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February 11, 1986

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EID: LEGAL BUREAU

Ms. Denise D. Fort, Director  
Environmental Improvement Division  
P.O. Box 968  
Santa Fe, New Mexico 87504-0968

*Carol*

Att'n: Ms. Andrea Smith, General Counsel

Re: Proposed Price-Anderson Bill of Sen. Metzenbaum

Dear Denise and Andrea:

Recently Sen. Bingaman's office contacted me to review yet another proposed Price-Anderson bill. I believe that the enclosed bill of Sen. Metzenbaum goes the furthest in accomplishing New Mexico's specific goals of including coverage for WIPP by name and/or by substantive provisions. This bill also tracks all of the other recommendations New Mexico made for improving the present Price-Anderson Act. I apologize for my mark-ups on the bill. In summary, the bill would accomplish the following major changes:

1. It would eliminate totally the \$500 million liability limit for nuclear accidents involving federal contractors. The bill would require the federal government to fully compensate for any damages resulting from nuclear activities.
2. It provides for a safety incentive for contractors by mandating that DOE recover its expenses if a contractor is found to have caused the accident due to gross negligence or willful misconduct.
3. It extends the Price-Anderson coverage to include transportation, storage and disposal of high-level and transuranic waste so as to specifically cover New Mexico's WIPP facility.
4. It provides coverage for all acts of theft or sabotage.
5. It extends coverage to precautionary evacuations and emergency response costs.

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Environmental Improvement Division  
February 11, 1986  
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6. It eliminates the extraordinary nuclear occurrence requirement for triggering the waiver of defense provision, and therefore applies the waiver of defense provision (which makes it easier for the public to recover) to all DOE nuclear incidents.

7. It extends the statute of limitations by allowing claims for five years after the discovery of an injury and permitting state statutes of limitations which are less restrictive to apply.

As you can see from my notes on the bill, I had a number of suggestions for tightening up the application of the amendment to the WIPP facility. I would like to see a definitional section for "nuclear materials," which would specifically include transuranic waste. I would also like to include the phrase "research and development" and thus "experimentation" as it is defined in Section 2014(x) of the present Act as one of the types of possession and use which would trigger the application of the Price-Anderson Act. Also, whenever the phrase "storage and disposal" is used, it includes the phrase "whether on a temporary or permanent basis."

I have provided my comments by phone to Mitch Fouchee in Sen. Bingaman's office in D.C. His office is attempting to work with this bill to draft it as expansively as possible to cover WIPP and all WIPP-related activities. I will keep you advised as this bill progresses. If you have any other questions, please contact me. You can also call Mitch directly at (202) 224-0165 if you would like.

Very truly yours,

BOSSON & CANEPA, P.A.

By: \_\_\_\_\_

*Joseph F. Canepa*  
Joseph F. Canepa

JFC:jc

Enclosure

99th CONGRESS  
1st Session

S. \_\_\_\_\_

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IN THE SENATE OF THE UNITED STATES

Mr. Metzenbaum introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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A BILL

To amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to clarify the financial obligations of the United States with respect to nuclear incidents, to remove the limits on liability for a nuclear incident, to provide better economic protection for people living near Federal nuclear facilities and nuclear transportation routes, and for other purposes.

1 Be it enacted by the Senate and House of Representatives  
2 of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Federal Nuclear Facilities  
5 Insurance and Liability Act of 1985".

6 SEC. 2. FINDINGS AND PURPOSES.

7 (a) Findings.--The Congress finds that--

8 (1) an equitable, efficient, reliable, and

*Research  
or Development  
S.I.C.*

comprehensive system should be established in advance of any accident involving Government-owned or operated facilities possessing nuclear materials pursuant to the Atomic Energy Act of 1954, as amended, to provide a mechanism for full and prompt compensation of all public liability in the event of such an accident;

(2) the increasing role of the Federal Government in the storage, disposal and transportation of radioactive materials, including spent fuel, high-level waste and transuranic waste, pursuant to the Nuclear Waste Policy Act of 1982 and other provisions of law, necessitates that the Federal Government unequivocally accept its legal responsibility to assure that the public will be compensated fully, promptly and without excessive litigation for all damages from any accident involving the storage, disposal or transportation of such materials and any activities undertaken to accomplish such storage, disposal, or transportation;

(3) the assumption by the Federal Government, through comprehensive indemnity agreements, of full financial responsibility for any accident involving nuclear materials owned or possessed by the Federal Government and its contractors will provide additional incentives for the safe handling, storage, and disposal of such materials; and

*2014(X)  
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Muller*

(4) when the Federal Government enters into contracts with private parties to undertake certain activities involving nuclear materials subject to the Atomic Energy Act of 1954, as amended, those private parties should be held to a standard of care, through the imposition of appropriate financial responsibility, that would provide significant incentives for the safe operation of such activities.

