

A G R E E M E N T
BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY
AND
THE MINISTRY
OF ENVIRONMENTAL PROTECTION, NATURAL RESOURCES AND FORESTRY
AND
THE MINISTRY OF INDUSTRY
AND THE CITY OF CRACOW
OF THE REPUBLIC OF POLAND
FOR
COLLABORATION TO DEMONSTRATE AN EMERGING RETROFIT
OF CLEAN COAL TECHNOLOGY AT A POWERPLANT IN CRACOW, POLAND

WHEREAS:

The United States Department of Energy (DOE) and the Ministry of Environmental Protection, Natural Resources and Forestry (MOEP) and the Ministry of Industry (MOI) and the City of Cracow of the Republic of Poland (hereinafter collectively referred to as the "Polish Party") have a mutual interest in collaborating to demonstrate a clean coal technology and introduce air protection technology in Poland; the Power and Brown Coal Board shall serve as the designee of the MOI; DOE and the Polish Party (hereinafter referred to as "the Parties") believe that the program would be of mutual interest to both Parties; and recognize the contribution such collaboration can make to improving the environment.

IT IS AGREED AS FOLLOWS:

ARTICLE 1

OBJECTIVES

The objective of this Agreement is to establish a framework for collaboration between the Parties. The Parties shall assess coal-fired plants in the Cracow region, select a specific plant in the Cracow region for retrofitting, select the methods of emission control for this plant using U.S. clean coal technology, fabricate equipment, modify the existing boiler, install the equipment and operate it as an example of a pattern solution for pollution control (hereinafter referred to as the "Project"). Such collaboration shall be on the basis of mutual benefit, equality and reciprocity.

ARTICLE 2

SCOPE OF ACTIVITIES

The work to be performed by the Parties in carrying out the Project shall be described in detail in Annex 1 "Scope of Work," Annex 2 "Responsibilities of the Bilateral Steering Committee, Schedule, and Funding Requirements" and Annex 3 "Financial and Reporting Provisions" to be entered into within ninety days after signature of this Agreement. The Annexes shall be attached hereto and form an integral part of this Agreement. The technical portion of the work, consisting of five major phases and the activities to be carried out by each Party with respect thereto, are summarized as follows:

PHASE 1: The Polish Party shall provide to DOE (i) the design and performance characteristics of the powerplants in the Cracow region, (ii) data concerning current use of types of emission controls in Poland, (iii) current plans for modifications to existing units in the Cracow region, such as the installation of dust removal equipment including precipitators on some powerplant units, and (iv) the desired levels of control of SO₂ and/or NO_x emission which need to be achieved both at individual powerplants and throughout Poland. The DOE shall provide to the Polish Party (i) information concerning performance and economics of emerging United States retrofit technologies for flue gas desulfurization and denitrogenization, including plans and/or operations of ongoing activities in the United States, and (ii) information concerning the U.S. industrial capacity for retrofitting powerplants using such technologies.

The Parties through the Bilateral Steering Committee as defined in Article 3 shall select a powerplant in the Cracow region to be used for the Project. The Parties through the Steering Committee shall specify for the selected powerplant the technical and economic performance its retrofitting is intended to achieve, as well as identify the potential for utilizing solid waste in the selected powerplant. Furthermore, the Steering Committee shall agree upon a list of emission control technologies which will be considered for the retrofitting.

PHASE 2: The DOE shall issue a solicitation for and award a contract for the design, fabrication, delivery and installation of equipment in the selected powerplant. Competition for the contract will be restricted to United States firms (i) incorporated, licensed to conduct business or organized under the laws of any state of the United States, (ii) not a subsidiary of a foreign firm, (iii) utilizing technology either it owns or is owned by another United States firm for which it has a license, or is in the public domain, and (iv) utilizing property which is fabricated in the United States, except to the extent that no adequate U.S. manufacturing capability exists for a particular component in which case it could be fabricated in Poland.

PHASE 3: The Power and Brown Coal Board, as a designee of the Polish Party, shall provide the powerplant for retrofitting, shall be responsible for the site preparation as mutually agreed by the Parties, shall be responsible for

the installation of the emission control system and other necessary modifications to the powerplant, including provision of labor, required installation materials, auxiliary equipment, and consumables such as fuels and sorbents. The DOE shall assist in the installation of the emission control system by providing training to host site personnel.

PHASE 4: The Power and Brown Coal Board shall assist in plant startup and shall be fully responsible for operation. The DOE shall provide technical support as necessary by providing training to host site personnel.

PHASE 5: The Polish Party shall provide DOE with all information arising from retrofitting the powerplant, including operational data, for five years from the date of startup.

ARTICLE 3

ORGANIZATION

The project shall be overseen by a Bilateral Steering Committee (BSC) consisting of six members; three to be designated by the Polish Party and three by DOE. The BSC shall be responsible for overseeing all phases of the project. The BSC shall meet as required, alternating the meeting site between Poland and the U.S. The BSC membership shall be designated within 30 days of the signing of this Agreement.

