

UNITED STATES GOVERNMENT

Memorandum

TO : Files

DATE: October 19, 1961

FROM : L. P. R. Huard, Chief, Administrative Branch
Division of Licensing and Regulation

SUBJECT: AMENDMENT TO INDEMNIFICATION AGREEMENT WITH PENN STATE UNIVERSITY

Pennsylvania State University holds a valid interim indemnity agreement entered into April 16, 1959 and effective August 23, 1958 (per Section 140.72) and covering the activity licensed under AEC License No. R-2 and its amendments.

By letter of November 4, 1958, Penn State established that they were a nonprofit educational institution and requested exemption from that part of 10 CFR Part 140 requiring the submission of proof of financial protection. The Commission granted this exemption by Amendment No. 5 to the license dated April 16, 1959.

On November 29, 1960 the Commission issued License No. R-72 to Penn State licensing, among other things, the right "to possess, but not to operate, the facility (C-W Quehanna reactor)". The effective date of License R-72 was December 12, 1962.

Based on the existence of a valid License No. R-72, the review of the pertinent dockets and the reasons stated above, the activities licensed under said license are also to be included in the indemnity agreement. A more detailed analysis of this matter is included in William Stewart's memorandum to Robert Lowenstein of September 20, 1961, copy attached.

Attachment:
Memo dated 9/20/61

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UNITED STATES GOVERNMENT

Memorandum

TO : Robert Lowenstein, Director
Division of Licensing & Regulation

DATE: SEP 20 1961

FROM : William Stewart, *W.R. Stewart* Attorney
Office of the General Counsel

SUBJECT: INDEMNITY AGREEMENTS - Penn. State University

On April 16, 1959, an interim indemnity agreement was sent to Pennsylvania State University in connection with the operation of the reactor under AEC License No. R-2. On November 29, 1960, License No. R-72 was issued to the University which authorized possession (but not operation) of the nuclear research reactor facility at the Curtiss-Wright Research and Development Center at Quehanna, Pennsylvania. Curtiss-Wright gave the reactor to the University. The license not only authorized possession of the reactor but also authorized possession of special nuclear material and possession of such byproduct material as was produced by Curtiss-Wright's previous operation of the reactor. No indemnity agreement was entered into with Pennsylvania for the activities authorized by this license.

Roger Huard has drafted a letter to Pennsylvania which contains an amendment to the indemnity agreement mentioned above which would indemnify Pennsylvania for the activities licensed by the latter license. This procedure would seem to be correct under provisions of Section 140.72, 10 CFR Part 140, which states that indemnity agreements with non-profit educational institutions will be effective on:

"(1) The effective date of the license (issued pursuant to Part 50 of this chapter) authorizing the licensee to operate the nuclear reactor involved; or

(2) The effective date of the license (issued pursuant to Part 70 of this chapter) authorizing the licensee to possess and store special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor....which-ever is earlier".

Robert Lowenstein

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I should like to point out, however, that in the past the issuance of an indemnity agreement before a licensee is authorized to operate a reactor covers only "such public liability as arises out of or in connection with the receipt, possession and storage of special nuclear material to be used as fuel" in the operation of the reactor. The issuance of the Huard amendment in this case would indemnify Pennsylvania for such public liability as arises out of or in connection with the possession of the reactor and the possession of the byproduct material as well as the possession and storage of the special nuclear material to be used as fuel in the operation of the reactor.

Although this is the first time that we have indemnified the licensee for anything other than the activities in connection with the storage of fuel prior to the issuance of an operating license, such a procedure appears to be legal since Section 140.71 merely states the date that an indemnity agreement shall be effective and not what activities are to be covered by the indemnity agreement. Therefore, I have concurred in the Huard proposed amendment.

cc: Troy Conner
Courts Oulahan
Roger Huard
Eber Price