(b) Purposes.--The purposes of this Act are to--

(1) establish an equitable, efficient, reliable and comprehensive mechanism for full and prompt compensation of the public in the event of an accident involving nuclear materials subject to the Atomic Energy Act of 1954, as amended, which are possessed or used in activities of the Federal Government or by Federal contractors; and

(2) provide incentives, through the imposition of financial responsibility, for the safe operation of such activities and the prevention of such accidents by the Federal Government and its contractors.

*deferral to include TAX*

SEC. 3. INDEMNIFICATION FOR DEPARTMENT OF ENERGY CONTRACTORS;  
 NUCLEAR WASTES.

(a) Indemnification Agreements.--Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended in the first sentence by striking out "is authorized until

AUGUST 1, 1987, to'' and inserting in lieu thereof ''shall''.

(b) Elimination of Liability Limitation.--Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by--

(1) striking out '', in the amount of \$500,000,000'' and all that follows through the period at the end thereof and inserting in lieu thereof a period; and

(2) inserting at the end thereof ''Any agreement of indemnification entered into pursuant to this subsection shall not limit the amount indemnified.''. ''

(c) Negligence of Federal Contractors.--Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended--

(1) by inserting ''(1)'' after the subsection designation; and

(2) by inserting at the end thereof the following new paragraph:

''(2) Subsequent to a nuclear incident or precautionary evacuation covered by an indemnity agreement entered into pursuant to this subsection, the Secretary of Energy shall promptly determine if there was gross negligence or willful misconduct on the part of the Federal contractor, or any subcontractor or supplier of such contractor, which resulted in the nuclear incident or precautionary evacuation. To the extent that the Federal contractor, subcontractor, or

supplier is determined to have engaged in gross negligence or  
 2 willful misconduct, and to the extent that such negligence or  
 3 misconduct contributed to the incident or evacuation in  
 4 question, the Secretary of Energy shall recover from the  
 5 contractor, subcontractor, or supplier a proportional share  
 6 of the amount paid by the Federal Government in satisfaction  
 7 of all claims attributable to the nuclear incident or  
 8 precautionary evacuation. No amounts recovered from any  
 9 contractor, subcontractor, or supplier pursuant to the  
 10 preceding sentence may be reimbursed directly or indirectly  
 11 by the Department.".

12 (d) Indemnification for Nuclear Incidents Involving  
 13 Nuclear Wastes.--(1) Section 170 d. of the Atomic Energy Act  
 14 of 1954 (42 U.S.C. 2210(d)), as amended by subsection (c) of  
 15 this section, is further amended by adding at the end thereof  
 16 the following new paragraph:

17 "(3)(A) The Secretary of Energy shall enter into  
 18 agreements of indemnification with all Federal contractors  
 19 engaged in--

20 "(1) any activity pursuant to the Nuclear Waste  
 21 Policy Act of 1982 (42 U.S.C. 10101 et. seq.), including  
 22 the disposal, storage, or transportation of high-level  
 23 radioactive waste and spent nuclear fuel; or

24  "(ii) any activity involving the disposal, storage,  
 25 or transportation of transuranic waste.

*experimentation, research and development*

*does this cover it for WIPP?*

agreements shall indemnify such contractors for all public liability resulting from a nuclear incident or precautionary evacuation arising out of any such activity.

“(B) Any Federal funds expended to compensate the public for a nuclear incident or precautionary evacuation involving the disposal, storage, or transportation of high-level radioactive waste or spent nuclear fuel shall be from funds available through the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)).”

(2) Subsection s. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(s)) is amended by adding at the end thereof the following: “For purposes of those activities that the Secretary of Energy is authorized or directed to undertake, pursuant to this Act or any other law, that involve the risk of public liability for a nuclear incident as a result of the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to or from a storage or disposal site or facility, and the construction and operation of any such site or facility, the Secretary shall, to the extent that such activities are not undertaken by contract, be considered as if the Secretary were a contractor with whom an indemnity agreement has been entered into pursuant to subsection 170 d.”

(e) Conforming Amendment.--Section 302(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(d)) is amended in the matter preceding paragraph (1) by striking out "only for" and inserting in lieu thereof "only for payments that may be required under section 170 d.(3) of the Atomic Energy Act of 1954, and for".

SEC. 4. ELIMINATION OF LIMITATION ON LIABILITY.

(a) In General.--Section 170 e. of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by--

(1) striking out "The aggregate liability for a single nuclear incident of persons indemnified," and inserting in lieu thereof "With respect to any nuclear incident to which an agreement of indemnification entered into, other than under the provisions of subsection 170 d., is applicable, the aggregate liability for a single nuclear incident of persons indemnified,"; and

(2) striking out "or contractor".

(3) striking out "and provided further" and all that follows through the period at the end thereof and inserting in lieu thereof a period.

