NUCLEAR SAFETY

Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and AUSTRALIA

Signed at Vienna September 30, 2008

with

Addenda

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

AUSTRALIA

Nuclear Safety

Memorandum of understanding signed
at Vienna September 30, 2008;
Entered into force September 30, 2008.
With addenda.

MEMORANDUM OF UNDERSTANDING

(MOU)

BETWEEN

THE NUCLEAR REGULATORY COMMISSION

OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

(USNRC)

AND

THE COMMONWEALTH OF AUSTRALIA FOR THE PURPOSES OF THIS MEMORANDUM ACTING THROUGH THE CHIEF EXECUTIVE OFFICER OF THE AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AGENCY

(ARPANSA)

FOR COOPERATION AND THE EXCHANGE OF INFORMATION IN NUCLEAR REGULATORY AFFAIRS

September 30, 2008

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BETWEEN
THE NUCLEAR REGULATORY COMMISSION
OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA
(USNRC)
AND
THE COMMONWEALTH OF AUSTRALIA FOR THE PURPOSES OF THIS MEMORANDUM ACTING THROUGH THE CHIEF EXECUTIVE OFFICER OF THE AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AGENCY
(ARPANSA)
FOR COOPERATION AND THE EXCHANGE OF INFORMATION
IN NUCLEAR REGULATORY AFFAIRS

The USNRC and ARPANSA, hereinafter together referred to as the "Parties";

Having a mutual interest in a continuing exchange of unclassified information pertaining to regulatory matters and of standards required or recommended by their organizations for the regulation of safety and environmental impact of nuclear facilities and activities;

Recognizing the U.S.-Australia Agreement for Cooperation in the Peaceful Uses of Atomic Energy, and adhering to the principle that all information exchanged and all activities carried out under this Memorandum of Understanding (MOU) will be exclusively for peaceful purposes;

Having been Parties to the Memorandum of Understanding for Cooperation and the Exchange of Unclassified Information in Nuclear Regulator Affairs which was signed for a period of five years on September 8, 2003;

Have reached the following understandings:

I. SCOPE OF THE MOU

To the extent that the USNRC and ARPANSA are permitted to do so under the laws, regulations, and policy directives of their respective authorities and as they mutually determine, the Parties will exchange unclassified technical and regulatory information relating to the safety, safeguards, physical protection, transport safety, radiation protection, waste management, and environmental impact of nuclear facilities, materials, and activities. It is the intent of the Parties that this MOU serve broadly as the foundation for all unclassified nuclear safety and regulatory cooperation in which they may mutually determine to engage. Cooperative areas under this MOU may include but not be limited to:

- Legislation, regulations, guides, standards, policies, and licenses;
- Regulatory oversight, including major safety reviews and initiatives, technical reports, inspections, performance monitoring, and licensing decisions;
- Risk assessment;
- Siting, construction, operation, and decommissioning of non-sensitive nuclear installations, particularly research reactors;
- Seismic safety;
- Aging of components;
- Human performance;
- Reports on incidents and other operational experience of substantial significance;
- Radiation protection;
- Storage, discharge, and treatment of radioactive wastes;
- Security of nuclear and other radioactive material;
- Other activities of immediate public interest;
- Participation of ARPANSA personnel in courses at NRC's Technical Training Center in Chattanooga, Tennessee;
- On-the-job training at NRC, including temporary assignments (usually for a minimum period of six months) within the NRC staff to gain and/or share regulatory and safety experience. (All such assignments will be considered on a case-by-case basis and be the subject of a separate attachment-of-staff arrangement between the Parties.);
- Technical meetings.

II. ADMINISTRATION

A. The exchange of information under this MOU may be accomplished by mail, by appropriate means of electronic communication, and by visits and meetings arranged in advance on a case-by-case basis.

B. An administrator will be designated by each Party to supervise and coordinate its participation in the overall exchange. The administrators will be the recipients of all documents transmitted under the exchange, unless the Parties decide otherwise. One or more technical coordinators may be appointed as direct contacts for specific disciplinary areas.

C. Meetings of persons implementing this MOU on behalf of the two Parties will be arranged when the Parties mutually deem it to be appropriate. Any visit made under this MOU will take place only after consultation between the administrators.

D. The Transmitting Party does not warrant the suitability of any information for any particular use or application, and the application or use of such information exchanged or transferred between the Parties under this MOU will be the responsibility of the Receiving Party.

E. Nothing contained in this MOU will require either Party to take any action which would be inconsistent with its existing laws, regulations, and policy directives. Should any conflict arise between the terms of this MOU and those laws, regulations, and policy directives, the Parties will consult before any action is taken. No nuclear information related to proliferation-sensitive technologies will be exchanged under this MOU.

F. Unless otherwise mutually determined, all costs resulting from cooperation pursuant to this MOU will be the responsibility of the Party that incurs them. The Parties' commitments under this MOU are subject to the availability of appropriated funds and to the laws and regulations applicable to the Parties.

III. EXCHANGE AND USE OF INFORMATION

A. General

The Parties support the widest possible dissemination of information provided or exchanged under this MOU, subject both to the need to protect proprietary or other confidential or privileged information as may be exchanged hereunder, and to the provisions of Addendum A and the Intellectual Property Addendum, which are integral parts of this MOU.

