

January 29, 1998

U.S. Department of Energy
Office of General Counsel, GC-52
1000 Independence Avenue, S.W.
Washington, D.C. 20585

**COMMENTS TO THE PRICE-ANDERSON ACT NOTICE OF
INQUIRY**

To whom it may concern:

The attached comments by the Clark County, Nevada Department of Comprehensive Planning, Nuclear Waste Division, are in reference to a Notice of Inquiry (NOI) released by the Department of Energy (DOE) pursuant to Section 170p of the Atomic Energy Act.

From the perspective of local government and the public, we support continuing the comprehensive provisions of the Price-Anderson Act. The need to have available sufficient financial resources to ameliorate impacts from nuclear incidents will be increasingly important in the future. The potential for accidents, for example, will be greater as larger amounts of nuclear waste are transported on the nation's rails and highways due to decisions made on weapons-site cleanup and Yucca Mountain programs. Strong and comprehensive Price-Anderson Act provisions need to be in place to protect the public.

While we appreciate the opportunity to comment, it is unfortunate that the NOI was not released until the end of December 1997, during the holidays, and that review was limited to 30-days. It will be difficult, particularly for those in the public, to provide substantive comments by the January 30, 1997 deadline. This detracts from the objective of DOE "*to provide an early opportunity for public participation in the development of this report in a manner consistent with its public participation policy.*"

Because of the complexity of the issues and the timing of the release we would hope that DOE would extend the deadline for comments on this important topic.

If there are questions on the attached comments please contact me.

Sincerely,

/Signed/
Dennis A. Bechtel, Manager

Attachment

cc: Richard B. Holmes

**COMMENTS FROM THE CLARK, COUNTY NEVADA
DEPARTMENT OF COMPREHENSIVE PLANNING, NUCLEAR WASTE DIVISION
ON THE DOE NOTICE OF INQUIRY (NOI) AND REPORT
TO CONGRESS ON THE PRICE-ANDERSON ACT**

This introductory paragraph is intended to provide a context for our comments. Clark County, Nevada, which includes the City of Las Vegas, is home to 1.3 million residents and 32 million annual visitors, was named in April 1988 as an *affected unit of local government* by DOE, under provisions of the Nuclear Waste Act of 1982, as amended. The provision of *affected* status by DOE was in recognition of the potential impacts that could occur to Clark County from Yucca Mountain activities. In addition, there are eight other counties in Nevada and one in California that have, similarly, been named affected units of local government by DOE.

Because of the limitations of transportation infrastructure and the dictates of geography, DOE has historically transported nuclear waste through Clark County. Should Yucca Mountain be named as a permanent nuclear waste repository, or if pending interim storage legislation be approved by Congress, the number of commercial spent fuel shipments or high-level defense waste into Nevada will increase considerably.

Also of concern is the probable naming of the Nevada Test Site as either a regional or centralized site for the storage and disposal of a large percentage of the nation's low-level radioactive waste (LLW) from the cleanup of weapon's development sites.

Because Clark County and other affected counties, particularly Lincoln, Nye and White Pine counties, may become the "end of the funnel" for nuclear waste shipments from a number of sources, with the obvious potential for a greater number of accidents, Price-Anderson becomes extremely important.

The following is our response to your questions. The comments have been indexed to your questions.

1. Continuation of Price-Anderson (P-A) provisions: [Question 1] P-A should be continued for a number of reasons. The public, in general, has great concerns about radioactive material and waste. This concern will intensify as the number of shipments of nuclear waste transported increases because of decisions made on Yucca Mountain and other nuclear waste disposition programs. P-A, was enacted, in part, to provide an immediate source of funding to ameliorate impacts from nuclear incidents. This rapid turn-around was understood as necessary because of the public's concerns about the danger of radioactive substances and a recognition to quickly resolve the problems resulting from nuclear accidents. Conventional insurance coverage, as an example of a potential replacement for P-A indemnification, could probably not be a substitute for this immediate funding relief.

