



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 19, 1980

William B. Schultz
Alan B. Morrison
Public Citizen Litigation Group
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036

Dear Sirs:

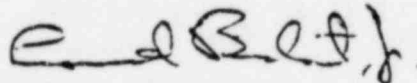
This responds to your letter dated December 20, 1979, concerning "NRC Regulations on Insurance Requirements Under the Price-Anderson Act." Specifically, your letter calls into question the validity of the NRC regulation implementing 42 U.S.C. 2210(b), namely, 10 CFR 140.11(a)(4). This regulation was last amended on May 1, 1979. See 44 Fed. Reg. 20632 (April 6, 1979). The current level specified in the regulation as the "maximum amount of liability insurance available" required for large power reactors is \$160 million.

NRC regulations implementing Section 170b of the Price-Anderson Act have historically adopted the amount provided by the nuclear liability insurance pools as the "maximum amount available" from private sources at reasonable cost and on reasonable terms. (See the Federal Register citations following 10 CFR 140.11, beginning in 1960). During this twenty-year period, the Price-Anderson Act has twice been thoroughly re-examined by Congress, which was aware of the Commission's implementation of this section. We have been unable to locate any legislative history indicating Congressional dissatisfaction with the insurance program then in effect. Particularly during the 1974-1975 review, when the "secondary layer" of retrospective premiums was developed, this matter was under close Congressional scrutiny. Nevertheless, Congress did not amend Section 170b as to primary insurance, nor did it require the Commission to alter its regulations implementing that section.

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It is therefore our view that 10 CFR 140.11 was validly promulgated by the Commission. Your letter, however, presents certain policy issues which deserve more detailed consideration. As a general matter, any increase in the primary financial protection layer will lessen the amount of government indemnity and could, depending on the extent of the increase and the size of the secondary financial protection layer, increase the amount of funds available to pay public liability claims. This is a desirable objective. You have requested that the Commission amend its regulations in this area and we are therefore referring your letter to the Executive Director for Operations for appropriate action. (See 10 CFR 2.802, 44 Fed. Reg. 61320). Whether the facts now justify an increase in the primary financial protection layer can be appropriately explored in the rulemaking context.

Sincerely,



Leonard Bickwit, Jr.
General Counsel

NUCLEAR REGULATORY COMMISSION

/Docket No. PRM-50-26/

William K. Watson
Filing of Petition for Rulemaking

AGENCY: U. S. Nuclear Regulatory Commission

ACTION: Publication of Petition for Rulemaking from William K. Watson

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment, as a petition for rulemaking, a motion filed before the Commission on January 6, 1980, by William K. Watson. This petition, which has been assigned Docket No. PRM-50-26, requests that the Commission amend 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," to provide that an applicant for a license for a facility which will store certain quantities of nuclear products be required to design the facility to protect against release to the atmosphere of these products if the facility is attacked by nuclear weapons detonated at ground level and having an equivalent yield of up to 5 megatons.

DATE: Comment period expires *APR 15 1980*

ADDRESSES: A copy of the petition for rulemaking is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555.

All persons who desire to submit written comments or suggestions concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Joseph M. Felton, Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Telephone: 301-492-7211.

SUPPLEMENTARY INFORMATION: The pertinent paragraph of the Commission's regulations, 10 CFR §50.13, now reads as follows:

An applicant for a license to construct and operate a production or utilization facility, or for an amendment to such license, is not required to provide for design features or other measures for the specific purpose of protection against the effects of (a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or (b) use or deployment of weapons incident to U.S. defense activities.

The petitioner requests that this paragraph be replaced by the following wording:

An applicant for a license to construct a production or utilization facility, or for an amendment to such license, wherein it is contemplated there will be stored anywhere within the facility nuclear products with a radioactive half life of one year or more in quantities in excess of 100,000 Curies, shall be required to design the facility in such a manner that the nuclear products cannot be released to the atmosphere by the use of a nuclear weapon with an equivalent yield of less than five (5) megatons which is detonated at ground level at the geographical location of any structures at the facility which contain the aforesaid quantities of radioactive material.

The petitioner alleges that nuclear armed cruise missiles are now able with reasonable probability to directly impact a building, pond, or storage tank and disseminate the contents over a wide region. In support of his contentions, the petitioner attaches an article from an unidentified publication, entitled "Why Nuclear Power Should go Underground". This article refers to Government-sponsored reports which, according to the article, indicate that a direct hit by nuclear weapons in the 20- to 100- kiloton range could smash the reactor containment vessel and release its contents.

Dated at Washington, D. C., this

day of

For the Nuclear Regulatory Commission

Samuel J. Chilk
Secretary of the Commission