

DLR:LPRH
Docket Nos. 50-5, 174

OCT 8 1962

Mr. Ralph E. Montgomery
Contract Negotiator and Coordinator
Office of the Vice President for Research
The Pennsylvania State University
Room 203, Old Main Building
University Park, Pennsylvania

Dear Mr. Montgomery:

By letter of April 16, 1959 you received an interim indemnity agreement indemnifying the activities licensed under AEC License No. R-2. That indemnity agreement indicated that it would be superseded, in due course, by the execution and issuance of a formal indemnity agreement. The interim indemnity agreement was also amended November 27, 1961 to indemnify the activities licensed under AEC License No. R-72.

Enclosed are two signed copies of Formal Indemnity Agreement No. E-10 for your review and acceptance, superseding the interim indemnity agreement, as amended.

The location shown as Item 3 of the Attachment to the indemnity agreement for License No. R-2 is essentially as submitted by you in your letter of July 10, 1961 and modified to reflect the roadway changes. The location used for License No. R-72 is drawn from the hazards summary report and generally follows the pattern established for License No. R-2. The Isolation Rooms and Hot Cells have been excluded from the location as activities conducted therein are not currently being indemnified.

B/17

Mr. Ralph E. Montgomery

- 2 - OCT 8 1962

The work contemplated under Construction Permit No. CPER-71 may necessitate changing the definition of location. If this becomes necessary, the indemnity agreement will be amended upon completion of the work under CPER-71

You should carefully examine the Attachment; any errors therein should be brought to our attention immediately and prior to your execution of the agreement. One signed copy of the indemnity agreement should be returned to this office at your earliest convenience.

Sincerely yours,

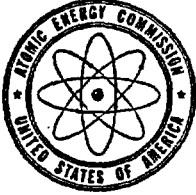
(Signed)
Eber R. Price, Assistant Director
Division of Licensing and Regulation

Eber R. Price
Assistant Director
Division of Licensing
and Regulation

Enclosures
Formal Indemnity Agreement
No. E-10 (2)

DISTRIBUTION:
Formal (2)
Public Document Room (2)
Supplementary (2)
Bill Stewart, OGC
P. Travelstead, FIN
Roger Huard

OFFICE ▶	DLR	DGE	DLR			
SURNAME ▶	LPRHuard:bmj	BStewart	ERPrice			
DATE ▶	10/8/62	10/5/62	10/8/62			



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON 25, D.C.

Indemnity
Agreement E-10
No.

This indemnity agreement No. E-10 is entered into by and
between The Pennsylvania State University

(hereinafter referred to as the "licensee") and the United States Atomic Energy Commission (hereinafter referred to as the "Commission") pursuant to subsection 170k of the Atomic Energy Act of 1954, as amended (hereinafter referred to as "the Act").

ARTICLE I

As used in this agreement,

1. "Nuclear reactor", "byproduct material", "person", "source material", and "special nuclear material" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

2(a) "Nuclear incident" means any occurrence or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of the radioactive material.

(b) Any occurrence or series of occurrences causing bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of

i. The radioactive material discharged or dispersed from the location over a period of days, weeks, months or longer and also arising out of such properties of other material defined as "the radioactive material" in any other agreement or agreements entered into by the Commission under subsection 170 c or k of the Act and so discharged or dispersed from "the location" as defined in any such other agreement; or

ii. The radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into by the Commission pursuant to subsection 170 c or k of the Act as "the radioactive material" and which is in the course of transportation

shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

3. "In the course of transportation" means in the course of transportation within the United States, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

(a) With respect to transportation of the radioactive material to the location, such transportation is not by pre-determination to be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto;

(b) The transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto;

(c) "In the course of transportation" as used in this agreement shall not include transportation of the radioactive material to the location if the material is also "in the course of transportation" from any other "location" as defined in any other agreement entered into by the Commission pursuant to subsection 170 c or k of the Act.

4. "Person indemnified" means the licensee and any other person who may be liable for public liability.

5. During the period 12:01 A.M., August 23, 1958
to 12:01 A.M., September 6, 1961, inclusive:

"Public liability" means any legal liability arising out of or resulting from a nuclear incident, except (1) claims under state or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; and (2) claims arising out of an act of war.

