U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SCIENCE AND TECHNOLOGY

SUITE 2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6371

June 5, 1986

Hon. Toney Anaya
Governor
State of New Mexico
Sante Fe, NM 87503

Dear Mr. Anaya:

For your information, enclosed is a complimentary copy of the printed record from our Subcommittee's "Legislative Inquiry on the Price-Anderson Act," and the report forwarded to the Interior Committee by Chairman Fuqua. I hope you will find them interesting and useful.

Thank you for your assistance with our legislative oversight of this issue.

Sincerely,

MARILYN LLOYD, Chairman
Subcommittee on Energy
Research and Production

ML:ms
Enclosures

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SCIENCE AND TECHNOLOGY

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WASHINGTON, DC 20515
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April 18, 1986

Honorable Morris K. Udall, Chairman
Committee on Interior and Insular Affairs
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The Committee on Science and Technology has a long-standing interest in the Price-Anderson Act as it relates to the Department of Energy contractors and university research reactors. The most recent expression of this interest is an exhaustive inquiry conducted on this issue by the Subcommittee on Energy Research and Production, which was begun last October and concluded this month.

The attached report prepared by the staff of the Energy Research and Production Subcommittee at the request of Chairman Lloyd is the product of this inquiry. The report contains seven recommendations concerning the amendment and reauthorization of the Price-Anderson Act. I believe that these recommendations define the necessary and appropriate changes to the Price-Anderson Act relative to the Science Committee's jurisdictional concerns.

The Subcommittee received written testimony and responses to numerous questions from many individuals having an interest in the Price-Anderson Act relative to Department of Energy contractors and university research reactors. An inquiry record containing all of the testimony received by the Subcommittee is expected to be published shortly.

I would hope that the attached recommendations could be incorporated into your Committee's markup of the Price-Anderson Act. We would be most supportive of any recommendation from your Committee containing the elements recommended in this report.

Sincerely,

DON FUQUA
Chairman

DF/Vms
Attachment

cc: Honorable Don Young
Ranking Republican Member

Recommendations For The
Amendment of the Price-Anderson Act
Department of Energy Contractors
University Research Reactors

The following are recommendations concerning the amendment and reauthorizati of the Price-Anderson Act. No other amendments to this Act relating to D contractors or operators of university research reactors are necessary appropriate at this time.

1.0 Recommendation: EXTENSION OF ACT

The Price-Anderson Act should be reauthorized for an indefinite period for D contractors and operators of research reactors.

Explanation

The Price-Anderson Act serves four important policies of the federal gover ment:

1. It provides assurance to the public of the availability of sufficie sums of money to reimburse claims for damages in a timely and reliab manner from a nuclear accident at contractor facilities and universi research reactors.

2. It serves to facilitate private sector participation in the gover ments nuclear research and development program.

3. It significantly reduces the cost to the government of conducting n clear research and development.

4. It facilitates nuclear engineering education and academic research universities.

While DOE possesses authority under the Atomic Energy Act to contractually i demnify contractors for possible nuclear losses, such authority is not ad quate for several reasons:

1. "Umbrella" coverage of subcontractors and suppliers is not applicabl

2. Payments would not be "prompt" as the indemnification is continge upon subsequent appropriations;

3. The public is not assured of immediate or substantial payments;

4. Tort law defenses against a claimant may be exercised by defendan and,

5. Contract terms may vary causing non-uniform public protection.

2.0 Recommendation: LIMITATION ON LIABILITY

The limitation on liability and level of protection of the public should be the same as the highest level for commercial nuclear power plants, as long as it is set at a reasonable level for such power plants.

Explanation

No valid policy reason to maintain different levels of public protection between government facilities and commercial facilities is evident. Although the Congress has pledged to take whatever action is deemed necessary to protect the public in the event of an accident causing damage in excess of the limit, it makes eminent sense to administratively settle claims to the same limit for either government or commercial nuclear-related accidents.

The government should not open the Treasury to unlimited compensation in advance of any accident. Doing so would be an undesirable precedent which would subject the government to unpredictable demands. It is sufficient that Congress will review the needs of the public after any serious accident.

3.0 Recommendation: NUCLEAR WASTE

A. The extraordinary nuclear occurrence provision of the Price-Anderson Act should be amended to apply to any contractor activity including the management of any nuclear waste and spent fuel facilities for DOE.

B. The Nuclear Waste Fund created by P.L. 97-425 should be the source of funds for Price-Anderson Act coverage of activities conducted under P.L. 97-425.

