

APPENDIX C
MEMORANDUM OF UNDERSTANDING BETWEEN
THE NUCLEAR REGULATORY COMMISSION AND
THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
WITH RESPECT TO THE GASEOUS DIFFUSION PLANTS

I. LEGISLATION AND AUTHORITIES

The Atomic Energy Act of 1954, as amended by the Energy Policy Act of 1992 (the Act), created the United States Enrichment Corporation (USEC), a government corporation, to manage and operate the two uranium gaseous diffusion plants (GDPs) in Paducah, Kentucky, and Piketon, Ohio, owned and previously operated by the U.S. Department of Energy (DOE). Pursuant to the Act, on July 1, 1993, USEC began leasing from DOE substantial operating portions of the two GDPs. Section 1312 of the Act requires USEC to be subject to and comply with the Occupational Safety and Health Act (OSH Act) in the same manner, and to the same extent, as an employer is subject to the OSH Act, notwithstanding sections 3(5), 4(b)(1), and 19, of the OSH Act.

In addition, the Act requires the U.S. Nuclear Regulatory Commission (NRC) to promulgate standards applicable to the GDPs, to protect the public health and safety from radiological hazards, and to provide for the common defense and security. NRC must establish an annual certification process for compliance with these standards. NRC publishes its final standards, 10 CFR Part 76, "Certification of Gaseous Diffusion Plants," on September 23, 1994 (59 FR 48944). NRC will assume regulatory oversight responsibility with respect to USEC's compliance with the Part 76 standards after NRC completes the first compliance certification process.

The USEC Privatization Act, signed into law on April 26, 1996, provides for establishment for a private corporation to succeed USEC. The USEC Privatization Act specifies that the private corporation will be subject to the OSH Act, but the exceptions to sections 3(5), 4(b)(1), and 19 were removed with respect to the private successor. Furthermore, the USEC Privatization Act requires NRC and Occupational Safety and Health Administration (OSHA) to enter into a memorandum of agreement, within 90 days of enactment of the Privatization Act, to govern the exercise of their authority over occupational safety and health at the GDPs.

II. BACKGROUND AND PURPOSE

A. Both NRC and OSHA have responsibilities concerning occupational safety and health at GDPs. Because it is not always practical to sharply identify boundaries between the nuclear and radiological safety regulated by NRC and the industrial safety

regulated by OSHA, the two agencies have agreed to coordinate their regulatory programs to assure worker safety, avoid regulatory gaps in the protection of workers, and avoid duplicative regulation.

B. The purpose of this Memorandum of Understanding (MOU) between NRC and OSHA is to delineate the general areas of responsibility of each agency; to describe generally the efforts of the agencies to achieve worker protection; and to provide guidelines for coordination of interface activities between the two agencies at the GDPs. The MOU applies both to USEC and any private successor corporation.

C. DOE remains the owner of the GDP sites and facilities, and continues to conduct and regulate activities at the sites that are outside NRC jurisdiction. This MOU does not apply to DOE facilities that are not leased, and does not affect jurisdictional issues between OSHA and DOE.

III. HAZARDS ASSOCIATED WITH GDPS

Working conditions at the GDPs involve both radiological and non-radiological occupational hazards. Frequently, conditions involve a combination of these hazards. Examples are: (1) radioactive materials and other chemicals, in the same work area, that present potential radiological and chemical hazards; (2) hazardous chemicals that could adversely affect radiological safety or could be released from the processing of radioactive materials; and (3) a fire or explosion hazard that could cause a release of radioactive material and other hazardous chemicals.

In general, NRC will apply its standards to working conditions involving radiological hazards, OSHA will apply its standards to working conditions involving non-radiological hazards, and both agencies will apply their standards to conditions involving a combination of hazards. NRC and OSHA will coordinate their efforts, as specified in this memorandum.

IV. NRC RESPONSIBILITIES

NRC is responsible for certifying two leased GDPs, as mandated by the Act and other applicable statutes. NRC will conduct compliance certification in accordance with 10 CFR Part 76. This will include regulation of radiological hazards and any other hazards that may affect radiological safety of the facilities.

NRC's responsibilities include protecting public health and safety, including workers, and protecting and safeguarding materials and plants in the interest of national security. Agency functions are performed through: standards-setting and rule-making; technical reviews and studies; conduct of public hearings; issuance of compliance

certificates; inspection, investigation and enforcement; and evaluation of operating experience.

V. OSHA RESPONSIBILITIES

OSHA is responsible for administering the requirements established under the OSH Act and OSHA standards. Under the OSH Act, employers have a general duty to furnish each employee with a place of employment that is free from recognized hazards that can cause death or serious physical harm and to comply with all OSHA standards, rules, and regulations. OSHA standards contain requirements designed to protect employees against workplace hazards. Under the OSH Act, OSHA is authorized among other things to conduct workplace health and safety inspections, including inspections in response to employee complaints, and to issue citations and conduct enforcement actions.

