Memorandum of Understanding
between
The Administrator for the National Nuclear Security Administration
and
The Assistant Secretary for Environment, Safety and Health

I. Purpose

The National Nuclear Security Administration (NNSA) was created by the National Defense Authorization Act for Fiscal Year 2000 (NNSA Act). The NNSA Act requires NNSA to comply with all environmental, safety, and health statutes and substantive requirements and to develop procedures to meet them. It provides that nothing shall diminish the authority of the Secretary to ascertain and ensure that such compliance occurs. It also provides that employees of the Department who are not employees of the NNSA other than the Secretary and Deputy Secretary, are precluded from issuing direction to NNSA employees or NNSA contractors when they are carrying out any function of the NNSA. The NNSA facilities and activities are still subject to enforcement under section 234A of the Atomic Energy Act of 1954, enacted as part of the Price-Anderson Amendments Act of 1988 (PAAA), which is implemented for the Secretary of Energy by the Assistant Secretary for Environment, Safety and Health (EH-1). This Memorandum of Understanding (MOU) establishes the principles and protocols that will enable the Administrator of the NNSA to effectively utilize these services of EH for Price-Anderson activities.

II. Introduction

The Department of Energy (DOE) must continue to implement the Secretary's Price-Anderson enforcement authority in a manner consistent with the NNSA Act and PAAA. The PAAA provides the Secretary with the authority to issue civil penalties to indemnified contractors for violations of DOE nuclear safety requirements. The Secretary's authority is implemented through the Office of Price-Anderson Enforcement (EH-10) pursuant to 10 CFR 820 (Procedural Rules for DOE Nuclear Activities). The exercise of this function is complicated by section 3213 of the NNSA Act that prohibits the exercise of authority by non-NNSA employees (such as EH-1) over NNSA contractor employees. (Note: Under 10 CFR 820, the Deputy Administrator for Naval Reactors exercises Price-Anderson enforcement authority for Naval Reactor facilities and activities.) Consistency with section 3213 requires that either the Price-Anderson authority be vested with a NNSA employee or be exercised from the Office of the Secretary.

III. Principles

In order to establish the protocols necessary to ensure continued effective implementation of the PAAA enforcement activities, this MOU is based on the following principles:

1. EH-10 shall continue to be the primary office for conducting investigations and identifying potential regulatory violations against the Department's Nuclear Safety rules at NNSA facilities and activities. Upon completion of EH-10's investigations

and deliberations, a recommendation shall be provided to the Administrator regarding rules at NNSA facilities and activities. Upon completion of EH-10's investigations and deliberations, a recommendation shall be provided to the Administrator regarding enforcement action. This recommendation shall be in accordance with criteria set forth in the DOE General Statement of Enforcement Policy (Appendix A of 10 CFR 820) and related enforcement guidance documents.

2. The Administrator shall make the determination of violation and be the signatory of all PAAA enforcement actions taken within NNSA, including Notices of Violation and Special Report Orders. Discretionary non-directed regulatory instruments, including Enforcement Letters and Consent Orders, will continue to be issued by EH-10. Compliance Orders, authorized by 10 CFR 820, Subpart C, are still initiated by the Secretary.

3. The Administrator recognizes the need for EH-10 to have unfettered access to NNSA facilities, contractor staff, and NNSA Federal staff during the conduct of their investigations. However, EH-10 should keep NNSA apprised of its activities involving NNSA interests.

4. The cognizant NNSA manager at a site/area office shall be the responsible individual for ensuring that NNSA is satisfied with a Contractor's actions taken in response to reported PAAA noncompliances for NNSA facilities and activities at that site. This includes both those corrective actions undertaken in response to enforcement actions and lower-level issues reported internally by the Contractor.

5. EH-10 will inform EH-1 of all dealings with the NNSA and formally communicate with the Secretary and the Administrator through EH-1.

6. Statistics and lessons learned generated by EH-10 will integrate NNSA activities in a manner that provides the Secretary, the Administrator, and EH-1 with a complete status of those actions involving NNSA facilities or activities.

7. EH-10 will continue to focus exclusively on contractor activities, in concert with NNSA management.

8. EH-10 will inform the Administrator of any issues that may arise involving the NNSA PAAA Coordination processes or Federal staff.

9. NNSA recognizes that it is to the advantage of a contractor to self-identify and report PAAA noncompliances through the appropriate mechanisms, as defined by the EH-10 procedures. Potential noncompliances identified by NNSA personnel should be brought to the attention of the contractor to give it the option of reporting them. Should the contractor choose not to report after a reasonable attempt to resolve any disagreements, the cognizant NNSA manager at a site/area office should discuss the situation with EH-10, and take an appropriate action. In this case, NNSA line management should also be informed of the situation.

