



Department of the Interior  
US Geological Survey  
Box 25046 MS-974  
Denver CO, 80225

July 15, 2009

Document Control Desk  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Sirs:

This request is submitted for the USGS research reactor license R-113 (Docket 50-274) for amendment of Indemnity Agreement D-10. We request that Item 3 of the Attachment in the subject Agreement be changed to read,

*"Item 3 Location*

*The Reactor Room, Reactor Control Room, Reactor Facility Offices and Laboratories (Rooms 149-152, 154, 157 and reactor hallway) in the Nuclear Science Building (Building 15), Denver Federal Center, Denver, Colorado."*

The current wording of this paragraph is,

*"Item 3 Location*

*The Reactor Room (Room No. 149) and the Control Area (Room No. 150) in the Nuclear Science Building (Building 15), Denver Federal Center, Denver, Colorado."*

The change is being requested so that additional reactor facility spaces will be covered by the indemnity agreement. These are spaces where byproduct materials that have been created by the reactor are frequently used or stored. The change will also help to reduce confusion in these spaces about whether licensed materials are possessed on the reactor license or the USGS byproduct material license. All of the spaces listed in our proposed wording are controlled access spaces that are under the control of the USGS reactor staff.

A copy of our complete Indemnity Agreement is attached, and a drawing of the affected area of the USGS Building 15 is also attached to show the affected spaces. The spaces that are desired to be covered by the indemnity agreement are labeled with room numbers or other appropriate designators and are marked by cross-hatching on the attached map.

A020  
NRR

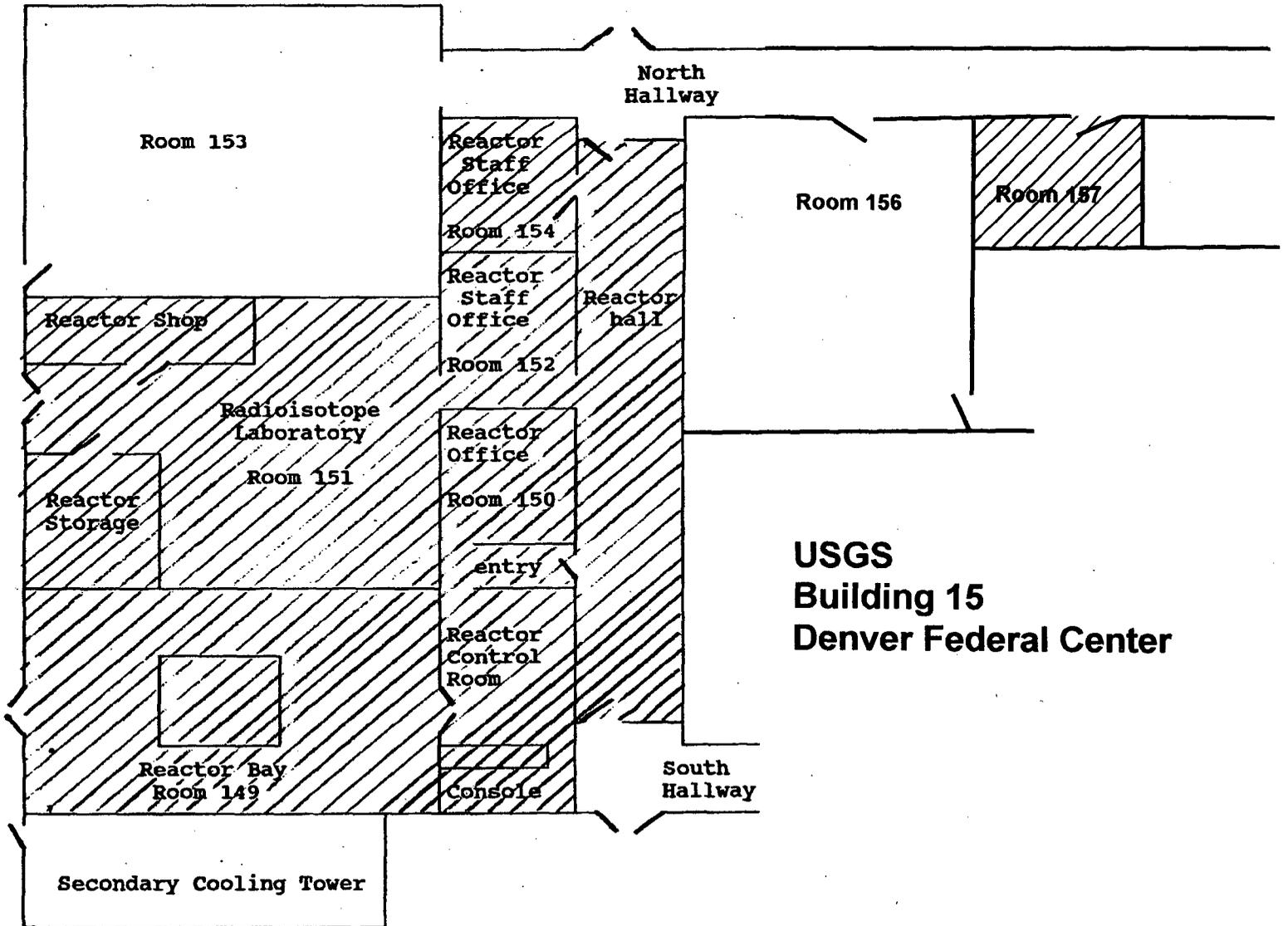
Please contact me if you have any questions concerning this request.

Sincerely,

A handwritten signature in black ink that reads "Tim DeBey". The signature is written in a cursive style with a large, stylized "T" and "D".

Tim DeBey  
USGS Reactor Supervisor

Copy to:  
Linh Tran 12 D3 NRR/ADRO/DPR/PRT  
Jo Ann Simpson 12 D3 NRR/ADRO/DPR/PFP



**USGS  
Building 15  
Denver Federal Center**

UNITED STATES  
ATOMIC ENERGY COMMISSION  
WASHINGTON, D.C. 20545

Effective NOV 30, 1968. Indemnity Agreement No. D-10, dated April 8, 1968, as amended, is hereby further amended in its entirety, and the following substituted therefore:

This Indemnity Agreement No. D-10 is entered into by and between the U.S. Geological Survey, Department of the Interior

(hereinafter referred to as the "licensee") and the United States Atomic Energy Commission (hereinafter referred to as the "Commission") pursuant to subsection 170c 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, including an extraordinary nuclear 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, including an extraordinary nuclear 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 170c 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 170c 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. "Extraordinary nuclear occurrence" means an event which the Commission has determined to be an extraordinary nuclear occurrence as defined in the Atomic Energy Act of 1954, as amended.
4. "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 predetermination 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 170c or k of the Act.

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

6. "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.

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

8. "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).

9. "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

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 within 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. With respect to any extraordinary nuclear occurrence to which this agreement applies, the Commission, and the licensee on behalf of itself and other persons indemnified, insofar as their interests appear, each agree to waive

(a) any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

(1) negligence;

(2) contributory negligence;

(3) assumption of the risk;

(4) unforeseeable intervening causes, whether involving the conduct of a third person or an act of God. As used herein, "conduct of the claimant" includes conduct of persons through whom the claimant derives his cause of action;

(b) any issue or defense as to charitable or governmental immunity

(c) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than ten years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

5. The waivers set forth in paragraph 4 of this Article:

(a) shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(b) shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(c) shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;

Provided, however, that with respect to an extraordinary nuclear occurrence occurring at the facility, a claimant who is employed at the facility in connection with the construction of a nuclear reactor with respect to which no operating license has been issued by the Atomic Energy Commission shall

not be considered as employed in connection with the activity where the extraordinary nuclear occurrence takes place if:

- (1) the claimant is employed exclusively in connection with the construction of a nuclear reactor, including all related equipment and installations at the facility, and
- (2) no operating license has been issued by the AEC with respect to the nuclear reactor, and
- (3) the claimant is not employed in connection with the possession, storage, use or transfer of nuclear material at the facility.

(d) shall not apply to any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law;

(e) shall be effective only with respect to those obligations set forth in this agreement;

(f) shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (1) the limit of, liability provisions under subsection 170e of the Atomic Energy Act of 1954, as amended, and (2) the terms of this agreement.

6. 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) \$160,000,000, As used in this Article "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."

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

8. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not, with respect to any nuclear incident, in the aggregate exceed whichever of the following is the lower: (a) \$500,000,000 or (b) with respect to a common occurrence, \$560,000,000 less the sum of the amounts of financial protection established under all applicable agreements.

9. Bankruptcy or insolvency of any person indemnified or of the estate of any person indemnified shall not relieve the Commission of any of its obligations hereunder.

### ARTICLE III

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 there-under may be assigned or transferred without the approval of the Commission.

#### ARTICLE IV

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 V

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 VI

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 4(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 agreements

UNITED STATES ATOMIC ENERGY COMMISSION

Indemnity Agreement No. D-10

ATTACHMENT

Item 1 - Licensee      U.S. Geological Survey  
                                 Department of Interior  
                                 Address      Denver, Colorado 80225

Item 2 - License number or numbers  
                                 R-113

Item 3 Location

The Reactor Room (Room No. 149) and the Control Area (Room No. 150) in the Nuclear Science Building (Building 15), Denver Federal Center, Denver, Colorado.

Item 4 The indemnity agreement designated above, of which this Attachment is a part, is effective as of 12:01 a.m., on the eighth day of April 1968.

FOR THE UNITED STATES ATOMIC ENERGY COMMISSION

Eber R. Price, Director  
Division of State and Licensee Relations

Accepted JAN 27 1969

By      U.S. Geological Survey  
                                 Department of Interior