

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CORPS OF ENGINEERS, UNITED STATES ARMY,
AND THE UNITED STATES NUCLEAR REGULATORY COMMISSION
FOR REGULATION OF NUCLEAR POWER PLANTS

1. Purpose

a. For the purpose of coordinating and implementing consistent and comprehensive requirements to assure effective, efficient and thorough regulation of nuclear power plants and to avoid conflicting and unnecessary duplication of effort and of standards related to overall public health and safety and environmental protection, the Corps of Engineers, United States Army (US Army CE) and the United States Nuclear Regulatory Commission (U.S.N.R.C.) have entered into this Memorandum of Understanding-- subject to their respective statutory authorities. The agreement pertains to nuclear power electric generating stations using nuclear steam supply systems, including their appurtenant structures, located in or affecting navigable waters. In the case of a floating nuclear power plant, such structures include the electrical transmission lines from the plant to a landbased substation, the protective breakwater and mooring systems, and all appurtenant supporting facilities.

b. Nothing in this Memorandum of Understanding is to be interpreted as contravening the terms of the existing Memorandum of Understanding between the Atomic Energy Commission and the Department of Defense dated 14/16 Feb 1967, pursuant to Section 91b of the Atomic Energy Act of 1954, as amended.

This DRAFT SHOWS SIGNATURES

Pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344), the Secretary of the Army, acting through the US Army CE, exercises regulatory authority over the discharge of dredged or fill material in navigable waters at specified disposal sites. The selection of disposal sites will be in accordance with guidelines developed by the Administrator of the United States Environmental Protection Agency in conjunction with the Secretary of the Army. Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishing areas, wildlife or recreation areas.

Under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et. seq.), the Secretary of the Army, acting through the US Army CE, is authorized to issue permits for the transportation of dredged material from the United States for the purpose of dumping into ocean waters. However, as "dumping" is defined by Section 3(f) of that Act, it does not include the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on/or in the submerged land beneath such waters, for a purpose other than disposal when such construction or such placement is otherwise regulated by Federal law.

3. Agency Responsibilities

a. General Arrangements

The U.S.N.R.C. will serve as "Lead Agency," exercising the primary responsibility in conducting environmental reviews and in preparing environmental statements for nuclear power plants covered by this Memorandum of Understanding. Except as otherwise indicated, all written communications of US Army CE to and from a license applicant or licensee relating to environmental analyses and reports will be transmitted through the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee. In particular, any actions requiring partial or complete shutdown of the nuclear power plant or changes from the design and operating limitations and conditions approved within the terms of this Memorandum of Understanding will be transmitted through the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee.

Except with respect to any actions requiring partial or complete shutdown of a nuclear power plant or changes from the design and operating conditions approved by either agency, each agency will separately enforce its pertinent regulations or orders and the conditions of the permits and licenses which it issues. Enforcement, as used in this Memorandum of Understanding, means the discovery of a violation of law or the conditions of a permit or license, the issuance of a notice of violation, and subsequent actions for the imposition of sanctions.

regulations require the applicant to submit, at his expense, information required in support of his application. Once such information is received, the following procedure will apply to independent analysis of information received in any of these four areas. (An independent analysis is one requiring effort in addition to the analysis done by the U.S.N.R.C. and the US Army CE staff.)

- 1) U.S.N.R.C. will provide funding for such an independent analysis if U.S.N.R.C. agrees the independent analysis is needed and would normally be required by U.S.N.R.C. if US Army CE were not involved.
- 2) US Army CE will require that the applicant pay contract or other costs of such analysis, as required in US Army CE regulations, if US Army CE determines that the independent analysis is needed, but U.S.N.R.C. does not agree that it is needed or does not agree that such analysis would be required under the regulatory procedures of U.S.N.R.C. In these cases, the contracting and collection of associated costs from the applicant will be the responsibility of the US Army CE. The U.S.N.R.C. will be furnished copies of the results of the study.

In addition, the US Army CE will review and comment on the draft environmental statement in other areas within its regulatory jurisdiction and areas in which the US Army CE has special expertise, as required by NEPA.

On request, each agency will participate in any public hearings held by the other agency. Particularly, in the case of the U.S.N.R.C. hearings, the US Army CE will provide expert testimony, as required, in those areas (sections) covered in the U.S.N.R.C. Environmental Statements in whose preparation the US Army CE participated and those areas of special US Army CE expertise.

4. U.S.N.R.C. Permits and Licenses and US Army CE Department of the Army Permits

A U.S.N.R.C. permit to construct a nuclear power plant must be obtained prior to any commencement of any construction at the proposed site.^{*/} For certain nuclear power reactors,¹ such as the floating nuclear power plants, such a construction permit will not be issued before the U.S.N.R.C. has issued a license to manufacture these reactors. The U.S.N.R.C. will prepare an environmental statement before such a construction permit is issued, discussing the environmental effects of construction and operation of the nuclear power plant at the proposed site; and the U.S.N.R.C. will also evaluate compliance with U.S.N.R.C. criteria for safe design, construction and operation of the nuclear plant including, if applicable, a plant manufactured pursuant to a manufacturing license. US Army CE will participate in the preparation of this environmental statement as described in Section 3, above. This construction permit will be issued on the basis of, among other things, the design and other information presented by the applicant in accordance with requirements of Title 10, Code of Federal Regulations, Chapter I.

* Some activities may be conducted under a limited work authorization.

Following the above agency actions, and after any requisite public hearings have been held, a facility operating license may be issued by the U.S.N.R.C. pursuant to 42 U.S.C. 2133, 2134, 2232, and 2235.

5. Procedures

a. Correspondence

The following documents, relating to US Army CE responsibilities as described in Section 3 of this Memorandum, will be promptly transmitted to the proper recipients by the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee: official U.S.N.R.C. notices to license applicants or licensees affected by the provisions of this Memorandum, issuances of licenses pursuant to applicable statutes and regulations, and in accordance with the provisions of this memorandum, correspondence to license applicants or licensees pertaining to licensing and certification reviews, and correspondence relating to inspection actions. The U.S.N.R.C. will promptly forward to the US Army CE copies of correspondence with the applicant and other documents which affect the responsibilities of the US Army CE under the provision of this Memorandum.

b. Public Information

All correspondence to or from either agency dealing with matters which are the subject of this Memorandum of Understanding will be subject to the Freedom of Information Act. In addition, all correspondence flowing through the U.S.N.R.C. will be subject to § 2.790 of 10 CFR Part 2, which provides for routine disclosure of certain documents in public

e. Schedules of Reviews and Inspections

In order to coordinate inspection and review activities and to efficiently implement regulatory requirements, each agency will advise the other of its schedules for accomplishing inspections and environmental reviews which have an effect on the activities of the other agency as defined in Section 3.a. of this Memorandum of Understanding. Where applicable, these schedules will be incorporated into the U.S.N.R.C. licensing project schedule. Representatives of each agency will be invited to coordination meetings held by the other agency pertaining to environmental review activities which are to be coordinated. Each agency will give priority to keeping the agreed schedules for environmental reviews and will keep the other agency advised of problems which are jeopardizing schedules.

f. Amendment of Assignments

The assignment of responsibilities of this Memorandum may be amended by exchange of letters between the Executive Director for Operations, U.S.N.R.C., and the Chief of Engineers, United States Army.

6. Other Laws and Matters

Nothing in this Memorandum of Understanding shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor the