04-428

MEMORANDUM OF UNDERSTANDING

(MOU)

BETWEEN

THE NUCLEAR REGULATORY COMMISSION

OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

(USNRC)

AND

THE AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AGENCY

OF THE GOVERNMENT OF AUSTRALIA

(ARPANSA)

FOR COOPERATION AND THE EXCHANGE OF UNCLASSIFIED INFORMATION

IN NUCLEAR REGULATORY AFFAIRS

The USNRC and ARPANSA, hereinafter together referred to as the "Parties";

Having a mutual interest in a continuing exchange of unclassified information pertaining to regulatory matters and of standards required or recommended by their organizations for the regulation of safety and environmental impact of nuclear facilities and activities;

Having already established a history of informal cooperation in regulatory matters and in the development of safety standards;

Recognizing the U.S.-Australia Agreement for Cooperation in the Peaceful Uses of Atomic Energy, and adhering to the principle that all information exchanged and all activities carried out under this MOU will be exclusively for peaceful purposes;

Have reached the following understandings:

I. SCOPE OF THE MOU

To the extent that the USNRC and ARPANSA are permitted to do so under the laws, regulations, and policy directives of their respective authorities and as they mutually determine, the Parties will exchange unclassified technical and regulatory information

relating to the safety, safeguards, physical protection, transport safety, radiation protection, waste management, and environmental impact of nuclear facilities, materials, and activities. It is the intent of the Parties that this MOU serve broadly as the foundation for all unclassified nuclear safety and regulatory cooperation in which they may mutually determine to engage. Cooperative areas under this MOU may include but not be limited to:

- Legislation, regulations, guides, standards, policies, and licenses;
- Regulatory oversight, including major safety reviews and initiatives, technical reports, Inspections, performance monitoring, and licensing decisions;
- Risk assessment;
- Siting, construction, operation, and decommissioning of non-sensitive nuclear installations, particularly research reactors;
- Seismic safety;
- Aging of components;
- Human performance;
- Reports on incidents and other operational experience of substantial significance;
- Radiation protection;
- Storage, discharge, and treatment of radioactive wastes;
- Security of nuclear materials and installations;
- Other activities of immediate public interest;
- Participation of ARPANSA personnel in courses at NRC's Technical Training Center in Chattanooga, Tennessee;
- On-the-job training at NRC, including temporary assignments (usually for a minimum period of six months) within the NRC staff to gain and/or share regulatory and safety experience. (All such assignments will be considered on a case-by-case basis and be the subject of a separate attachment-of-staff agreement between the Parties.);
- Technical meetings.

II. ADMINISTRATION

A. The exchange of information under this MOU may be accomplished by mail, by appropriate means of electronic communication, and by visits and meetings arranged in advance on a case-by-case basis.

B. An administrator will be designated by each Party to supervise and coordinate its participation in the overall exchange. The administrators will be the recipients of all documents transmitted under the exchange, unless the Parties decide otherwise. One or more technical coordinators may be appointed as direct contacts for specific disciplinary areas.

C. Meetings of persons implementing this MOU on behalf of the two Parties will be arranged when the Parties mutually deem it to be appropriate. Any visit made under this MOU will take place only after consultation between the administrators.

D. The Transmitting Party does not warrant the suitability of any information for any particular use or application, and the application or use of such information exchanged or transferred between the Parties under this MOU will be the responsibility of the Receiving Party.

E. Nothing contained in this MOU will require either Party to take any action which would be inconsistent with its existing laws, regulations, and policy directives. Should any conflict arise between the terms of this MOU and those laws, regulations, and policy directives, the Parties will consult before any action is taken. No nuclear information related to proliferation-sensitive technologies will be exchanged under this MOU.

F. Unless otherwise mutually determined, all costs resulting from cooperation pursuant to this MOU will be the responsibility of the Party that incurs them. The Parties' commitments under this MOU are subject to the availability of appropriated funds and to the laws and regulations applicable to the Parties.

III. EXCHANGE AND USE OF INFORMATION

A. General

The Parties support the widest possible dissemination of information provided or exchanged under this MOU, subject both to the need to protect proprietary or other confidential or privileged information as may be exchanged hereunder, and to the provisions of Addendum A and the Intellectual Property Addendum, which are integral parts of this MOU.

B. Confidentiality

1. The Parties will inform each other about any information that is to be treated as confidential (see B.2 below) pursuant to this MOU. The term "confidential," as used here and throughout this MOU, means only provided or received "in confidence." It has no reference to "Confidential - National Security Information," which is excluded in entirety from the scope of this MOU.

