January 30, 1998

Eric J. Fygi, Esq.
Acting General Counsel
U.S. Department of Energy
Office of the General Counsel, GC-52
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Subject: Notice of Inquire Concerning Preparation of Report to Congress on the Price-Anderson Act, *62 Federal Register 250*

Dear Mr. Fygi:

We are pleased to have the opportunity to comment on the subject *Federal Register* "Notice of Inquiry" of December 31, 1997. We trust that our comments will assist the Department in preparing its required written report to Congress on the need to continue or modify provisions of the Price-Anderson Act. In accordance with the Notice, five copies of these comments are enclosed.

Universities Research Association, Inc. (URA) is a nonprofit corporation consisting of 87 member research universities located in the United States, Canada, Japan, and Italy. URA constructed, and continues to manage and operate, under contract with DOE, the Fermi National Accelerator Laboratory (Fermilab) located near Batavia, Illinois. URA has a broad charter for the management of research and educational activities in the natural sciences.

This Association strongly supports the continuation of the provisions of the Price-Anderson Act for DOE contractors and suppliers, including the exemption of Fermilab, among other named DOE national laboratories, from the payment of civil penalties under that Act. It is our experience at Fermilab that a few subcontractors/suppliers expect Price-Anderson protection and will not contract with the Laboratory without it.

The passage of time since the enactment of the Price-Anderson Act makes it no less important to protect the public from a nuclear incident. Moreover, while the incurrence of a nuclear incident remains extremely remote, DOE nonprofit contractors and their suppliers are not in the financial position to protect against this risk, particularly since
there is no realistic way of estimating the monetary damages which may potentially be involved. The

establishment of a financial reserve by individual contractors would be cost prohibitive, cost inefficient, and ineffective in truly protecting itself and the public should a major calamity actually occur. It is equally important to continue not making the Act's indemnification subject to the availability of appropriated funds. With regard to the use of either a Public Law 85-804, or a Section 162 of the Atomic Energy Act, indemnity as a substitute for a Price-Anderson indemnity, we do not believe that either one would suffice, since indemnification by the Government under these two other statutory schemes 1) would not cover the public, and 2) would be discretionary on the part of the Department. Lastly, use of DOE's "general contract authority" to indemnify its contractors would not be workable either, since this type of indemnity is subject to the availability of appropriated funds, a restriction unacceptable to us and certain subcontractors and suppliers.

Attached are answers to those DOE's questions considered pertinent to our Laboratory operations and experience. Once again, we appreciate the opportunity to comment.

Sincerely,

William A. Schmidt
General Counsel

Enclosure

URA's Answers to the Department of Energy's Price-Anderson Questions

DOE Question No.

1 Yes, the DOE Price-Anderson indemnification should be continued without modification. The initial rationale for it is equally applicable today. The broad nuclear incident indemnification under which our Laboratory currently operates must be available to satisfy the public's (particularly our neighbors) concerns and those of certain suppliers.

2 The DOE Price-Anderson indemnification should continue and should not be made discretionary. Funds must continue to be available to protect the public and URA to compensate for damages and injuries resulting from a nuclear incident.

4 DOE Price-Anderson indemnification should always apply to DOE activities conducted pursuant to an NRC license. To do otherwise, would be counter- productive to the current consideration by the Department of greater external regulation of DOE facilities. Nonprofit M&O contractors are not in the financial position to absorb even more potential risk, as the NRC monetary limits on indemnification would require.

5 DOE Price-Anderson indemnification should continue to provide omnibus coverage, and we are not aware of any persuasive reasons why a distinction should be made between for-profit and nonprofit contractors. Nonprofit contractors generally have, however, more limited corporate funds available to cover these risks than do large for-profit contractors, and nonprofit university contractors are not in the position to expose their institution's endowment to this risk.

6 If omnibus DOE indemnification coverage were not continued, we are not aware of any acceptable alternatives. Public Law 85-804, Section 162 of the Atomic Energy Act, and DOE's general contract indemnification authority do not possess the statutory advantages of Price-Anderson indemnities, such covering the public and being applicable by operation of law.

7 Elimination of the DOE Price-Anderson indemnification would negatively affect DOE's ability to perform its mission, since in all likelihood fewer contractors (nonprofit and for-profit) would be able or willing to compete on DOE requirements because of the uncapped and indefinite liability of a nuclear incident.

8 Likewise, elimination of this statutory protection would negatively affect the willingness of existing or potential DOE contractors to undertake DOE activities because the risk assumed without Price-Anderson coverage would clearly outweigh any monetary gain of the contractor, and in given circumstances, could seriously affect the continued viability of a contractor.

9 While typically not a problem at our Laboratory, those Laboratories with a reactor, for example, would have serious concerns about their ability to obtain goods or services from subcontractors/suppliers should Price-Anderson coverage be eliminated.

10 The elimination of Price-Anderson indemnification would make it more difficult for claimants to be compensated for nuclear damage since other indemnification schemes, unlike Price-

Anderson, do not contain the public protection features, including precationary evacuation, of the Price-Anderson Act. Lastly, since inclusion of these alternative indemnities is not mandatory, any failure to include one would be fatal to claimant recovery unlike the Price-Anderson Act which is applicable by operation of law.

12 The amount of DOE Price-Anderson indemnification for DOE activities inside the United States should be increased at least at the rate of annual inflation.

15 The Price-Anderson indemnification should continue to cover DOE contractors when a nuclear incident results from gross negligence or willful misconduct in view of potentially huge exposure for any such incident, an exposure far beyond the financial wherewithal of a nonprofit.

16 Yes, the Price-Anderson indemnification should be extended to cooperative agreements, since under given circumstances, such instruments may well be appropriate to manage and operate a DOE scientific user facility.

20 It would seem to be clearly in the Government and public interest to expand the definition of nuclear incident to cover non-proliferation, nuclear risk reduction, and improvement of nuclear safety outside the United States such as in the former Soviet Union. In those instances, inclusion should be mandatory in order to make it apply by operation of law.

30 The mandatory exemption from civil penalties for certain nonprofit contractors operating named DOE national laboratories should be continued. It should also be continued for subcontractors and suppliers of the named nonprofit contractors. These organizations and the national laboratory each operates are national resources which merit exemption from civil penalties so as not to further erode the funding available for research and development for the scientific and public good, i.e., if nonprofits were made subject to Price-Anderson civil penalties, additional research dollars would have to be placed in a risk pool which might never be used, but must nonetheless be set aside for prudent business reasons. If a nonprofit permits an egregiously unsafe condition or situation to develop at a Laboratory, DOE has other contractual tools available to remedy it.