

MEMORANDUM OF UNDERSTANDING

BETWEEN

HER MAJESTY THE QUEEN

in right of Ontario as represented by the Minister of Labour

AND

THE CANADIAN NUCLEAR SAFETY COMMISSION

1. PREAMBLE

- 1.1 **WHEREAS** nuclear works and undertakings have been declared by Parliament of Canada in section 71 of the *Nuclear Safety and Control Act* (the NSCA) to be for the general advantage of Canada and, as a result, such works and undertakings fall within the jurisdiction of Parliament;
- 1.2 **AND WHEREAS** the NSCA establishes the Canadian Nuclear Safety Commission (CNSC) to fulfill the objects and carry out the responsibilities set out in the NSCA, including the regulation of the development, production and use of nuclear energy and the production, possession and use of nuclear substances;
- 1.3 **AND WHEREAS** The Governor in Council has made regulations under the *Canada Labour Code* (CLC) excluding employment on or in connection with nuclear facilities from the application of Part II of the CLC (except sections 158-160);
- 1.4 **AND WHEREAS** those regulations also make the Ontario *Occupational Health and Safety Act* (OHSA), applicable to nuclear facilities in Ontario;
- 1.5 **AND WHEREAS** the OHSA provides authority for the exercise of federal powers conferred under federal legislation in certain circumstances;
- 1.6 **AND WHEREAS** the Ministry of Labour for Ontario (the Ministry) is responsible for administering and enforcing the OHSA;
- 1.7 **AND WHEREAS** the Government of Canada and the Government of the Province of Ontario entered into a Memorandum of Understanding in 1998 (the 1998 MOU) wherein the Province indicated its willingness and capacity to effectively administer certain workplace laws (including the OHSA) with respect to employment on or in connection with prescribed nuclear facilities in Ontario and agreed to administer and enforce the applicable regulations made under the CLC in respect of such facilities;
- 1.8 **AND WHEREAS**, as a result of the foregoing, the Government of the Province of Ontario and Government of Canada have joint jurisdiction over nuclear facilities in Ontario and the Ministry and the CNSC have corresponding jurisdiction under the OHSA and the NSCA respectively;
- 1.9 **AND WHEREAS** the Ministry and the CNSC seek to work together collaboratively and effectively within their respective but related areas of jurisdiction and expertise;
- 1.10 **AND WHEREAS** the Ministry and the CNSC recognize that they are subject to the *Freedom of Information and Protection of Privacy Act* (in the case of the Ministry) and the *Access to Information Act* and the *Privacy Act* (in the case of the CNSC);
- 1.11 **AND WHEREAS** any information received by or from either the Ministry or the CNSC in relation to this MOU is subject to the OHSA and the NSCA respectively, and any regulations made there under;

1.12 **THEREFORE**, the Ministry and the CNSC will consult and cooperate in accordance with the provisions of this MOU in carrying out their respective mandates in an effort to assist each other, minimize regulatory duplication and use government resources effectively.

2. DEFINITIONS

“classified information”	means information which may be subject to an exemption under the <i>Freedom of Information and Protection of Privacy Act</i> , <i>Access to Information Act</i> or the <i>Privacy Act</i> and the unauthorized disclosure, destruction, removal, modification, interruption, or use of which would reasonably be expected to cause injury to the provincial/national interest.
“nuclear energy”	has the meaning as in section 2 of the NSCA.
“nuclear facility”	has the same meaning as in section 1 of SOR/98-180 – Ontario Hydro Nuclear Facilities Exclusions from Part II of the Canada Labour Code Regulations (Occupational Health and Safety).
“nuclear substance”	has the meaning as in section 2 of the NSCA.
“technical expertise”	as applied to the Ministry means expert knowledge of the OHS and Regulations there under.
“technical expertise”	as applied to the CNSC means expert knowledge of the NSCA and Regulations there under as well as specific licence conditions pertaining to a nuclear facility.
“Participant”	means the Ministry or the CNSC.
“Participants”	means the Ministry and the CNSC.
“prescribed information”	means the information prescribed by section 21 of SOR/2000-202 - <i>General Nuclear Safety and Control Regulations</i> made under the NSCA.
“protected information”	means information that is sensitive but not in relation to the national interest of Canada.
“reportable event”	has the meaning as in CNSC guideline RD-99.1: Reporting Requirements for Operating Nuclear Power Plants: Events.

