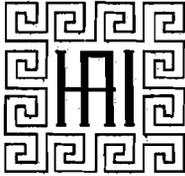


FOI/PA REQUEST

Case No.  
Date Rec'd  
Specialist  
Related Case

2008-0245  
6-2-08  
Sheppard



HISTORY ASSOCIATES INCORPORATED

300 N. STONESTREET AVENUE  
ROCKVILLE, MARYLAND 20850  
WWW.HISTORYASSOCIATES.COM

PHONE: (301) 279-9697  
FAX: (301) 279-9224  
E-MAIL: HAI@HISTORYASSOCIATES.COM

June 2, 2008

U.S. Nuclear Regulatory Commission  
Mail Stop T5-F11  
Washington, DC 20555-0001

RE: FREEDOM OF INFORMATION ACT REQUEST

Via Electronic Mail

Dear Sir or Madam:

Pursuant to the Freedom of Information Act (FOIA) 5 U.S.C. 552, I am requesting documents and/or information concerning nuclear energy liability "facility form" insurance policies, along with any endorsements thereto, issued by the Nuclear Energy Liability Insurance Association (NELIA), or its successor American Nuclear Insurers (ANI). In addition, I am requesting documentation or information concerning the drafting, revising, interpretation and/or explanation of the provisions of nuclear energy liability "facility form" insurance policies and endorsements issued by ANI or NELIA from 1957 to the present. In particular, this request includes but is not limited to any documentation concerning communications between NELIA and the NRC with respect to a 1990 amendatory endorsement [NE-72 (1/1/90)] to the nuclear energy liability "facility form" insurance policies. For your reference, I am attaching a redacted copy of this endorsement to my request.

I believe that the Division of Policy and Rulemaking, which falls under the Office of Nuclear Reactor Regulation's Associate Director for Operating Reactor Oversight and Licensing, or its predecessors dating back to the Atomic Energy Commission's Office of Antitrust and Indemnity, may have received the above described information concerning liability insurance.

**To the extent that any relevant copies of documents are classified or contain information exempt from release and/or FOIA, I request that you declassify and/or sanitize the documents for my review.** If there are classified or exempt documents that you will not declassify and/or sanitize, I request that you identify any and all such documents by listing date, author, recipient(s), page numbers and unclassified subject matter. If any documents contain exemptions, please specify the exemptions claimed for each page or passage. In addition, please advise me of any destruction of records and include the date of and authority for such destruction.

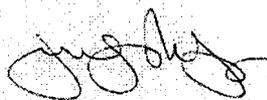
I recognize that the volume of records responsive to this request may be large. In the past, History Associates Incorporated (HAI) has worked with federal agencies to arrange a visit to assist in the review of files referenced in FOIA requests. This approach allows HAI researchers to identify a limited number of responsive documents to be copied, thereby reducing the amount of time required by agency officials to review and process documents for release and avoiding a time-consuming item-by-item examination by NRC of the requested documentation. Please contact me as soon as possible concerning the feasibility of this arrangement in this instance.

HAI agrees to pay all reasonable and standard processing fees authorized by 5 U.S.C. 552(a)(4)(A) and the applicable regulations up to \$100. If the fees will exceed this amount please call with an estimate of the costs so that I can specifically request authorization for expenditures beyond \$100.

If you have any questions please contact me at 301-279-9697, or e-mail me at [jrandazzo@historyassociates.com](mailto:jrandazzo@historyassociates.com).

Sincerely,

Sincerely,



Jennifer Randazzo  
Historian

Enclosure

JR

## FOIA Resource

---

**From:** Jennifer Randazzo [jrandazzo@historyassociates.com]  
**Sent:** Monday, June 02, 2008 4:07 PM  
**To:** FOIA Resource  
**Subject:** FOIA Request  
**Attachments:** FOIA Request.pdf; Endorsement NE 72.pdf

Dear Sir or Madam:

Attached please find a FOIA request that I am transmitting to you on June 2, 2008, along with the enclosure referenced in the body of my request. Please contact me with any problems opening or accessing these attachments.

Thank you,

Jennifer Randazzo

Jennifer Randazzo  
Historian  
History Associates Incorporated  
300 N. Stonestreet Avenue  
Rockville, MD 20850  
301.279.9697 (p)  
301.279.9224 (f)

**Nuclear Energy Liability Insurance**  
**NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**

**AMENDATORY ENDORSEMENT**  
**(Facility Form)**

It is agreed that:

1. INSURING AGREEMENT I is replaced by the following:

**I COVERAGE A - LIABILITY**

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as covered damages because of bodily injury or property damage, or as covered environmental cleanup costs because of environmental damage. This Coverage applies only to bodily injury, property damage or environmental damage caused during the policy period by the nuclear energy hazard, and which is discovered and for which written claim is made against the insured, not later than ten (10) years after the end of the policy period.

