

Nuclear Regulatory Commission

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unenforceable. The Commission will issue a certificate of release of any such lien if it finds that the liability for the amount has been fully satisfied or has become legally unenforceable.

4. If the Commission determines that the licensee is financially able to reimburse the Commission for a deferred premium payment made in its behalf, and the licensee, after notice of such determination by the Commission fails to make such reimbursement within 120 days, the Commission will take appropriate steps to suspend the license for 30 days. The Commission may take any further action as necessary if reimbursement is not made within the 30-day suspension period including, but not limited to termination of the operating license.

UNITED STATES NUCLEAR REGULATORY COMMISSION

Indemnity Agreement No. _____
Item 1—Licensee _____
Address _____
Item 2—a. Amount of financial protection _____

b. With respect to any nuclear incident, the amount specified in Item 2a of this Attachment shall be deemed to be (i) reduced to the extent that any payment made by the insurer or insurers under a policy or policies specified in Item 5 of this Attachment reduces the aggregate amount of such insurance policies below the amount specified in Item 2a and (ii) restored to the extent that, following such reduction, the aggregate amount of such insurance policies is reinstated.

Item 3—License number or numbers _____
Item 4—Location _____
Item 5—Insurance Policy No.(s) _____

Item 6—The indemnity agreement designated above, of which this Attachment is a part, is effective as of ___ m., on the ___ day of _____, 19__.

For the United States Nuclear Regulatory Commission.

By _____
For the _____
(Name of licensee)

By _____
Dated at Bethesda, MD, the _____ day of _____, 19__.

[26 FR 3457, Apr. 22, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §140.92, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§140.93 Appendix C—Form of indemnity agreement with licensees furnishing proof of financial protection in the form of licensee's resources.

This indemnity agreement No. _____ is entered into by and between the _____ (hereinafter referred to as the licensee) and the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission pursuant to subsection 170(c) of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act).

ARTICLE I

As used in this agreement,

1. Nuclear reactor, byproduct material, person, source material, special nuclear material, and precautionary evacuation shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

2.(a) For facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, and except where otherwise specifically provided, amount of financial protection means the amount specified in Item 2 of the Attachment annexed hereto, as modified by paragraph 8, Article II, with respect to common occurrences, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred retrospective premium charges).

(b) For all other facilities, and except where otherwise specifically provided, amount of financial protection means the amount specified in Item 2 of the Attachment annexed hereto, as modified by paragraph 8, Article II, with respect to common occurrences.

3. (a) Nuclear incident means any occurrence including an extraordinary nuclear occurrence or series of occurrences at the location or in the course of transportation causing bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of the radioactive material.

(b) Any occurrence including an extraordinary nuclear occurrence or series of occurrences causing bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive or other hazardous properties of—

i. The radioactive material discharged or dispersed from the location over a period of days, weeks, months or longer and also arising out of such properties of other material defined as the radioactive material in any other agreement or agreements entered into

by the Commission under subsection 170(c) or (k) of the Act and so discharged or dispersed from *the location* as defined in any such other agreement; or

ii. The radioactive material in the course of transportation and also arising out of such properties of other material defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act as *the radioactive material* and which is in the course of transportation shall be deemed to be a common occurrence. A common occurrence shall be deemed to constitute a single nuclear incident.

4. *Extraordinary nuclear occurrence* means an event which the Commission has determined to be an extraordinary nuclear occurrence as defined in the Atomic Energy Act of 1954, as amended.

5. *In the course of transportation* means in the course of transportation within the United States, or in the course of transportation outside the United States and any other nation, and moving from one person licensed by the Commission to another person licensed by the Commission, including handling or temporary storage incidental thereto, of the radioactive material to the location or from the location provided that:

(a) With respect to transportation of the radioactive material to the location, such transportation is not by pre-determination to be interrupted by the removal of the material from the transporting conveyance for any purpose other than the continuation of such transportation to the location or temporary storage incidental thereto;

(b) The transportation of the radioactive material from the location shall be deemed to end when the radioactive material is removed from the transporting conveyance for any purpose other than the continuation of transportation or temporary storage incidental thereto;

(c) *In the course of transportation* as used in this agreement shall not include transportation of the radioactive material to the location if the material is also *in the course of transportation* from any other location as defined in any other agreement entered into by the Commission pursuant to subsection 170(c) or (k) of the Act.

