identifies situations with immediate safety significance, he or she will immediately communicate this information to the USEC and the DOE Site Safety Representatives. It is essential that this information be discussed with a DOE site representative immediately upon discovery so that DOE may take prompt action as dictated by the situation. If the DOE Site Safety Representatives are unavailable, the NRC Inspector will transmit this information immediately to the DOE Regulatory Oversight Manager or his designee.
7. DOE will receive copies of all written communications between USEC and NRC relating to activities of NRC Inspectors under this agreement.
8. If potential violations of DOE regulatory requirements are identified as a result of the NRC's inspection activities, DOE may take appropriate enforcement action as set forth in Appendix B of the ROA. Enforcement action, if any, will be taken only by DOE.

C. Communications and Information Exchange

1. The DOE and NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

2. The DOE and NRC agree to meet every 6 months at mutually agreeable times and locations to exchange information on matters of common concern pertinent to this Agreement.
3. The DOE and NRC agree to consider each other's identified information needs and concerns when developing inspection plans.
4. The NRC will conform to DOE practices regarding information disclosure. For instance, the NRC must abide by DOE protocol not to publicly disclose DOE inspection findings prior to the release of the DOE inspection report. However, the NRC may discuss with USEC any NRC finding relative to the development of 10 CFR Part 76 standards or certification of the gaseous diffusion plants in accordance with the Act, as amended.
5. To preclude dissemination of information which may be exempt from disclosure pursuant to the Freedom of Information Act, the DOE and NRC shall consult with each other before disclosure of information related to this Agreement.
6. The NRC will notify DOE before stationing an NRC Resident Inspector at a site.

VII. Contacts

- A. The principal senior management contacts for this Agreement will be the Director, Division of Radiation Safety and Safeguards, Region III, NRC, and the DOE Regulatory Oversight Manager. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.
- 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.

VIII. Resolution of Conflicts

- A. If disagreements or conflicts about matters within the scope of this Agreement arise, DOE and NRC will work together to resolve these differences.
- B. Resolution of differences between DOE and NRC staff over the significance of findings will be the initial responsibility of the DOE Regulatory Oversight Manager.
- C. The DOE Office of Chief Counsel, Oak Ridge Operations, will have the final authority to interpret DOE's regulatory requirements.

NRC/DOE AGREEMENT

- 6 -

IX. Effective Date, Termination, and Modification

This Agreement shall become effective upon signing by the Region III Administrator, NRC, and the DOE Regulatory Oversight Manager, and shall remain in effect until NRC issues the initial certificate and/or approves a compliance plan, which terminates this Agreement. A formal review, not less than 6 months after the effective date, will be performed concurrently by the DOE and NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties.


X. Separability

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

FOR THE U. S. DEPARTMENT OF ENERGY

 8/11/94
Regulatory Oversight Manager

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

 8/11/94
Regional Administrator