ARTICLE 4

PROTECTION AND DISTRIBUTION OF INTELLECTUAL PROPERTY RIGHTS

1. Business-Confidential Information

- A. For the purpose of this Agreement, "business-confidential information" means any know-how, technical data, or technical, commercial, or financial information, that is developed outside this agreement and that meets all of the following conditions:
- (i) It is of a type customarily held in confidence for commercial reasons;
 - (ii) It is not generally known or publicly available from other sources;
 - (iii) It has not been previously made available by the owner to others without an obligation concerning its confidentiality; and
 - (iv) It is not already in the possession of the recipient without an obligation concerning its confidentiality.

- B. Any business-confidential information will be furnished or transferred only by mutual written agreement of the Parties to the cooperative activity concerned and will be given full protection in accordance with the laws and regulations of their respective countries.
- C. Any business-confidential information will be appropriately identified before it is furnished in the course of the cooperative activities under this Agreement. Responsibility for identifying such information will fall on the party which furnishes it. Unidentified information will be assumed not to be information to be protected, except that a party to the cooperative activity may notify the other party in writing, within a reasonable period of time after furnishing or transferring such information, that such information is business-confidential information under the laws and regulations of its country. Such information will thereafter be protected in accordance with subparagraph B above.

2. Ownership of Intellectual Property Rights

Between each Party and nationals of its country, the ownership of intellectual property rights will be determined in accordance with its national laws, regulations and practices.

3. Inventions

- A. For the purpose of this Agreement, the "Invention" means any invention made in the course of the cooperative activities under this Agreement which is or may be patentable or otherwise protectable under the laws of the parties or any third country.
- B. With respect to any invention made under this Agreement, DOE shall have the right to obtain all rights and interests in all countries.

4. Copyrights

Disposition of rights to copyright-protected works created in the course of the cooperative activities under this Agreement will be determined on a case-by-case basis as necessary or in the relevant implementing arrangements. The parties to the cooperative activities concerned may take appropriate steps to secure copyrights to works created in the course of the cooperative activities under this Agreement in accordance with the national laws and regulations of the respective countries.

5. Rights to Semiconductor Chip Layout Designs

Disposition of rights to semiconductor chip layout designs created in the course of the cooperative activities under this Agreement will be determined on a case-by-case basis as necessary or in the relevant implementing arrangements. The parties to the cooperative activities concerned may take appropriate steps to secure rights to semiconductor chip layout designs created in the course of the cooperative activities under this Agreement in accordance with the national laws and regulations of the respective countries.

6. For those other forms of intellectual property created in the course of the cooperative activities under this Agreement which are protected under the laws of either country, disposition of rights will be determined on an equitable basis, in accordance with the laws and regulations of the respective countries.

7. Cooperation

Each party to the cooperative activity concerned will take all necessary and appropriate steps, in accordance with the laws and regulations of its country, to provide for the cooperation of its authors and inventors which are required to carry out the provisions of the Agreement. Each party to the cooperative activity concerned assumes the sole responsibility for any award or compensation that may be due its personnel in accordance with the laws and regulations of its country, provided, however, that this Agreement creates no entitlement to any such award or compensation.

ARTICLE 5

GENERAL PROVISIONS

1. Compensation for damages incurred during the implementation of this Agreement shall be in accordance with the applicable laws of the countries of the Parties.
2. All activities under this Agreement shall be in accordance with the laws of the respective countries. All questions related to the Agreement arising during its term shall be settled by the Parties by mutual agreement.
3. Nothing in this Agreement is intended to affect other arrangements for cooperation or collaboration between the Parties or any other arrangements of the Parties in existence on the date this Agreement comes into effect.
4. Issues with regard to title of property acquired pursuant to this Agreement are reserved and shall be described in Annex 1.

ARTICLE 6

FUNDING

Except when otherwise agreed in writing, all costs resulting from joint activities under this Agreement shall be borne by the Party that incurs them. It is understood that the U.S. shall bear the cost of up to \$(US) 10 million to procure equipment from a U.S. supplier and provide technical support to the projects as described in Article 2. It is understood that the ability of each Party to carry out its obligations under this Agreement is subject to the availability of appropriated funds.

ARTICLE 7

ADDITIONAL AGREEMENT

In consultation with the Polish Party, DOE shall conduct a scoping analysis to examine approaches to assess and develop the capability to manufacture or modify equipment for use in Poland in order to burn fossil fuels cleanly. Based on the analysis, DOE and the Polish Party shall develop and enter into another agreement which shall identify specific activities to be pursued and specific resources to be utilized. The scoping analysis will specifically define a program to address the control of emission from low emission sources which are the major contributors to pollutions in the City of Cracow.

ARTICLE 8

This Agreement shall enter into effect upon signature by both Parties and remain in effect for five years or until the prescribed operating period has been completed, whichever occurs first. This Agreement may be amended or extended by mutual written agreement. This Agreement may be terminated at any time by either Party upon six (6) months written notice to the other Party.

DONE IN DUPLICATE AT Washington, D.C. (USA),
this 15th day of March 1990

FOR THE DEPARTMENT
OF ENERGY
OF THE UNITED STATES
OF AMERICA


(Signature)

W. Henson Moore

(Printed Name)

Deputy Secretary

(Title)

FOR THE MINISTRY
OF ENVIRONMENTAL PROTECTION,
NATURAL RESOURCES AND FORESTRY
FOR THE MINISTRY
OF INDUSTRY,
AND FOR THE CITY OF CRACOW
OF THE REPUBLIC OF POLAND


(Signature)

Bronislaw Kaminski

(Printed Name)

Minister

(Title)