2. The Parties are committed to protect any information that has been identified as confidential information. Such information will not be published or transmitted to any third party without prior written consent from the Transmitting Party.

C. Intellectual Property

Without prejudice to the provisions of the Intellectual Property Addendum of this Arrangement, the Parties will jointly and effectively protect intellectual property in accordance with the Parties' laws and concluded international agreements, which the Parties have undertaken to comply with.

D. Consultation

If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the provisions of Confidentiality of this Article in order to comply with applicable laws or regulations or any other reason, it will immediately inform the other Party. The Parties will thereafter consult to define an appropriate course of action.

E. Other

Nothing contained in this MOU will preclude a Party from using or disseminating information received without restriction by a Party from sources outside of this MOU.

F. Dispute Resolution

The laws and regulations of the respective countries will govern cooperation under this MOU. Any dispute or questions among the Parties concerning the interpretation or application of this MOU will be settled by prompt and amicable consultation or negotiation between the Parties.

IV. FINAL PROVISIONS

A. This MOU will come into effect upon signature and, subject to paragraph B. of this Article, will remain in effect for five years, unless extended for a further period of time by written notice of the Parties.

B. Either Party may withdraw from this MOU by providing the other Party with at least 180 days' prior written notice of its intent to withdraw.

C. This MOU may be amended by written amendment signed by the Parties.

D. All information protected as proprietary or other confidential or privileged information will remain so protected for the duration of this MOU and after this MOU has expired or been terminated, unless otherwise specifically determined by the Parties in writing.

E. This MOU supersedes all communications, negotiations, and arrangements, either written or oral, between the Parties relating to this MOU prior to its signing

Signed in duplicate at Rockville, Maryland, on the 8th day of September 2003.

FOR THE NUCLEAR REGULATORY COMMISSION OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Nils J. Diaz, Chairman

FOR THE AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AGENCY OF THE GOVERNMENT OF AUSTRALIA:

John Loy, Chief Executive Officer

CERTIFIED A TRUE COPY
BY
Office of the Secretary

ADDENDUM "A"

Information Exchange and Use

1. Definitions

For the purposes of this MOU:

A. The term "information" means nuclear energy-related regulatory, safety, safeguards, waste management, scientific, or technical data, including information on results or methods of confirmatory assessment, research, and any other knowledge intended to be provided or exchanged under this MOU.

B. The term "proprietary information" means information made available under this MOU which contains trade secrets or other privileged or confidential information (such that the person having the information may derive an economic benefit from it or may have a competitive advantage over those who do not have it), and may only include information which:

(1) has been held in confidence by its owner;

(2) is of a type which is customarily held in confidence by its owner;

(3) has not been transmitted by the owner to other entities (including the Receiving Party) except on the basis that it be held in confidence;

(4) is not otherwise available to the Receiving Party from another source without restrictions on its further dissemination; and

(5) is not already in the possession of the Receiving Party.

C. The term "other confidential or privileged information" means information, other than "proprietary information," which is unclassified but protected from public disclosure under the laws and regulations of the country providing the information and which has been transmitted and received in confidence.

2. Marking Procedures for Documentary Proprietary Information

A Party receiving documentary proprietary information pursuant to this MOU will respect the privileged nature thereof, provided such proprietary information is clearly marked with the following (or substantially similar) restrictive legend:

> This document contains proprietary information furnished in confidence under an MOU dated September 8, 2003 between the United States Nuclear Regulatory Commission and the Australian Radiation Protection and Nuclear Safety Agency and will not be disseminated outside these organizations, their consultants, contractors, and licensees, and concerned departments and agencies of the Government of the United States and the Government of Australia without the prior approval of (name of the Transmitting Party). This notice will be marked on any reproduction hereof, in whole or in part. These limitations will automatically terminate when this information is disclosed by the owner without restrictions.

This restrictive legend will be respected by the Receiving Party and proprietary information bearing this legend will not be used for commercial purposes, made public, or disseminated in any manner unspecified by or contrary to the terms of this MOU without the consent of the Transmitting Party.

3. Dissemination of Documentary Proprietary Information

A. In general proprietary information received under this MOU may be freely disseminated by the Receiving Party without prior consent to persons within or employed by the Receiving Party, and to concerned Government departments and Government agencies in the country of the Receiving Party.