Section 1312 of the Energy Policy Act contains certain exceptions to the OSH Act as applied to USEC. The USEC Privatization Act deleted these exceptions with respect to application of the OSH Act to a private corporation which succeeds USEC.

VI. IMPLEMENTATION

In recognition of the agencies' authorities and responsibilities enumerated above, the following procedures will be followed:

A. NRC will apply its standards in inspection and enforcement of working conditions involving radiological hazards or combined hazards, as described in Paragraph III. OSHA will apply its standards in inspection and enforcement of working conditions involving non-radiological hazards or combined hazards, as described in Paragraph III. OSHA will not normally conduct enforcement actions with regard to GDP working conditions that involve radiological hazards.

B. It is not intended that either agency will in any way be restricted from regulating safety within their respective jurisdictions. If NRC or OSHA identifies, or is notified by the operator of, a conflict between NRC and OSHA requirements, both agencies will work together to resolve the concern promptly.

C. NRC has established a permanent site office and assigned full-time inspectors at each GDP, and plans to continue this arrangement for the foreseeable future. The results of NRC inspections will be provided to OSHA on request, subject to applicable procedures to protect classified and proprietary information. The information will also be available in NRC local public document rooms, and available to GDP workers on request, except for any portions containing classified, proprietary, private, or other information withheld from the public in accordance with applicable laws and

regulations. NRC resident inspectors will also be available to discuss working conditions with workers.

D. Although NRC does not conduct inspections exclusively focused on non-radiological safety, in the course of inspections related to radiological hazards or combined hazards, NRC personnel may identify non-radiological worker safety concerns. NRC will bring the identified matters to the attention of GDP management. Significant worker safety concerns will be documented in writing and made available as specified in Paragraph VI. C. In addition, OSHA will be informed as follows:

1. Referral to OSHA of Hazards Identified by NRC

If non-radiological worker safety concerns are identified by NRC, or if USEC demonstrates a pattern of unresponsiveness to non-radiological worker safety concerns identified by others, NRC will inform the appropriate OSHA Regional Office.

2. Referral to OSHA of Worker Safety and Health Complaints

NRC will refer worker safety or health complaints, related to non-radiological or combined hazards, to the appropriate OSHA Regional Office in accordance with existing NRC procedures. These procedures provide for protection of the identity of the complainant and are coordinated with NRC.

E. To the extent practicable, OSHA inspectors will inform the site office, on arrival on site, of OSHA inspections in areas where combined radiological and non-radiological hazards are present, as described in Paragraph III. Findings from such inspections will be shared and coordinated with NRC.

F. OSHA Regional Offices will inform the NRC Regional III Office or site office of matters related to radiological hazards or combined hazards, when such matters come to their attention during inspections or through complaints. Workers' complaints falling within NRC jurisdiction will be handled by NRC in accordance with existing procedures.

G. Worker representatives may accompany NRC inspectors on inspections of working conditions as provided in 10 CFR Part 19. Worker representatives may accompany OSHA inspectors as provided in 29 CFR Part 1903.

H. The employee protection provisions in Section 211 of the Energy Reorganization Act of 1974, as amended, 10 CFR Part 76.7, and Section 11(c) of the OSH Act, are applicable to employees of USEC and contractors at its administered facilities.

I. In recognition of the fact that both NRC and OSHA will conduct inspections in areas where combined hazards are present, OSHA will provide NRC personnel with basic chemical and industrial safety training in OSHA safety standards, consistent with ongoing OSHA training programs and resource constraints. Also, NRC will provide OSHA personnel with training in basic radiation safety requirements, consistent with ongoing NRC training programs and resource constraints. Details of such training will be as mutually agreed to by the NRC Technical Training Center and the OSHA National Training Institute.

VII. ENFORCEMENT

A. Each agency will conduct an inspection and enforcement program within its responsibilities, as warranted.

B. Each agency will take enforcement actions as it deems appropriate within the limits of its authorities. Upon completion of any NRC and/or OSHA inspections/investigations associated with the same set of facts or the same incidents for which either agency intends to take enforcement action, NRC and OSHA will consult with each other on the results of their respective inspections and will jointly define the scope of enforcement action to minimize duplicative enforcement actions and preclude duplicative civil penalties.

VIII. CONTACTS

NRC and OSHA will designate appropriate contacts for implementation of this memorandum. A list of OSHA contacts will be provided to the Director, Office of Nuclear Material Safety and Safeguards, NRC. A list of NRC contacts will be provided to the Director of Policy, OSHA.

IX. EFFECTIVE DATE, REVISION, AND TERMINATION

This memorandum shall be effective upon signature by authorized representatives of the respective agencies, and shall continue in effect until revised by mutual agreement, unless terminated by either party upon 120 days notice in writing.

For the Nuclear Regulatory Commission.

James M. Taylor
Executive Director for Operations

Dated: July 26, 1996

For the Occupational Safety and Health Administration.

Joseph A. Dear
Assistant Secretary for Occupational Safety and Health
Dated: July 26, 1996