

OCT 03 1984

MEMORANDUM FOR: William J. Olmstead
Regulations Division Director
and Chief Counsel
Office of the Executive Legal Director

FROM: Jerome Saltzman, Assistant Director
State and Licensee Relations
Office of State Programs

SUBJECT: MRC INDEMNIFICATION OF DOE FOR HLW ACTIVITIES

In recent months, increased attention has been focused on the question of the authorities under which DOE can provide third party liability protection in connection with civilian high level waste facilities. The attached DOE memorandum from Hames to Rusche dated June 27, 1984 describes how this issue has come to a head in connection with consultation and cooperation agreement negotiations with the State of Washington. Liability with respect to high level waste was also the subject of a resolution passed this summer by the National Conference of State Legislatures (see attached).

We note that the definition of "Person" in Paragraph 140.3(g) of MRC's regulations states that the Department [of Energy] " . . . shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244). . . ." This change to the definition of "person" (and consequently of "person indemnified") was made as a result of the Energy Reorganization Act but we have been unsuccessful in learning the reason or intent of the change.

In order that we may be able to respond to questions pertaining to whether MRC can indemnify DOE for high level waste activities where DOE is a licensee of the MRC we would like your views on the following questions:

1. What were the reasons and intent of the amendment to the definition of "person" in 140.3(g)?
2. What was the authority for the MRC to change the definition of "person" from that found in Sec. 11.5. of the Act?
3. Does the MRC have authority to condition the DOE license so as to require DOE to enter into an agreement with MRC to indemnify DOE for its activities relating to civilian high level waste repositories and transportation?

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4. If the NRC has this authority does it have discretion in the exercise of this authority?
5. What is the amount of protection that would be provided under the indemnity agreement?
6. Is this protection affected by whether DOE uses contractor personnel or DOE employees?
7. Can this indemnity coverage cover the period of DOE's post-operational custodial period?
8. Can financial protection be required?
9. If NRC were to provide indemnity coverage to DOE in a fashion similar to its coverage for Federal reactor licensees under Subpart C of Part 140, what is its authority not to require financial protection? (see the "note" to §140.51).

As you can see from the nature of these questions, we are groping with a concept (the possible indemnification of DOE by NRC) that we have not addressed before. If you can add anything else to help us understand this matter, beyond our questions, please feel free to provide it.

We would appreciate your responses as soon as possible since the subject of liability coverage for high level waste has become quite a hot topic and we have had to respond to questions in a number of meetings with the states.

/s/ JEROME SALTZMAN

Jerome Saltzman, Assistant Director
State and Licensee Relations
Office of State Programs

Enclosures:

1. Ltr. dtd 1/16/84
from R. Hanes to C. Roe
2. Memo dtd 6/27/84
from R. Hanes to R. Rusher
3. Resolution passed by NCS.

cc: E. Browning

OFFICE OF STATE PROGRAMS

ITEMS OF INTEREST

WEEK ENDING AUGUST 3, 1984

Resolution from NCSL Meeting

Wayne Kerr and Sue Weissberg attended the annual meeting of the National Conference of State Legislatures (NCSL) which was held in Boston, Mass., July 23-27 and was attended by over 4,000 State Legislators. Items of discussion included electric utility regulation, Price-Anderson Act, electricity rate shock, high-level radioactive waste repository siting and low-level radioactive waste. At the session on Price-Anderson, the Energy Committee adopted the following resolution which was approved by the full Conference at their final business meeting:

The National Conference of State Legislatures respectfully requests the Congress of the United States to clarify the authority of the U. S. Department of Energy to provide for strict liability on the part of the Federal Government with full indemnification for any State in which an accident occurs during the transportation or in the disposal of high-level nuclear waste.

Idaho Review

The Idaho radiation control program will be reviewed August 7-10, 1984.

California Follow-up Review

A follow-up review of the California radiation control program will be performed August 13-17, 1984.

New York Department of Labor Review

A review of the New York Department of Labor radiation control program will be performed August 16-17 and 20-24, 1984.