

MEMORANDUM OF UNDERSTANDING BETWEEN THE NUCLEAR DECOMMISSIONING AUTHORITY AND THE ENVIRONMENT AGENCY

1 Introduction

1.1. This Memorandum of Understanding (MoU) is between the Nuclear Decommissioning Authority (NDA) and the Environment Agency. It forms one of a series of similar MoUs between the NDA and the nuclear regulators, i.e. the Health and Safety Executive (HSE), Environment Agency (EA), the Scottish Environment Protection Agency (SEPA), and the Office for Civil Nuclear Security (OCNS). It should be read in conjunction with the MoUs and other agreements already in place between the Environment Agency and other nuclear regulators in relation to the operation of nuclear sites (see References below).

1.3 Nothing in the terms of this MoU over-rides, or is intended to pre-empt, the ability of either party to exercise its statutory powers or undertake its statutory duties. Equally, nothing in the MoU constitutes, or is intended to have the effect of, a binding legal agreement between the NDA and the Environment Agency

1.4 This MoU is disapplied immediately with respect to relevant designated sites, installations and facilities if the NDA exercises its power under section 10(2) (b) of the Energy Act 2004, namely its power to apply for registrations under section 7 of the Radioactive Substances Act 1993 and authorisations under sections 13 and 14 of that Act. For relevant sites the relationship of the NDA with the Environment Agency becomes that of regulated organisation under the Radioactive Substances Act 1993.

2 Purpose and Objectives

2.1 The MoU represents a statement of common purpose by the NDA and the Environment Agency with respect to the decommissioning and clean-up of designated sites, installations and facilities. Consistent with their respective statutory obligations, duties and functions, the NDA and the Environment Agency undertake to ensure that decommissioning and clean up activities are carried out cost effectively, openly, transparently and as quickly as is reasonably practicable in accordance with safety, security and environmental regulatory requirements.

2.2 In line with that common purpose, the NDA and the Environment Agency jointly commit themselves to the development and maintenance of:

- (a) effective working relationships nationally, regionally and at site level, which facilitate the delivery of decommissioning and clean up of designated sites, installations and facilities;
- (b) working arrangements which are transparent, particularly to those responsible for managing designated sites, installations and facilities; and
- (c) working arrangements which are consistent with the NDA's statutory obligation to consult stakeholders and the general commitment of both the NDA

and the Environment Agency to openness and transparency, as far as reasonably practicable, in their dealings with stakeholders and members of the public.

2.3 This MoU sets out the basis on which the NDA and the Environment Agency intend to achieve these objectives and work together to achieve their common purpose.

3 Statement of Commitments

3.1 It is important that the demands placed on site licensees or operators of other designated sites, installations and facilities as a result of different statutory obligations should as far as possible be mutually consistent. The agreed aim of the NDA, the Environment Agency and the other nuclear regulators is to ensure consistency in devising strategies and plans, to harmonise and streamline their individual requirements wherever practicable and to minimise the overall administrative burden on site licensees/operators.

3.2 The NDA hereby commits itself to:

(a) develop and maintain a constructive working relationship with the Environment Agency and respond positively to criticism and challenge;

(b) engage as appropriate in joint working with the Environment Agency, other nuclear regulators, site licensees/operators and other stakeholders to resolve issues of substance;

(c) do nothing which inhibits the Environment Agency or the other nuclear regulators in the exercise of their statutory powers, functions and duties (including taking enforcement action);

(d) take appropriate action as and when it is made aware of any concerns the Environment Agency might have about the operation of any designated site, installation or facility;

(e) establish mechanisms and methods of working which facilitate dialogue with the Environment Agency and other nuclear regulators; inviting them to make proposals as well as responding to those put forward by the NDA; and giving them a reasonable time (to be defined in each case) in which to offer views, consistent with the NDA's timetable for decision making;

(f) provide in a timely manner all such information which the Environment Agency may request regarding the NDA's overall strategy or annual work plans;

(g) agree with Environment Agency the section of its annual report dealing with relationships with the nuclear regulators before adopting it and sending it to the Secretary of State; and

(h) act in accordance with and, over time, review and improve the operation of the MoU as a basis for delivering a common purpose approach to decommissioning and clean up.

3.3 The Environment Agency recognises that in order to carry out its statutory duties the NDA will need to monitor the actions of nuclear site licensees and operators of other designated sites, installations and facilities and hold them to account for performance. Consequently, and without prejudice to any regulatory action, the Environment Agency commits itself to (as appropriate):

- (a) develop and maintain a positive working relationship with the NDA and its principal contractors and to respond constructively to criticism and challenge;
- (b) engage in joint working with the NDA, other nuclear regulators, site licensees/operators and other stakeholders to resolve issues of substance;
- (c) support the NDA in the implementation of decisions taken following consultation with and in agreement with the Environment Agency under the terms of this MoU;
- (d) work together with the NDA in explaining the basis of such decisions to other stakeholders;
- (e) inform the NDA as soon as reasonably practicable about any significant regulatory action impacting on the discharge of the NDA's statutory duties and other functions;
- (f) where regulatory action is taken, ensure that the NDA is made aware of the background to, and implications of, the action taken so that the NDA can respond and take whatever action may be necessary to ensure that it can properly discharge its statutory duties and functions;
- (g) subject to legal and security constraints, supply the NDA with all such factual information which the NDA may reasonably request or which the Environment Agency considers may be material to the carrying out of the NDA's statutory duties and functions;
- (h) act in accordance with and, over time, improve the operation of, this MoU as a basis for delivering a common purpose approach to decommissioning and clean up;
- (i) comment constructively, and in a timely way on proposals and documents put forward by site licensees/operators or the NDA, as appropriate; and
- (j) where the Environment Agency's views differ significantly from those of other nuclear regulators, work with them and the NDA to resolve any differences so as to provide a firm basis for implementation of agreed NDA proposals.

3.4 In addition, for designated sites, installations and facilities, both the NDA and the Environment Agency will engage constructively (seeking to resolve any concerns in a timely manner) on:

- (a) preparation and revision of NDA priorities, strategies and plans (including Lifecycle Baselines (LCBLs) and Near Term Work Plans (NTWPs));

- (b) contract terms;
- (c) tender evaluation criteria; and
- (d) NDA procedures, requirements and guidance.

4 Research

4.1 The NDA and the Environment Agency jointly undertake to work constructively together, both bilaterally and within the framework of a research co-ordination body, to promote a properly co-ordinated and cost effective approach to relevant research.

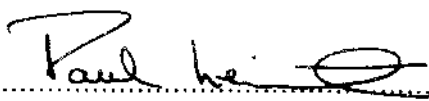
5 Cost Recovery for Generic Work

5.1 The NDA and the Environment Agency agree that the costs of generic work undertaken by the Environment Agency in support of the decommissioning and clean-up of designated sites, installations and facilities can be recovered from NDA funds. The NDA and the Environment Agency are developing suitable financial arrangements for this, the details of which will be the subject of a separate agreement.

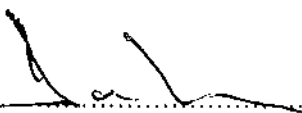
6 Review Provisions

6.1 A Review Group, involving representatives of the NDA and the Environment Agency (and other nuclear regulators, as appropriate), will meet whenever the need arises, and at least every year, to review the working of this MoU, having sought input from appropriate stakeholder groups. The NDA and the Environment Agency will take the chair alternately.

6.2 In the event of the Group's inability to resolve particular issues which may bear on policy matters, the NDA and the Environment Agency will each refer to its own Chief Executive and Board.

Signed: 
5 April 05

Paul Leinster
Acting Chief Executive,
(In the absence of Barbara Young)
Environment Agency

Signed: 

Ian Roxburgh
CEO, NDA

April 2005

Notes

- 1) The interests of the Food Standards Agency in England and Wales will be covered under this MoU (see Refs. 4 and 5 below).
- 2) Under the liabilities agreements with British Energy (BE), the NDA requires the production of decommissioning plans for each power station and uncontracted liabilities plans for the management of non-decommissioning nuclear liabilities. These will be the BE equivalent of LCBLs and will be complemented, where appropriate with detailed shorter term plans (known as the Annual Liabilities Reports Part 2) which will be the BE equivalent of Near Term Work Plans NTWPs. These plans will be subject to approval by the NDA and any material changes to the plans will require formal approval. These plans will provide a comprehensive and agreed basis for the decommissioning and clean up of each site, installation and facility; which satisfies the requirements of the nuclear regulators; and which enables site licensees/operators to focus on ensuring that work is carried out consistent with securing best value for money.

The terms of this MoU may be taken as applying to the working arrangements between the NDA and Environment Agency on the BE equivalents of LCBLs and NTWPs.

References

1. Memorandum of Understanding between the Health and Safety Executive and the Environment Agency on Matters of Mutual Concern at Nuclear Sites Licensed by HSE in England and Wales, 23 April 2002.
www.environment-agency.gov.uk/commondata/103599/nuclear_mou_final_version.doc
2. The Working Relationship Between HSE and EA on Nuclear Safety and Environmental Regulatory Issues - A Statement of Intent, 8 August 2001.
www.environment-agency.gov.uk/commondata/105385/hseras.pdf
3. Working Together on Nuclear Sites, January 2003.
www.environment-agency.gov.uk/commondata/105385/wtfinal2_1.pdf
4. Concordat between the Food Standards Agency and the Environment Agency, January 2002.
(www.food.gov.uk/multimedia/pdfs/EA.pdf)
5. Working Agreement between the Environment Agency and the Food Standards Agency in respect of Arrangements under the Radioactive Substances Act 1993, 10 June 2003.