

PROPOSED RULE PR-1061 et al (63)
(50 FR 23960)

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Docket No.

PDR

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(Return to WM, 623-SS)

September 17, 1985

United States Nuclear Regulatory Commission
Policy & Program Control Branch
Division of Waste Management
Office of Nuclear Material Safety & Safeguards
Washington, D.C. 20555
Attn: Mr. Joseph O. Bunting, Jr., Chief

Dear Mr. Bunting:

This letter is in response to the Advanced Notice of Proposed Rulemaking (ANPRM) on financial responsibility for changes of accidental releases of certain materials. Our company has a radioactive materials license for well-logging, and would therefore be included in the new ruling.

Pro-Technics generally agrees with the public policy behind the proposed rules, providing adoption of such rules will properly balance any risk to the public of the various radioactive materials usages with the benefit to the public of this material. Such balancing must consider the true realities of a particular event causing a cleanup, versus the public's perception of the risks and dangers involved in such an event. While the public may have a vehement response to anything of a radioactive nature, the rules as implemented must give due regard to the broad range of risk and safety associated with a particular material and its use. With the foregoing as a background, Pro-Technics responds to the ANPRM as follows:

- a) The Nuclear Regulatory Commission should consider criteria such as half-life, physical form, type of encapsulation, and amount of radioactive material in determining the nature and extent of required coverage.

Pro-Technics uses primarily Ir-192 (74 day half-life) and I-131 (8 day half-life) in our tracing operations. This material is carried in DOT approved carriers. In the event of a radioactive material spill, chances are it would be confined to one spot and it would be a low volume spill. Cleanup procedures would likely involve no more than removing the contaminated soil or diluting the spill with water, and the like. The likelihood of a spill that would seriously affect other persons and/or property is slim. Liability exposure would certainly not even approach the \$2,000,000 amount set forth in the ANPRM. Given the above facts, it is estimated that Pro-Technics maximum liability exposure would be in the area of \$100,000 to \$200,000.

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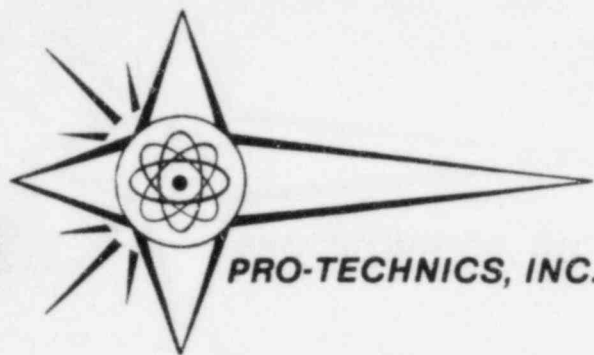
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• Denver, Colorado 80222 •

