

868



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

RELATED CORRESPONDENCE

DOCKETED
USNRC

July 15, 1985

'85 JUL 19 AIO 57

John W. Harte, Esq.
Williams, Johnson, Buchanan & Harte
P.O. Box 463
Aiken, South Carolina 29802-0463

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of
GEORGIA POWER CO.
(Vogtle Electric Generating Plant, Units 1 and 2)
Docket Nos. 50-424 and 50-425 (OL)

Dear Mr. Harte:

This is in response to your letter to me dated May 20, 1985.

In your letter, you indicated that you had not seen the Vogtle offsite emergency plan and that meetings with representatives of Georgia Power Company had failed to reach a solution which would adequately resolve your client's concerns. As you may know, the Vogtle emergency plan is now available for review, and a determination as to the plume exposure pathway emergency planning zone (EPZ) has been made by the State of South Carolina. I understand that you have written to appropriate South Carolina officials concerning that State's EPZ determination for Vogtle.

Pursuant to your request, I have advised the Commission's docketing and service section to add your name and the name of J. M. Brown to the service list for purposes of keeping you informed of developments in the Vogtle licensing proceedings. I am also enclosing a copy of 10 C.F.R. § 2.714 and § 2.715(a) which sets out this Commission's regulations concerning intervention as a party to the proceeding and the opportunity to make a limited appearance statement. You may wish to familiarize yourself, as well, with other portions of 10 C.F.R., in particular Parts 2 and 50.

As you may know, the Federal Emergency Management Agency (FEMA) has primary federal responsibility for reviewing the adequacy of offsite emergency response plans for commercial power reactors in the United States. For your

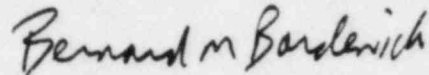
3507190566 850715
PDR ADDCK 05000424
G PDR

DS07

information, I have enclosed a copy of the latest Memorandum of Understanding between FEMA and the NRC.

Please do not hesitate to contact me if you have any further questions.

Sincerely,

A handwritten signature in cursive script, reading "Bernard M. Bordenick".

Bernard M. Bordenick
Counsel for NRC Staff

Enclosure: As stated

cc: James E. Joiner, Esq.
Bruce W. Churchill, Esq.
Joshua P. Moore

PART 2 • RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

request a stay pursuant to paragraphs (c)(3) and (c)(4) of this section. A proceeding may be stayed for a reasonable time in order for an affected party to obtain other representation if this would be necessary to prevent injustice.

(3) Anyone disciplined pursuant to this section may within ten (10) days after issuance of the order file an appeal with the Atomic Safety and Licensing Appeal Board or the Commission, as appropriate. The appeal shall be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. The Appeal Board or Commission, as appropriate, shall consider each appeal on the merits, including appeals in cases in which the suspension period has already run. If necessary for a full and fair consideration of the facts, the Appeal Board or Commission, as appropriate, may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. In the latter event, unless the Appeal Board or the Commission, as appropriate, provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. Such hearing shall commence as soon as possible. In the case of an attorney, if no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, the Appeal Board, or the Commission, as appropriate, shall notify the state bar(s) to which the attorney is admitted. Such notification shall include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Appeal Board or Commission.

(4) A suspension exceeding 1 day shall not be effective for 72 hours from the date the suspension order is issued. Within this time a suspended individual may request a stay of the sanction from the appropriate reviewing tribunal pending appeal. No responses to the stay request from other parties will be entertained. If a timely stay request is filed, the suspension shall be stayed until the reviewing tribunal rules on the motion. The stay request shall be in writing and contain the information specified in §§ 2.786(b)(1), (2) and (4) of this part. The Appeal Board or Commission, as appropriate, shall rule on the stay request within 10 days after the filing of the motion. The Appeal Board or Commission shall consider the factors specified in §§ 2.788(e)(1) and (e)(2) of this part in determining whether to grant or deny a stay application.

§ 2.714 Intervention.

(a)(1) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for leave to intervene. In a proceeding noticed pursuant to § 2.105, any person whose interest may be affected may also request a hearing. The petition and/or request shall be filed not later than the time specified in the notice of hearing, or as provided by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, or as provided in § 2.102(d)(3). Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d) of this section:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

(2) The petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

(3) Any person who has filed a petition for leave to intervene or who has been admitted as a party pursuant to this section may amend his petition for leave to intervene. A petition may be amended without prior approval of the presiding officer at any time up to fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference. After this time a petition may be amended only with approval of the presiding officer, based on a balancing of the factors specified in paragraph (a)(1) of this section. Such an amended petition for leave to intervene must satisfy the requirements of this paragraph (a) of this section pertaining to specificity.