The companies shall have the right and duty to defend any claim or suit against the insured alleging such injury or damage, and seeking damages or costs which are payable under the terms of this policy; but the companies may make such investigation, negotiation and settlement of the claim or suit as they deem expedient.

The companies' duty to defend shall be limited, as described in INSURING AGREEMENT IV, if the claim or suit also seeks any of the following, which in no event shall be construed as covered by this policy:

- (1) damages for on-site property damage;
- (2) recovery of on-site cleanup costs or any other cleanup costs except covered environmental cleanup costs;
- (3) performance of an insured's environmental protection obligations or on-site cleanup obligations; or
- (4) any other relief or recovery except payment of covered damages or covered environmental cleanup costs.

The companies' duty to defend claims or suits ends when the limit of their liability has been exhausted pursuant to CONDITION 3.

Subject to INSURING AGREEMENT IV, the companies shall pay, with respect to any claim or suit they defend, the costs incurred in the defense, including

- (1) costs taxed against the insured in any such suit and interest on any judgment therein;
- (2) premiums on appeal bonds and bonds to release attachments in any such suit, but without obligation to apply for or furnish such bonds;

- (3) reasonable expenses, other than loss of earnings, incurred by the insured at the companies' request.

**COVERAGE B - DAMAGE TO PROPERTY OF AN INSURED AWAY FROM THE FACILITY**

With respect to property damage caused during the policy period by the nuclear energy hazard to the property of an insured which is away from the facility, to pay to such insured those sums which such insured would have been legally obligated to pay as covered damages therefor, had such property belonged to another.

**COVERAGE C - SUBROGATION - OFFSITE EMPLOYEES**

With respect to bodily injury caused during the policy period by the nuclear energy hazard to any employee of an insured, and which is discovered and for which written claim is made against the insured, not later than ten (10) years after the end of the policy period, to pay to the workmen's compensation carrier of such insured as follows:

All sums which such carrier would have been entitled to recover and retain as damages from another person or organization, had such person or organization alone been legally responsible for such bodily injury, by reason of the rights acquired by subrogation by the payment of the benefits required of such carrier under the applicable workmen's compensation or occupational disease law. An employer who is a duly qualified self-insurer under such law shall be deemed to be a workmen's compensation carrier within the meaning of this Coverage.

This Coverage does not apply to bodily injury to any person who is employed at and in connection with the facility; nor shall it constitute workmen's compensation insurance as required under the laws of any state.

2. INSURING AGREEMENT II is replaced by the following:

**II DEFINITION OF INSURED**

The unqualified word "insured" includes (a) the named insured and (b) any other person or organization with respect to his legal responsibility for covered damages or covered environmental cleanup costs because of bodily injury, property damage or environmental damage caused by the nuclear energy hazard.

Subdivision (b) above does not include as an insured the United States of America or any of its agencies, except the Tennessee Valley Authority.

Subject to CONDITION 3 and the other provisions of this policy, the insurance applies separately to each insured against whom claim is made or suit is brought.

3. INSURING AGREEMENT III is replaced by the following:

III DEFINITIONS Wherever used in this policy:

"bodily injury" means bodily injury, sickness or disease, including death resulting therefrom, sustained by any person.

"covered damages" means damages because of bodily injury or property damage to which this policy applies; but covered damages do not include environmental cleanup costs or on-site cleanup costs.

"covered environmental cleanup costs" means only those environmental cleanup costs which are incurred directly for monitoring, testing for, cleaning up, neutralizing or containing environmental damage as the result of a transportation incident; but covered environmental cleanup costs do not include on-site cleanup costs.

"disposal site" means any structure, basin, excavation, premises or place prepared as a dump or site for the disposal of waste materials of a general nature, but which may also be used for the disposal of waste materials containing small amounts of nuclear material.

"environment" includes land, the atmosphere, and all watercourses, bodies of water and natural resources, whether on, above or below the surface of the ground.

"environmental cleanup costs" include all loss, cost or expense arising out of any governmental decree, order or directive (other than an award of covered damages in an action at law) requiring or requesting a person or organization to undertake or pay for monitoring, testing for, cleaning up, neutralizing or containing contamination of the environment, whether the contamination is on, above or below the surface of the ground.

"environmental damage" means contamination of the environment by nuclear material.

"environmental protection obligations" include all obligations of any person or organization

- (1) relating to the protection of the environment from contamination or imminent danger of contamination, and
- (2) imposed by any governmental laws, regulations or ordinances.

"governmental" refers to federal, state and local governments and authorities, including courts, agencies and political subdivisions thereof.

"indemnified nuclear facility" means

- (1) "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, or
- (2) any other nuclear facility.

if financial protection is required pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, with respect to any activities or operations conducted thereat.

