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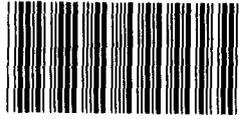
Testimony

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Price-Anderson Act Nuclear Accident
Liability Protection

Statement for the Record by
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Before the
Subcommittee on Energy Research and
Development
Committee on Science, Space, and
Technology
House of Representatives



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Madam Chairman and Members of the Subcommittee:

We appreciate the opportunity to present for the record our views on the liability protection provided by the Price-Anderson Act, amendments proposed by H.R. 1414, and responses to questions you raised in a June 8, 1987, letter concerning H.R. 1414. My statement today is based in part on our June 2, 1987, report on a number of Price-Anderson issues, such as the need for the act and the coverage provided by it.¹

The indemnification provisions of the Price-Anderson Act expire on August 1, 1987. Expiration of the indemnity provisions could have an immediate impact on the Department of Energy's (DOE) nuclear defense programs and nondefense activities; its plans to transport and dispose of nuclear waste; and the people that live near, and the contractors that operate, its nuclear facilities. Although DOE's indemnification continues through the life of its contracts, DOE's contracts terminate at the end of 5 years, and the financial protection provided by the act would not apply to any contract that DOE awards after August 1, 1987.

In addition, the existing act does not afford the public the same level of financial protection for an accident at a DOE facility as an accident at a commercial facility. The liability

¹Nuclear Regulation: A Perspective on Liability Protection for a Nuclear Plant Accident (GAO/RCED-87-124).

limit for DOE contractors currently is \$205 million less than that for commercial activities. Further, the act may not cover the costs of a precautionary evacuation at either a commercial or DOE facility. Although commercial activities carry private insurance to cover these costs, DOE does not require its contractors to obtain private insurance.

Before I describe these issues and respond to some of your questions concerning H.R. 1414, I will provide a brief overview of the act and the coverage provided by it.

PRINCIPAL FEATURES

OF THE ACT

The Price-Anderson Act has two underlying objectives: (1) establish a mechanism for public compensation for personal injury or property damage in the event of a nuclear accident and (2) remove the roadblock to the private development of nuclear power. The act provides "umbrella" coverage and limits the liability for anyone (contractors, subcontractors, vendors, suppliers, architect-engineers, and transporters) who performs work in connection with commercial or government nuclear activities. In addition, the act prescribes a system of private insurance and government indemnity (reimbursement of liability) to cover the off-site consequences of a nuclear accident at commercial and government facilities.

The act initially limited liability to \$560 million for commercial and \$500 million for government activities. It also established a two-step process to pay claims that included private insurance and government indemnity. Since DOE and its predecessor agencies have generally reimbursed contractors for all costs of doing business with the government, DOE has not required its contractors to obtain private insurance. Therefore, claims arising from a nuclear accident at a DOE facility would be paid by the government.

GAO'S POSITION

ON THE ACT

In previous reports and testimony, we concluded that the act's indemnification authority should be extended since many of the original premises for the act still exist.² We continue to believe this because (1) the potential for an accident that causes significant off-site personal injury and property damage exists, (2) private insurance to fully cover the expected consequences of a catastrophic accident is not available, (3) industry is not willing to assume the risks of an accident without adequate financial protection, and (4) the public would not be assured that it could

²Analysis of the Price-Anderson Act (EMD-80-80, Aug. 18, 1980), Congress Should Increase Financial Protection to the Public From Accidents at DOE Nuclear Operations (EMD-81-111, Sept. 14, 1981), and November 8, 1985, hearings before the Subcommittee on Energy Research and Production, House Committee on Science and Technology.

receive personal injury and property damage compensation if an accident bankrupted the responsible party.

Expiration of DOE's indemnification authority could have an immediate impact on the agency's nuclear programs because DOE indemnification continues only through the 5-year life of its contracts. The financial protection provided by the act would not apply to any contract that DOE awards after August 1, 1987. In addition, the public is not afforded the same level of protection for an accident at a DOE and commercial facility.