3. PURPOSE

- 3.1 The purpose of this MOU is to establish a formal mechanism for cooperation and for the authorized exchange of information/data and technical expertise between the Ministry and the CNSC related to the exercise of their respective areas of jurisdiction at nuclear facilities.

4. PRINCIPLES

- 4.1 The Participants, in carrying out their respective mandates, will cooperate and support each other, as appropriate, in meeting their responsibilities under their respective mandates.
- 4.2 The Participants will offer each other training on their respective legislation and regulations, as applicable and where needed.
- 4.3 The Participants will offer each other the opportunity to conduct joint field visits.
- 4.4 The Participants will provide each other the opportunity for joint planning, and for consulting with each other on the development of policies and programs that may affect the discharge of the other Participant's mandate in a manner that allows for timely and substantive advice.
- 4.5 The Participants will coordinate activities where possible and appropriate and provide sponsorship to each other to facilitate entry into workplaces under joint jurisdiction.
- 4.6 The Participants will foster strong working relationships by establishing mechanisms and links for sharing information, data (e.g. statistics on lost time, critical injuries and fatalities) and technical expertise, taking into account any legal constraints on the sharing of information including protected, personal, classified, privileged and prescribed information, including confidential business information.

5. UNDERSTANDINGS AND ARRANGEMENTS

- 5.1 Each Participant shall:
- i. Notify the other in accordance with Article 13.1 on the happening of any event referenced in Appendix 1;
 - ii. Collect, use and disclose information and provide technical expertise to the other, as is authorized and permitted by law, subject to the considerations referenced in Article 9;
 - iii. Provide the other with notice of any change in legislation, regulations or policies that is likely to affect the respective exercise of jurisdiction over nuclear facilities or the terms of this MOU;
 - iv. Use exchanged information/technical expertise only for the purposes set out in Appendix 3;

- v. Disclose any information/technical expertise received from the other only as authorized and permitted by law;
- vi. Ensure the confidentiality of exchanged material;
- vii. Limit access to exchanged information/technical expertise to those persons or categories of persons referred to in Appendix 4;
- viii. Implement security measures described in Article 7 of this MOU; and
- ix. Consult and cooperate with each other in promoting worker awareness, monitoring compliance and enforcing regulatory requirements.

5.2 Subject to Article 9, following an event referred to in Appendix 1, the CNSC or the Ministry, as the case may be, shall disclose relevant information and technical expertise to the other as is authorized and permitted by law in order to assist the other Participant in the carrying out its respective mandate. While the precise information and technical expertise to be disclosed and shared shall be determined on a case by case basis, examples of the type of information and technical expertise that are contemplated are set out in Appendix 2.

5.3 While every effort will be made to ensure the accuracy and completeness of information disclosed under this MOU, such disclosure of information and technical expertise is made without a guarantee of accuracy or completeness and neither Participant will be liable to the other for any damages resulting from the disclosure or use of any information that is inaccurate or incomplete.

6. COSTS AND COST SHARING

6.1 To the extent practicable, a Participant will honour, without charge to the other Participant, the arrangements made in this MOU.

6.2 Should financial arrangements be necessary, the Participants will consult and cooperate to develop mutually satisfactory arrangements for cost sharing and/or funding.

7. SECURITY

7.1 The Participants shall implement and maintain reasonable measures to ensure the security of the information disclosed by each to the other by selecting and maintaining the most appropriate products, tools and procedures. On request by a Participant, the other will document these measures for audit purposes.

8. DISPOSAL

8.1 Subject to legislated government records retention requirements and applicable directives and guidelines, each Participant shall notify the other if either intends to dispose of any information exchanged under this MOU and shall dispose of such information in accordance with this MOU.

8.2 In disposing of information/technical expertise exchanged under this MOU, the Participants shall ensure that disposal is in such a manner that it cannot be reconstructed or retrieved.

