

files

October 9, 1981



SECY-81-591

RULEMAKING ISSUE (Affirmation)

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: AMENDMENTS TO 10 CFR PART 140 - CHANGES IN NUCLEAR ENERGY LIABILITY INSURANCE POLICY

Purpose: To obtain Commission approval for the publication of a notice of proposed rulemaking to amend 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," to make changes in the Facility Form of nuclear liability insurance policy (\$140.91) furnished by licensees as evidence of financial protection.

Category: This paper covers a minor policy question.

Discussion: As discussed in SECY-80-503 (dated November 12, 1980), in late 1980 American Nuclear Insurers (ANI) submitted to the Commission two endorsements to the Facility Form of nuclear liability insurance policy that both they and Mutual Atomic Energy Liability Underwriters (MAELU), the other nuclear insurance pool, would have liked to have been made effective on January 1, 1981. The endorsements would make two changes to the existing policies. First, they would modify the definition of "insured shipments" to conform to the changes made in the statutory definition of "byproduct material" in Public Law 95-604, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Second, the endorsements would relieve insurers of liability arising out of inspections.

Contact:
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Extension: 492-9884

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Although the Commission published the two endorsements in the Federal Register on February 18, 1981, requesting comment (46 F.R. 12750), the Commission also sought public comment on the broader question as to whether it should reconsider its traditional approach of publishing in 10 CFR 140.91 (Appendix A to Part 140) the entire Facility Form of nuclear liability insurance policy (and endorsements to that policy) furnished by licensees as evidence of financial protection. The Commission requested comments on the alternative approach of publishing only those provisions of the policy and endorsements relating to the NRC responsibilities for protection of the public. The Commission believed that publication of the insurance policy's provisions in its regulations on this more limited basis could remove any misimpression that through this publication the Commission was placing its imprimatur on all of the provisions of the policy and endorsements, including contractual provisions solely between the insurance companies and the insured that have no bearing on the protection of the public. In furtherance of this prospective change in approach, the Commission published alternative texts of the endorsements submitted by the insurance pools which deleted provisions that the Commission did not consider to affect public protection.

The two comments received on the notice of proposed rulemaking both opposed the Commission's proposed modification of its traditional position of publishing the entire nuclear liability insurance policy and endorsements. The first comment, submitted by Baltimore Gas and Electric Company, stated in part that if the Commission did not want to appear to give its approval to contractual matters between the insured and the insurers that do not affect the protection of the public, specific provisions of the policy and endorsements could be disclaimed. In the second comment, ANI stated that it is difficult to identify the parts of an insurance policy that would not affect financial protection even though they appear not to do so. ANI furnished examples of changes in the policy which appeared not to be related to the protection of the public, but which upon closer scrutiny were in fact related.

ANI further stated that when the Commission adopts any type of contract as evidence of financial protection, it necessarily accepts the entire contract because the contractual provisions are not separable. ANI further argued that if the Commission either relinquishes or decides to share authority over portions of a contract, the financial protection program becomes vulnerable to the confusion inherent to a system where divided authority exists.

To retain the present system of publishing the Facility Form and endorsements and codifying them in the regulations while still addressing the concerns of the Commission, ANI has suggested adding to the regulations an introductory statement which would make clear that the text of a particular endorsement or change in the Facility Form policy is merely an example of one contract which the Commission would consider as acceptable as proof of financial protection, but that other variations on the text would be considered by the Commission. ANI believes that such a statement would substantially reduce the sense of "imprimatur" that the inclusion of the text in the regulations has at present, while allowing the Commission the option of considering alternatives. Further, ANI argues that such a statement would make clear that the Commission has jurisdiction over the entire contract as evidence of financial protection, thus avoiding the possibility that state regulators could compel changes in text that ANI believes would damage the financial protection program.

The staff does not believe that the changes suggested by ANI or any other changes in its regulations would, or necessarily should, avoid "...the possibility that state regulators could compel changes in text that are damaging to the financial protection program." Publication of the text of the policy is not intended to put a protective blanket over the policy that shields it from state regulatory review and proposed changes. If in fact a state regulatory body requires a change in text, the Commission can consider the specific problem as it arises. Nevertheless, while the staff does not agree with all of ANI's comments, it does believe that certain ANI suggestions have merit. The staff also recognizes that the Commission may not want the impression of endorsing provisions of insurance policies, offered as proof of financial

protection that, at least on their face, do not seem to address the primary concern of the Commission, namely protection of the public. Thus, considering ANI's comments and the Commission's expressed views, we would propose the following changes in the regulations, based to some extent on ANI's comments.

