

NUCLEAR SAFETY

Arrangement Between the UNITED STATES OF AMERICA and POLAND

Signed at Vienna September 22, 2010

with

Addendum



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.”

POLAND

Nuclear Safety

*Arrangement signed at Vienna September 22, 2010;
Entered into force September 22, 2010.
With addendum.*

**ARRANGEMENT
BETWEEN
THE PRESIDENT OF THE NATIONAL ATOMIC ENERGY AGENCY OF
THE REPUBLIC OF POLAND
AND
THE NUCLEAR REGULATORY COMMISSION OF
THE UNITED STATES OF AMERICA
FOR THE EXCHANGE OF TECHNICAL INFORMATION
AND COOPERATION IN NUCLEAR SAFETY MATTERS**

The Nuclear Regulatory Commission of the United States of America (hereinafter called the USNRC) and the President of the National Atomic Energy Agency of the Republic of Poland (hereinafter called the President of the PAA); together, hereinafter called the Parties;

Having a mutual interest in an exchange of information pertaining to regulatory matters and of standards required or recommended by the Parties for the regulation of safety and environmental impact of nuclear facilities;

Acknowledging the Agreement between the Government of the Republic of Poland and the Government of the United States of America for Scientific and Technology Cooperation, which was signed on February 10, 2006; and the 1995 EURATOM-U.S. Agreement for the Peaceful Uses of Nuclear Energy to which Poland is a party;

Having indicated a desire to cooperate under the terms of a five-year Arrangement for the Exchange of Technical Information and Cooperation in Nuclear Safety Matters;

Have agreed as follows:

CHAPTER I

SCOPE OF THE ARRANGEMENT

Article 1

Technical Information Exchange

To the extent that the Parties are permitted to do so under the laws, regulations, and policy directives of their respective countries, the Parties will exchange the following types of technical information relating to the regulation of safety, radioactive waste and spent fuel management, and environmental impact of designated nuclear facilities and to nuclear safety research programs.

1. Topical reports concerning technical safety, radioactive waste and spent fuel management, and environmental effects written by or for one of the Parties as a basis for, or in support of, regulatory decisions and policies.
2. Documents relating to significant licensing actions and safety and environmental decisions affecting nuclear facilities.
3. Detailed descriptive documents on the USNRC process for licensing and regulating certain US facilities designated by the President of the PAA as similar to certain facilities being built or planned in Poland and equivalent documents on such Polish facilities.
4. Documents relating to analysis performed by USNRC during Standard Design Certification procedure for reactor designs designated by the President of the PAA as similar to certain facilities planned in Poland.
5. Documents relating to safety culture enhancement programmes implemented by one of the Parties.
6. Reports on operating experience, such as reports on nuclear incidents, accidents, and shutdowns, and compilations of historical reliability data on components and systems.
7. Regulatory procedures for the safety, waste management, and environmental impact evaluation of nuclear facilities.
8. Early advice of important events, such as serious operating incidents and government-directed reactor shutdowns, that are of immediate interest to the Parties.
9. Copies of regulatory standards required to be used, or proposed for use, by the regulatory organizations of the Parties.
10. Information in the field of nuclear safety research which the Parties have the right to disclose, either in the possession of one of the Parties or

available to it. Cooperation in research areas may require a separate agreement, if determined to be necessary by the research organizations of one or both of the Parties. Each Party will transmit immediately to the other information concerning safety research results that requires early attention in the interest of public safety, along with an indication of significant implications.

11. Internal procedures used by the Parties for knowledge management programmes.

Article 2

Cooperation in Safety Research

The execution of joint programs and projects, or those programs and projects under which activities are divided between the two Parties, including the use of test facilities and/or computer programs owned by either Party, will be agreed upon on a case-by-case basis and may be the subject of a separate agreement, as determined to be necessary by one or both of the Parties. Other cooperation will be accomplished by an exchange of letters between the Parties, subject at least to the terms and conditions of the present agreement. Technical areas specified by such exchanges of letters may be subsequently modified by mutual consent.

Article 3

Training and Assignments

Within the limits of available resources and subject to the availability of appropriated funds, the USNRC will assist the President of the PAA by providing certain training and experience for PAA safety personnel. Unless otherwise agreed, costs of salary, allowances, and travel of the PAA participants will be paid by the President of the PAA. The following are typical, but not necessarily restricted to, the kinds of training and experience that may be provided:

1. PAA inspector accompaniment of USNRC inspectors on reactor operation and (if available) reactor construction inspections in the U.S., including extended briefings at USNRC regional inspection offices.
2. Participation by PAA employees in USNRC staff training courses.
3. Assignment of PAA employees for 6-24 month periods within the USNRC staff to work on PAA staff duties and gain on-the-job experience.
4. Exchange of information and documents relating to education, training and on-the-job training of the future regulatory inspectors.
5. Possible training assignments within the radiation control programs of interested USNRC Agreement States.

CHAPTER II

ADMINISTRATION

Article 4

The exchange of information under this Arrangement will be accomplished through letters, reports, and other documents, and by visits and meetings arranged in advance. A meeting will be held annually, or at such other times as mutually agreed, to review the exchange of information, to recommend revisions to the provisions of the Arrangement, and to discuss topics within the scope of the exchange. The time, place, and agenda for such meetings will be agreed upon in advance. Visits which take place under this Arrangement, including their schedules, will have the prior approval of the administrators referred to in paragraph II.B.

Article 5

An administrator will be designated by each Party to coordinate its participation in the overall exchange. The administrators will be the recipients of all documents transmitted under the exchange, including copies of all letters unless otherwise agreed. Within the terms of the exchange, the administrators will be responsible for developing the scope of the exchange, including agreement on the designation of the nuclear facilities subject to the exchange, and on specific documents and standards to be exchanged. One or more technical coordinators may be appointed as direct contacts for specific disciplinary areas. These technical coordinators will assure that both administrators receive copies of all transmittals. These detailed arrangements are intended to assure, among other things, that a reasonably balanced exchange providing access to equivalent available information from both sides is achieved and maintained.

Article 6

The administrators will determine the number of copies to be provided of the documents exchanged. Each document will be accompanied by an abstract in English, 250 words or less, describing its scope and content.

Article 7

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

Article 8

Recognizing that some information of the type covered in this Arrangement is not available within the agencies which are Parties to this Arrangement, but is available from

other agencies of the governments of the Parties, each Party will assist the other to the maximum extent possible by organizing visits and directing inquiries concerning such information to appropriate agencies of the government concerned. The foregoing will not constitute a commitment of other agencies to furnish such information or to receive such visitors.

CHAPTER III

EXCHANGE AND USE OF INFORMATION

Article 9

General

The Parties support the widest possible dissemination of information provided, created or exchanged under this Arrangement, subject to the requirements of each Party's national laws, regulations and policies and the need to protect proprietary and other sensitive or privileged information, and subject to the provisions of the Intellectual Property Annex, which is an integral part of this Arrangement.

Article 10

Definitions

1. 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 provided, created or exchanged under this Arrangement.

2. The term "proprietary information" means information created or exchanged under this Arrangement 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:

- (a) has been held in confidence by its owner;
- (b) is of a type which is customarily held in confidence by its owner;
- (c) has not been transmitted by the owner to other entities (including the receiving Party) except on the basis that it be held in confidence;
- (d) is not otherwise available to the receiving Party from another source without restriction on its further dissemination; and
- (e) is not already in the possession of the receiving Party.

3. The term "other sensitive or privileged information" means non-classified information, other than "proprietary information," which has been transmitted and received in confidence under this Arrangement 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.

Article 11

Marking Procedures for Documentary Proprietary Information

A Party receiving documentary proprietary information pursuant to this Arrangement 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 Arrangement dated _____, between the President of the National Atomic Energy Agency of the Republic of Poland and the United States Nuclear Regulatory Commission and will not be disseminated outside these organizations, their consultants, contractors, and licensees, or concerned departments and agencies of the Government of Poland and the Government of the United States, without the prior written approval of (name of transmitting Party). This notice will be marked on each page of any reproduction hereof, in whole or in part. These limitations will automatically terminate when the proprietary information is disclosed by the owner without restriction."

This restrictive legend will be respected by the Parties to this Arrangement. 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 Arrangement without the 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.

Article 12

Dissemination of Documentary Proprietary Information

1. In general, proprietary information received under this Arrangement 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:

- (a) 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
- (b) such proprietary information will bear the restrictive legend appearing in Article 11 of this Arrangement.