9. DISCLOSURE PRACTICES

9.1 With respect to the sharing and disclosure of information, the Participants recognize the following:

- i. Subsection 63(1) of the OHSA prohibits the disclosure of information collected under that Act to any person except for “the purposes of the Act and the regulations or as required by law.” However, subsection 63(4) of the OHSA permits a Director of the Ministry to communicate or allow to be communicated disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under the OHSA or the regulations;
- ii. The collection and disclosure of personal information is regulated by privacy legislation including the *Freedom of Information and Protection of Privacy Act* (in the case of the Ministry) and the *Access to Information Act* and the *Privacy Act* (in the case of the CNSC); and
- iii. In certain circumstances, judicial warrants for the collection and disclosure of information may be required.

10. NOTIFICATION OF INABILITY TO ACT UNDER THIS MOU

10.1 A Participant will notify the other Participant, as soon as possible, if the determination is made that it is unable to continue to act under this MOU.

11. DURATION

11.1 This MOU shall be effective for five (5) years from the effective date unless:

- i. it is terminated in accordance with Article 18; or
- ii. its term of operation is amended by the Participants in accordance with Article 12.

12. AMENDMENT

12.1 This MOU, including its terms of operation, may be revised by the mutual written consent of the Participants.

12.2 If either Participant wishes to amend this MOU, it shall provide the other with at least ten (10) working days' notice of any proposed amendments. The notice shall indicate the reasons why the amendment is being proposed.

12.3 The Participants will use their best efforts to agree on any amendment proposed under subsection 12.2 within the ten (10) day notice period. If agreement is reached, the amendment shall be effective on the day it is signed by the last Participant.

13. NOTICE

13.1 Notifications made under Article 5.1 shall be provided by e-mail to the other Participant's point of contact identified in Article 19 as soon as possible following an event referred to in Appendix 1.

13.2 All other notices under this MOU shall be in writing and shall be delivered in PDF format by e-mail, personal delivery, letter or facsimile to the other Participant's point of contact identified in Article 19.

13.3 Notices given under Article 13.2 shall be deemed to have been given:

- i. in the case of postage prepaid envelope, five (5) business days after such notice is mailed; or
- ii. in the case of personal delivery or facsimile one (1) business day after such notice is delivered or sent.

13.4 In the event of a postal disruption, notices given under Article 13.2 must be given by personal delivery or by facsimile.

14. PERIODIC REVIEW

14.1 This MOU will be reviewed by the Participants' primary points-of-contact identified under Article 19 every three (3) years or at any time the need is identified by either one of the Participants to verify that the MOU is functioning as originally intended.

15. MEETINGS

15.1 The Participants will endeavour to meet at least once per year and have teleconferences once every quarter or as required.

16. EFFECTIVE DATE

16.1 This MOU becomes effective on the date of the last signature of a Participant.

17. CONFLICT RESOLUTION

17.1 The Participants will make every reasonable effort to resolve at the working level any disputes regarding interpretation of this MOU. Failing resolution at the working level, conflicts may be referred for resolution to each Participant's respective primary point-of-contact identified at the end of this MOU or, failing resolution between the primary points-of-contact, to the designated signing authorities for this MOU.

18. WITHDRAWAL/TERMINATION

18.1 Either Participant may withdraw from this MOU by providing at least six (6) months notice in writing to the other Participant, specifying its intention to withdraw and the effective date of withdrawal. This MOU is terminated on the effective date of the withdrawal.

18.2 If six (6) months notice is not given in writing, a Participant may still withdraw and terminate this MOU provided the other Participant agrees, in writing, to an expedited withdrawal/termination date.

19. PRIMARY POINTS-OF-CONTACT

19.1 The primary points-of-contact under this MOU are:

Director
Occupational Health & Safety Branch
Operations Division
Ministry of Labour
505 University Avenue
TORONTO, Ontario
M7A 1T7
Telephone Number: 416-326-7866
Fax: 416-326-5325

Director General
Directorate of Power Reactor Regulation
Regulatory Operations Branch
Canadian Nuclear Safety Commission
280 Slater Street
OTTAWA, Ontario
K1P 5S9
Telephone Number: 613-995-2655
Fax: 613-995-5086

SIGNATURES

Signed in duplicate in English and French, both versions being equally authentic.