First, the final sentence in §140.15(a)(1) would be revised by adding the underscored language to the existing text so it would read as follows:

"The licensee may furnish such financial protection in the form of the nuclear energy liability insurance policy set forth in §140.91 or in any other form acceptable to the Commission."

Second, a prefatory statement would be included in §140.91 which would read as follows:

§140.91 Form of nuclear energy liability policy for facilities.

"While the text of the policy which follows is an example of a contract which is acceptable to the Commission as evidence of the financial protection required of the licensee by section 170 of the Atomic Energy Act of 1954, as amended, variations on this text will also be considered by the Commission in determining whether the licensee meets the financial protection requirements of the Act. The full text of the policy is published solely for the purpose of completeness. Publication of this text should not be construed as a Commission endorsement of any particular provision pertaining solely to the business relationship between the insurers and the insureds or to any other matter not related to public protection."

By adopting these changes to the regulations, the staff believes that the Commission would still benefit from the traditional approach of publishing the entire Facility Form and endorsements and codifying them in the regulations as well as remove the impression that it was placing its imprimatur on all of the language in the insurance policy.

Therefore, the staff proposes to again publish endorsements NE-50 and NE-51, in their entirety, along with NE-46 and NE-48, two other endorsements not previously published in the Federal Register.

NE-46, which was effective on January 1, 1977, sets forth certain rights of the insurance companies regarding inspections of nuclear facilities and suspension of insurance. NE-48, which was also effective on January 1, 1977, consolidates into a single endorsement a number of previously adopted endorsements. Even though these endorsements are in effect, the Commission will determine, based on the comments received, whether changes in these endorsements are necessary.

As indicated, the previously published endorsements, NE-50 and NE-51, would modify the definition of "insured shipment" to conform to the changes made in the statutory definition of "byproduct material" in Public Law 95-604, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), and also modify Condition 2 of the Facility Form to relieve insurers and persons making inspections from potential liability arising either out of damage to property at the insured facility or suspension of insurance.*

*The Commission in its Federal Register notice of February 18, 1981, requested comments on alternative texts of the endorsements that, among other things, would have deleted the provisions relieving insurers and persons making inspections from potential liability with respect to damage of the insured's property. If the Commission were to adopt the staff's recommendations, relief of liability provisions would then be incorporated into the regulations without the imprimatur of Commission endorsement. It should be noted that with respect to these liability provisions, ANI stated in its comments that "although the provisions of Endorsements NE-50 and NE-51 which relieve insurers from tort liability for damage to an insured facility arising from pool engineering activities do not affect scope of coverage, they do affect the pools' ability to maintain and increase the amount of capacity they can offer. Exposure to liability from engineering activities is a deterrent to insurers participating in the pools. GPU's recent suit against NRC dramatizes insurers' concern. The provision that we have added to the Facility Form to mitigate our member companies concern does affect the "amount" of coverage we are able to provide (as distinguished from the "scope" of that coverage), and so the new provision does relate to "financial protection."

A minor change to Condition 4 of the Facility Form is again proposed which would insert "\$124,000,000" as the amount of nuclear liability insurance provided by ANI to licensees. The remaining \$36,000,000 of the required \$160,000,000 in primary liability insurance coverage is provided by MAELU.

The staff has submitted a companion paper, SECY-81-592, requesting Commission approval of publication of a final rule to codify in Part 140 a standard master policy form which the staff has determined to be adequate proof that a licensee is maintaining the necessary secondary layer of financial protection required by the Commission pursuant to subsection 170b. of the Atomic Energy Act of 1954, as amended. The policy form contains contractual provisions relating to the rights and responsibilities of the insurers and insured and graphically illustrates the difficulty the staff would have if it had to isolate from the full text of the policy only those provisions related directly to protection of the public.