Under the existing act, DOE's liability is \$205 million lower than that for commercial activities; this gap could increase to \$260 million in the early 1990s when more commercial nuclear power plants start to operate. However, some DOE nuclear facilities could experience accidents comparable to those projected for commercial activities (between \$67 million and \$15.5 billion for the worst type of accident). DOE agrees that liability coverage for its contractors should be the same as that available for commercial facilities.

We further reported that the act is ambiguous concerning coverage of precautionary evacuation costs at either a commercial or DOE facility. The act covers liability for a nuclear incident that causes off-site damages as a result of the release of radioactive material. Neither the act nor its legislative history

discusses whether this includes the cost of a precautionary evacuation--where a radiation release appears imminent, such that a precautionary evacuation is ordered, but in fact, no release occurs. Although commercial activities carry insurance that covers precautionary evacuation costs, DOE does not require its contractors to obtain private insurance. Therefore, it is uncertain whether costs arising from a precautionary evacuation at a DOE facility would be covered.

In 1981 we recommended that the Congress amend the definition of a "nuclear incident" to clearly include any occurrence in which DOE determines that a release of radiation may be imminent.³ We continue to support this position because the public incurs costs regardless of whether radioactive material is released or not; that is, lives are disrupted and the potential exists for economic damage, such as lost wages and relocation costs. However, DOE does not agree; it believes that public protection for a precautionary evacuation should be dealt with in the same manner as any potentially hazardous activity--whether nuclear, toxic, or explosive.

³Congress Should Increase Financial Protection to the Public From Accidents at DOE Nuclear Operations (EMD-81-111, Sept. 14, 1981).

GAO'S VIEWS ON H.R. 1414

On May 21, 1987, the House Committee on Interior and Insular Affairs reported out H.R. 1414, Price-Anderson Amendments Act of 1987. The bill extends the indemnity authority of both the Nuclear Regulatory Commission (NRC), which licenses and indemnifies commercial activities, and DOE through August 1, 1997. The bill keeps the three tiers of financial protection for NRC licensees-- private insurance, deferred premium (retrospective premium), and government indemnity--and does not affect DOE's authority to require or not require its contractors to obtain private insurance. In addition, H.R. 1414 is intended to strengthen the Congress' commitment to compensate the public fully and promptly for damages in excess of the statutory liability limit.

H.R. 1414 would also increase the liability limit for NRC's commercial reactor licensees and DOE's contractors to about \$7.0 billion; it leaves the liability limit for other NRC licensees (nonprofit educational institutions, federal agencies, and persons who possess radioactive materials) at the current level. In addition, H.R. 1414 removes DOE's discretion to indemnify only those contractors it determines are engaged in activities that pose a substantial risk to public health and safety. The bill requires DOE to indemnify all contractors involved in the storage, handling, transportation, treatment, or disposal of, or research and

development on, spent fuel, high-level radioactive waste, and transuranic waste.

The following provides answers to some of the broader questions that you raised about H.R. 1414, specifically the statute of limitations, penalties for gross negligence and willful misconduct, and legal costs.

Statute of Limitations

The Congress adopted a 20-year statute of limitations in 1966 solely for claims arising from a large-scale accident that NRC and DOE determine to have caused substantial off-site radioactive contamination and damage to the public or property ("extraordinary nuclear occurrence"). The act provides that a claimant must file for damages within 3 years from the date he or she knew, or reasonably could have known, of the injury or damages but within 20 years from the date of the accident. H.R. 1414 would remove the 20-year absolute deadline but keep the more flexible 3-year limit.

DOE supports retaining both the 3-year limit and the 20-year deadline. DOE believes that removing the deadline would create a potentially unlimited time for claimant actions and could increase evidentiary and litigation problems from the lack of records, failure of memories, and unavailability of material witnesses. In addition, NRC has recommended that the Congress extend the absolute

deadline from 20 to 30 years. NRC stated that 30 years would provide greater assurance that claimants with latent injuries caused by a nuclear accident are provided protection under the Price-Anderson system.

