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JUL 15 1991

Mr. Robert M. Mussler, Counsel
Office of the U.S. Nuclear Waste Negotiator
1823 Jefferson Place, NW
Washington, D.C. 20036

Dear Mr. Mussler:

SUBJECT: PROPOSED MEMORANDUM OF UNDERSTANDING

In response to Mr. Leroy's letter of February 8, 1991 requesting the U.S. Nuclear Regulatory Commission's (NRC's) consideration of entering into a Memorandum of Understanding (MOU) with the Office of the U.S. Nuclear Waste Negotiator (ONWN), and Chairman Carr's subsequent letter of agreement dated March 12, 1991, I am enclosing a draft MOU for your review. This MOU is a revision of the existing agreement between ONWN and the U.S. Department of Energy. The revisions incorporated into this MOU primarily reflect the NRC's regulatory role and mission in the national high-level radioactive waste program. Although not specifically stated in this MOU, a prospective applicant may confer informally with the NRC prior to the filing of an application. Therefore, we are available to assist you in any pre-licensing discussions with a potential applicant or a potential host State or Indian Tribe. I believe that this draft will serve as a good starting point for discussing what the MOU should address.

As the designated staff contact for the NRC, I would appreciate receiving any comments or proposed revisions you may want to suggest. Please contact me if you have any questions concerning this subject. I can be reached at (301) 492-3352.

Sincerely,

Original Signed by

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

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OFC :HLPD	:HLPD	:HLWM	:HLWM	:NMSS	:NMSS
NAME:RCarlson	:JHolonich	:JLinehan	:BYoungblood	:GArlotto	:RMBernero
Date:05/6/91	:05/6/91	:05/7/91	:05/7/91	:05/8/91	:05/ /91

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FIRST MEMORANDUM OF UNDERSTANDING
BETWEEN THE
OFFICE OF THE U.S. NUCLEAR WASTE NEGOTIATOR
AND THE
U.S. NUCLEAR REGULATORY COMMISSION

I. INTRODUCTION

This MEMORANDUM OF UNDERSTANDING (MOU) outlines the initial procedures for interactions between the Office of the U.S. Nuclear Waste Negotiator (ONWN) and the U.S. Nuclear Regulatory Commission (NRC) in carrying out the Nuclear Waste Policy Amendments Act of 1987 (title V of Public Law 100-203),¹ which amended the Nuclear Waste Policy Act of 1982 (Public Law 97-425) (the Act) and, inter alia, created the ONWN. The ONWN is an independent establishment in the Executive Branch, separate from NRC and all other operating departments and agencies of the Federal Government. This independence facilitates the mission of the ONWN to find States or Indian Tribes willing to negotiate regarding the siting of a monitored retrievable storage facility or a permanent repository within their jurisdictions as part of an integrated waste management system for the disposal of spent nuclear fuel and high-level radioactive waste.

II. PURPOSE

The purpose of this MOU is to establish a working relationship between the ONWN and NRC that assures a timely flow of information between the parties;

¹ 42 U.S.C. 10241 et seq.

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provides the ONWN with use of such NRC services, facilities, and personnel as the NRC's Chairman determines appropriate and consistent with the scope described in Section V, and maintains each party's independence.

III. AUTHORITY

This MOU is entered into under the authority of section 409 of the Act (42 U.S.C. 10249), which provides that each department, agency, and instrumentality of the United States may furnish the Negotiator such information as he determines to be necessary to carry out the functions of the ONWN, and under the authority of section 408 of the Act (42 U.S.C. 10248(4)), which specifies that the Negotiator may utilize the services, personnel, and facilities of other Federal agencies, subject to the consent of the head of any such agency.

IV. MATTERS NOT ADDRESSED

Subsequent MOU's between the parties addressing procedures and relations regarding other provisions of the Act may be entered into at a later date.

V. POLICY

The working relationship of the parties under this MOU will be consistent with the provisions of the Act related to high-level nuclear waste regulatory matters associated with a monitored retrievable storage facility and a

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geologic repository including transportation and safeguards. The NRC will respond in a timely manner to all written requests made by the ONWN to NRC for services, personnel, facilities, or information, subject to the discretion of the NRC's Chairman and as permitted by law. The scope of the NRC activity generally will be limited to pre-licensing consultations and discussions with the Office of the Nuclear Waste Negotiator, a potential applicant, or a potential host State or Indian Tribe.

Information made available to the ONWN under this agreement may be used at that agency's option in carrying out its responsibilities under the Act. The ONWN and NRC contemplate that all information requested and provided would be information that may be released to the public.

VI. POINTS OF CONTACT

The points of contact for routine daily communication between the ONWN and NRC will be Counsel for the ONWN located in the Washington, D.C. liaison office and the Director of the Office of Nuclear Material Safety and Safeguards within NRC.

VII. SUPPLEMENTAL INTERAGENCY AGREEMENTS

Unless otherwise agreed by the NRC's Chairman and the Negotiator, when requested by the Negotiator to provide services, personnel, facilities or information, NRC shall determine whether compliance with such requests will be

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in furtherance of its purposes, responsibilities, and obligations. To the extent NRC determines that compliance is in furtherance of such purposes, responsibilities, and obligations, it will assume the costs of such compliance.

If it is determined that a commitment, obligation, or transfer of funds is required, the details of the levels of support to be furnished by one organization to the other, with respect to funding, will be developed in specific interagency agreements.

All obligations or expenditures emanating from activities conducted under this MOU or any subsequent interagency agreements are subject to the availability of appropriated funds.

VIII. AMENDMENT OR TERMINATION

This MOU may be modified, amended, or terminated by mutual written agreement, or may be terminated unilaterally by either part upon thirty (30) days written notice to the other party.

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IX. EFFECTIVE DATE

This MOU shall be effective upon execution by the Negotiator and the NRC's
Chairman.

UNITED STATES NUCLEAR REGULATORY COMMISSION

Date: _____

By _____
Ivan Selin, Chairman

OFFICE OF THE UNITED STATES NUCLEAR
WASTE NEGOTIATOR

Date: _____

By _____
David H. Leroy, Negotiator

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