Recommendation:

That the Commission:

- (a) Approve for publication in the Federal Register with a thirty day comment period the notice of proposed rule making to amend Part 140 (Attachment "A");
- (b) Note that pursuant to §51.5(d)(2) of the Commission's regulations neither an environmental impact statement negative declaration nor an environmental impact appraisal need be prepared in connection with the subject amendments;
- (c) Note that if no significant adverse comments or questions are received on the notice of proposed rulemaking and no substantial changes in the text are indicated, the proposed rule will be promulgated in effective form by the Executive Director for Operations.



William J. Dircks
Executive Director for Operations

Enclosure:
1. Attachment "A"

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Wednesday, October 28, 1981.

Commission staff office comments, if any, should be submitted to the Commissioners NLT October 21, 1981, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for consideration at an open meeting during the week of November 2, 1981. Please refer to the appropriate weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

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10 CFR Part 140

FINANCIAL PROTECTION REQUIREMENTS
AND INDEMNITY AGREEMENTS

Miscellaneous Amendments

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is seeking comments on whether to add to its regulations statements which would indicate that the text of a particular endorsement or change in the Facility Form policy is an example of a contract which has been "accepted" as evidence of financial protection but that other variations on the text would be considered by the Commission. Also included for public comment are four endorsements submitted by American Nuclear Insurers making several changes in the Facility Form policy.

DATE: Comments must be received by [30 days after publication]
Comments received after _____, will be considered if it is practical to do so, but assurances of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments or suggestions should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments

Attachment "A"

received may be examined and copied for a fee at the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-9884.

SUPPLEMENTARY INFORMATION: On February 18, 1981, the Commission published in the FEDERAL REGISTER (46 F.R. 12750) two endorsements submitted by American Nuclear Insurers (ANI), one of the two nuclear energy insurance pools. These endorsements proposed changes in the existing Facility Form policy furnished by nuclear reactor licensees as evidence of financial protection. The Commission also sought comment, however, on the broader question as to whether it should continue its traditional approach of publishing in 10 CFR 140.91 the Facility Form policy and endorsements or, alternatively, publish only those provisions of the policy and endorsements that relate to the NRC responsibilities for protection of the public.

Two comments were received on the proposed notice, and both opposed the Commission's proposed modification of its traditional position of publishing the entire nuclear liability insurance policy and endorsements. The first comment, submitted by Baltimore Gas and Electric Company, stated in part that if the Commission does not want to appear to give its

approval to contractual matters between the insured and the insurers that do not affect the protection of the public, specific provisions of the policy and endorsements could be disclaimed. In the second comment, ANI expressed its difficulty in identifying the parts of an insurance policy that would not affect financial protection and furnished examples of changes in the policy which appeared not to be related to financial protection but which upon closer scrutiny were in fact related.

ANI further stated that when the Commission adopts any type of contract as evidence of financial protection, it necessarily accepts the entire contract because the contractual provisions are not separable. ANI further argued that if the Commission either relinquishes or decides to share authority over portions of a contract, the financial protection program becomes vulnerable to the confusion inherent to a system where divided authority exists.

To retain the present system of publishing the Facility Form and endorsements and codifying them in the regulations while still addressing the concerns of the Commission, ANI suggested adding to the regulations an introductory statement which would make clear that the text of a particular endorsement or change in the Facility Form policy is merely an example of one contract which the Commission would consider acceptable as proof of financial protection, but that other variations on the text would be considered by the Commission. ANI believes that such a statement would

substantially reduce the sense of "imprimatur" the inclusion of the text in the regulations has at present, while allowing the Commission the option of considering alternatives. Further, ANI argued that such a statement would make clear that the Commission has jurisdiction over the entire contract as evidence of financial protection, thus avoiding the possibility that state regulators could compel changes in text that ANI believes would damage the financial protection program.

By publishing the entire text of the Facility Form policy and endorsements and codifying them in the regulations, the Commission does not intend to shield the policy from review by state insurance bodies or members of the public. Since changes in the policy will always be published for comment, the Commission will be able to consider requests for changes in the text or petitions for rulemaking. While the Commission does not agree with all of ANI's comments, it does believe that certain of these comments have merit. Therefore, the Commission is proposing to continue publishing the entire Facility Form and endorsements and codifying them in the regulations but with certain qualifying statements to remove the misimpression that the NRC is placing its imprimatur on all of the language in the text.