2. 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:

- (a) 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; and
 - (b) 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
 - (c) that such proprietary information will bear the restrictive legend appearing in Article 11 of this Arrangement.
- 3. With the prior written consent of the Party furnishing proprietary information under this Arrangement, the receiving Party may disseminate such proprietary information more widely than otherwise permitted under the terms set forth in this Arrangement. The Parties may grant such approval to the extent permitted by their respective national laws, regulations and policies, provided:
 - (a) that the entities receiving proprietary information under Article 11 of this Arrangement, 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
 - (b) that the entities receiving proprietary information under Article 11 of this Arrangement, 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
 - (c) that those entities receiving proprietary information under Article 11 of this Arrangement that are domestic organizations permitted or licensed by the receiving Party, agree to use the proprietary information only for activities carried out under or within the terms of their specific permit or license.

Article 13

Marking Procedures for Other Sensitive or Privileged Information of a Documentary Nature

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

- (1) that the information is protected from public disclosure by the Government of the transmitting Party; and

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

Article 14

Dissemination of Other Sensitive or Privileged Information of a Documentary Nature

Other sensitive or privileged information may be disseminated in the same manner as that set forth in Article 12.

Article 15

Non-Documentary Proprietary or Other Sensitive or Privileged Information

Non-documentary proprietary or other sensitive or privileged information provided in seminars and other meetings organized under this Arrangement, or information arising from the 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 Arrangement; provided, however, that the Party communicating such proprietary or other sensitive or privileged information has placed the recipient on notice as to the character of the information communicated.

Article 16

Consultation

If, for any reason, one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of this Arrangement, it will immediately inform the other Party. The Parties will thereafter consult to define an appropriate course of action.

Article 17

Dispute Resolution

Any dispute or questions between the Parties concerning the interpretation or application of this Arrangement will be settled by Parties through negotiations and consultations.

Article 18

Other

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

CHAPTER IV

FINAL PROVISIONS

Article 19

This Arrangement will come into effect upon signature and, subject to paragraph IV.B., will remain in effect for a period of five years. It may be extended for a further period of time by written agreement of the Parties.

Article 20

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

Article 21

Unless otherwise agreed in writing, all costs resulting from cooperation pursuant to this Arrangement will be the responsibility of the Party that incurs them. The Parties' actions under this Arrangement are subject to the availability of appropriated funds and to the laws and regulations of such Party.

Article 22

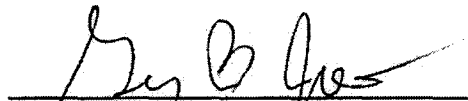
Either Party may terminate this Arrangement by providing the other Party written notice at least 180 days prior to its intended date of termination.

Article 23

All information protected by provisions of this Arrangement as proprietary or other sensitive or privileged information will remain so protected for the duration of this Arrangement and indefinitely after this Arrangement has expired or been terminated, unless otherwise agreed by the Parties in writing.

DONE at Vienna, Austria on this 22nd day of September 2010, in the English and Polish languages, both being equally authentic.

FOR THE UNITED STATES
NUCLEAR REGULATORY
COMMISSION:



Gregory B. Jaczko, Chairman

FOR THE NATIONAL ATOMIC ENERGY
AGENCY OF THE REPUBLIC OF
POLAND:



Michael Waligórski, President

NOTE: At the present time, the Treaty Office does not have the Polish text of this Arrangement. If the Polish text becomes available, it will be added to this publication.

INTELLECTUAL PROPERTY ADDENDUM

Pursuant to Chapter III of this Arrangement:

The Parties will ensure adequate and effective protection of intellectual property created or furnished under this Arrangement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Arrangement and to 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 undertaken pursuant to this Arrangement, except as otherwise specifically agreed by the Parties or their designees.

2. For purposes of this Arrangement, "intellectual property" will mean the subject matter listed 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 by 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 this Addendum by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Addendum does 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 Arrangement should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute will be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) will govern.

5. Termination or expiration of this Arrangement will not affect 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 Arrangement. 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. (1) For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party will be entitled to obtain all rights and interests in its own country. Rights and interests in third countries will be determined in implementing arrangements. If research is not designated as "joint research," rights to intellectual property arising from the research will be allocated in accordance with paragraph II.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.

(2) Notwithstanding paragraph II.2.b. (1), 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. (1), 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 will 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.