B. Confidentiality

1. The Parties will inform each other about any information that is to be treated as confidential (see 8.2 below) pursuant to this MOU. The term "confidential," as used here and throughout this MOU, means only provided or received "in confidence." It has no reference to "Confidential -National Security Information," which is excluded in entirety from the scope of this MOU.

2. The Parties are committed to protect any information that has been identified as confidential information. Such information will not be published or transmitted to any third party without prior written consent from the Transmitting Party.

C. Intellectual Property

Without prejudice to the provisions of the Intellectual Property Addendum of this Arrangement, the Parties will jointly and effectively protect intellectual property in accordance with the Parties' laws and concluded international agreements, in force from time to time, which the Parties have undertaken to comply with.

D. Consultation

If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the provisions of Confidentiality of this Article in order to comply with applicable laws or regulations or any other reason, it will immediately inform the other Party. The Parties will thereafter consult to define an appropriate course of action.

E. Other

Nothing contained in this MOU will preclude a Party from using or disseminating information received without restriction by a Party from sources outside of this MOU.

F. Dispute Resolution

The laws and regulations of the respective countries will govern cooperation under this MOU. Any dispute or questions among the Parties concerning the interpretation or application of this MOU will be settled by prompt and amicable consultation or negotiation between the Parties.

IV. FINAL PROVISIONS

A. This MOU will come into effect upon signature and, subject to paragraph B. of this Article, will remain in effect for five years, unless extended for a further period of time by written notice of the Parties.

B. Either Party may withdraw from this MOU by providing the other Party with at least 180 days' prior written notice of its intent to withdraw.

C. This MOU may be amended by written amendment signed by the Parties.

D. All information protected as proprietary or other confidential or privileged information will remain so protected for the duration of this MOU and after this MOU has expired or been terminated, unless otherwise specifically determined by the Parties in writing.

E. This MOU supersedes all communications, negotiations, and arrangements, either written or oral, between the Parties relating to this MOU prior to its signing.

Signed in duplicate at Vienna, on the 30th day of September 2008.

FOR THE NUCLEAR REGULATORY COMMISSION OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Dr. Dale E. Klein, Chairman

FOR THE AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AGENCY OF THE GOVERNMENT OF AUSTRALIA:

Dr. John Loy, Chief Executive Officer

ADDENDUM "A"

Information Exchange and Use

1. Definitions

For the purposes of this MOU:

A. The term "information" means unclassified nuclear energy-related regulatory, safety, safeguards, waste management, scientific, or technical data, including information on results or methods of confirmatory assessment, research, and any other knowledge intended to be provided or exchanged under this MOU.

B. The term "proprietary information" or "business confidential" means information created or exchanged under this MOU which contains trade secrets or other privileged or sensitive commercial information (such that the person having the information may derive a commercial benefit from it or may have a commercial advantage over those who do not have it), and may only include information which:

(1) has been held in confidence by its owner;
(2) is of a type which is customarily held in confidence by its owner;
(3) has not been transmitted by the owner to other entities (including the Receiving Party) except on the basis that it be held in confidence;
(4) is not otherwise available to the Receiving Party from another source without restrictions on its further dissemination; and
(5) is not already in the possession of the Receiving Party.

C. The term "other confidential or privileged information" means unclassified information, other than "proprietary information," which has been transmitted and received in confidence under this MOU and is protected from public disclosure under the laws, regulations, or policies of the country of the Party providing the Information, or is otherwise restricted by the provider.

2. Marking Procedures for Documentary Proprietary Information

A Party receiving documentary proprietary information pursuant to this MOU will respect the privileged nature of such information, provided that such proprietary information is clearly marked with the following (or substantially similar) restrictive legend:

> This document contains proprietary information furnished in confidence under an MOU dated September 30, 2008 between the United States Nuclear Regulatory Commission and the Australian Radiation Protection and Nuclear Safety Agency and will not be disseminated outside these organizations, their consultants, contractors, and licensees, and concerned departments and agencies of the Government of the United States and the Government of Australia without the prior approval of (name of the Transmitting Party). This notice will be marked on any reproduction hereof, in whole or in part. These limitations will automatically terminate when the proprietary information is disclosed by the owner without restrictions.

This restrictive legend will be respected by the Parties to this MOU. Proprietary information bearing this restrictive legend will not be made public or otherwise disseminated in any manner unspecified or contrary to the terms of this MOU without prior written consent of the Transmitting Party. Proprietary information bearing this restrictive legend will not be used by the Receiving Party or its contractors and consultants for any commercial purposes without the prior written consent of the Transmitting Party.

3. Dissemination of Documentary Proprietary Information

A. In general, proprietary information received under this MOU may be disseminated by the Receiving Party without prior consent to persons within or employed by the Receiving Party, and to concerned Government departments and Government agencies in the country of the Receiving Party, provided:

(1) such dissemination is made on a case-by-case basis to persons or departments and agencies having a legitimate need for the proprietary information; and

(2) such proprietary information will bear the restrictive legend appearing in Paragraph 2, above.