The Commission is republishing two endorsements, NE-50 and NE-51. The endorsements would modify the definition of "insured shipment" to conform to the changes made in the statutory definition of "byproduct

material" in Public Law 95-604, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Byproduct material was redefined by the UMTRCA to include uranium mill tailings. The pools have proposed amending the definition of "insured shipment" in the Facility Form policy in order to continue to provide coverage for shipments of uranium mill tailings within the scope of the term "insured shipment." Prior to enactment of the UMTRCA, uranium mill tailings were covered under the definition of "source material." This change in the definition of the term "insured shipment" is required since this term had included only shipments of "source material, special nuclear material, spent fuel or waste." Since the insurance policies have covered "byproduct material" only in the form of "spent fuel or waste," the new definition of insured shipment would add the words "or tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." It should be noted that uranium mill tailings shipments are not associated with shipments to or from nuclear facilities for which the licensees are required to maintain financial protection and indemnity under the Price-Anderson Act. The proposed change would accommodate shipments to or from other (non-reactor) facilities where financial protection is not required but where the Facility Form is utilized.

The second change the pools are proposing in the endorsements is a modification to Condition 2 of the Facility Form. Condition 2 authorizes the insurers to inspect the facility and related operations, to examine

certain books and records, and to suspend insurance as to particular insureds in the event of noncompliance with a request by insurers that a condition be corrected. The revised language would relieve insurers and persons or organizations making inspections or examinations on their behalf of potential liability arising either out of damage to property at the insured facility or suspension of insurance. The insurers advocate such changes to facilitate their ability to conduct inspection activities which are geared to minimizing the risk of losses to the pools.

The changes are combined in one endorsement, form NE-51, to be used effective January 1, 1981, for policies already issued. The same changes are included as a part of the amendatory endorsement NE-50 which will be used with newly issued policies effective on or after January 1, 1981.

The Commission is also publishing for comment two other endorsements. NE-46, effective on January 1, 1977, sets forth certain rights of the insurance companies regarding inspections of nuclear facilities and suspensions of insurance. NE-48, also effective on January 1, 1977, consolidates a number of previous endorsements, including NE-46. Based on the comments received, the Commission will consider whether these endorsements, which are presently in effect, should be modified.

A minor change to Condition 4 of the Facility Form to insert "\$124,000,000" is also proposed. The \$124,000,000 figure reflects the amount of nuclear liability insurance provided by ANI to licensees. The remaining \$36,000,000 of the required \$160,000,000 in primary liability insurance coverage is provided by MAELU, the other nuclear insurance pool. This proposed addition is made in paragraph IV of the Amendatory Endorsement. The remaining paragraphs of the Amendatory Endorsement set out below are unchanged. Such paragraphs merely reflect previously approved changes to the Facility Form.

Paperwork Reduction Act Statement

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Public Law 96-511), the NRC has made a preliminary determination that this proposed rule does not impose new reporting or record-keeping requirements. This proposed rule has nevertheless been submitted to the Office of Management and Budget for its consideration of any potential or new reporting or record-keeping requirements, pursuant to Public Law 96-511.

Regulatory Flexibility Statement

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects two named nuclear liability

insurance underwriting pools. These two pools are the only ones in the country writing nuclear liability policies and do not fall within the definition of a small business found in section 3 of the Small Business Act, 15 U.S.C. 632.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Part 140, Code of Federal Regulations, are contemplated.

1. Section 140.15(a)(1) is revised to read as follows:

§140.15 Proof of financial protection

(a)(1) Proof of financial protection in the case of licensees who maintain financial protection in whole or in part in the form of liability insurance shall (with respect to such insurance) consist of a copy of the liability policy (or policies) together with a certificate by the insurers issuing such policy stating that said copy is a true copy of a currently effective policy issued to the licensee. The licensee may furnish such financial protection in the form of the nuclear energy liability insurance policy set forth in §140.91 or in any other form acceptable to the Commission.

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2. A prefatory statement is added to Section 140.91 to read as follows:

§140.91 Appendix A - Form of nuclear energy liability policy for facilities.

While the text of the policy which follows is an example of a contract which is acceptable to the Commission as evidence of the financial protection required of the licensee by section 170 of the Atomic Energy Act of 1954, as amended, variations on this text will also be considered by the Commission in determining whether the licensee meets the financial protection requirements of the Act. The full text of the policy is published solely for the purpose of completeness. Publication of this text should not be construed as a Commission endorsement of any particular provision pertaining solely to the business relationship between the insurers and the insureds or to any other matter not related to public protection.