Because the 3-year limitation provides more flexibility than an absolute deadline, we believe that the 3-year limit provides the public greater assurance of receiving compensation for latent health effects that may not occur for 20 to 40 years after the accident. If, for example, an individual becomes aware of having contracted cancer 35 years after a nuclear accident, under DOE's and NRC's proposals, the claimant could not file for damages because the 30-year limit had passed. Under H.R. 1414, however, the claimant could still file a damage suit.

Civil and Criminal Penalties for
Gross Negligence or Willful Misconduct

Some of the Price-Anderson proposals being considered by the Congress would impose penalties on DOE's contractors found liable because of gross negligence, willful misconduct, or bad faith. We have not considered this issue in our work.

However, DOE's indemnity agreements with its contractors do not relieve the contractors (and other persons indemnified) of liability in the event of an accident resulting from gross

negligence, willful misconduct, or bad faith. The agreements, which take effect simultaneously with performance contracts, currently provide that if damages resulting from an accident are awarded against a contractor (or other persons indemnified) DOE will reimburse the indemnified party for damages up to \$500 million.

Those who favor holding DOE's contractors financially liable point to the liability as an incentive for safe plant operations. Others believe that holding contractors financially liable would discourage private industry participation in DOE nuclear programs. They also believe it would undermine the omnibus feature of the act, which extends indemnification protection not only to DOE contractors but to any other person or entity who may be liable; diminish the protection available to the public because of the possibility of protracted litigation and delays in damage settlement; and increase the cost of services provided to DOE because contractors and suppliers would have to add a charge to cover this new and insurable risk.

If penalties are prescribed by law for gross negligence, willful misconduct, or bad faith, then the Congress should also consider who will pay the penalties.

Legal Costs

A 1975 Price-Anderson amendment stipulated that costs to investigate, settle, and defend claims arising from a nuclear accident could not be paid by government indemnity funds. Subsequently, the Department of Justice concluded that the act allowed payment of these costs from the private insurance and retrospective premiums (NRC licensees only). H.R. 1414 would keep the prohibition against using government indemnity funds to pay legal costs. It would continue to allow payment of legal costs from private insurance and retrospective premiums but only if the total dollar amount of property damages, health claims, and legal costs is within the liability limit.

However, H.R. 1414 stipulates that if damages and legal costs exceed the liability limit, the legal costs may be paid only pursuant to court order. The court may authorize the payment of 70 percent of the costs only after applying certain tests specified in the bill, such as reasonableness. In this way, H.R. 1414 ensures that available funds are not spent on legal costs at the expense of providing full compensation to the public for damages. We have not fully analyzed the ramification of this amendment, but it does not seem objectionable.

Although H.R. 1414 permits the use of private insurance and retrospective premiums to pay legal costs as defined in the act, the bill would prohibit the use of indemnity funds to pay legal costs arising from an accident. DOE does not require its contractors to obtain insurance or make retrospective contributions; however, DOE does have an interest in the contractors being able to successfully defend themselves. If successful, DOE would not have to indemnify. Therefore, the Congress may want to consider amending H.R. 1414 to allow DOE to reimburse contractors' legal costs in the event of an accident.

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This concludes my written statement. My responses to the other questions raised in your June 8, 1987, letter are in appendix I to this testimony.

Question 1: Should the August 1, 1997 expiration date of DOE indemnification authority in section 4.(a) be deleted, providing permanent authority? If so, please explain why such a change is warranted.

GAO RESPONSE

The act limits the indemnification authority to 10 years because the Congress wanted to review periodically the effectiveness and continued need for liability protection. DOE has stated that industry may be reluctant to enter into contracts with DOE without the act's indemnification authority. In light of this, the Congress may want to give DOE permanent authority to indemnify its contractors and provide oversight through other mechanisms, such as appropriations, authorization, and/or oversight hearings.

Question 2: Should section 4.(a)d.(1)(A) of the bill be clarified to specify that DOE may "directly or indirectly" cover indemnified persons through the umbrella coverage provided to its prime contractor? Why?