For the Ministry of Labour

Sophie Dennis
Assistant Deputy Minister
Operations Division

Signed on:

July 12/11

For the Canadian Nuclear Safety
Commission

Michael Binder
President

Signed on:

JUL 08 2011

APPENDIX 1

Triggering Events

The Ministry shall notify the CNSC upon the happening of any of the following events:

- A worker complaint or work refusal involving nuclear energy or nuclear substances at a nuclear facility;
- Notification of a critical injury or fatality at a nuclear facility;
- Any other event that the Ministry believes may impact or be relevant to the role and responsibilities of the CNSC or to the exercise of the respective mandates of either the Ministry or the CNSC as it relates to the health and safety of workers at nuclear facilities.

The CNSC shall notify the Ministry upon the happening of any of the following events:

- A reportable event or any incident resulting in exposure to a hazard that exceeds a limit set out in the NSCA or regulations made thereunder and which may impact the health and safety of a worker at a nuclear facility;
- A worker complaint or work refusal involving nuclear energy or nuclear substances at a nuclear facility;
- Notification of a critical injury or fatality at a nuclear facility;
- Any other event that the CNSC believes may impact or be relevant to the role and responsibilities of the Ministry or to the exercise of the respective mandates of either the CNSC or the Ministry as it relates to the health and safety of workers at nuclear facilities.

APPENDIX 2

Examples of Information and Technical Expertise that may be Subject to Disclosure/Sharing under Article 5.2

Examples Information/Technical Expertise held by the CNSC:

- Information about the location/nuclear facility at which an event took place;
- Event details (e.g. type, cause and nature of the event, date and time of event, number of workers involved, CNSC action taken, mitigation activities, future preventative strategy);
- Whether there has been non-compliance to NSCA or any Regulations thereunder;
- Results of analysis (e.g. area monitoring, worker personal and bioassay monitoring related to potential exposure);
- Initial and Ongoing Update Report relating to an event;
- Provision of Technical Expertise related to the event;
- Licence Conditions;
- Other information that would impact on the health and safety of workers involved with the development, production and use of nuclear energy or nuclear substances at nuclear facilities.

Examples of Information/Technical Expertise held by the Ministry

- Information about the location/nuclear facility at which an event took place (e.g. name, address, contact information, etc.);
- Event Details (e.g. type, cause and nature of the event, date and time of event, Ministry response and actions, number of workers involved);
- Field Visit Reports;
- Orders (if any);
- Information concerning the Joint Health and Safety Committee;
- Identified hazards;
- Other information that would impact on the health and safety of workers involved with the development, production and use of nuclear energy or nuclear substances at nuclear facilities.

APPENDIX 3

Purposes for which Information/Technical Expertise that is Shared or Disclosed May be Used

- Aiding in the response to a worker complaint, work refusal and any issue impacting on the health and safety of a worker related to the development, production and use of nuclear energy or nuclear substances at nuclear facilities;
- Facilitating joint entry into workplaces;
- Assisting in the evaluation of a health and safety program at the nuclear facility;
- Assisting in the protection of staff conducting investigations and inspections at a nuclear facility;
- Providing expertise and professional knowledge in respect of matters that have impacted or may impact the health and safety of workers at a nuclear facility.

APPENDIX 4

Access to Shared Information and Technical Expertise

Information and technical expertise provided by the CNSC shall be made available only to Ministry staff performing the following functions or in the following job classifications:

- Investigations, inspections, consultations;
- Management;
- Field Staff including Inspectors, Radiation Protection Officers, Hygienists, Ergonomists, Engineers and Physicians;
- Program Specialists;
- Policy Advisors;
- Legal Counsel to the Ministry.

Information and technical expertise provided by the Ministry shall be made available only to CNSC staff performing the following functions or in the following job classifications:

- Legislative compliance;
- Licence Administration;
- Management;
- Field Staff;
- Legal Counsel to the CNSC.