IV. Scope

This MOU applies only to activities involving the identification, investigation, and enforcement of PAAA-related noncompliances at NNSA facilities, with the exception of facilities under the cognizance of the Deputy Administrator for Naval Reactors.

V. Responsibilities

A. The Office of Environment, Safety and Health shall:

1. Continue to implement the Secretary's program for the investigation and identification of potential PAAA violations, consistent with its current policies and procedures, except as amended by this MOU;

2. Recommend to the Administrator all enforcement actions for issuance, including Notices of Violation and Special Report Orders;

3. In coordination with NNSA, continue to issue discretionary non-directed regulatory instruments, including Enforcement Letters and Consent Orders, in accordance with EH-10's current policies and procedures;

4. Notify the NNSA, through the NNSA PAAA Coordinator, of any intended formal investigations and PAAA program reviews involving NNSA facilities or activities, at least 24 hours prior to their onset. No formal investigation or PAAA program review shall be initiated at a NNSA facility until this notification has been given. This does not include actions necessary to conduct initial screenings of reported noncompliances to determine the need for a formal investigation; and

5. Collect statistics and lessons learned from enforcement activities at NNSA facilities into a separate group to provide the Secretary, the Administrator, and EH-1 an integrated status of PAAA enforcement activities at NNSA facilities.

B. The Administrator for the National Nuclear Security Administration shall:

1. Be responsible for the determination of violation and approval of all PAAA enforcement actions affecting NNSA facilities and activities (this responsibility may not be delegated);

2. Document the basis for rejection of a recommendation for a PAAA enforcement action;

3. Ensure that cognizant NNSA managers at site/area offices are designated for each NNSA facility or activity, and that their roles and responsibilities are clearly defined;

4. Ensure that each site/area office where NNSA activities take place has a documented NNSA PAAA Coordination process, consistent with current PAAA

policies and procedures, within which contractor programs are monitored and reviewed, contractor corrective action plans are reviewed for appropriateness, technical adequacy, and comprehensiveness, and approved, and the closure of corrective actions is tracked and verified; and

5. Be responsible for the line management oversight of PAAA Coordination programs within NNSA, including the appraisal of the technical adequacy and appropriateness of contractor corrective actions and the comprehensiveness of closure actions.

C. The Cognizant NNSA Manager at each Site/Area Office shall:

1. Establish and work with the NNSA Site/Area Office PAAA Coordinators to remain aware of all PAAA-related activities at NNSA facilities or activities under his/her cognizance;

2. Cooperate with EH-10 during ongoing investigations, providing information and support as requested, consistent with existing PAAA Coordinator guidance;

3. Ensure that the site/area office has a documented and appropriate PAAA Coordination process in accordance with NNSA expectations and current PAAA policies and procedures, including a process for the tracking and verification of closure of corrective actions;

4. Review and approve all contractor corrective action plans in response to enforcement actions for NNSA facilities or activities under their cognizance, based on the appropriateness, technical adequacy, and comprehensiveness of the plan;

5. Verify and document the closure of contractor corrective actions in response to enforcement actions;

6. Notify NNSA and EH upon completion and closure of all corrective actions related to an enforcement action (the EH notification should be conducted through the Noncompliance Tracking System, as currently established) to initiate closure of the enforcement action; and

7. Review the contractor PAAA Coordination process on a periodic basis to ensure compliance with NNSA expectations for the identification and reporting of potential PAAA noncompliances.

VI. Conflict Resolution

The Secretary is responsible for Price-Anderson enforcement and also is responsible for implementation of the NNSA Act. Any conflicts that arise between EH and NNSA during

the implementation of this MOU, which cannot be resolved by the two parties, shall be brought to the Office of the Secretary for resolution.

VII. Effective Date, Change, and Termination

This MOU shall be effective upon signature of all parties and shall remain in effect until modified or terminated by mutual agreement. This MOU shall be reviewed periodically during the ongoing implementation of the NNSA legislation to ensure continued consistency and adequacy in complying with the Secretarial and regulatory expectations.

Approved: _____ 1/12/01
Administrator, National Nuclear Security Administration — Date

Approved: _____ 1/3/01
Assistant Secretary for Environment, Safety and Health — Date

Concurrence: _____ 12/5/00
Deputy Administrator for Defense Programs — Date

Concurrence: Kenneth E. Baker 12/20/00
Deputy Administrator for Defense Nuclear Nonproliferation — Date