(b) Conforming Amendments.--(1) Section 21. of the Atomic Energy Act of 1954 (42 U.S.C. 2012(1)) is amended by adding at the end thereof "pursuant to section 170.".

(2) The section heading for section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended to read as

follows:

2 "SEC. 170. LIABILITY FOR NUCLEAR INCIDENTS AND  
3 INDEMNIFICATION FOR FEDERAL CONTRACTORS."

4 (3) The item relating to section 170 in the table of  
5 contents of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et  
6 seq.) is amended to read as follows:

"Sec. 170. Liability for nuclear incidents and  
indemnification for Federal contractors."

7 SEC. 5. DISCOVERY AND STATUTE OF LIMITATIONS; EXTRAORDINARY  
8 NUCLEAR OCCURRENCE.

9 (a) Waiver of Defenses.--Paragraph (1) of section 170 n.  
10 of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(2)) is  
11 amended--

12 (1) in the matter before clause (a) by inserting  
13 after "extraordinary nuclear occurrence" the following:  
14 "or, in the case of any agreement entered into pursuant  
15 to subsection 170 d., any nuclear incident";

16 (2) in clause (c) by striking out "a device  
17 utilizing"; and

18 (3) in the matter following clause (c) before the  
19 first sentence by--

20 (A) striking out "within three years" and  
21 inserting in lieu thereof "within five years"; and

22 (B) striking out ", but in no event more than  
23 twenty years after the date of the nuclear  
24 incident".

(b) Jurisdiction.--The first sentence of paragraph (2) of section 170 n. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(2)) is amended by--

(1) inserting after "resulting from an extraordinary nuclear occurrence" the following: "or, in the case of any agreement entered into pursuant to subsection 170 d., any nuclear incident"; and

(2) inserting after "extraordinary nuclear occurrence" the second and third time such phrase appears the following: "or incident".

#### SEC. 6. PRECAUTIONARY EVACUATION.

(a) Definition.--Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) is amended by adding at the end thereof the following new subsection dd.:

"dd. The term 'precautionary evacuation' means an evacuation of the public within a specified area near a production or utilization facility, or a storage or disposal site or transportation route in the case of an accident involving the storage, disposal, or transportation of source material, special nuclear material, byproduct material, high-level or transuranic radioactive waste, or spent nuclear fuel (including such material that is illegally diverted from its intended place of confinement) where the evacuation is--

"(1) the result of any event that is not classified as a nuclear incident but which causes an evacuation; and

*Note  
low level  
is omitted*

1  
2       “(2) ordered by an official (authorized by State law  
3       to order such an evacuation) of a State or a political  
4       subdivision of a State.”.

5       (b) Liability of Federal Contractors for Costs of  
6       Precautionary Evacuation.--Section 170 d. of the Atomic  
7       Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by  
8       inserting before the period at the end of the first sentence,  
9       the following: “, or precautionary evacuation”.

10       (c) Costs Incurred by State or Local Governments.--  
11       Section 11 w. of the Atomic Energy Act of 1954 (42 U.S.C.  
12       2014(w)) is amended by inserting after “nuclear incident”  
13       the first place it appears, the following: “or, in the case  
14       of an indemnity agreement entered into pursuant to section  
15       170 d., a precautionary evacuation (including all costs  
16       incurred by a State, or a political subdivision of a State,  
17       in the course of responding to a nuclear incident or a  
18       precautionary evacuation)”.

19       SEC. 7. THEFT OR DIVERSION OF RADIOACTIVE MATERIAL.

20       (a) Definition.--Section 11 q. of the Atomic Energy Act  
21       of 1954 (42 U.S.C. 2014(q)) is amended by inserting after  
22       “byproduct material” the first place it appears, the  
23       following: “(including, in the case of an indemnity  
24       agreement entered into pursuant to section 170 d., such  
25       material that is illegally diverted from its intended place  
      of confinement)”.

1  
2 (b) Federal Liability.--Section 170 d. of the Atomic  
3 Energy Act of 1954 (42 U.S.C. 2210(d)) (as amended by section  
4 4) is further amended by adding at the end thereof the  
5 following new paragraph:

6 "(4) The Secretary of Energy shall compensate public  
7 liability claims arising out of or in connection with a  
8 nuclear incident or a precautionary evacuation resulting from  
9 source material, special nuclear material, byproduct  
10 material, high-level radioactive waste, transuranic waste, or  
11 spent nuclear fuel that is illegally diverted from its  
12 intended place of confinement, and which cannot be traced to  
13 a licensee of the Nuclear Regulatory Commission required to  
14 maintain financial protection under this section."

15 SEC. 8. EFFECTIVE DATE.

16 The amendments made by this Act shall take effect on the  
17 date 60 days after the date of the enactment of this Act and  
18 shall apply with respect to all contracts referred to in  
19 section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C.  
20 2210(d)) without regard to whether such contracts were  
21 entered into before, on, or after the date of the enactment  
of this Act.