



MEMORANDUM OF UNDERSTANDING BETWEEN NDA AND SEPA

1 Introduction

- 1.1. This Memorandum of Understanding ('MoU') is between the Nuclear Decommissioning Authority ('NDA') and the Scottish Environment Protection Agency ('SEPA'). There are similar MoUs between the NDA and the Health and Safety Executive ('HSE'), Environment Agency ('EA'), SEPA, and the Office for Civil Nuclear Security ('OCNS'). It should be read in conjunction with the MoUs and other Agreements between SEPA in relation to the regulation of nuclear sites. (References below).
- 1.2 Nothing in the terms of this MoU over-rides, or is intended to pre-empt, the ability of either party to exercise its statutory powers or to undertake its statutory duties. Equally, nothing in this MoU constitutes, or is intended to have the effect of, a binding legal agreement between the NDA and SEPA. If there is any conflict between any provision(s) in this MoU and any statutory or regulatory or other duty or action performed by SEPA, the latter shall take priority and all conflicting provisions of this MoU shall be disapplied until the conflict no longer applies.
- 1.3 In the event that the NDA becomes, or commences the process of becoming, regulated in any way (including, for the avoidance of doubt, prosecution) by SEPA under the Radioactive Substances Act 1993 or any other legislation or regulations which SEPA applies, the operation of this whole MoU shall cease immediately until such time, if any, as the NDA ceases to be so regulated by SEPA, at which point it shall become effective again.
- 1.4 Nothing in this MoU shall constitute a partnership or a joint venture between SEPA and the NDA.
- 1.5 Nothing in this MoU shall have the effect of delegating any of SEPA's statutory powers, functions or duties to any other body, individual or organisation.

2 Definitions

- 2.1 Throughout this MoU, the following term(s) have the meaning set out below.
- 2.2 "Designated" in relation to sites, installations and facilities means designated under the Energy Act 2004.

3 Purpose and Objectives

3.1 Insofar as is consistent with SEPA's interpretation of the exercise of its statutory, regulatory and other duties, powers and functions, the NDA and SEPA jointly commit themselves to the development and maintenance of:

- (a) effective working relationships nationally and at site level, which facilitate the delivery of decommissioning and clean up of designated sites, installations and facilities; and
- (b) working arrangements which are transparent; and
- (c) working arrangements which are consistent with the NDA's and SEPA's statutory obligations to consult stakeholders and their general commitment to openness and transparency, as far as practicable, in dealings with stakeholders; and
- (d) a financial mechanism by which SEPA can charge the NDA for generic work associated with the decommissioning and clean-up of designated sites, installations and facilities

4 Statement of Commitments

4.1 It is important that the demands placed on site licensees or operators of other designated sites, installations and facilities as a result of different statutory obligations are mutually consistent so far as possible. The agreed aim of the NDA, SEPA and the other nuclear regulators is, insofar as is consistent with SEPA's interpretation of the exercise of its statutory, regulatory and other duties, powers and functions, to ensure consistency in devising strategies and plans, to harmonise and streamline their individual requirements wherever practicable and to minimise the overall administrative burden on site licensees/operators.

4.2 The NDA hereby commits itself to:

- (a) develop and maintain a constructive working relationship with SEPA and to respond positively to criticism and challenge;
- (b) engage, as appropriate, in joint working with SEPA insofar as SEPA considers it appropriate to do so, other nuclear regulators, site licensees/operators and other stakeholders to resolve issues of substance;
- (c) do nothing which inhibits SEPA or the other nuclear regulators in the exercise in their sole discretion of their statutory powers, functions and duties, (including taking enforcement action);
- (d) take appropriate action as and when it is made aware of any concerns SEPA might have about the operation of any designated site, installation or facility;

- (e) establish mechanisms and methods of working which facilitate dialogue with SEPA and other nuclear regulators; inviting SEPA where in its sole judgment it is possible to make proposals as well as responding to those put forward by the NDA; and giving SEPA a reasonable time (to be agreed by SEPA in each case) in which to offer views, and the NDA's time table for decision making will where possible be consistent with this;
- (f) provide, in a timely manner, all such information which SEPA may request regarding the NDA's overall strategy or annual work plans or otherwise;
- (g) agree with SEPA the section of its annual report dealing with relationships with the nuclear regulators before adopting it and sending it to the Secretary of State (and the Scottish Ministers if required) ; and
- (h) act in accordance with and, over time, review and improve the operation of the MoU as a basis for facilitating decommissioning and clean up.

