

MEMORANDUM OF UNDERSTANDING BETWEEN THE NUCLEAR DECOMMISSIONING AUTHORITY AND THE HEALTH & SAFETY EXECUTIVE

Background

The Energy Act 2004 and the White Paper on Managing the Nuclear Legacy¹ both serve to underline the crucial importance to the delivery of the UK's nuclear clean up programme of the relationships between the Nuclear Decommissioning Authority (NDA) and the nuclear regulators - i.e. the Health and Safety Executive (HSE), the Environment Agency (EA), the Scottish Environment Protection Agency (SEPA), Office of Civil Nuclear Security (OCNS), and the Department for Transport. The regulators and the NDA have a common interest in ensuring that decommissioning and clean up is driven forward safely, securely, cost effectively and in ways which protect the environment.

The suite of Memoranda of Understanding (MoU) between NDA the regulators (of which this MoU is one) aims to further that common interest by setting a framework for open, constructive and complementary working relationships. Whilst recognising that the MoUs cannot override the statutory duties of any of the parties, it is acknowledged that when placing requirements on nuclear site operators, mutual co-operation between NDA and the regulators should help to ensure that conflicting demands are minimised, synergies are exploited, the appropriate balance of precautions is attained, and public confidence in the process is maintained.

¹ Managing the Nuclear legacy: A Strategy for Action; Cm5552. HMSO July 2002

1 Introduction

- 1.1 This Memorandum of Understanding (MoU) is between the Nuclear Decommissioning Authority (NDA) and the Health and Safety Executive (HSE). It forms one of a series of similar MoUs between the NDA and the nuclear regulators, i.e. 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 those MoUs and other agreements already in place between HSE and other nuclear regulators in relation to the operation of nuclear sites (see references)².
- 1.2 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 HSE.
- 1.3 This MoU also recognises that in carrying out its statutory duties, the NDA and its staff are subject to the legal requirements of the Health and Safety at Work etc Act and all of its relevant statutory provisions³.
- 1.4 This MoU is disappplied immediately with regard 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 and hold nuclear site licences.

2 Purpose and Objectives

- 2.1 The MoU represents a statement of common purpose by the NDA and HSE with respect to the decommissioning and clean up of designated sites, installations and facilities, and the health and safety of workers and others. Consistent with their respective statutory obligations, duties and functions the NDA and HSE undertake to facilitate safe, early, decommissioning and clean-up, in accordance with security and environmental regulatory requirements.
- 2.2 In line with that common purpose, the NDA and HSE jointly commit themselves to the development and maintenance of:
 - a) effective working relationships nationally, regionally and at site level which facilitate the safe, early, delivery of decommissioning and clean up;
 - b) working arrangements which are transparent, particularly to those responsible for operating designated sites, installations and facilities; and
 - c) working arrangements which are consistent, so far as practicable, with both NDA's and HSE's general commitment to openness and transparency

² The interests of the Food Standards Agency will be covered under any MoU between NDA and EA/SEPA (see Ref. 6)

³ Those health and safety requirements apply to the NDA as an employer and its staff as employees, and potentially more generally, e.g. as a client for construction projects covered by the Construction (Design and Management) Regulations 1994.

in their dealing with stakeholders and the NDA's statutory obligation to public consultation.

3 Statement of Commitments

- 3.1 It is acknowledged that the demands placed on site licensees/operators of designated sites, installations and facilities as a result of obligations placed on them by NDA and HSE should, so far as possible, be mutually consistent. HSE and NDA will therefore seek to: ensure consistency in devising strategies and plans; harmonise and streamline their individual requirements wherever practicable; and 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 HSE and respond positively to criticism and challenge;
 - b) engage in joint working with HSE, other nuclear regulators, site licensees/operators and other stakeholders to resolve issues of substance;
 - c) facilitate the exercise by HSE of its statutory powers and duties, (including taking enforcement action);
 - d) take appropriate action that may be necessary to ensure that it can properly discharge its statutory duties and functions when it is made aware of any concerns HSE might have about the operation of any designated site, installation or facility;
 - e) take appropriate action as and when it is made aware of any concerns HSE might have about the involvement of NDA or its staff;
 - f) establish mechanisms and methods of working which facilitate dialogue with HSE 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 in which to offer views, consistent where possible with the NDA's timetable for decision making;
 - g) provide in a timely manner all such information which HSE may request regarding the NDA's overall strategy or annual work plans;
 - h) consult and seek agreement with HSE on those parts of its annual report dealing with relationships with the nuclear regulators before adopting it and sending it to the Secretary of State (and the Scottish Ministers if required) ; and
 - i) act in accordance with and, over time, review and improve the operation of this MoU.
- 3.3 HSE 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 against the requirements of the contract. Consequently, and without prejudice to any regulatory action, HSE commits itself, where appropriate and where resources permit to:

- a) develop and maintain a positive working relationship with the NDA 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, so far as the duties, obligations and functions of HSE allow;
- c) support the NDA in the implementation of decisions taken following consultation with and in agreement with HSE under the terms of this MoU;
- d) work together with the NDA in explaining the basis of such decisions to 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, obligations and 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 requirements, supply the NDA with appropriate factual information that HSE considers may be material to NDA's statutory duties, obligations and functions;
- h) comment constructively, and in a timely way on relevant NDA proposals and documents;
- i) where HSE's views on NDA's strategies, plans and proposals differ significantly from those of other nuclear regulators, work with them and the NDA to agree a way forward; and
- j) act in accordance with and, over time, review and improve the operation of this MoU.

3.4 In addition, where appropriate and where resources and time permit, NDA and HSE will engage constructively, and seek to resolve any concerns in a timely manner, on:

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

- c) tender evaluation criteria; and
- d) NDA procedures, requirements and guidance.

4 Research

- 4.1 The NDA and HSE 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 Review Provisions

- 5.1 A Review Group, involving representatives of the NDA, and HSE (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 HSE will take the chair alternately.
- 5.2 In the event of the Group's inability to resolve particular issues which may bear on policy matters, the NDA will refer to its Chief Executive and Board and HSE to its senior management.

Signed:



Timothy Walker
Director General, HSE

Signed:.....



Ian Roxburgh
CEO, NDA

March 2005

Note on British Energy

- 1) Under the liabilities agreements with British Energy (BE), 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 Life Cycle Base Lines (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 (NTWP). These plans will be subject to approval by 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.
- 2) The terms of this MoU may be taken as applying to the working arrangements between the NDA and HSE on the BE equivalents of LCBL's and NTWP's.

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. MoU between HSE and SEPA on Matters of Mutual Concern at Licensed Nuclear Sites in Scotland – 22 March 2002
5. The MoU between the HSE and the DTI on Matters of Mutual concern at Licensed Nuclear Sites dated 3 April 2001.
6. Concordat between the Food Standards Agency and the Environment Agency, January 2002.
(www.food.gov.uk/multimedia/pdfs/EA.pdf)
7. Working Agreement between the Environment Agency and the Food Standards Agency in respect of Arrangements under the Radioactive Substances Act 1993, 10 June 2003.