

MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY
AND
THE MINISTRY OF ENVIRONMENTAL PROTECTION,
NATURAL RESOURCES AND FORESTRY
OF THE REPUBLIC OF POLAND
FOR
COLLABORATION ON THE KRAKOW CLEAN FOSSIL FUELS
AND ENERGY EFFICIENCY PROJECT
A PROJECT FOR ELIMINATION OF LOW EMISSION SOURCES IN KRAKOW

The United States Department of Energy (DOE) and the Ministry of Environmental Protection, Natural Resources and Forestry (MOEP) of the Republic of Poland (hereinafter referred to as "the Parties");

Having a mutual interest in collaborating to promote the implementation of five pilot projects to demonstrate a free-market approach to cleaning the air of Krakow;

Believing that the program would be of mutual interest to both Parties; and

Recognizing the contribution such collaboration can make to improving the environment.

Have agreed as follows:

ARTICLE 1

OBJECTIVES

The objective of this Memorandum of Understanding (MOU) is to establish a framework for collaboration between the Parties. The Parties shall collaborate to promote the implementation of five pilot projects to demonstrate a free-market approach to decreasing the levels of air pollution in Krakow. The collaboration shall take the form of support for U.S./Polish joint ventures to provide equipment and services to implement the projects on a free-market basis. In support of this effort the Parties shall conduct engineering analysis, pilot testing, and incentive analysis and shall carry out selected analysis efforts based on the results of the previously conducted scoping analysis and the engineering and incentive analyses. Such collaboration shall be on the basis of mutual benefit, equality, and reciprocity.

ARTICLE 2

SCOPE OF ACTIVITIES

The cooperation will consist of three major phases as follows:

PHASE 1: The Parties shall conduct a series of activities, as described in the Program Description (Annex 3) and specified in the Statement of Work (Annex 5), supporting the five pilot projects (Annex 4). The Parties, through the Bilateral Steering Committee (BSC) as described in Article 3, shall oversee the activities in Annex 5. The activities shall be jointly conducted by the Parties based on the budget as agreed in Article 6 of this Memorandum of Understanding and Annex 6 (Responsibilities of the Bilateral Steering Committee, Schedule and Funding Requirements). Annexes 3 and 4 are attached. Annexes 5 and 6 will be negotiated and signed within 90 days of entry into force of the MOU. All annexes are integral parts of the MOU.

PHASE 2: The Parties shall conduct meetings with United States and Polish companies in order to inform them of the objectives of the program, the progress of the work to date in PHASE 1, and to solicit expressions of interest from these United States and Polish companies with respect to possible technical approaches and cost-sharing possibilities for the feasibility studies, equipment and services, which would be necessary for the five pilot projects.

PHASE 3: DOE shall issue a solicitation for and award contracts to United States and Polish companies for the conduct of feasibility studies (including the demonstration of equipment, if appropriate) and for joint ventures to commercialize equipment and services for the five pilot projects.

Phases 2 and 3 shall be specifically defined within 90 days of entry into force of the MOU and set forth in an amendment to Annex 5.

ARTICLE 3

ORGANIZATION

1. The Project shall be overseen by a Bilateral Steering Committee (BSC) consisting of eight members, four to be designated by MOEP and four by DOE. The BSC shall be responsible for overseeing all phases of the project and coordinating with related projects, and shall meet as required alternating the meeting site between Poland and the U.S. The Parties shall designate their BSC members within 30 days of the entry into force of this MOU.
2. Cooperation under the MOU shall include the participation of the Vojevodship of Krakow and the City of Krakow. The MOEP has designated a Plenipotentiary to represent its interests.

ARTICLE 4

INTELLECTUAL PROPERTY RIGHTS

Provisions for the protection and distribution of intellectual property created or furnished in the course of cooperative activities under this MOU and provisions for the protection of classified information and unclassified export-controlled information and equipment are set forth, respectively, in Annexes 1 and 2, which constitute integral parts of this MOU.