"insured shipment" means a shipment of source material, special nuclear material, spent fuel, waste, or tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, herein called "material",

- (1) to the facility from a nuclear facility owned by the United States of America, but only if the transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or
- (2) from the facility to any other location except an indemnified nuclear facility, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

"nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of nuclear material, but only if

- (1) the nuclear material is at the facility or has been discharged or dispersed therefrom without intent to relinquish possession or custody thereof to any other person or organization, or
- (2) the nuclear material is in an insured shipment which is away from any other nuclear facility and is in the course of transportation, including handling and temporary storage incidental thereto, within the territorial limits of the United States of America, its territories or possessions, or Puerto Rico.

"nuclear facility" means "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters. The term "nuclear facility" also means

- (1) any nuclear reactor.
- (2) any equipment or device designed or used for
  - (a) separating the isotopes of uranium or plutonium.

- (b) processing or utilizing spent fuel, or
- (c) handling, processing or packaging waste.
- (3) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste.

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"nuclear material" means source material, special nuclear material or byproduct material.

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission or a self-sustaining chain reaction or to contain a critical mass of fissionable material.

"on-site cleanup costs" include all loss, cost or expense arising out of on-site cleanup obligations.

"on-site cleanup obligations" include all obligations of any person or organization, imposed by common law or otherwise, to undertake or pay for monitoring, testing for, cleaning up, neutralizing or containing contamination by nuclear material at the facility, whether the material is on, above or below the surface of the ground.

"on-site property damage" includes all property damage to any property at the facility, whether the property is on, above or below the surface of the ground, other than aircraft, watercraft or vehicles licensed for highway use, provided such aircraft, watercraft or vehicles are not used in connection with the operation of the facility.

"property damage" means physical injury to or destruction or radioactive contamination of property, and loss of use of property so injured, destroyed or contaminated, and loss of use of property while evacuated or withdrawn from use because possibly so contaminated or because of imminent danger of contamination.

"source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in any nuclear reactor.

"the facility" means the facility described in the declarations and includes the location designated in Item 3 of the declarations and all property and operations at such location.

"transportation incident" means a discharge or dispersal of nuclear material from an insured shipment caused by collision or upset of the transporting conveyance, or an accident that breaks open, punctures or ruptures the shipping containers or containment thereon; but only if both the discharge or dispersal and the collision, upset or accident take place away from any nuclear facility and away from any disposal site, and both occur in the course of the transportation, including handling and temporary storage incidental thereto.

"waste" means any waste material

- (1) containing byproduct material and
- (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (1) or (2) thereof.

4. INSURING AGREEMENT IV is replaced by the following and INSURING AGREEMENT IV-A added by the "Amendment of Coverage Endorsement for Workers Claims (Facility Form)" continues to apply:

#### IV LIMITED DEFENSE OF PARTIALLY COVERED CLAIMS OR SUITS

The following provisions apply with respect to any partially covered claim or suit for which the companies' duty to defend has been limited by INSURING AGREEMENT I:

- (1) The companies will defend the claim or suit unless the companies and the first named insured mutually agree on a different defense arrangement. By making such a defense, the companies shall not be considered as having waived their rights under this policy to deny payment or reimbursement of the items not covered.
- (2) As soon as practicable, the first named insured, acting on behalf of all insureds, and the companies shall endeavor to reach an equitable arrangement for handling the defense and sharing the costs thereof.
- (3) The companies' share of defense costs shall not exceed the portion of the total defense costs that represents the costs which would be reasonably and necessarily incurred in the defense of the claim or

- suit in the absence of any claim or demand for the items not covered.
- (4) The companies shall have a right to contribution from the first named insured for all defense costs as they are incurred in excess of the amount of the companies' share, including reimbursement by the first named insured of all such excess costs paid by the companies.
  - (5) If the companies and the first named insured cannot agree on the companies' share of defense costs, the dispute shall be submitted, as a condition precedent to any right of recovery on this policy, to arbitration for a final and binding resolution, as provided in Condition 19.
5. In EXCLUSIONS (d) and (e), and in all endorsements to this policy relating thereto, the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage."
  6. EXCLUSION (f) is replaced by the following exclusion:  
[This policy does not apply:]  
(f) to on-site property damage;
  7. In CONDITION 3, and in all endorsements to this policy modifying the dollar amount of the limit of liability stated in Item 4 of the declarations, the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage."
  8. In CONDITION 4, and in all endorsements to this policy modifying the dollar amount of the total aggregate liability of the companies with respect to a common occurrence:
    - (a) the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage"; and
    - (b) the words "bodily injury and property damage" are replaced by "bodily injury, property damage and environmental damage."
  9. In CONDITIONS 5, 11, 15 and 18, and in all endorsements to this policy relating thereto, the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage."
  10. CONDITION 19, DECLARATIONS, is renumbered CONDITION 20.
  11. The following CONDITION is added to the policy:  
**19 ARBITRATION OF DISPUTES RELATING TO THE APPLICATION OF INSURING AGREEMENT IV**

All such disputes subject to paragraph (5) of INSURING AGREEMENT IV shall be submitted to a Board of Arbitration (the "Board") for a final and binding resolution of the dispute.

