

January 30, 1998

Mr. Eric J. Fygi  
U.S. Department of Energy  
Office of General Counsel  
GC-52  
1000 Independence Ave. S.W.  
Washington, D.C. 20585  
(PAA.notice@hq.doe.gov)

RE: Comments Concerning the Continuation or Modification of the Provisions of the Price-Anderson Act

Dear Mr. Fygi:

On behalf of the Board of Lincoln County Commissioners, the Caliente City Council, and their Joint City/County Impact Alleviation Committee, I am pleased to submit the following comments concerning the continuation or modification of the provisions of the Price-Anderson Act. These comments reflect the perspectives of a county and city which are located at the end of " the funnel" through which the majority of all shipments of spent nuclear fuel, high and low-level radioactive waste will pass on their way to interim storage and/or disposal sites at the Nevada Test Site (NTS). Since 1985, the Department of Energy has recognized the likelihood that Lincoln County and the City of Caliente would serve as the transportation gateway for radioactive waste being transported to NTS. Legislation, which has passed both houses of the Congress, requires the Secretary of Energy to establish rail-to-truck intermodal transportation facilities in Caliente to handle spent nuclear fuel and other high-level radioactive waste. DOE's Nevada Operations Office is currently preparing an environmental assessment regarding establishment of intermodal facilities in Caliente to handle shipments of low-level radioactive waste.

Given Congressional and DOE focus upon Lincoln County and the City of Caliente as key locales in the national transportation strategy for things nuclear, the existing system of liability coverage and indemnification afforded through the Price-Anderson Act is vitally important to the residents of our area. The Price-Anderson Act represents an effective means of mitigating the consequences of an unanticipated incident involving the transportation of nuclear materials through the County and City. Public acceptance of the risks associated with transportation of radioactive constituents is in part dependent upon awareness that the consequences of an incident would be fully mitigated by the Federal Government. Elimination or reduction in the extent of liability coverage and indemnification afforded by

the Price-Anderson Act would make it difficult for any unit of local government or its residents to

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effectively manage risks associated with transportation of radioactive wastes. **Lincoln County and the City of Caliente urge the Department of Energy to seek reauthorization of the Price Anderson Act. Where existing liability coverage and indemnification can be expanded, the DOE is encouraged to seek such changes to the Act.**

Lincoln County and the City of Caliente are particularly interested in being assured that the Price-Anderson Act accomplishes the following:

1. Indemnifies the County and City and its elected officers and employees for any actions each may take pursuant to state law or local ordinance regarding the siting, construction, and operation of nuclear waste transportation system components.
2. Indemnifies residents of the County and City who may be employed by DOE or its contractors in the siting, construction, and operation of nuclear waste transportation system components.
3. Indemnifies public and private institutions called upon by DOE or otherwise required to respond to or support emergency response situations arising from an incident involving nuclear materials.
4. Provide liability coverage and indemnification for incidents involving the transportation of all classes of radioactive waste including spent nuclear fuel, high-level, transuranic, greater than Class C, other mixed-wastes, and low-level.
5. Ensures that the definition of "contractor" includes railroads and motor carriers engaged to transport nuclear wastes for the DOE pursuant to the terms of accepted tenders.

#### Answers to Questions Posed in the NOI

##### **Should the DOE Price-Anderson indemnification be continued without modification?**

Yes. However, to the extent that modifications to the Act are necessary to ensure that indemnification is available to Lincoln County and the City of Caliente, their respective elected officers and employees, and residents of the County and City who may be employed by DOE or its contractors in the siting, construction, and operation of nuclear waste transportation system components, then such revisions to the Act should be pursued.

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**Should the DOE Price-Anderson indemnification be eliminated or made discretionary with respect to all or specific DOE activities?**

No. Indemnification affords direct and indirect participants (including state, local governments, and their residents employed in nuclear waste management activities) with protection from personal responsibility for damages in the event of an incident. As a consequence, indemnification is causally related to state and local government and their resident's willingness to accept risk associated with nuclear activities.

**Should there be different treatment for "privatized arrangements"?**

No. DOE is using "privatized arrangements" on an ever-increasing basis to undertake all aspects of the Department's mission. Failure to extend full liability coverage and indemnification to entities and individuals engaged by DOE through "privatized arrangements" would greatly increase the potential for unmitigated damages in the event of an incident. This may be particularly true for activities occurring "off-site" such as transportation and intermodal operations. DOE is currently working to enter into "privatized arrangements" for waste acceptance, storage, and transportation services to support both the Waste Isolation Pilot Project (WIPP) and the Civilian Radioactive Waste Management Program.