* * * * *

3. Section 140.91, Appendix A, is amended by adding the following endorsements to read as follows:

NE-50 (1/1/80), Amendatory Endorsement (Indemnified Nuclear Facility)

It is agreed that:

I. In Insuring Agreement III:

"DEFINITIONS"

- A. The first sentence of the definition of "nuclear facility" is amended to read: "nuclear facility" means "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or by Mutual Atomic Energy Liability Underwriters.
- B. The definition of "indemnified nuclear facility" is replaced by the following: "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 by 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;
- C. Solely with respect to an "insured shipment" to which this policy applies as proof of financial protection required by the Nuclear Regulatory Commission. Subdivision (2) of the definition of "nuclear energy hazard" is amended to read:
- (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 the handling and temporary storage incidental thereto, within
 - (a) the territorial limits of the United States of America, its territories or possessions, Puerto Rico or the Canal Zone; or
 - (b) international waters or airspace, provided that the nuclear material is in the course of transportation for the purpose of going to or returning from a port or place of refuge as the result of an emergency.

- D. The definition of "insured shipment" is replaced with the following:

"insured shipment" means shipment of source material, special nuclear material, spent fuel or 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 any location except an indemnified nuclear facility, 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, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

- E. As used herein, "financial protection" has the meaning given it in the Atomic Energy Act of 1954, as amended.

- II. Insuring Agreement IV is replaced by the following:

IV. APPLICATION OF POLICY. This policy applies only to bodily injury or property damage (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured, not later than ten years after the end of the policy period.

- III. Condition 2 is replaced by the following:

2. INSPECTION: SUSPENSION. The companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject of this insurance and any property insurance afforded the insured through American Nuclear Insurers. If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such conditions be corrected without delay. In the event of noncompliance with such request, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuation of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend this insurance with respect to named insured and such other person or organization effective 12:00 midnight of the next business day of such

Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

Neither the right to make such inspections and examinations nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation. In consideration of the issuance or continuation of this policy, the insured agrees that neither the companies nor any persons or organizations making such inspections or examinations on their behalf shall be liable with respect to injury to or destruction of property at the facility, or any consequential loss or expense resulting therefrom, or any loss resulting from interruption of business or manufacture, arising out of the making of or a failure to make any such inspection or examination, or any report thereon, or any such suspension of insurance, but this provision does not limit the contractual obligations of the companies under this policy or any policy affording the insured property insurance through American Nuclear Insurers.

IV. Condition 4 is replaced by the following:

4. LIMITATION OF LIABILITY: COMMON OCCURRENCE. Any occurrence or series of occurrences resulting in bodily injury or property damage arising out of the radioactive, toxic, explosive or other hazardous properties of
- (a) nuclear material discharged or dispersed from the facility over a period of days, weeks, months or longer and also arising out of the properties of other nuclear material so discharged or dispersed from one or more other nuclear facilities insured under any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association, or
 - (b) source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under this policy and also arising out of such properties of other source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under one or more other

Nuclear Energy Liability Policies (Facility Form) issued by Nuclear Energy Liability Insurance Association, shall be deemed to be a common occurrence resulting in bodily injury or property damage caused by the nuclear energy hazard.

With respect to such bodily injury and property damage (1) the total aggregate liability of the members of the Nuclear Energy Liability Policies (Facility Form), including this policy, applicable to such common occurrence shall be the sum of the limits of liability of each such policies, the limit of liability of each such policy being as determined by Condition 3 thereof, but in no event shall such total aggregate liability of such members exceed \$124,000,000; (2) the total liability of the companies under this policy shall not exceed that proportion of the total aggregate liability of the members of Nuclear Energy Liability Insurance Association, as stated in clause (1) above, which (a) the limit of liability of this policy, as determined by Condition 3, bears to (b) the sum of the limits of liability of all such policies issued by such members, the limit of liability of each such policy being as determined by Condition 3 thereof.

The provisions of this condition shall not operate to increase the limit of the companies' liability under this policy.