There shall be two parties to the arbitration: the first named insured, acting on behalf of all insureds as their duly authorized representative, and Nuclear Energy Liability Insurance Association, acting on behalf of the companies as their duly authorized representative.

Except to the extent the parties mutually agree otherwise, the following principles will apply:

- (a) The arbitration will take place in New York, New York, and will be governed by the laws of the State of New York.
- (b) Either party may begin the process of arbitration by giving notice to the other party in writing of its intention to do so and the name of the arbitrator that it has appointed.
- (c) The other party shall then appoint in writing an arbitrator, and the arbitrators shall appoint in writing an umpire before they begin the arbitration. The umpire shall act as chairman of the Board.
- (d) If a party fails to name its arbitrator within thirty (30) days of the other party's written request that it do so, the requesting party may appoint an arbitrator for the party in default.
- (e) If the two arbitrators fail to agree on the selection of an umpire within thirty (30) days after they have both been appointed, each of them shall name two, of whom the other shall decline one. The choice shall be made by drawing lots.
- (f) The arbitrators and umpire shall be executive officers or former executive officers of insurance companies licensed to do business in the United States or of organizations designated as the first named insured under a Nuclear Energy Liability Policy issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters; provided that the current employees of the following shall not be eligible for service without the consent of both parties:
  - (1) any party or likely party to the underlying claim or suit;
  - (2) American Nuclear Insurers, MAERP Reinsurance Association or their members; or
  - (3) any other insurer or reinsurer which has casualty insurance or reinsurance in force on any of the foregoing which may be materially affected by the Board's decision.
- (g) Within thirty (30) days after the appointment of the

- umpire, each party shall submit its case in writing to the Board.
- (h) The Board shall determine its rules of procedure, and the nature and extent of any discovery, testimony, examination or cross-examination of witnesses and oral argument permitted. The decision of any two members of the Board shall be final and binding on all parties. All discovery, submissions of evidence, hearing of witnesses and argument shall be completed within sixty (60) days of the appointment of the umpire, provided the Board may grant one extension of thirty (30) days.
  - (i) The arbitrators and the umpire are not to be bound by any strict rules of legal procedure, evidence or legal precedents. They shall, however, be governed by the terms of this policy, and shall have no power to add to or change its provisions. Subject to this admonition, they shall interpret the relevant provisions of this policy as an honorable business agreement, and shall be entitled to decide, in accordance with such provisions together with the other materials submitted to them, what they think is the fair and right thing to be done between the parties from a business point of view, without favoring the interest of either party.
  - (j) The Board shall make its award in writing within thirty (30) days after the close of the period, including any extension granted, described in paragraph (h) above.
  - (k) If the Board fails to make an award within the time prescribed by paragraph (j) above, then unless an extension is agreed to by the parties, a new arbitration shall be commenced and completed in accordance with the procedure set out in paragraphs (a) through (j) above.
  - (l) The award of the Board signed by any two members shall be final, not subject to appeal and binding on all parties, including all insurers subscribing the policy and all insureds thereunder. The award shall be treated as a matter involving interstate commerce, and may be filed or confirmed in any court of competent jurisdiction, state or federal, and judgment thereon entered and enforced, in accordance with the law and practice of the forum.
  - (m) Unless the Board decides otherwise, each party shall pay the expenses of the arbitrator appointed by or for it and one half of the other costs of arbitration.
  - (n) If an arbitrator or umpire is unable or unwilling to act, a new arbitrator or umpire, as the case may be, shall be appointed to act in his or her place, in accordance with the provisions set forth above.
  - (o) All materials relevant to the arbitration shall be submitted to the Board in triplicate and the filing party shall send simultaneously a copy thereof to the opposing party.

12. This endorsement applies to all claims for damages, costs, expenses or other relief or recovery for which coverage is sought under this policy, and which are first made in writing against any insured on or after the effective date of this endorsement stated below.

10

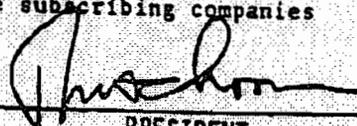
**COPY**

Effective Date of this Endorsement \_\_\_\_\_ To form a part of Policy No \_\_\_\_\_

Issued to \_\_\_\_\_

Date of Issue \_\_\_\_\_

For the subscribing companies

By   
PRESIDENT

Endorsement No \_\_\_\_\_

Countersigned by \_\_\_\_\_