B. Proprietary information received under this Arrangement may be disseminated by the Receiving Party without prior consent to contractors and consultants of the receiving Party located within the geographical limits of that Party's territory, provided:

(1) that the proprietary information is used by such contractors and consultants only for work within the scope of their contracts with the Receiving Party relating to the subject matter of the proprietary information and will not be used by such contractors and consultants for any other private commercial purposes;

(2) that such dissemination is made on a case-by-case basis to contractors and consultants having a legitimate need for the proprietary information and who have executed a non-disclosure agreement; and

(3) that such proprietary information shall bear the restrictive legend appearing in Paragraph 2, above.

C. With the prior written consent of the Party furnishing proprietary information under this MOU, the Receiving Party may disseminate such proprietary information more widely than otherwise permitted under the terms set forth in this MOU.

The Parties will endeavor to grant such approval to the extent permitted by their national policies, regulations, and laws, provided:

(1) that the entities receiving proprietary information under Addendum A, Paragraph 3 of this MOU, including domestic organizations permitted or licensed by the Receiving Party to construct or operate nuclear production

or utilization facilities, or to use nuclear materials and radiation sources, have a legitimate need for the proprietary information and have executed a non-disclosure agreement; and

(2) that the entities receiving proprietary information under Addendum A, Paragraph 3 of this MOU, including domestic organizations permitted or licensed by the receiving Party to construct or operate nuclear production or utilization facilities, will not use such proprietary information for any private commercial purposes; and

(3) that those entities receiving proprietary information under Addendum A, Paragraph 3 of this MOU that are domestic organizations permitted or licensed by the receiving Party, will use the proprietary information only for activities carried out under or within the terms of their specific permit or license.

4. Marking Procedures for Other Confidential or Privileged Information of a Documentary Nature

A Party receiving under this MOU other confidential or privileged information will respect its confidential nature, provided such information is clearly marked so as to indicate its confidential or privileged nature and is accompanied by a statement indicating

(a) that the information is protected from public disclosure by the Government of the Transmitting Party, and

(b) that the information is transmitted under the condition that it be maintained in confidence.

5. Dissemination of Other Confidential or Privileged Information of a Documentary Nature

Other confidential or privileged information may be disseminated in the same manner as that set forth in paragraph 3., Dissemination of Documentary Proprietary Information.

6. Non-Documentary Proprietary or Other Confidential or Privileged Information

Non-documentary proprietary or other confidential or privileged information provided in seminars and other meetings arranged under this MOU, or information arising from attachments of staff, use of facilities, or joint projects, will be treated by the Parties according to the principles specified for documentary information in this MOU; provided, however, that the Party communicating such proprietary or other confidential or privileged information has placed the recipient on notice as to the character of the information communicated.

INTELLECTUAL PROPERTY ADDENDUM

Pursuant to Article III. and Addendum A of this MOU:

The Parties will ensure adequate and effective protection of intellectual property created or furnished under this MOU and relevant implementing arrangements. The Parties will notify one another in a timely fashion of any inventions or copyrighted works arising under this MOU and will seek protection for such intellectual property in a timely fashion. Rights to such intellectual property will be allocated as provided in this Addendum.

I. SCOPE

1. This Addendum is applicable to all cooperative activities in which the Parties engage pursuant to this MOU, except as otherwise mutually arranged by the Parties or their designees.

2. For purposes of this MOU, "intellectual property" will have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967, and may include other subject matter as agreed between the Parties.

3. This Addendum addresses the allocation of rights, interests, and royalties between the Parties. Each Party will ensure that the other Party can obtain rights to intellectual property allocated in accordance with the Addendum by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Addendum will not otherwise alter or prejudice the allocation between a Party and its nationals, which will be determined by that Party's laws and practices.

4. Disputes concerning intellectual property arising under this MOU will be resolved through discussions between the concerned participating institutions or, if necessary, through consultations and negotiations between the Parties or their designees.

5. Termination or expiration of this MOU will not affect existing rights or obligations under this Addendum.

II. ALLOCATION OF RIGHTS

1. Each party will be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this MOU. All publicly distributed copies of copyrighted work prepared under this provision will indicate the names of the authors of the work unless an author explicitly declines to be named.

2. Rights to all forms of intellectual property, other than those rights described in Section II.1 above, will be allocated as follows:

   a. Visiting researchers, for example, scientists visiting primarily in furtherance of their education, will receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor will be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

   b. For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have determined in advance on the scope of work, each Party will be entitled to obtain all rights and interests in its own State. The Party in whose State the invention was made will have first option to acquire all rights and interests in third States. If research is not designated as "joint research," rights to intellectual property arising from the research will be allocated in accordance with paragraph 11.2.a., above. In addition, each person named as an inventor will be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.

   c. Notwithstanding paragraph II.2.b above, if a type of intellectual property is available under the laws of one Party but not of the other Party, the Party whose laws provide for this type of protection will be entitled to all rights and interests worldwide. Persons named as inventors of the property will nonetheless be entitled to royalties as provided in paragraph II.2.b above.

III BUSINESS CONFIDENTIAL

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Arrangement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.