B. In addition, proprietary information may be disseminated without prior consent

(1) to contractors or consultants of the Receiving Party located within the territorial limits of the State of that Party for use only within the scope of work of their contracts with the Receiving Party in work relating to the subject matter of the proprietary or other confidential or privileged information;

(2) to domestic organizations permitted or licensed by the Receiving Party to construct or operate nuclear production or utilization facilities, or to use nuclear materials and radiation sources, provided that such proprietary or other confidential or privileged information is used only within the terms of the permit or license; and

(3) to contractors of organizations identified in 3.B.(2), above, for use only in work within the scope of the permit or license granted to such organizations;

provided that any dissemination of proprietary information under 3.B.(1), (2), and (3), above, will be on an as-needed, case-by-case basis, will be pursuant to an agreement of confidentiality, and will be marked with a restrictive legend substantially similar to that appearing in 2., above.

C. With the prior written consent of the Party furnishing proprietary information under this MOU, the Receiving Party may disseminate such proprietary information more widely than otherwise permitted in subsections 3.A. and 3.B. The Parties will cooperate in developing procedures for requesting and obtaining approval for such wider dissemination, and each Party will grant such approval to the extent permitted by its national policies, regulations, and laws.

4. Marking Procedures for Other Confidential or Privileged Information of a Documentary Nature

A Party receiving under this MOU other confidential or privileged information will respect its confidential nature, provided such information is clearly marked so as to indicate its confidential or privileged nature and is accompanied by a statement indicating

(a) that the information is protected from public disclosure by the Government of the Transmitting Party, and

(b) that the information is transmitted under the condition that it be maintained in confidence.

5. Dissemination of Other Confidential or Privileged Information of a Documentary Nature

Other confidential or privileged information may be disseminated in the same manner as that set forth in paragraph 3., Dissemination of Documentary Proprietary Information.

6. Non-Documentary Proprietary or Other Confidential or Privileged Information

Non-documentary proprietary or other confidential or privileged information provided in seminars and other meetings arranged under this MOU, or information arising from attachments of staff, use of facilities, or joint projects, will be treated by the Parties according to the principles specified for documentary information in this MOU; provided, however, that the Party communicating such proprietary or other confidential or privileged information has placed the recipient on notice as to the character of the information communicated.

INTELLECTUAL PROPERTY ADDENDUM

Pursuant to Article III. and Addendum "A" of this MOU:

The Parties will ensure adequate and effective protection of intellectual property created or furnished under this MOU and relevant implementing arrangements. The Parties will notify one another in a timely fashion of any inventions or copyrighted works arising under this MOU and will seek protection for such intellectual property in a timely fashion. Rights to such intellectual property will be allocated as provided in this Addendum.

I. SCOPE

1. This Addendum is applicable to all cooperative activities in which the Parties engage pursuant to this MOU, except as otherwise mutually arranged by the Parties or their designees.

2. For purposes of this MOU, "intellectual property" will have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967; viz., 'intellectual property' will include the rights relating to:

   - literary, artistic and scientific works,
   - performances of artists, phonograms, and broadcasts,
   - inventions in all fields of human endeavor,
   - scientific discoveries,
   - industrial designs,
   - trademarks, service marks, and commercial names and designations,
   - protection against unfair competition,

   and all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields."

3. This Addendum addresses the allocation of rights, interests, and royalties between the Parties. Each Party will ensure that the other Party can obtain rights to intellectual property allocated in accordance with the Addendum by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Addendum will not otherwise alter or prejudice the allocation between a Party and its nationals, which will be determined by that Party's laws and practices.

4. Disputes concerning intellectual property arising under this MOU will be resolved through discussions between the concerned participating institutions or, if necessary, through consultations and negotiations between the Parties or their designees.

5. Termination or expiration of this MOU will not affect existing rights or obligations under this Addendum.

II. ALLOCATION OF RIGHTS

1. Each party will be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this MOU. All publicly distributed copies of copyrighted work prepared under this provision will indicate the names of the authors of the work unless an author explicitly declines to be named.

2. Rights to all forms of intellectual property, other than those rights described in Section II.1., above, will be allocated as follows:

   a. Visiting researchers, for example, scientists visiting primarily in furtherance of their education, will receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor will be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

   b. (1) For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have determined in advance on the scope of work, each Party will be entitled to obtain all rights and interests in its own State. The Party in whose State the invention was made will have first option to acquire all rights and interests in third States. If research is not designated as "joint research," rights to intellectual property arising from the research will be allocated in accordance with paragraph II.2.a., above. In addition, each person named as an inventor will be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.

   (2) Notwithstanding paragraph II.2.b. (1), above, if a type of intellectual property is available under the laws of one Party but not of the other Party, the Party whose laws provide for this type of protection will be entitled to all rights and interests worldwide. Persons named as inventors of the property will nonetheless be entitled to royalties as provided in paragraph II.2.b. (1), above.