4.3 SEPA recognises that, in order to carry out the NDA's statutory duties, the NDA will need to monitor the actions of nuclear site licensees and operators of other designated sites, installations and facilities and hold them to account for performance. Consequently, and without prejudice to any regulatory action, SEPA commits itself to the extent to which, in SEPA's sole judgment, it is possible to (as appropriate):

- (a) develop and maintain a positive working relationship with the NDA;
- (b) engage in joint working with the NDA, and other nuclear regulators, to resolve issues of substance;
- (c) subject to legal and security constraints, where regulatory action is taken, ensure that the NDA is made aware of the background to, and implications of, the action taken so that the NDA can respond and take whatever action may be necessary to ensure that it can properly discharge its statutory duties and functions;
- (d) subject to legal and security constraints, supply the NDA with all such factual information which the NDA may reasonably request;
- (e) act in accordance with and, over time, improve the operation of this MoU as a basis for facilitating decommissioning and clean up; and
- (f) comment within a reasonable time (to be agreed by SEPA in each case), on proposals and documents put forward by the NDA;

4.4 In addition, for designated sites, installations and facilities, both NDA and SEPA will engage constructively, (seeking to resolve any concerns in a timely manner), so far as SEPA considers in its sole judgment possible, on:

- (a) preparation and revision of NDA priorities, strategies and plans (including Lifecycle Baselines and Near Term Work Plans);

(b) NDA procedures, requirements and guidance

5 Research

5.1 The NDA and SEPA jointly undertake to work constructively together, both bilaterally and within the framework of a research co-ordination body, to promote a properly co-ordinated and cost effective approach to relevant research

6 Review Provisions

6.1 A Review Group, involving representatives of the NDA, and SEPA (at appropriate director level for SEPA) will meet whenever the need arises, and at least every year, to review the working of this MoU. The NDA and SEPA will take the chair alternately.

6.2 In the event of the Group's inability to resolve particular issues which may bear on policy matters, the NDA will refer to its Chief Executive and Board and SEPA to its Chief Executive and Board.

7 Termination

7.1 Either party may terminate this MoU on two months' notice in writing to the other party.

Signed:

Dr Campbell Gemmell
Chief Executive, SEPA

Date:

Signed:.....

Dr Ian Roxburgh
Chief Executive Officer, NDA

Date:

Relevant Notes

1. The interests of the Food Standards Agency may be separately dealt with. (See Ref.6 below)
2. Under the liabilities agreements with BE, NDA require the production of decommissioning plans for each power station and uncontracted liabilities plans for the management of non-decommissioning nuclear liabilities. These will be the BE equivalent of LCBLs and will be complemented, where appropriate with detailed shorter term plans (known as the Annual Liabilities Reports Part 2) which will be the BE equivalent of NTWP. These plans will be subject to approval by NDA and any material changes to the plans will require formal approval. These plans will provide a comprehensive and agreed basis for the decommissioning and clean up of each site, installation and facility; which satisfies the requirements of the nuclear regulators; and which enables site licensees/operators to focus on ensuring that work is carried out consistent with securing best value for money.
3. The terms of this MoU may be taken as applying to the working arrangements between the NDA and SEPA on the BE equivalents of LCBL's and NTWP's.

References

1. Memorandum of Understanding between the Health and Safety Executive and the Environment Agency on Matters of Mutual Concern at Nuclear Sites Licensed by HSE in England and Wales, 23 April 2002.
www.environment-agency.gov.uk/commondata/103599/nuclear_mou_final_version.doc
2. The Working Relationship Between HSE and EA on Nuclear Safety and Environmental Regulatory Issues - A Statement of Intent, 8 August 2001.
www.environment-agency.gov.uk/commondata/105385/hseras.pdf
3. Working Together on Nuclear Sites, January 2003.
www.environment-agency.gov.uk/commondata/105385/wtfinal2_1.pdf
4. MoU between HSE and SEPA on Matters of Mutual Concern at Licensed Nuclear Sites in Scotland – 22 March 2002
5. The MoU between the HSE and the DTI on Matters of Mutual concern at Licensed Nuclear Sites dated 3 April 2001.
6. Concordat between the Food Standards Agency and the Environment Agency, January 2002.
(www.food.gov.uk/multimedia/pdfs/EA.pdf)
7. Working Agreement between the Environment Agency and the Food Standards Agency in respect of Arrangements under the Radioactive Substances Act 1993, 10 June 2003.