**Should there be any change in the current system under which DOE activities conducted pursuant to an NRS license are covered by the DOE Price-Anderson indemnification, except in situations where the NRC extends Price-Anderson coverage under the NRC system?**

No. Under the current system, all DOE activities conducted pursuant to an NRC license are covered under Price-Anderson indemnification, either by DOE or NRC. There should never be a DOE activity conducted under an NRC license which is not covered under Price-Anderson indemnification.

**Should the Price-Anderson indemnification continue to provide omnibus coverage, or should it be restricted to DOE contractors or to DOE contractors, subcontractors, and suppliers?**

Price-Anderson should continue to provide omnibus coverage. Restricting coverage to DOE contractors, subcontractors, and suppliers may render others, such as state and local governments, liable for unmitigated damages.

**To what extent, if any, would elimination of the DOE Price-Anderson indemnification affect the ability of claimants to receive compensation for nuclear damage resulting from a DOE activity?**

In the event DOE indemnification is not available and private insurance is utilized for compensation, Lincoln County and the City of Caliente are concerned that the ability of

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claimants to receive compensation will be severely constrained. Such constraints will result from lengthy and expensive legal maneuvering on the part of private insurance carriers, which as a result of the potentially high dollar value of judgements, could afford to "outspend" claimants and thereby force unsatisfactory settlements. State and local governments and local residents would not be able to afford costly legal proceedings necessary to secure full compensation.

**Should the amount of the DOE Price-Anderson indemnification for all specified DOE activities inside the United States (currently \$8.96 billion) remain the same or be increased or decreased?**

Any attempt to reduce the level of indemnification may serve to erode public trust and confidence in DOE's ability to mitigate damages. Public acceptance of risks associated with nuclear waste management activities is related in part to the ability of DOE to mitigate damages.

**Should the DOE Price-Anderson indemnification continue to cover DOE contractors and other persons when a nuclear incident results from their gross negligence or willful misconduct?**

Yes. Under the current "no-fault" approach, resolution of claims for compensation can proceed absent consideration of who is to blame. Without the "no-fault" approach, access to compensation will be delayed for long periods while armies of lawyers argue over who is to blame and who is to pay. In the meantime, damages will go unmitigated. Lincoln County, the City of Caliente, and their residents should not be expected to endure the unmitigated consequences of a nuclear incident while the DOE and its contractors argue over who was responsible. In the event the DOE is granted authority to seek reimbursement for the amount of the indemnification, DOE would provide compensation only in an amount which the Department thought was recoverable, minus likely high costs of pursuing a court judgement to secure payment. In the end, unmitigated damages are likely to result.

**Should the DOE Price-Anderson indemnification be extended to activities undertaken pursuant to a cooperative agreement or grant?**

Yes. Lincoln County and the City of Caliente have been vested with participatory responsibilities in the decision-making process leading to management of spent nuclear fuel and high-level radioactive waste in the United States. County and City participation is funded by DOE through a direct payment form of a grant. The County and City must be indemnified from liability associated with activities conducted pursuant to the Nuclear Waste Policy Act as amended.

**Should DOE Price-Anderson indemnification continue to cover transportation activities under a DOE contract? Should coverage vary depending on factors such as the type of nuclear material being transported, method of transportation, and jurisdictions through which the material is being transported?**

DOE Price-Anderson indemnification should continue to cover transportation under a DOE contract. In addition, transportation services secured through DOE acceptance of a tender should also be indemnified. Continued coverage of transportation is very important given the significant increase in shipments of nuclear waste which are projected to occur during the next 30 years. Coverage should not vary according to any factors. Each and every potential incident should be covered to the fullest extent with compensation based upon the characteristics of each incident.

**Should there be any modifications in the types of claims covered by the Price-Anderson system?**

Modifications should be considered to the extent required to ensure compensation for the following types of claims:

1. Loss of revenues to businesses in the vicinity of an incident, including the effects of the area being negatively stigmatized.
2. Loss of revenues to local governments in the vicinity of an incident, including the effects of the area being negatively stigmatized.
3. Loss of income to persons whose places of employment are temporarily or permanently closed as a result of an incident.

I trust these comments to be helpful to your efforts to develop a well considered report to the Congress concerning the Price-Anderson Act.

Sincerely,

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Ed Wright, Chairman  
Board of Lincoln County Commissioners  
Chairman, Joint City/County  
Impact Alleviation Committee

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Kevin J. Phillips, Mayor  
City of Caliente  
Vice Chairman, Joint City/County  
Impact Alleviation Committee

CC: Members, Joint City/County Impact Alleviation Committee  
Members, Nevada Congressional Delegation  
Affected Units of Government (Nevada and California)