ARTICLE 5

GENERAL PROVISIONS

1. Compensation for damages incurred during the implementation of this MOU shall be in accordance with the applicable laws of the countries of the Parties.
2. All activities under this MOU shall be in accordance with the laws of the respective countries. All questions related to the MOU shall be settled by the Parties by mutual agreement.
3. Nothing in this MOU 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 MOU comes into effect.
4. Issues with regard to title of property acquired pursuant to this MOU are reserved and shall be described as necessary in Annex 5.

ARTICLE 6

FUNDING

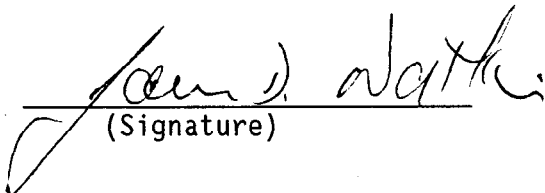
Except when otherwise agreed in writing, all costs resulting from joint activities under this MOU shall be borne by the Party that incurs them. It is understood that the DOE shall bear the cost of up to \$(U.S.) 20 million. The Polish Party shall contribute, in kind, costs (in the form of services and equipment) of up to 25% of U.S. cost. It is understood that the ability of each Party to carry out its obligations under this MOU is subject to the availability of appropriated funds.

ARTICLE 7

This MOU shall enter into force upon signature by both Parties and remain in force for 5 years. This MOU may be amended or extended by mutual written agreement. This MOU 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., this 16th day of October 1991.

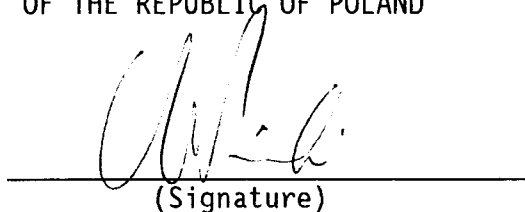
FOR THE DEPARTMENT
OF ENERGY
OF THE UNITED STATES
OF AMERICA


(Signature)

James D. Watkins
(Printed Name)

Secretary
(Title)

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


(Signature)

Maciej Nowicki
(Printed Name)

Minister
(Title)

ANNEX 1 - INTELLECTUAL PROPERTY

PREAMBLE

Pursuant to Article IV of this MOU:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this MOU and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this MOU and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

I. SCOPE

- A. This Annex is applicable to all cooperative activities undertaken pursuant to this MOU, except as otherwise specifically agreed by the Parties or their designees.
- B. For purposes of this MOU, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm July 14, 1967.
- C. This Annex addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with the Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.
- D. Disputes concerning intellectual property arising under this MOU should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of United Nations Commission on International Trade Laws (UNCITRL) shall govern.
- E. Termination or expiration of this MOU shall not affect rights or obligations under this Annex.

II. ALLOCATION OF RIGHTS

- A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and

books directly arising from cooperation under this MOU. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

- B. Rights to all forms of intellectual property, other than those rights described in Section II(A) above, shall be allocated as follows: With respect to any intellectual property created under this MOU, DOE or its designees shall have the right to obtain all right and interests in all countries.

III. BUSINESS-CONFIDENTIAL INFORMATION

In the event that information identified in a timely fashion as business-confidential is furnished or created under the MOU, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practice. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

ANNEX 2 - SECURITY OBLIGATIONS

I. PROTECTION OF INFORMATION

Both Parties agree that no information or equipment requiring protection in the interests of national defense or foreign relations of either Party and classified in accordance with the applicable national laws and regulations shall be provided under this Memorandum of Understanding. In the event that information or equipment which is known or believed to require such protection is identified in the course of cooperative activities undertaken pursuant to this Memorandum of Understanding, it shall be brought immediately to the attention of the appropriate officials and the Parties shall consult concerning the need for and level of appropriate protection to be accorded such information or equipment.

II. TECHNOLOGY TRANSFER

The transfer of unclassified export-controlled information or equipment between the Parties shall be in accordance with the relevant laws and regulations of each Party to prevent the unauthorized transfer or retransfer of such information or equipment provided or produced under this Memorandum of Understanding. If either Party deems necessary, detailed provisions for the prevention of unauthorized transfer or retransfer of such information or equipment shall be incorporated into the contracts or implementing arrangements.