Explanation

A. The Price-Anderson Act permits coverage of all DOE contractor activities, including the operation of waste disposal facilities and monitored retrievable storage facilities, and transportation incident thereto. However, the extraordinary nuclear occurrence provision may not be applicable to all such facilities. This provision requires a contractor to waive certain defenses it may be entitled to under state law for serious accidents. However, the waiver provision applies only to an accident at a "production or utilization facility," or other "device" operated by the contractor. Since a storage or disposal facility cannot be considered a "production or utilization facility," which is defined as a reactor, or a "device," which is commonly defined as an article of equipment, this provision may not now apply to accidents at a storage or

disposal facility.

B. The spent fuel and nuclear waste storage, disposal and transportation activities of the government are conducted for the benefit of the government and commercial sectors. The government recovers no profit in carrying out this program. It is, therefore, appropriate that each participating sector pay its proportionate share of any accident damages. The easiest mechanism for accomplishing this allocation is to use the nuclear waste fund as a source of funding to pay such damages. The contributions to the fund to pay for the disposal and storage program are already based upon the utility and defense community's pro-rated share of expenses, so charging the fund for damage payments would automatically allocate the cost to the appropriate sector. If the waste program contractors take possession of spent fuel or waste it is appropriate that the program be responsible for the damages incurred.

4.0 Recommendation: COVER ALL NUCLEAR CONTRACTORS

The Price-Anderson Act should be amended to make mandatory the extension of coverage to all DOE contractors connected with government nuclear activities.

Explanation

The Price-Anderson Act does not require that DOE nuclear contractors be extended Price-Anderson coverage. Providing such coverage is discretionary with the Department of Energy. The DOE regulations permit Price-Anderson Act coverage only if the DOE contracting officer determines that the risk of loss in the event of an accident exceeds $60 million.

The public would be maximally protected if Price-Anderson Act coverage applied in all circumstances involving a possible nuclear accident. The DOE may be faced with an unnecessary conflict of interest in having to decide if accident damages could exceed $60 million while at the same time trying to convince public representatives that an activity does not run the risk of significant accident consequences. Additionally, should DOE miscalculate the risk of loss, the public could be left unprotected for damages in excess of the $60 million. The DOE retains authority under existing Price-Anderson provisions to require contractors to purchase insurance for these contracts where the risk of loss is deemed small. Making the Price-Anderson Act mandatory will therefore not significantly change the administrative findings necessary under the Price-Anderson Act.

5.0 Recommendation: PUNITIVE DAMAGES PROHIBITED

The Price-Anderson Act should preclude claims for exemplary or punitive damages and should be further amended to clarify DOE's authority to assess civil and criminal penalties against the person indemnified.

Explanation

It is an irony of the law that "exemplary" or "punitive" damages are not a-warded to punish the defendant but are awarded "in the view of supposed aggra-vation of the injury to the feelings of the plaintiff by the wanton or reck-less act of defendant." Black's Law Dictionary, revised 4th edition, 1968, p. 468. Even though punishment of the defendant is not the issue, the award o such damages is inappropriate under the Price-Anderson Act system of coverage.

Punitive damages are intangible damages which are recoverable at the discre-tion of the jury or the judge in a non-jury trial. In recent years, the dis-tinction between negligence and recklessness has been blurred such that in th Silkwood v. Kerr McGee case, the judge instructed the jury that punitive dam ages could be awarded even if the defendant had complied with all relevan government regulations. This blurred distinction can result in very large a wards paid by the government for clearly non-physical damages. Additionally even for less significant accidents, the limitation on liability could b quickly reached imposing a severe burden on the Treasury, and possibly affect ing the level of recovery of each claimant.

The public should be reimbursed under Price-Anderson for actual bodil injuries or property damage. No recovery should be permitted for the les tangible, punitive damages. Furthermore, if a contractor's actions leading t an accident constitute legal malice, they should be punished by a civil o criminal penalty assessed by the Department of Energy or a court of law. Th Atomic Energy Act provides for the imposition of such civil or crimina penalties and the Price-Anderson Act should be amended to clarify that DO possesses authority to punish willful or wanton activity of a contractor tha causes a nuclear accident.

Other damages may also be less tangible and clearly prone to overestimatior However, no position is taken on these other less tangible damages, such a pain and suffering and loss of consortium. Although less tangible, actio limiting recovery for these damages is unnecessary and inappropriate at thi time.

6.0 Recommendation: PRECAUTIONARY EVACUATIONS

The definition of "public liability" in the Price-Anderson Act should be a mended to specifically provide for payment of costs associated with precau tionary evacuations.

Explanation

The Price-Anderson Act could be interpreted as precluding coverage for a offically ordered or recommended precautionary evacuation when a nuclea accident is threatened but does not subsequently occur. Evacuations unde these circumstances are reasonable and should be covered by the Price-Anderso Act.

