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MEMORANDUM FOR: Bill M. Morris, Director  
Division of Regulatory Applications  
Office of Nuclear Regulatory Research

FROM: Donald A. Cool, Chief  
Radiation Protection and Health Effects Branch  
Division of Regulatory Applications  
Office of Nuclear Regulatory Research

SUBJECT: PUBLIC COMMENTS ON NOTICE OF PROPOSED RULEMAKING URANIUM  
ENRICHMENT REGULATIONS (56FR46739)

This is in response to your memorandum dated August 23, 1991, requesting a summary of public comments submitted in rulemaking action.

On September 16, 1991, the Commission published for public comment proposed amendments to 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150, and 170 concerning the licensing of uranium enrichment facilities (Attachment 1). The comment period expired on December 2, 1991, with the receipt of two letters (Attachments 2 and 3). The Environmental Protection Agency responded with no comments.

The non substantive clarification wording change suggested by "Winston & Strawn" concerning the proposed change to 10 CFR Part 140 will be adopted. Use of "nuclear liability insurance," as suggested, in place of "financial protection" will remove any perceived association with the "Price-Anderson Act" which is not intended. This change has the support of R. Fonner, OGC.

The next milestone is final rulemaking to the EDO by March 7, 1992.

Original Signed By:

Donald A. Cool, Chief  
Radiation Protection and  
Health Effects Branch  
Division of Regulatory Applications  
Office of Nuclear Regulatory Research

Attachments:  
As stated

DISTRIBUTION:  
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Cir./Chron  
JWang  
CNilsen

\*See previous concurrences

OFFC:RPHEB:DRA\*  
NAME:CNilsen:tlb:dm  
DATE:12/19/91

RPHEB:DRA\*  
JWang  
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DCool  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DOCKET NUMBER **PR 2, 40, 50 ET.AL.**  
PROPOSED RULE

(56FR46739)

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OFFICE OF ENFORCEMENT

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Mr. Samuel J. Chilk  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Mr. Chilk:

In accordance with Section 309 of the Clean Air Act and the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA) has reviewed the U.S. Nuclear Regulatory Commission's proposed rule concerning 10 CFR Parts 2, 40, 50, 51, 70, 75, 110, 140, 150 and 170 (uranium enrichment regulations) and has no comments.

Thank you for the opportunity to review the proposed rule. Should you have further need to contact EPA regarding this rulemaking, please have your staff contact Ms. Susan Offerdal of my staff at (202) 260-5059.

Sincerely,

Richard E. Sanderson  
Director  
Office of Federal Activities

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DOCKET NUMBER  
PROPOSED RULE

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(56 FR 46739)  
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USNRC

WINSTON & STRAWN

FREDERICK H. WINSTON (1853-1886)  
SILAS H. STRAWN (1891-1946)

1400 L STREET, N.W.  
WASHINGTON, D.C. 20005-3502 '91 DEC -2 P3:57

(202) 371-5700

FACSIMILE (202) 371-5950

WRITER'S DIRECT DIAL NUMBER

CHICAGO OFFICE  
35 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60601  
(312) 558-5600

NEW YORK OFFICE  
175 WATER STREET  
NEW YORK, NY 10038-4981  
(212) 269-2500

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December 2, 1991

PDR  
AD90-2  
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Mr. Samuel J. Chilk  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subj: Notice of Proposed Rulemaking  
Uranium Enrichment Regulations  
(RYN 3150-AD90)  
56 Fed. Reg. 46,739 (Sept. 16, 1991)

Dear Mr. Chilk:

In accordance with the above-referenced Notice of Proposed Rulemaking (the Notice), we hereby submit the following comments on behalf of Louisiana Energy Services, L.P. (LES). LES has a substantial interest in the proposed regulations that would govern uranium enrichment facilities. LES filed with the NRC, on January 31, 1991, an application for a license to possess and use byproduct, source, and special nuclear material and to enrich natural uranium to a maximum of five percent U-235 by the gas centrifuge process. LES operations under this application would specifically be governed by the proposal contained within the above-referenced Notice. Receipt of the LES application has been noticed in the Federal Register. 56 Fed. Reg. 23,310 (May 21, 1991).

LES generally supports the proposed regulations and urges the Commission to promulgate the proposal with specific changes as suggested below.