- V. The second paragraph of Condition 12, "OTHER INSURANCE," is amended to read:

If the insured has other valid and collectible insurance (other than such concurrent insurance or any other nuclear energy liability insurance issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters to any person or organization) applicable to loss or expense covered by this policy, the insurance afforded by this policy shall be excess insurance over such other insurance; provided, with respect to any person who is not employed at and in connection with the facility, such insurance as is afforded by this policy for bodily injury to an employee of the insured arising out of and in the course of his employment shall be primary insurance under such other insurance.

- VI. Paragraph (c) of Condition 16, "COMPANY REPRESENTATION," is amended to read:

(c) Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other

communications required by this policy to be given to the companies may be given to such agent, at its office at the Exchange, Suite 245, 270 Farmington Avenue, Farmington, Connecticut 06032, with the same force and effect as if given directly to the companies. Any requests, demand or agreements made by such agent shall be deemed to have been made directly by the companies.

Effective Date of this Endorsement _____ 12:01 A.M. Standard Time to form a part of policy No. _____.

Issued to _____ For the subscribing companies.

Date of Issue _____.

By _____ General Manager.

Endorsement No. _____
NE-50 (1/1/81)

NE-51 (1/1/81)--Amendment of Definition of Condition 2 "Inspection; Suspension" and "Insured Shipment" (Indemnified Nuclear Facility)

It is agreed that:

(1) Condition 2 "INSPECTION; SUSPENSION" is replaced by the following:

2. INSPECTION; SUSPENSION. The companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject of this insurance and any property insurance afforded the insured through American Nuclear Insurers. If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuation of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend this insurance with respect to the named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

Neither the right to make such inspections and examinations nor the making thereof nor advice or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation. In consideration of the issuance or continuation of this policy, the insured agrees that neither the companies nor any persons or organizations making such inspections or examinations on their behalf shall be liable with respect to injury to or destruction of property at the facility, or any consequential loss or expense resulting therefrom, or any loss resulting from interruption of business or manufacture, arising out of the making of or a failure to make any such inspection or examination, or any report thereon, or any such suspension of insurance, but this provision does not limit the contractual obligations of the companies under this policy or any policy affording the insured property insurance through American Nuclear Insurers.

(2) The definition of "insured shipment" in Insuring Agreement III, "DEFINITIONS," is replaced by the following: "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 any location except an indemnified nuclear facility, 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, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

Effective date of this Endorsement _____ 12:01 A.M. Standard
Time to form a part of Policy No. _____

Issued to _____ For the subscribing companies.

Date of Issue _____.

By _____ General Manager.

Endorsement No. _____

NE-51 (1/1/81)

NE-46 (1/1/77) Amendatory Endorsement

AMENDMENT OF CONDITION 2 "INSPECTION: SUSPENSION"
(Facility Form)

It is agreed that Condition 2 "INSPECTION; SUSPENSION" is replaced by the following:

- 2. INSPECTION; SUSPENSION. the companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject matter of this insurance. Neither the right to make inspections and examinations nor the making thereof nor any advance or report resulting therefrom shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation.

If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a representative of the companies may request that such condition be corrected without delay. In the event of non-compliance with such request, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuance of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend the insurance with respect to the named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such Commission receives such notice. The period of such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

Effective Date of this Endorsement _____ To form a part of Policy
12:01 A.M. Standard Time

No. _____

Issued to _____

Date of Issue _____ For the subscribing companies

By _____
General Manger

Endorsement No. _____ Countersigned by _____

NE-48 (1/1/77)

AMENDATORY ENDORSEMENT
(Facility Form)

It is agreed that:

I. In Insuring Agreement III, "DEFINITIONS"

- A. The first sentence of the definition of "nuclear facility" is amended to read:

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

- B. The definition of "indemnified nuclear facility" is replaced by the following:

"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 by 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;

II. Insuring Agreement IV is replaced by the following:

- IV. APPLICATION OF POLICY. This policy applies only to bodily injury or property damage (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured, not later than ten years after the end of the policy period.