2. Privatization: [Question 3] The objective of indemnification coverage should be that it be available as quickly as possible to solve problems, primarily for the public, local entities and others that could be harmed

by nuclear incidents. Different arrangements, such as this proposal, should be avoided because it may complicate the original intent of P-A indemnification coverage: to provide coverage quickly to protect the public.

3. Price-Anderson coverage issues [Question 4] Coverage should continue to apply to all activities conducted relative to NRC licensees, even if the NRC decides not to extend P-A coverage.

4. Omnibus P-A coverage: [Question 5] Omnibus coverage should continue to be provided. Coverage is especially important for *persons indemnified* (including individuals and entities). Notwithstanding the increasing emphasis on *privatization*, it may be difficult for the private sector to obtain coverage either because of the potential (or perceived) dangers of working with nuclear material/waste, or because the cost of the insurance. To protect the public, therefore, it is important to continue P-A coverage. Since the private sector will be increasingly important in the cleanup of radioactive facilities and in the transport of waste DOE, cleanup efforts will be hindered if insurance coverage is not readily available.

5. The ability of claimants to receive indemnification if P-A was not available? [Question 10] As noted above, it is unlikely that the private sector, if P-A were not available, will assume the responsibility for insuring parties against the risk associated with nuclear activities (wasn't that the reason for the passage of P-A originally?). If the private sector is involved it is probable that attempting to resolve claims subsequent to a nuclear incident would be a long and protracted process.

6. P-A amount of indemnification. [Question 12] It is unclear how the current statutory limit of \$8.96 billion was determined. Since that figure was set in 1988 it may need to be adjusted for inflation. If the \$8.96 million amount was negotiated it may be useful to conduct studies to provide estimates of the cost of several potentially representative nuclear accidents (e.g., a transportation accident with a resulting release of radioactivity).

7. Aggregated Public Liability. [Question 14] Public liability should be defined by the actual extent of the damages and not by an arbitrary number. As I understand it, the current limitation is \$500 million per incident (for persons, as defined in the Act) and as much as \$560 million for an incident resulting from a transportation incident. While it is difficult to determine whether these maximum amounts are sufficient, damages from a serious accident requiring extensive cleanup and evacuation of residents in an urban area could conceivably exceed these figures.

8. Contractors Negligence:[Question 15] Without indemnification it is probable that few contractor's would get involved in DOE cleanup activities. More importantly, however, is the protection provided the public from potentially negligent conduct by contractors. Is data available to determine if the current system of civil or criminal penalties incorporated in the P-A in 1988 has improved contractor performance? (Are there less accidents or claims?) If performance has not improved, the system of penalties should perhaps be reevaluated and strengthened as needed.

9. P-A Coverage for Cooperative Agreements or Grants? [Question: 16] Coverage should be made available to protect the public (and others, local entities for example) from any actions or decisions made which could be tied to a nuclear incident. That should include decisions made or actions taken by

contractors or others with cooperative agreements or recipients of grants.

10. P-A Coverage for Transportation Activities (Question: 17) It is particularly important that indemnification coverage be retained for activities associated with the transportation of nuclear materials or waste. With a decision to be made shortly on the disposition of nuclear waste from weapon's sites cleanup, with the Waste Isolation Pilot Plant (WIPP) coming on-line in the next several months, and with Yucca Mountain as an interim storage facility at the Nevada Test Site potentially happening in the future, the amount of nuclear waste transported nationwide will increase dramatically. This, of course, will increase the potential for accidents and the probable need for P-A coverage.

11. Indemnification for DOE Cleanup Sites and Mixed Waste [Questions 18,19] P-A indemnification coverage should be available for any incident involving radioactive waste.

12. Modification in the types of claims. Property value claims could occur after accidents. It should be noted that there is an increasing case law with regard to property claims, and courts are becoming more sympathetic to property owners (see *Komis v. The City of Santa Fe [New Mexico]*).

13. Mandatory exemption for certain non-profit contractors? [Question 30] In light of the incident that occurred at Brookhaven Laboratory last year perhaps exemption for non-profit contractors should be eliminated. Exemptions may have a tendency to create sloppiness in operations which could result in negative impacts to the public. To prevent this exemptions should be avoided.