(b) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in paragraph (a)(1) of this section.

(c) Any party to a proceeding may file an answer to a petition for leave to intervene within ten (10) days after service of the petition, with particular reference to the factors set forth in paragraph (d) of this section. However, the staff may file such an answer within fifteen (15) days after service of the petition.

(d) The Commission, the presiding officer or the atomic safety and licensing board designated to rule on petitions to intervene and/or requests for hearing shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(e) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission, presiding officer or the designated atomic safety and licensing board may direct in the interests of: (1) Restricting irrelevant, duplicative, or repetitive evidence and argument, (2) having common interests represented by a spokesman, and (3) retaining authority to determine priorities and control the compass of the hearing.

(f) In any case in which, after consideration of the factors set forth in paragraph (d) of this section, the Commission or the presiding officer finds that the petitioner's interest is limited to one or more of the issues involved in the proceeding, any order allowing intervention

PART 2 • RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

shall limit his participation accordingly.

(g) A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to paragraph (f) of this section.

(h) Unless otherwise expressly provided in the order allowing intervention, the granting of a petition for leave to intervene does not change or enlarge the issues specified in the notice of hearing.

§ 2.714a Appeals from certain rulings on petitions for leave to intervene and/or requests for hearing.

(a) Notwithstanding the provisions of § 2.730(f), an order of the presiding officer or the atomic safety and licensing board designated to rule on petitions for leave to intervene and/or requests for hearing may be appealed, in accordance with the provisions of this section, to the Atomic Safety and Licensing Appeal Board within ten (10) days after service of the order. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief. Any other party may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal. No other appeals from rulings on petitions and/or requests for hearing shall be allowed.

(b) An order wholly denying a petition for leave to intervene and/or request for a hearing is appealable by the petitioner on the question whether the petition and/or hearing request should have been granted in whole or in part.

(c) An order granting a petition for leave to intervene and/or request for a hearing is appealable by a party other than the petitioner on the question whether the petition and/or the request for a hearing should have been wholly denied.

§ 2.715 Participation by a person not a party

(a) A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making oral or written statement of his position on the issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but he may not otherwise participate in the proceeding.

(b) The Secretary will give notice of a hearing to any person who requests it prior to the issuance of the notice of hearing, and will furnish a copy of the notice of hearing to any person who re-

quests it thereafter. When a communication bears more than one signature, the Commission will give the notice to the person first signing unless the communication clearly indicates otherwise.

(c) The presiding officer will afford representatives of an interested State, county, municipality, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to §§ 2.754 and 2.762 and petitions for review by the Commission pursuant to § 2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate.

(d) If a matter is taken up by the Appeal Board on appeal or sua sponte or by the Commission pursuant to § 2.786 or sua sponte, a person who is not a party may, in the discretion of the Appeal Board or the Commission, respectively, be permitted to file a brief "amicus curiae". A person who is not a party and desires to file a brief must submit a motion for leave to do so which identifies the interest of the person and states the reasons why a brief is desirable. Except as otherwise provided by the Commission or the Appeal Board, such brief must be filed within the time allowed to the party whose position the brief will support. A motion of a person who is not a party to participate in oral argument before an Appeal Board or the Commission will be granted at the discretion of the Appeal Board or the Commission.

§ 2.715a Consolidation of parties in construction permit or operating license proceedings.

On motion or on its or his own initiative, the Commission or the presiding officer may order any parties in a proceeding for the issuance of a construction permit or an operating license for a production or utilization facility who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. However, it may not order any consolidation that would prejudice the rights of any party. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

§ 2.716 Consolidation of proceedings.

On motion and for good cause shown or on its own initiative, the Commission or the presiding officers of each affected proceeding may consolidate for hearing or for other purposes two or more proceedings, or may hold joint hearings with interested States and/or other federal agencies on matters of concurrent jurisdiction, if it is found that such action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

§ 2.717 Commencement and termination of jurisdiction of presiding officer.

(a) Unless otherwise ordered by the Commission, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. If no presiding officer has been designated, the Chief Administrative Law Judge has such jurisdiction or, if he is unavailable, another hearing examiner has such jurisdiction.

