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# AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

## EXECUTIVE COUNCIL

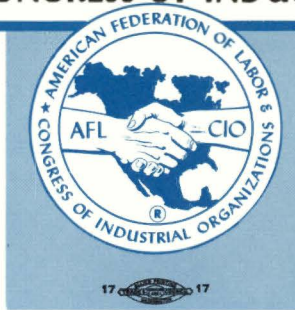
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May 26, 1971

*Acknowledged by card 5/28/71*



Mr. W. B. McCool  
Secretary of the Commission  
Atomic Energy Commission  
Washington, D. C. 20545

Attention: Chief Public Proceedings Branch

Dear Sir:

The Federal Register, Volume 36, Number 88, published Thursday, May 6, 1971, invited interested persons to submit comments or suggestions concerning proposed amendments to 10 CFR 140, Financial Protection Requirements and Indemnity Agreements, and a proposed endorsement to the facility form of nuclear liability insurance policy furnished as financial protection, to clarify the waivers of defenses provisions in the facility form and in the AEC indemnity agreement forms.

AFL-CIO representatives and representatives of the AEC have met to discuss the waivers of defenses problem on a number of occasions during the past year. The proposed amendment and related endorsement to the nuclear energy liability insurance policy clarifying that a licensee's workers who are employed at an indemnified site exclusively in connection with the construction, including maintenance, of a nuclear reactor with respect to which no operating license has been issued, and who are not employed in connection with the possession, storage, use, or transfer of nuclear material at the facility, will maintain their rights under the waivers of defenses provisions is consistent with the views expressed by AFL-CIO representatives throughout the course of the meetings.

The AFL-CIO is pleased to note in the proposals the expressed intention of the insurers and the Commission that claimants employed exclusively in connection with the construction of a nuclear reactor include those employees engaged in maintaining a facility, the construction of which is essentially complete in an appropriate state of readiness pending the receipt by the applicant of the operating license, even though the maintenance duties in connection with the facility may not be full time.

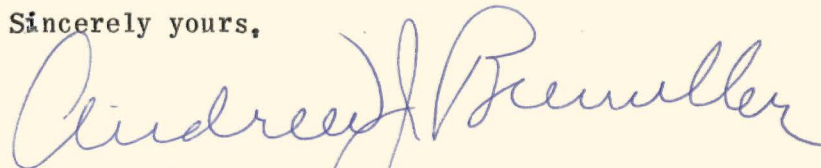
However, there are other problems related to the waivers of defenses the amendments fail to clarify. The proposed amendments relate to workers employed by the licensee at an indemnified site exclusively in connection with the construction, including maintenance, of a nuclear reactor . . . . This language makes no provision for workers employed by the licensee who move between jobs at the indemnified site and jobs at other locations. The language also fails to clarify what protection, if any, is afforded workers other than construction workers including maintenance, e.g., timekeepers, payroll personnel and others. Individuals engaged in work of this nature -- service work as compared to construction or maintenance work -- employed by the licensee at an indemnified site should, in our opinion, be afforded the protection of the waivers of defenses.

We are also concerned about the application of the waivers of defenses to workers employed by subcontractors in connection with the construction, maintenance, or service work related to a nuclear reactor. Public employees -- workers employed by political entities, state, county, city, water district, and many others -- should also be afforded the waivers of defenses protection. We would also hope that workers employed by public utility firms -- light, gas, and water companies required to perform work at indemnified sites would be extended the protection of the waivers of defenses provisions.

It is entirely possible that the Commission would view the various working groups we mentioned above as members of the public. If this were the case, in the event of an extraordinary nuclear occurrence, we assume, they would be afforded the protection of the waivers of defenses provisions.

Since this is an assumption, on our part, we would appreciate receiving from you a written reply concerning the applicability of the waivers of defenses to the workers mentioned above.

Sincerely yours,



Andrew J. Biemiller, Director  
DEPARTMENT OF LEGISLATION