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OFFICE OF THE
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Christopher J. Wentz
Coordinator
Radioactive Waste Consultation Task Force
New Mexico Energy, Minerals and
Natural Resources Department
Sante Fe, New Mexico 87505

Dear Mr. Wentz:

This is in response to your letter of May 30, 1995, concerning potential Price-Anderson Public Liability coverage that might apply to spent fuel shipments to a proposed Mescalero storage facility. Your specific question asked that our response address potential liability during 1) transportation to the facility and 2) while spent fuel was stored at the facility. In your letter you requested an "official interpretation" of NRC regulations. We note that the Commission's regulations authorize the General Counsel to issue formal, written interpretations of the regulations which are recognized as binding on the Commission. However, the General Counsel exercises this authority very sparingly and only in instances involving major policy or legal questions. Following issuance, these interpretations are codified in 10 CFR Part 8 of the Commission's regulations. To date, only four written interpretations have been issued. Accordingly, this response does not constitute a formal interpretation, but rather contains our informal views on your questions.

As a premise of your questions, you provided that, at all times involved, title to the spent fuel would remain with the utility which was the source of the spent fuel. In order to answer your questions we are also assuming that the question of Price-Anderson coverage is being asked in the context of a "nuclear incident" having occurred as that term is described in the Price-Anderson provisions of the Atomic Energy Act of 1954, as amended, (AEA or "the Act").

Under the Price-Anderson requirements of the Act, the Commission has provided for mandatory liability coverage only for operators of nuclear power

In pertinent part the definition provides:

The term "nuclear incident" means an occurrence, including an extraordinary occurrence, within the United States causing, within or outside the United States, 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 source, special nuclear or byproduct material..."

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In the matter of Private Fuel Storage
Staff IDENTIFIED ✓
Applicant RECEIVED ✓
Intervenor REJECTED ✓
Contractor _____ DATE 6/22/00
Other _____ Witness Sheehan
Operator L. Shindeling

facilities licensed under §§ 103 and 104 of the AEA.² This effectively results in NRC licensees, who have licenses issued under 10 CFR Part 50, being required to maintain commercially available public liability insurance. In addition to the commercially available insurance, these licensees receive the Price-Anderson mandated expanded coverage and/or indemnification for public liability arising from nuclear incidents.³ The specific model provisions for required mandatory liability insurance, as well as model provisions for federal indemnity associated with the Price-Anderson liability protections, appear in NRC regulations at 10 CFR 140.91 - 140.93. Copies of these provisions are enclosed for your convenience.

Under the terms of both the recommended wording for required liability insurance and model indemnity agreements appearing in 10 CFR Part 140, coverage includes coverage during "insured shipments". The term "insured shipments" is defined to include shipment of spent fuel "from the facility to any other location except an indemnified facility, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation." See 10 CFR 140.91, Appendix A, "Nuclear Energy Liability Policy". The definition of transportation subject to Price-Anderson liability coverage appearing in the model indemnification agreements is similar, providing that coverage for a nuclear incident occurring in the course of transportation will not end until "the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto..." See 10 CFR 140.92, Appendix B, "Form of indemnity agreement with licensees furnishing insurance policies as proof of financial protection".

While specific commercial policies held by licensees will be subject to interpretation by the insurance companies involved and would be outside NRC's authority to interpret in individual cases, it appears clear that the intent of the above language is that Price-Anderson coverage will be in effect during transportation of the spent fuel to a facility, such as the proposed Mescalero facility, from a nuclear power plant licensed under 10 CFR Part 50.⁴ To the extent the spent fuel is to be stored at the Mescalero facility, the result is

² Please note that certain educational and non-profit operators of research reactors are exempt from the need for commercial insurance. Indemnification requirements similar to those applying to utility power reactors do apply to these research reactors. See AEA section 170k.

³ There is also a middle layer of financial protection provided by a pool consisting of deferred premiums to be paid by all licensed Part 50 power reactor licensees of a minimum size. See 10 CFR 140.11(a)(4).

⁴ Mandatory insurance requirements and NRC indemnification for nuclear incidents as a supplement thereto are only required of persons licensed under Part 50 of the Commission's regulations. Should a licensee terminate its Part 50 license after spent fuel is transported to an offsite facility, there is no requirement that commercial insurance and indemnification be maintained to cover potential public liability associated with the spent fuel. Accordingly, the above discussion only applies during periods when the utility holding title to the spent fuel also maintains a Part 50 license that was associated with use of the spent fuel.

not as clear. While it is possible to interpret language in the sample indemnification and insurance agreements to cover storage at the proposed Mescalero facility by concluding that it is "temporary storage" incident to transportation to a final disposal site, we can not conclude that this is the best or even the intended meaning for those provisions of the model indemnity and insurance agreements addressing "insured shipments". As noted previously, the exact wording and interpretation of these policy provisions may vary from licensee to licensee and insurance company to insurance company.

While Price-Anderson coverage under the provisions discussed above may not be applicable to temporary storage at the Mescalero facility, it should be noted that NRC power reactor licensees are currently able to obtain commercially available public liability insurance of approximately 200 million dollars. It would appear, therefore, that licensees may be able to obtain separate commercially available insurance sufficient to address potential liabilities during storage of utility owned spent fuel at the Mescalero facility. However, the exact amount and availability of such insurance should be considered directly with the utilities or insurance companies involved and is beyond the scope of this response.

With respect to your question concerning filing claims for covered events, the process created by the Price-Anderson provisions of the Act does not provide for NRC to directly receive claims from third parties. Claims against the covered utility would be filed in federal court in accordance with jurisdictional provisions of the Act. See AEA Section 170 n.(2). Indemnification and/or insurance coverage would be provided directly to the covered Part 50 licensee upon a determination that covered public liability had been adjudicated against the licensee.

As noted above, this discussion is limited to the general principles that govern the NRC required insurance policies and indemnity agreements associated with NRC Part 50 licensees. Because the insurance policies and indemnity agreements are individual to each Part 50 licensee, there may be variations on policy language that would affect the above analysis. We hope that the above information will be useful to you in your evaluations of the applicability of Price-Anderson protections to the proposed Mescalero facility.

Sincerely,

C. William Reamer
Senior Supervisory Attorney

Enclosures: As stated

⁵ It is our understanding that the G. E. Morris facility, which is storing spent fuel and is not a Part 50 licensee, has been able to obtain commercially available insurance of approximately \$200,000,000 to cover its facility.