Comments of LES Concerning Financial  
Protection Requirements and Indemnity Agreements

Section 5 of the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, Pub. L. 101-575, "Licensing of Uranium Enrichment Facilities" (the Act), provides that the NRC must require "liability insurance" for licenses issued for uranium enrichment facilities to cover liability claims "arising out of or

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resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source or special nuclear material." 104 Stat. 2836. The Act further specifically provides that "[s]ection 170 of this Act [the Price-Anderson Act] shall not apply to any license under section 53 or 63 for a uranium enrichment facility constructed after the date of enactment of this section." Id. (emphasis added). In summary, the Congress intended in the Act that the NRC adopt requirements for "liability insurance" for uranium enrichment facilities. The Congress also specifically intended, in the Act, that the Price-Anderson Act, 42 U.S.C. § 2210, not apply to uranium enrichment facilities.

The amendments proposed in the Notice are intended to conform Part 140 to the Act to require liability insurance for uranium enrichment facilities. 56 Fed. Reg. at 46,740. Unfortunately, the language used in the proposal could be construed to imply that the Price-Anderson indemnification scheme applies to uranium enrichment facilities, contrary to congressional intent. Proposed Section 140.1(b) would provide that

The regulations in this part are issued to provide appropriate procedures and requirements for determining:

\* \* \*

(b) The financial protection required of uranium enrichment facility licensees pursuant to Section 193 of the Atomic Energy Act of 1954 (88 Stat. 919), as amended.

56 Fed. Reg. at 46,745 (emphasis added). Further, a new Section 140.13b would read, in part, as follows:

**§ 140.13b Amount of financial protection required for uranium enrichment facilities**

Each holder of a license issued under parts 40 or 70 of this chapter for a uranium enrichment facility that involves the use of source material or special nuclear material is required to have and maintain financial protection in the form of liability insurance. . . . Proof of financial protection must be filed with the Commission as required by § 140.15 before issuance of a license for a uranium enrichment facility under parts 40 and 70 of this chapter.

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56 Fed. Reg. at 46,745-46 (emphasis added).

Both of these proposed provisions ostensibly use the term "financial protection" to describe the nuclear liability insurance that is to be maintained for a uranium enrichment facility. The proposed sections implicitly assume that the term "financial protection" is simply a synonym for liability insurance. This, however, is not the case. "Financial protection" is a term of art which is defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 et seq. (AEA), as follows:

"financial protection" means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.

42 U.S.C. § 2014(k) (emphasis added). The term "public liability" is itself implicated by its use in the definition of "financial protection." "Public liability" is another term of art for purposes of the AEA. The AEA defines "public liability" as

any legal liability arising out of or resulting from a nuclear incident . . . .

42 U.S.C. § 2014(w) (emphasis added). Again, the term "nuclear incident" is implicated by the use of "financial protection." And again, "nuclear incident" has special meaning under the AEA. "Nuclear incident" is defined as

any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material . . . .

42 U.S.C. § 2014(j) (emphasis added). In terms of the Price-Anderson Act, an extraordinary nuclear occurrence triggers waivers of defenses that are only applicable in Price-Anderson cases. 42 U.S.C. § 2210(n)(1). Thus, the use of the term "financial protection," and the statutory construction that necessarily accompanies use of that term ("financial protection" includes "public liability" which includes "nuclear incident" which includes "extraordinary nuclear occurrence"), leaves an ambiguity that the Price-Anderson coverage, including waivers of defenses thereunder,

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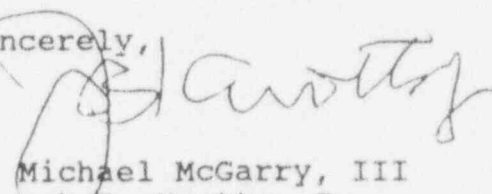
could apply to uranium enrichment facilities, a result clearly contrary to the intent of Congress as set out in the Act.<sup>1/</sup>

To avoid such a result, we urge the Commission to simply refer, in the proposed sections 140.1(b) and 140.13b, to "nuclear liability insurance" in place of the proposed term "financial protection." Substitution of this language would accomplish the stated purpose of this rulemaking, i.e., to conform NRC regulations with the requirements of the Act. If our suggestion is incorporated, the regulation would still require LES to obtain nuclear liability insurance, without any possibility of application of the Price-Anderson Act to uranium enrichment facilities. Thus, Congressional intent would be satisfied.

#### Conclusion

We appreciate the opportunity to comment on this proposed rulemaking.

Sincerely,



J. Michael McGarry, III  
Joseph B. Knotts, Jr.  
Mitchell S. Ross

Counsel to  
Louisiana Energy Services, L.P.

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<sup>1/</sup> See 104 Stat. 2836 ("Section 170 of this Act [Price-Anderson Act] shall not apply to any license under section 53 or 63 for a uranium enrichment facility constructed after the date of enactment of this section").