From 12:01 A.M., September 6, 1961:

"Public liability" means any legal liability arising out of or resulting from a nuclear incident, except (1) claims under state or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b), if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

6. "The location" means the location described in Item 3 of the Attachment hereto.

7. "The radioactive material" means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be irradiated by, the nuclear reactor or reactors subject to the license or licenses designated in the Attachment hereto, or (2) is produced as the result of operation of said reactor(s).

8. "United States" when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico.

ARTICLE II

Any obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability shall not in the aggregate exceed \$250,000 with respect to any nuclear incident.

ARTICLE III

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, the Commission agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material;

(b) Property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) The radioactive material.

3. The Commission agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from the reasonable costs of investigating, settling and defending claims for public liability.

4. (a) The obligations of the Commission under this Article shall apply only with respect to such public liability, such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) and such reasonable costs described in paragraph 3 of this Article as in the aggregate exceed \$250,000.

(b) With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability, such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) and to such reasonable costs described in paragraph 3 of this Article as in the aggregate exceed whichever of the following is lower: (1) the sum of the amounts of financial protection established under all applicable agreements; or (2) \$60,000,000. As used in this paragraph, "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170c of the Act in which agreement the nuclear incident is defined as a "common occurrence."

5. The obligations of the Commission under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

6. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not in the aggregate exceed \$500,000,000 with respect to any nuclear incident.

7. If the licensee is immune from public liability because it is a state agency, the Commission shall make payments under this agreement in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a state agency.

8. The obligations of the Commission under this Article, except to the licensee for damage to property of the licensee, shall not be affected by any failure on the part of the licensee to fulfill its obligations under this agreement. Bankruptcy or insolvency of the licensee or any other person indemnified or of the estate of the licensee or any other person indemnified shall not relieve the Commission of any of its obligations hereunder.

ARTICLE IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

ARTICLE V

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

ARTICLE VI

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 4 of the Attachment and shall terminate at the time of expiration of that license specified in Item 2 of the Attachment, which is the last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this

agreement shall not terminate until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has ended as defined in subparagraph 3(b), Article I. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

UNITED STATES ATOMIC ENERGY COMMISSION

Indemnity Agreement No. E-10

ATTACHMENT

Item 1 - Licensee The Pennsylvania State University
 Address University Park, Pennsylvania

Item 2 - License number or numbers
 R-2 and R-72

Item 3 - Location

For purposes of License No. R-2:

The area, approximately 200 x 250 feet, encircled by a chain link fence providing a restricted area around the reactor building and all the facilities and buildings included therein. And from August 28, 1961 the area as modified by partitioning off a portion of the southeast corner for roadway purposes. These areas are further depicted in a drawing submitted by the University September 14, 1961 and entitled, "Proposed Campus Road to Provide Access Between S. Entrance Road and S. University Road" dated April 18, 1961, which drawing is made part of this indemnity agreement by reference.

The areas noted are on the campus of The Pennsylvania State University, University Park, Pennsylvania.

For purposes of License No. R-72:

The area encircled by a chain link fence providing a restricted area around the Research Reactor and Radio-active Materials Laboratory and all the facilities and buildings included therein except the Isolation Rooms and Hot Cells. The area is generally depicted in the drawings on Pages 28 and 46 of the "Hazards Summary for the Nuclear Research Reactor located at the Curtiss-Wright Nuclear Research Laboratory of The Pennsylvania State University" dated September, 1960, which drawings are made part of this indemnity agreement by reference.

The area noted is at the Curtiss-Wright Research and Development Center, Quehanna, Pennsylvania.

Item 4 - The indemnity agreement designated above, of which this Attachment is a part, is effective as of 12:01 A.M., on the 23rd day of August, 1958 and supersedes the interim indemnity agreement dated April 16, 1959 and amended November 27, 1961 between you and the Atomic Energy Commission.

For the United States Atomic Energy Commission

(Signed)

Eber R. Price

Assistant Director

Division of Licensing and Regulation

By _____

For

THE PENNSYLVANIA STATE UNIVERSITY

(Name of Licensee)

By /S/ McKay Donkin, Treasurer

McKay Donkin, Treasurer

Dated at Germantown, Maryland, the ^{8th} day
of October, 1962.