GAO RESPONSE

The language of the bill seems sufficient to authorize DOE to "directly or indirectly" cover indemnified persons through the umbrella coverage provided to its prime contractors. The bill would require DOE to indemnify "persons indemnified" against public liability arising out of, or in conjunction with, the contract activity. It defines "persons indemnified" as "any person who may be liable for public liability."

Question 3: Should section 4.(a)d.(1)(A) of the bill be clarified to permit DOE not to insure persons already indemnified by the Nuclear Regulatory Commission? Why?

GAO RESPONSE

Under the terms of the act, it is unlikely that DOE and NRC would indemnify a person for the same liability. Therefore, we see no need to clarify the bill in the manner indicated by the question.

DOE and NRC would exercise their indemnity authority only if a nuclear incident occurs. Although one person may supply nuclear components to both NRC licensees and DOE facilities (the manufacturer of fuel rods, for example), the location of the incident determines which agency would indemnify. If the incident occurs at a commercial facility, NRC would indemnify or reimburse public liability; if the incident occurred at a DOE facility, DOE would indemnify. Although a possibility exists that one act of negligence may result in accidents at both an NRC licensee and DOE facility, DOE's indemnity would not duplicate NRC's. DOE would reimburse public damages incurred from the accident at DOE's facility; NRC would reimburse for damages incurred at NRC's licensee.

Question 4: Does the change from permissive authority to mandatory coverage of contractors in section 4.(a)d.(1)(A) in any way affect the scope of existing coverage over nuclear incidents resulting from sabotage or over nuclear incidents occurring after diversion from the intended transportation route? Why?

GAO RESPONSE

A change from permissive to mandatory authority would not affect the scope of existing coverage over nuclear incidents resulting from sabotage or diversion from the intended transportation route. DOE's indemnification agreements with its contractors cover not only the contractors but anyone else found liable for a nuclear accident related to the contract activity. Under such a provision, the public could recover compensation from DOE for damages incurred from acts of sabotage and terrorism involving contract activities.

Question 5: Should the bill be amended to require that DOE insurance coverage be the same as NRC coverage? Why? See section 4.(a)d.(3).

GAO RESPONSE

We believe that liability coverage for DOE's contractors should be comparable to that provided to NRC's licensees. Under the existing act, the public is not afforded the same level of financial protection for an accident at a DOE and commercial facility. As early as 1981, we noted that some DOE nuclear facilities could experience accidents comparable to those projected for commercial plants.¹ Nevertheless, the liability limit for DOE's contractors remains at \$500 million per accident as set out in 1957.

In addition, NRC requires its licensees to obtain private insurance. Since DOE has generally reimbursed contractors for all costs of doing business with the government, DOE has not required its contractors to obtain private insurance. H.R. 1414 would continue to allow DOE this discretion. If the Congress required DOE contractors to obtain private insurance, it should also consider who will bear the costs.

¹Congress Should Increase Financial Protection to the Public From Accidents at DOE Nuclear Operations (EMD-81-111, Sept. 14, 1981).

Question 6: Should the definition of "transuranic waste" in section 4.(b) be modified to delete "in concentrations greater than 10 nanocuries per gram, or" so that it is consistent with the Nuclear Regulatory Commission's definition in 10 C.F.R. 61.55? Why?

GAO RESPONSE

In 1982 DOE increased the definitional limit of transuranic (TRU) waste from greater than 10 nanocuries per gram to greater than 100 nanocuries per gram. This action resulted from a TRU waste workshop held in August 1982 to determine whether the 10-nanocuries-per-gram limit could be safely increased. Officials from DOE and the U.S. Environmental Protection Agency and individuals from the nuclear and scientific communities attended the workshop and concluded that the limit could safely be raised to 100 nanocuries per gram. Also in late 1982, NRC adopted 10 C.F.R. 61.55, using 100 nanocuries per gram as the concentration above which TRU waste would not generally be acceptable for near-surface disposal. Since both NRC and DOE adopted the "greater than 100 nanocuries per gram" definition of TRU waste, we believe it would be more appropriate to change section 4.(b) to reflect this definition.

Question 7: Should section 6.e.(3)(B) be amended to clarify that if the limitation on liability for nuclear waste is lifted pursuant to section 6.e.(3)(A), then Congress retains the discretion to fund this excess liability from sources it deems appropriate? Why?

GAO RESPONSE

Section 6.e.(3)(A) would remove the liability limit for a nuclear waste incident if (1) the court determines that accident liability would likely exceed the limit and (2) the Congress failed to act to provide full and prompt compensation for such liability within 1 year of receiving the President's compensation plan.

In such event, section 6.e.(3)(B) would require that the excess liability be paid either out of the Nuclear Waste Fund or through appropriations from the general revenues of the Treasury. We do not believe that this provision precludes a future Congress' options. If a future Congress elects to compensate the public from other sources, it could so specify in any legislation enacted to respond to that particular accident. Therefore, we do not believe that section 6.e.(3)(B) needs to be changed to add a general statement that the Congress retains such discretion.

Question 8: Should section 6.e.(6) of the introduced bill be restored to the bill? Will the deletion of this section subject the government to a potential judicial determination that although Congress may have acted within one year, "full and prompt compensation" was not provided and therefore unlimited government liability exists? What purpose is served by the one-year waiting period if government "full" liability, as determined by a court, accrues under any circumstance?

GAO RESPONSE

The deleted section 6.e.(6) stated that "as used in this subsection, the term full and prompt compensaton shall have the meaning given such term by an Act of Congress described in paragraph (2)." In its report on H.R. 1414, the House Committee on Interior and Insular Affairs struck this definition because it appeared to weaken the Congress' commitment to provide full and prompt compensation.

We do not believe that it is necessary to restore this section to the bill. If confronted with a nuclear waste accident that exceeds the liability limit, the Congress, in its response to the President's report, might avoid problems suggested by the question by enacting legislation that specifies that its actions constitute "full and prompt compensation" as the term is used in section 6.e.(3)(A).

Question 9: Should section 7.(a)(2)(C) be amended to allow the President to submit an additional compensation plan providing for less than full compensation? Why? Is the President precluded from submitting such a plan if the section is not amended? Why?

GAO RESPONSE

Section 7.(a)(2)(C) provides that the President should submit to the Congress one or more specific plans that either individually or collectively provide for full and equitable public compensation. The language in this section does not preclude the President from submitting to the Congress additional proposals for less than full compensation.

However, section 6 of the bill rather strongly implies that the Congress wants to ensure full and prompt compensation. That section states that the Congress will thoroughly review the particular incident and take whatever action is determined to be necessary to provide full and prompt compensation to the public.

Question 10: Should a thirty-year statute of limitations for claims under the Act be added to section 10.(a)? Why?

GAO RESPONSE

Our response to this question is included in our written statement.

Question 11: Should the inflation adjustment provision in section 15 be amended to require such adjustment only if the liability limit is not automatically raised an equal or greater amount through the addition of new plants to the pool? Why?

GAO RESPONSE

Section 15 requires NRC to adjust the deferred premium (retrospective premium) every 5 years on the basis of the Consumer Price Index. We support this effort since inflation has eroded the level of financial protection over time. For example, the \$560 million for NRC licensees would have to be raised to \$2.2 billion and the \$500 million for DOE contractors to almost \$2 billion to provide the same value of protection as in 1957 when the act was first passed.

However, we do not believe that section 15 should be amended such that NRC would make this adjustment only if new plants do not enter the pool. If NRC did not adjust the liability limit in a year when new plants enter the pool, the value of protection to be provided by the bill could be diluted. Therefore, NRC should adjust the deferred payment regardless of the number of plants in the pool.

Question 12: Should a provision be added prescribing civil and criminal penalties for negligent, grossly negligent, or intentional actions of a contractor or its employees which cause a nuclear incident? Why?

GAO RESPONSE

Our response to this question is included in our written testimony.

Question 13: Should legal costs as defined in section 11.(d) be fully included in the financial protection provided under the Act? Why?

GAO RESPONSE

Our response to this question is included in our written testimony.