A proceeding is deemed to commence when a notice of hearing or a notice of proposed action pursuant to § 2.105 is issued.

When a notice of hearing provides that the presiding officer is to be a hearing examiner, the Chief Administrative Law Judge will designate by order the hearing examiner who is to preside. The presiding officer's jurisdiction in each proceeding will terminate upon the expiration of the period within which the Commission may direct that the record be certified to it for final decision, or when the Commission renders a final decision, or when the presiding officer shall have withdrawn himself from the case upon considering himself disqualified, whichever is earliest.

(b) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate may issue an order and take any otherwise proper administrative action with respect to a licensee who is a party to a pending proceeding. Any order related to the subject matter of the pending proceeding may be modified by the presiding officer as appropriate for the purpose of the proceeding.

MEMORANDA OF UNDERSTANDING

274b. of the Atomic Energy Act of 1954, as amended.

8. Nothing herein shall be deemed to permit the State to impose packaging or transport standards beyond those contained in Federal regulations.

9. The principal NRC contact under this Memorandum of Understanding shall be the Emergency Preparedness and Radiological Safety Branch Chief for reactor licensees and the Materials and Safeguards Branch Chief or materials licensees. The principal State contact shall be the Manager, Office of Waste and Transportation Management.

10. This MOU shall become effective upon signing by the Director, Department of Nuclear Safety, State of Illinois, and the Regional Administrator, Region III, Nuclear Regulatory Commission and shall remain in effect permanently unless terminated by either party on thirty days prior written notice.

Date this 7th day of June 1984 at Glen Ellyn, IL.

James G. Keppler,

Regional Administrator.

For the State of Illinois:
Don Eichison.

Dated this 11th day of June 1984 at Springfield, IL.

50 FR 11962
Published 3/26/85

Publication of Subagreement No. 3 Between the U.S. NRC and the Washington State Energy Facility Site Evaluation Council

AGENCY: Nuclear Regulatory
Commission.

ACTION: Publication of subagreement
No. 3 between the U.S. NRC and the
Washington State Energy Facility Site
Evaluation Council.

SUMMARY: On September 6, 1978, an "umbrella" memorandum of understanding was signed by the NRC and the State of Washington, providing principles of cooperation between the State and NRC in areas of concern to the State.

Subagreement No. 3 identifies specific areas of information exchange and cooperation which are mutually acceptable to the State of Washington, its agent the Energy Facility Site Evaluation Council (EFSEC), and the United States Nuclear Regulatory Commission.

FOR FURTHER INFORMATION CONTACT:
Dean Kunihiro, Region V, U.S. Nuclear
Regulatory Commission, 1450 Maria
Lane, Suite 210, Walnut Creek,
California 94596. (Telephone: (415) 943-
3714.)

Dated at Walnut Creek, CA, this 18th day
of March 1985.

For the U.S. Nuclear Regulatory
Commission.

John B. Martin,
Regional Administrator.

50 FR 14782
Published 4/15/85

Publication of Subagreement No. 3 Between the U.S. NRC and the Washington State Energy Facility Site Evaluation Council

AGENCY: Nuclear Regulatory
Commission.

ACTION: Publication of Subagreement
No. 3 Between the U.S. NRC and the
Washington State Energy Facility Site
Evaluation Council¹.

SUMMARY: On September 6, 1978, an "umbrella" memorandum of understanding was signed by the NRC and the State of Washington, providing principles of cooperation between the State and NRC in areas of concern to the State.

Subagreement No. 3 identifies specific areas of information exchange and cooperation which are mutually acceptable to the State of Washington, its agent the Energy Facility Site Evaluation Council (EFSEC), and the United States Nuclear Regulatory Commission.

FOR FURTHER INFORMATION CONTACT:
Dean Kunihiro, Region V, U.S. Nuclear
Regulatory Commission, 1450 Maria
Lane, 210, Walnut creek, California
94596. (Telephone: (415) 943-3714).

Dated at Walnut Creek, CA this 10th day of
April, 1985.

For the U.S. Nuclear Regulatory
Commission.

John B. Martin,
Regional Administrator.

Subagreement 3 Between the United States Nuclear Regulatory Commission and the Washington State Energy Facility Site Evaluation Council Regarding the Inspection and Operation of Nuclear Powered Steam Electric Generating Stations Located in the State of Washington

This Subagreement is promulgated
under the provisions of the
Memorandum of Agreement between
the state of Washington and the United
States Nuclear Regulatory Commission,
dated September 6, 1978.

¹ The Nuclear Regulatory Commission published
this notice in the Federal Register of March 28, 1985
(50 FR 11962), but inadvertently omitted the
attachment. This notice includes the complete text.

Purpose

The objective of this Subagreement is
the establishment of a procedure
mutually acceptable to the State of
Washington (hereafter "State"), its
agent the Energy Facility Site Evaluation
Council (EFSEC), and the United States
Nuclear Regulatory Commission
(hereafter NRC) for the exchange of
information concerning maintenance,
engineering, quality assurance, security,
emergency planning and operation of
nuclear powered steam electric
generating stations located in the State
of Washington.

It is the intent of this Subagreement
that cooperative efforts should enhance
understanding, reduce duplication of
effort and provide wherever possible a
unified position on matters of joint
concern.

Implementation

1. The NRC conducts its inspection
program through resident inspectors and
special inspections originating from
Region V, Walnut Creek, California, and
NRC Headquarters, Washington, D.C.
EFSEC conducts its inspection through
Council members and staff and agency
inspectors operating under interagency
agreements.

2. EFSEC and NRC agree to the
greatest extent possible and in good
faith to provide the other party with
information relative to the spirit of this
Memorandum.

3. EFSEC and NRC agree to meet at
the call of either party at mutually
agreeable times and places to exchange
information on matters of common
concern. Regardless of intervening
meetings the parties agree to meet
annually to keep each other apprised of
planned activity for the ensuing year.

4. The EFSEC inspectors will not
duplicate the regulatory activities of the
NRC. To the extent possible EFSEC
inspectors will coordinate their
schedules and inspection activities with
NRC so that their on-site activities avoid
interruption to normal plant operations
and maintenance.

5. EFSEC agrees to share with NRC
information relative to its water
chemistry, radiological, industrial safety
and environmental monitoring programs.
Consistent with requirements to protect
confidential, proprietary, predecisional,
and safeguards information, NRC agrees
to share with EFSEC information
relative to its plant construction and
operation, radiological, health and
safety monitoring programs. Each
agency agrees to be sensitive to the
needs of the other when designing its
respective monitoring programs.

6. To the extent practicable EFSEC
inspectors may observe NRC audits.

MEMORANDA OF UNDERSTANDING

reviews, inspections, drills and meetings. In the same way, the NRC inspectors may observe EFSEC audits, reviews, inspections, drills and meetings. The parties recognize that there will be occasions when, because of the sensitive nature of certain meetings, it may be necessary for the parties to conduct their activities privately and separately.

7. The parties agree as a routine procedure to provide the other party with information copies of inspection reports and final enforcement actions conducted under the authority of either party.

8. EFSEC and NRC agree to work cooperatively and to share information during actual emergency response events and during all emergency response drills and exercises. Upon arrival at the site, each party will advise the other of its presence and confer upon the status and adequacy of emergency response operations.

9. The NRC will use its best efforts to make available space in its inspector training courses, seminars and special orientation programs to accommodate the training needs of the EFSEC inspectors.

10. Nothing in this Subagreement is intended to restrict or extend the statutory or regulatory authority of either EFSEC or NRC.

11. This Subagreement shall take effect immediately upon signing by the Chairman of EFSEC and the Regional Administrator, NRC Region V and may be terminated upon 30 days written notice by either party.

12. The principal NRC point of contact for this Subagreement shall be the Regional Administrator, NRC Region V. The principal Washington State contact shall be the Chairman of EFSEC.

13. If any provision of this Subagreement, or the application of any provision to any person or circumstance is held invalid, the remainder of this Subagreement and the application of such provisions to other persons or circumstances shall not be affected.

For the U.S. Nuclear Regulatory Commission.

John B. Martin,
Regional Administrator.

Dated: March 7, 1985.

For the Washington Energy Facility Site Evaluation Council.

Curtis Eschles,

Chairman.

Dated: February 19, 1985.

50 FR 15485
Published 4/18/85

Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating To Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into November 4, 1980 (Published December 16, 1980, 45 FR 82713). The substantive changes in the new MOU deal principally with the FEMA handling of NRC requests for findings and determinations concerning offsite planning and preparedness. The basis and conditions for interim findings in support of licensing are defined, as well as provisions for status reports when plans are not complete. The text of the MOU is set out below except that an attachment is not included. This attachment concerns membership on a steering committee.

Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness

I. Background and Purpose

This memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters, so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR Part 50, Appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in

Radiological Emergency Preparedness" that was responsive to the President's December 7, 1979, statement. A revised and updated memorandum of understanding became effective November 1, 1980. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the January and November 1980 MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles, agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergencies and takes the lead for assessing offsite radiological emergency response plans¹ and preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans, and communicates those findings and determinations to the NRC. The NRC reviews those FEMA findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, role, and responsibilities of Federal agencies for responding to accidents involving peacetime nuclear emergencies.

II. Authorities and Responsibilities

FEMA—Executive Order 12148 charges the Director, FEMA, with the responsibility to "... establish Federal

¹ Assessments of offsite plans may be based on State and local government plans submitted to FEMA under its rule (44 CFR Part 350), and as noted in 44 CFR 350.3(f), may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

MEMORANDA OF UNDERSTANDING

policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies" (Section 2-101) and "... represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs." (Section 2-104.)

On December 7, 1979, the President, in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning and to review and assess offsite emergency plans and preparedness for adequacy.
2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment adequacy). Notwithstanding the procedures which are set forth in 44 CFR 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings, and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA's procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

An interim finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the standards and criteria of NUREG-0654/FEMA-REP-1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be

implemented. The finding will indicate one of the following conditions: (1) Plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment adequacy); or (3) plans are adequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

If in FEMA's view the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in timely development and review of the plans.

An interim finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the standards and criteria of NUREG-0654/FEMA-REP-1, and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that may adversely affect public health and safety that must be corrected in order to provide reasonable assurance that the plans can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State, local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR 351, March 11, 1982. (47 FR 10758)].

NRC—The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not

specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and Appendix E to 10 CFR Part 50) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.

To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).

3. To review the FEMA findings and determinations as to whether offsite plans are adequate and can be implemented.

4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdowns of operating reactors.

III. Areas of Cooperation

A. *NRC Licensing Reviews.* FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include timely submittal of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA routine support will include providing assessments, findings and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will

MEMORANDA OF UNDERSTANDING

make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearing boards and administrative law judges, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. FEMA is not a party to NRC proceedings and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences will be made by the General Counsel of FEMA and the Executive Legal Director of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this document shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

B. FEMA Review of Offsite Plans and Preparedness. NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

C. Preparation for and Evaluation of Joint Exercises. FEMA and NRC will cooperate in determining exercise requirements for licensees. State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of the objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of any deficiencies by the licensee. The failure of a licensee to develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under 44 CFR Part 350. Exercise evaluations will identify one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are deficiencies that may adversely impact public health and safety that must be corrected by the affected State and local governments in order to provide reasonable assurance that the plan can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. Within 30 days of the exercise, a draft exercise report will be sent to the State, with a copy to the Regional Assistance Committee, requesting comments and a schedule of corrective actions, as appropriate, from the State in 30 days. Where there are deficiencies of the types noted in 2 above, and when there is a potential for a remedial exercise, FEMA Headquarters will promptly discuss these with NRC Headquarters. Within 90 days of the exercise, the FEMA report will be forwarded to the NRC Headquarters. Within 15 days of receipt of the FEMA report, NRC will notify FEMA in writing of action taken with the licensee relative to FEMA initiatives with State and local governments to correct deficiencies identified in the exercise.

D. Emergency Planning and Preparedness Guidance. NRC has lead

responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

E. Support for Document Management System. FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

At NRC, this includes Document Management System support to the extent that it does not affect duplication or records retention. At FEMA, this includes technical support to the Radiological Emergency Preparedness Management Information System. This agreement is not intended to include the automated information retrieval support for the national level emergency response facilities.

F. Ongoing NRC Research and Development Programs. Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

G. Public Information and Education Programs. FEMA will take the lead in developing public information and education programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation and its hazards and information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials.

IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee on Emergency Preparedness will continue to be the focal point for coordination of emergency planning, preparedness, and response activities between the two agencies. The Steering Committee will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will

MEMORANDA OF UNDERSTANDING

be referred to NRC and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State, and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria, as appropriate, in their respective jurisdictions. (See Attachment 1.)

V. Working Arrangements

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

VI. Memorandum of Understanding

A. This MOU shall be effective as of date of signature and shall continue in effect unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: April 3, 1985.

William J. Dircks,

Executive Director for Operations.

Approved for the Federal Emergency Management Agency.

Dated: April 9, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.