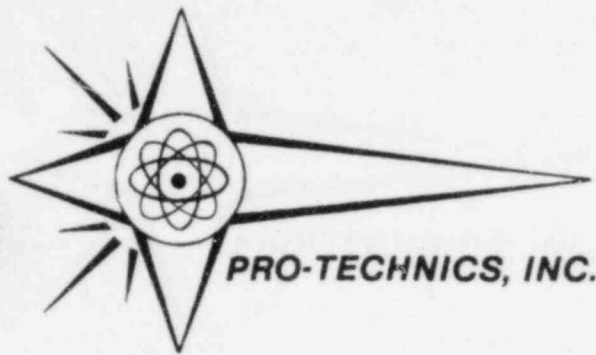
(303) 757-6222

Acknowledged by card OCT 03 1985

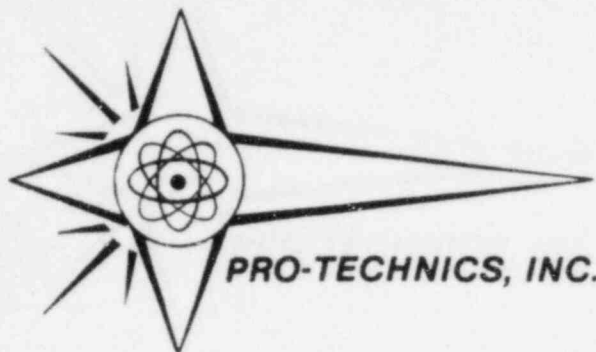
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- b) The ANPRM is unclear in item (b) when it asks "what effect would the cost for this coverage have on licensee operations". Presuming this refers to liability insurance purchased from third-party underwriters, Pro-Technics' experience is such that insurance coverage is extremely difficult to obtain. In fact, premiums for our company have tripled in less than twelve months, without there having been any claims filed by Pro-Technics. Certainly the threat of these type rule changes by the ANPRM (or even a hint of these changes), will insure that obtaining third party corporate coverage will be that much more difficult. To date, Pro-Technics' current insurance carrier has not committed as to whether they will continue to cover our company. A portion of their reasoning, they have stated, is because of this type of pending governing. If this type of insurance coverage becomes increasingly more difficult to obtain, perhaps the NRC could assist small license holders by aiding in the formulation of a government-sponsored insurance program.
- c) The financial responsibility requirement should not be any larger than is necessary to insure the respective licensee's true costs in the event a cleanup is necessary. Again, due recognition needs to be given to the risks associated with a licensee's operations, the type of radioactive material used, the manner in which it is used and transported, and the like. While the financial size of the licensee may be a factor, it should be recognized that usage by a licensee who is of a small financial size may, for whatever reason, pose a much greater risk than usage by a licensee who is financially much larger. In fairness and equity, the requirements should in general be tied to the nature of the user, and not to its financial size.
- d) The NRC should exempt licensees with certain types or quantities, such as those with short half-lives or with low activities. This is consistent with the concept that this entire response is attempting to convey, that the financial responsibility should be tied in great part to the risks associated with various licensees and their materials. Materials that would create a lasting environmental and health problem should be handled on a stricter basis, and their licensees should have a proportionately greater financial responsibility test.
- e) Licensees whose histories show them to be accident prone, careless or negligent should be subject to greater fiscal responsibility requirements. This general concept is used throughout the insurance industry, and the same should apply here. However, the greater requirements should be spelled out thoroughly in advance so that all affected parties have notice of additional financial requirements.



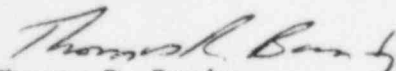
- f) The criteria the NRC should use in evaluating financial assurance mechanisms should include categories based on the operating histories of licensees, their financial performance, and the risks posed by their use of the respective materials.
- g) The insure that the financial protection will be available if needed, the NRC should consider licensees periodically being required to provide proof of insurance coverage, and proof of certain financial stability. In the event that either or both cannot be provided, then other methods should be considered, such as the posting of a bond, cash or other liquid assets placed in an escrow account, or a corporate guarantee either from a parent company or from the principals of the licensee. Again, the nature and extent of such a guarantee should be in direct proportion to the other criteria we have discussed previously.
- h) Not being an offerer of such policies, Pro-Technics has no feel for the answers to these questions. However, based on our experience of searching for adequate and fairly priced insurance, it is felt that general fear triggered by the ANPRM and subsequent correspondence certain to follow will, unquestionably, result in less adequate and more costly insurance. Our discussion with various insurance companies certainly seems to bear this out.
- i) The cost of property and liability insurance from the conventional insurance market and the nuclear insurance pools to provide cleanup coverage for sudden and non-sudden on-site accidental or unexpected releases of radioactive materials is getting very very expensive, as noted earlier. Fewer underwriters are willing to underwrite this risk, and those that will insure have priced the coverage nearly out of reach for the small businessman. Whether the terms and conditions of these existing types of policies are appropriate to the risks of accidental nuclear releases is a question that can only be analyzed on a policy by policy basis. Most policies apparently have the standard number of exceptions and exclusions, which makes thorough coverage difficult to obtain.
- j) Pro-Technics is not aware of financial assurance mechanisms or insurance policies currently available to provide coverage for environmental restoration of natural resources.



- k) As the NRC is particularly interested in hearing from certain regulatory agencies, financial and insurance institutions on the issue posed in paragraph (i), Pro-Technics offers no comment at this time.
- l) The NRC should require licensees to provide evidence of financial responsibility for all matters related to the cleanup of an accidental release. However, it should involve itself in no way with risk items to which any business is generally subject to. In any event, such non-radiological components would have to be thoroughly defined and understood, so that there is little question as to what is a licensee's responsibility.
- m) So that the NRC may be advised promptly when there is a change in the financial status of the licensee, we suggest that periodic insurance reports and financial reports be required by the various licensees. Further, in the event licensees fall below certain minimal requirements, which requirements are set giving due consideration to the other matters set forth in this correspondence, then should be an adequate opportunity for the licensee to cure the situation. If after the cure period the situation is not remedied, then strict measures may need to be enforced by the NRC.
- n) The NRC should differentiate between intentional and/or negligent releases and accidental releases, particularly when involving releases that are harmful to humans, animals or plants.
- o) The amount of coverage which would be appropriate for those fuel fabrication and radioisotope processing plants which have the potential for accidents resulting in cleanup costs significantly higher than \$2,000,000 is that amount sufficient to cover the cost of such a cleanup. This is consistent with the position that the risk should be a major factor in governing the financial responsibility requirement. Various tools should be used to secure financial responsibility for different layers of risk exposure. That is, a combination of the methods set forth in the ANPRM may be required for different layers of liability exposure.

We hope this letter is of use to the NRC in evaluating that which is presently under consideration, particularly as it relates to a licensee such as our company. If you have any questions or comments on this correspondence, please feel free to contact me at the number below.

Yours very truly,


Thomas R. Bandy
President