6. *Person indemnified* means the licensee and any other person who may be liable for public liability.

7. *Public liability* means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the

radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material, and (b), if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

8. *The location* means the location described in Item 4 of the Attachment hereto.

9. *The radioactive material* means source, special nuclear, and byproduct material which (1) is used or to be used in, or is irradiated or to be irradiated by, the nuclear reactor or reactors subject to the license or licenses designated in the Attachment hereto, or (2) which is produced as the result of operation of said reactor(s).

10. *United States* when used in a geographical sense includes Puerto Rico and all territories and possessions of the United States.

ARTICLE II

1. The licensee undertakes and agrees to indemnify and hold harmless all persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the incident, the licensee agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another, provided, that the obligation of the licensee under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material;

(b) Property damage due to neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation; and

(d) The radioactive material.

3. Any obligations of the licensee under paragraphs 1 and 2 of this Article, and under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability shall not in the aggregate exceed the amount of financial protection with respect to any nuclear incident, including the reasonable costs of investigating and settling claims and defending suits for damage.

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4. With respect to any extraordinary nuclear occurrence to which this agreement applies, the Commission, and the licensee on behalf of itself and other persons indemnified, insofar as their interests appear, each agree to waive:

(a) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

- (1) Negligence;
- (2) Contributory negligence;
- (3) Assumption of the risk;
- (4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, *conduct of the claimant* includes conduct of persons through whom the claimant derives his cause of action;

(b) Any issue or defense as to charitable or governmental immunity;

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

5. The waivers set forth in paragraph 4, of this article:

(a) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(b) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(c) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law: *Provided, however,* That with respect to an extraordinary nuclear occurrence occurring at the facility, a claimant who is employed at the facility in connection with the construction of a nuclear reactor with respect to which no operating license has been issued by the Nuclear Regulatory Commission shall not be considered as employed in connection with the activity where the extraordinary nuclear occurrence takes place if:

(1) The claimant is employed exclusively in connection with the construction of a nuclear reactor, including all related equipment and installations at the facility, and

(2) No operating license has been issued by the NRC with respect to the nuclear reactor, and

(3) The claimant is not employed in connection with the possession, storage, use or transfer of nuclear material at the facility;

(d) Shall not apply to any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law;

(e) Shall be effective only with respect to those obligations set forth in this agreement and in contracts or other proof of financial protection;

(f) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (1) the limit of liability provisions under subsection 170(e), of the Atomic Energy Act of 1954, as amended, and (2) the terms of this agreement and the terms of contracts or other proof of financial protection.

6. The obligations of the licensee under this agreement shall apply only with respect to nuclear incidents occurring during the term of this agreement.

7. Upon the expiration or revocation of any license designated in Item 3 of the Attachment, the Commission will enter into an appropriate amendment of this agreement with the licensee reducing the amount of financial protection required under this Article; provided, that the licensee is then entitled to a reduction in the amount of financial protection under applicable Commission regulations and orders.

8. With respect to a common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, *other applicable agreements* means each other agreement entered into by the Commission pursuant to subsection 170(c) or

(k) of the Act in which agreement the nuclear incident is defined as a *common occurrence*.

9. The obligations of the licensee under this Article shall not be affected by any failure or default on the part of the Commission or the Government of the United States to fulfill any or all of its obligations under this agreement. Bankruptcy or insolvency of any person indemnified other than the licensee, or the estate of any person indemnified other than the licensee, shall not relieve the licensee of any of his obligations hereunder.

ARTICLE III

1. The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability.

2. With respect to damage caused by a nuclear incident to property of any person legally liable for the nuclear incident, the Commission agrees to pay to such person those sums which such person would have been obligated to pay if such property had belonged to another; provided, that the obligation of the Commission under this paragraph 2 does not apply with respect to:

(a) Property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material;

(b) Property damage due to the neglect of the person indemnified to use all reasonable means to save and preserve the property after knowledge of a nuclear incident;

(c) If the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle and containers used in such transportation;

(d) The radioactive material.

3. [Reserved]

4. (a) The obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed the amount of financial protection.

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to Paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under this agreement and to all other applicable agreements; or (2) an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection.

5. The obligations of the Commission under this agreement shall apply only with respect

to nuclear incidents occurring during the term of this agreement.

6. The obligations of the Commission under this and all other agreements and contracts to which the Commission is a party shall not with respect to any nuclear incident, in the aggregate exceed whichever of the following is the lowest: (a) \$500,000,000; (b) \$560,000,000 less the amount of financial protection required under this agreement; or (c) with respect to a common occurrence, \$560,000,000 less the sum of the amounts of financial protection established under this agreement and all other applicable agreements.

7. The obligations of the Commission under this agreement, except to the licensee for damage to property of the licensee, shall not be affected by any failure on the part of the licensee to fulfill its obligations under this agreement. Bankruptcy or insolvency of the licensee or any other person indemnified shall not relieve the Commission of any of its obligations hereunder.

ARTICLE IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim (provided that no government indemnity that would otherwise be available to pay public liability claims is used for these purposes) and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

2. Neither this agreement nor any interest therein nor claim thereunder may be assigned or transferred without the approval of the Commission.

ARTICLE V

The parties agree that they will enter into appropriate amendments of this agreement to the extent that such amendments are required pursuant to the Atomic Energy Act of 1954, as amended, or licenses, regulations or orders of the Commission.

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ARTICLE VI

The licensee agrees to pay to the Commission such fees as are established by the Commission pursuant to regulations or orders of the Commission.

ARTICLE VII

The term of this agreement shall commence as of the date and time specified in Item 6 of the attachment and shall terminate at the time of expiration of that license specified in Item 3 of the attachment, which is last to expire; provided that, except as may otherwise be provided in applicable regulations or orders of the Commission, the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of the radioactive material from the location has ended as defined in subparagraph 5(b), Article I. Termination of the term of this agreement shall not affect any obligation of the licensee or any obligation of the Commission under this agreement with respect to any nuclear incident occurring during the term of this agreement.

ARTICLE VIII

The following provisions are applicable to each licensee operating a facility designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more:

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges): Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed \$63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) nor exceed \$10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

2. The Commission shall require the immediate submission of financial statements by those licensees who indicate, after an assessment of the retrospective premium by the insurance pools, that they will not pay the assessment. Such financial statements shall include, as a minimum, exhibits indicating internally generated funds from operations and accumulated retained earnings. Subsequent submission of financial statements by such licensees may be requested by the Commission, as required.

3. If premiums are paid by the Commission as provided in paragraph 1, payment by the Commission shall create a lien in the amount paid in favor of the United States upon all property and rights to property, whether real or personal, belonging to such licensee. The lien shall arise at the time payment is made by the Commission and shall continue until the liability for the amount (or a judgment against the licensee arising out of such liability) is satisfied or becomes unenforceable. The Commission will issue a certificate of release of any such lien if it finds that the liability for the amount has been fully satisfied or has become legally unenforceable.

4. If the Commission determines that the licensee is financially able to reimburse the Commission for a deferred premium payment made in its behalf, and the licensee, after notice of such determination by the Commission fails to make such reimbursement within 120 days, the Commission will take appropriate steps to suspend the license for 30 days. The Commission may take any further action as necessary if reimbursement is not made within the 30-day suspension period including, but not limited to, termination of the operating license.

UNITED STATES NUCLEAR REGULATORY COMMISSION

Indemnity Agreement No. _____

Attachment

Item 1—Licensee _____
Address _____
Item 2—Amount of financial protection _____
Item 3—License number or numbers _____
Item 4—Location _____

Item 5—The Indemnity Agreement designated above, of which this Attachment is a part, is effective as of ____ M., on the _____ day of _____, 19____.

For the United States Nuclear Regulatory Commission.

By _____
For the _____
(Name of licensee)

By _____
Dated at Bethesda, MD, the _____ day of _____, 19____.

[26 FR 3459, Apr. 22, 1961]

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