7.0 Recommendation: STATUTE OF LIMITATIONS

The statute of limitations in the Price-Anderson Act should be extended from --3 years from the date of discovery of the injury or 20 years from the date of the accident, whichever is sooner, to --3 years from the date of discovery of the injury or 30 years from the date of the accident, whichever is sooner.

Explanation

There is now sufficient scientific evidence to suggest that radiation induced injuries such as cancers could become evident after the present 20-year statute of limitation expires. If such latent injuries were to occur after the present 20-year period and the state statute of limitations was for a shorter period of time (state law supercedes if the state has a longer statute of limitations), then the victim would be without an oportunity to show a causal connection between the accident and the injury and collect for the damages.

The public policy favoring statutes of limitations remains as sound as it was in 1879 when Supreme Court Justice Swayne remarked, "Statutes of limitations are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs." Wood v. Carpenter, 101 U.S. 135, 25 L. Ed. 807. The Congress found in 1966 that the passage of time inhibits the ability to demonstrate that an incidence of cancer has been caused by an accident. This recommendation differs only in finding that a 30-year period would be more equitable than a 20-year period. "It has been written that the legislature has fulfilled its duty to a citizen if reasonable time is given to apply for the redress of wrongs. More than that encourages strife, by reviving controversies that had been suffered to sleep, and reviving them too, after it may have become difficult to understand their true character. Carson v. Hunter, 46 Mo. 467, 2 Am. Rep. 529." Woodruff v. Shores, 354 MO. 742, 190 S.W.2d 994, 166 A.L.R. 957. The view that there should be no overall period after which suits on the accident will be precluded is specifically rejected.

R&E/ERP

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 25, 1986

The Honorable Don Fuqua
Chairman
Committee on Science and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of April 18 and the accompanying report on the Price-Anderson Act prepared by the staff of Chairman Lloyd's Energy Research and Production Subcommittee. The views of the Science Committee on the Price-Anderson Act as it relates to Department of Energy contractors and university research reactors are, of course, entitled to careful consideration.

Many of the recommendations contained in the Science Committee's report are already reflected in H.R. 3653 as amended by the Interior Committee. In addition, many of the recommendations that are not reflected in the bill were considered by the Interior Committee. The Committee will resume its consideration of the bill on April 30.

The present status of each of the Science Committee's recommendation are summarized in the attachment to this letter.

Again, thank you for sharing the Science Committee's recommendations with me.

Sincerely,

MORRIS K. UDALL
Chairman

Attachment

STATUS OF THE RECOMMENDATIONS OF THE
COMMITTEE ON SCIENCE AND TECHNOLOGY
ON AMENDMENT OF THE PRICE-ANDERSON ACT

Recommendation 1: EXTENSION OF THE ACT FOR AN INDEFINITE PERIOD

The Interior Committee bill would authorize the Department of Energy to indemnify its contractors, and the Nuclear Regulatory Commission to indemnify its licensees for an additional ten years. The Energy and Environment Subcommittee rejected an amendment to extend such authority for twenty years.

Recommendation 2: EQUAL LIMITATIONS ON LIABILITY FOR ALL NRC LICENSEES AND DOE CONTRACTORS

The limitation on liability for all nuclear activities performed by DOE contractors except those involving nuclear waste would be the same as for commercial nuclear power plants. That limit would be $8.2 billion, assuming 100 commercial nuclear power plants. For DOE-contractor activities involving nuclear waste, there would be unlimited liability. For NRC licensees other than commercial power plants (such as university research reactors), the limitation on liability would remain at $500 million.

Recommendation 3: NUCLEAR WASTE

The extraordinary nuclear occurrence provision has been amended to apply to DOE-contractor activities involving nuclear waste. The Nuclear Waste Fund would be the source of funds used to pay up to $8.2 billion of compensation for nuclear waste activities.

Recommendation 4: MANDATORY COVERAGE OF DOE CONTRACTORS

The Interior bill has been amended to require DOE to indemnify its nuclear contractors.

Recommendation 5: PROHIBITION ON PUNITIVE DAMAGES

The Interior Committee bill does not change the current law with respect to punitive damages or with respect to DOE's authority to assess civil or criminal penalties. An amendment that would have precluded punitive damages awards was withdrawn.

Recommendation 6: PAYMENT OF PRECAUTIONARY EVACUATION COSTS

The bill provides for payment of costs resulting from precautionary evacuations.

Recommendation 7: STATUTE OF LIMITATIONS

As originally introduced, the Interior Committee bill waived state statutes of limitations if suit was filed within 3 years of the date of discovery of the injury and 30 years from the date of the accident, as recommended by the Science Committee. The Interior Committee subsequently struck the requirement that suit be filed within 30 years of the date of the accident.