

§ 140.107 Appendix G—Form of indemnity agreement with licensees processing plutonium for use in plutonium processing and fuel fabrication plants and furnishing insurance policies as proof of financial protection.

This Indemnity Agreement No. _____ is entered into by and between _____ (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*), and section 201 of the Energy Reorganization Act of 1974, as amended.

ARTICLE I

As used in this agreement:

1. *By product material, person, source material, special nuclear material, precautionary evacuation, and extraordinary nuclear occurrence* shall have the meaning given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

2. Except where otherwise specifically provided, *amount of financial protection* means the amount specified in Item 2a and b, of the Attachment annexed hereto as modified by paragraph 6, 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. *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 predetermination 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.

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

6. *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.

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

8. *The radioactive material* means (a) any source, special nuclear, or byproduct material which (1) is both used or to be used in, or is processed or to be processed by, the licensee's plutonium processing and fuel fabrication plant or plants and is subject to the license or licenses designated in the Attachment hereto, or (2) is produced as the result of the operation of said plant or plants or (b) any source, special nuclear, or byproduct material which is waste or contamination from material described in paragraph 8(a). The words *used or to be used* and *processed or to be processed* in this paragraph cover source, special nuclear or byproduct material which is *in the course of transportation* as used in the agreement or is received at the plant for use or processing in the plant but which is, in fact, for any reason, not so used or processed.

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

ARTICLE II

1. At all times during the term of the license or licenses designated in Item 3 of the Attachment hereto, the licensee will maintain financial protection in the amount specified in Item 2 of the Attachment and in the form of the nuclear energy liability insurance policy designated in the Attachment. If more than one license is designated in Item 3 of the Attachment, the licensee agrees to maintain such financial protection until the end of the term of that license which will be the last to expire. The licensee shall, notwithstanding the expiration, termination, modification, amendment, suspension or revocation of any license or licenses designated in Item 3 of the Attachment, maintain such financial protection in effect 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 4(b), Article I, or until the Commission authorizes the termination or the modification of such financial protection. The Commission will not unreasonably withhold such authorization.

2. In the event of any payment by the insurer or insurers under a policy or policies specified in Item 5 of the Attachment hereto which reduces the aggregate limit of such policy or policies below the amount of financial protection, the licensee will promptly apply to his insurers for reinstatement of the amount specified in Item 2a of the Attachment (without reference to paragraph b of Item 2) and will make all reasonable efforts to obtain such reinstatement. In the event that the licensee has not obtained reinstatement of such amount within ninety days after the date of such reduction, and in the absence of good cause shown to the contrary,

the Commission may issue an order requiring the licensee to furnish financial protection for such amount in another form.

3. Any obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment hereto, 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.

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

5. 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.

6. With respect to any common occurrence,

(a) If the sum of the limit of liability of any Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association exceeds \$155,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$155,000,000 as the limit of liability of the Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds \$45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of

the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability-Property Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts 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 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.

(d) As used in this paragraph 6., Article II and in Article III, *other applicable agreements* means each other agreement entered into by the Commission pursuant to subsection 170(c). of the Act in which agreement the nuclear incident is defined as a *common occurrence*. As used in this paragraph 6., Article II, *the obligations of the licensee* means the obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment, and the reasonable costs incurred by the insurers in investigating and settling claims and defending suits for damage.

7. 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 of the estate of any person indemnified other than the licensee, shall not relieve the licensee of any of its 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 described in Item 4 of the Attachment or at the location described in Item 3 of the declarations attached to any nuclear energy liability insurance policy designated in Item 5 of the Attachment;

(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 \$200,000,000.

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, or of the estate of the licensee or any other person indemnified, shall not relieve the Commission of any of its obligations hereunder.

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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.

ARTICLE VI

The licensee agrees to pay 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 the 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 paragraph 4(b), Article I. Termination of the term of this agreement shall not affect any obligation of the licensee or the Commission under this agreement with respect to any nuclear

incident occurring during the term of this agreement.

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATTACHMENT

Indemnity Agreement No. _____

Item 1—Licensee. _____

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 12:01 a.m., on the _____ day of _____, 19____.

For the U.S. Nuclear Regulatory Commission.

For _____

By _____

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

[42 FR 51, Jan. 3, 1977, as amended at 42 FR 20141, Apr. 18, 1977; 44 FR 20633, Apr. 6, 1979; 44 FR 24045, Apr. 24, 1979; 45 FR 37410, June 3, 1980; 49 FR 11152, Mar. 26, 1984; 54 FR 24160, June 6, 1989]

§ 140.108 Appendix H—Form of indemnity agreement with licensees possessing plutonium for use in plutonium processing and fuel fabrication plants and furnishing proof of financial protection in the form of the licensee's resources.

This Indemnity Agreement No. _____ is entered into by and between _____ (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), and Section 201 of the Energy Reorganization Act of 1974, as amended.

ARTICLE I

As used in this agreement: