§ 140.96

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 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 4 of the Attachment and shall terminate at the time of expiration of that license specified in Item 2 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 subparagraph (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.

UNITED STATES NUCLEAR REGULATORY COMMISSION

Indemnity Agreement No. E—__

ATTACHMENT

Item 1—Licensee _______________________

Address ______________________________

Item 2—License number or numbers ________

Item 3—Location _________________________

Item 4—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)

Dated at Bethesda, MD, the ________ day of ___________, 19____.

[27 FR 2887, Mar. 29, 1962]
Nuclear Regulatory Commission § 140.107

(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 agreement entered into by the Commission pursuant to 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 and so discharged or dispersed from the location as the radioactive material and which is in the course of transportation 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 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, 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.

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 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 produces 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

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to be processed in this paragraph cover source, special nuclear or byproduct mate-
rial which is in the course of transportation as
used in the agreement or is received at the
plant for use or processed by 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 li-
cense or licenses designated in Item 3 of the
Attachment hereto, the licensee will main-
tain financial protection in the amount speci-
fied in Item 2 of the Attachment and in the
form of the nuclear energy liability insur-
ance 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, not-
withstanding the expiration, termination,
modification, amendment, suspension of rev-
ocation of any license or licenses designated
in Item 3 of the Attachment, maintain such
financial protection in effect until all the ra-
dioactive material has been removed from
the location and transportation of the radio-
active material from the location has ended
as defined in subparagraph 4(b), Article I, or
until the Commission authorizes the termi-
nation or the modification of such financial
protection. The Commission will not unreas-
onably withhold such authorization.
2. In the event of any payment by the in-
surer or insurers under a policy or policies
specified in Item 5 of the Attachment which
reduces the aggregate limit of such policy or policies below the amount of finan-
cial protection, the licensee will promptly
apply to his insurers for reinstatement of the
amount specified in Item 2a of the Attach-
ment (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 reinstate-
ment 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 requir-
ing the licensee to furnish financial protec-
tion 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 pub-
lic liability, together with any public liabil-
sity 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 rea-
sonable 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 Attach-
ment, the Commission will enter into an ap-
propriate amendment of this agreement with
the licensee reducing the amount of finan-
cial protection required under this Article
provided, that the licensee is then entitled to
a reduction in the amount of financial pro-
tection under applicable Commission regula-
tions and orders.
6. With respect to any common occurrence,
(a) If the sum of the limit of liability of
any Nuclear Energy Liability-Property In-
surance 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 dif-
ference between said sum and $155,000,000 as
the liability of the Nuclear Energy
Liability-Property Insurance Association
policy designated in Item 5 of the Attach-
ment bears to the sum of the limits of liabil-
ity of all nuclear energy liability insurance
policies (facility form) applicable to such
common occurrence and issued by Nuclear
Energy Liability-Property Insurance Asso-
ciation;
(b) If the sum of the limit of liability of
any Mutual Atomic Energy Liability Under-
writers policy designated in Item 5 of the At-
tachment and the limits of liability of all
other nuclear energy liability insurance poli-
cies (facility form) applicable to such com-
mon occurrence and issued by Mutual Atom-
omic Energy Liability Underwriters exceeds
$45,000,000, the amount of financial protec-
tion specified in Item 2 a and b of the At-
tachment 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 agree-
ments is with a person who has furnished fi-
nancial protection in a form other than a nu-
clear energy liability insurance policy (facil-
ity form) issued by Nuclear Energy Liability-
Property Insurance Association or Mu-
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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 transportation 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 sum of the amounts 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.

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 ______ day of ______, 19 __________

For the U.S. Nuclear Regulatory Commission.

By __________________________

Dated at Bethesda, MD, the ______ day of _____ 19 __________