III. Condition 2 is replaced by the following:

2. INSPECTION: SUSPENSION. The companies shall at any time be permitted but not obligated to inspect the facility and all operations relating thereto and to examine the insured's books and records as far as they relate to the subject of this insurance. Neither the right to make inspections and examinations nor the making thereof nor any advice or report resulting therefrom shall constitute an undertaking on behalf of or for the benefit of the insured or others, to determine or warrant that such facility or operations are safe or healthful, or are in compliance with any law, rule or regulation. If a representative of the companies discovers a condition which he believes to be unduly dangerous with respect to the nuclear energy hazard, a

representative of the companies may request that such condition be corrected without delay. In the event of non-compliance with such request, a representative of the companies may, by notice to the named insured, to any other person or organization considered by the companies to be responsible for the continuance of such dangerous condition, and to the United States Nuclear Regulatory Commission, suspend the insurance with respect to the named insured and such other person or organization effective 12:00 midnight of the next business day of such Commission following the date that such suspension shall terminate as of the time stated in a written notice from the companies to the named insured and to each such person or organization that such condition has been corrected.

IV. Condition 4 is replaced by the following:

4. LIMITATION OF LIABILITY: COMMON OCCURRENCE.

Any occurrence of series of occurrences resulting in bodily injury or property damage arising out of the radioactive, toxic, explosive or other hazardous properties of

(a) nuclear material discharges or dispersed from the facility over a period of days, weeks, months or longer and also arising out of the properties of other nuclear material so discharges or dispersed from one or more other nuclear facilities insured under any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association, or

(b) source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under this policy and also arising out of such properties of other source material, special nuclear material, spent fuel or waste in the course of transportation for which insurance is afforded under one or more other Nuclear Energy Liability Policies (Facility Form) issued by Nuclear Energy Liability Insurance Association, shall be deemed to be a common occurrence resulting in bodily injury or property damage caused by the nuclear energy hazard.

With respect to such bodily injury and property damage ~~(1) the total aggregate liability of the members of the~~ Nuclear Energy Liability Insurance Association under all Nuclear Energy Liability Policies (Facility Form), including this policy, applicable to such common occurrence shall

be the sum of the limits of liability of all such policies, the limit of liability of each policy being as determined by Condition 3 thereof, but in no event shall such total aggregate liability of such members exceed \$96,875,000; (2) the total liability of the companies under this policy shall not exceed that proportion of the total aggregate liability of the members of Nuclear Energy Liability Insurance Association, as stated in clause (1) above, which (a) the limit of liability of this policy, as determined by Condition 3, bears to (b) the sum of the limits of liability of all such policies issued by such members, the limit of liability of each such policy being as determined by Condition 3 thereof.

The provisions of this condition shall not operate to increase the limit of the companies' liability under this policy.

- V. The second paragraph of Condition 12, "OTHER INSURANCE," is amended to read:

If the insured has other valid and collectible insurance (other than such concurrent insurance or any other nuclear energy liability insurance issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters to any person or organization) applicable to loss or expense covered by this policy, the insurance afforded by this policy shall be excess insurance over such other insurance; provided with respect to any person who is not employed at and in connection with the facility, such insurance as is afforded by this policy for bodily injury to an employee of the insured arising out of and in the course of this employment shall be primary insurance under such other insurance.

- VI. Paragraph (c) of Condition 16, "COMPANY REPRESENTATION," is amended to read:

(c) Nuclear Energy Liability Insurance Association is the agent of the companies with respect to all matters pertaining to this insurance. All notices or other communications required by this policy to be given to the

companies may be given to such agent, at its office at the Exchange, Suite 245, 270 Farmington Avenue, Farmington, Connecticut 06032, with the same force and effect as if given directly to the companies. Any requests, demands or agreements made by such agent shall be deemed to have been made directly by the companies.

Effective Date of
this Endorsement 12:01 A.M. Standard Time To form a part of Policy

No. NF _____

Issued to _____

Date of Issue _____ For the subscribing companies

By _____
General Manager

Endorsment No. _____ Countersigned by _____

NE-48
(1/1/77)

(Secs. 161(b) and (i), Pub. L. 83-703 Stat. 948, 949 (42 U.S.C. 2201(b), (i)); Sec. 170 Pub. L. 852-56. 71 Stat. 576, Pub. L. 94-197, 89 Stat. 1111 (42 U.S.C. 2210); Sec. 201, Pub. L. 93-438, as amended, 88 Stat. 1242, 89 Stat. 413 (42 U.S.C. 5841).

Dated at Washington, D.C. this day of _____, 1981.

For the Nuclear Regulatory Commission

Samuel J. Chilk
Secretary of the Commission.

Attachment "A"