MASON & HANGER CORPORATION

February 10, 1998

U. S. Department of Energy
Office of General Counsel, GC-52
1000 Independence Ave. SW.
Washington, DC 20585

Subject: Reply comments to notice of inquiry concerning preparation of report to Congress on the Price-Anderson Act

Dear Sir or Madam:

Mason & Hanger Corporation has reviewed the Federal Register Notice published December 31, 1997. It is our intent to offer the attached replies to the listed questions contained in the Notice.

Thank you for the opportunity to provide input to the report preparation process.

Please contact myself or Alan G. Wagner, Esq. at (806) 477-7233 if you have any questions.

Very truly yours,

Karen M. Richard
Chief Counsel

KMR:AGW:llg

Attachments

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RESPONSES TO INQUIRIES MADE IN FR68272-68278, DECEMBER 31, 1998

QUESTION NUMBER	RESPONSE
1.	Yes
2.	It should not be made discretionary. It would be extremely difficult, if not impossible, to formulate criteria for determining which activities or categories of activities should receive indemnification.
3.	No, regardless of specific contract forms, private, M&O, etc., all contractors performing DOE activities should be afforded the same level of indemnification protection.
4.	All nuclear activities undertaken for the DOE by a contractor should be indemnified even if the activities are conducted pursuant to an NRC license.
5.	Omnibus coverage should continue. No distinction should be made between forprofit and not-for-profit entities.
6.	There are no acceptable alternatives to Price Anderson indemnification for these risks.
7.	Many companies would refuse to perform the work. These are low probability/high consequence risks, and neither the costs nor the fees paid by DOE have ever reflected assumption of such catastrophic proportions. If companies incurred large liabilities and were unable to pay then, the public would be unprotected. A company could take bankruptcy and leave public injury claims unaddressed.
8.	Many existing or potential contractors would not be willing to perform the work. Start-up companies with no past and no future could perform the work, but at great risk to the public. This type of contingent liability for which there is no adequate insurance coverage would be difficult to address on company Balance Sheets and would be of concern to publicly owned companies, whose shareholders must be adequately informed of the risk associated with their investment.

9. Smaller sub-contractors and suppliers would be reluctant to accept the liability associated with warranting of their products and services. There are few contractors and suppliers servicing DOE exclusively. It would be logical that emphasis would be shifted to the private sector market to avoid the potential liability associated with DOE activities. Many subcontractors and suppliers are small, small disadvantaged and women-owned businesses. Without the Price Anderson indemnification, the public would be left unprotected in the event of a nuclear incident caused by one of them.

10. The ability of claimants to receive compensation depends on the financial resources of the entity claimed against. If the entity lacks sufficient resources to pay the claims, it will take bankruptcy and dissolve and the claims will remain unpaid. Any disputes over claims will involve aggressive defenses and will be extremely expensive cases to litigate. Inevitably the DOE will be joined in any lawsuits and those would have to be addressed under existing law or by special legislation.

11. Could not identify any available private insurance willing to insure the existing potential nuclear hazards at this site. If private insurance were available for some discrete part of these risks, it would probably be issued o a claims-made basis, which would require that insurance be purchased forever for completed operations. Therefore, mechanisms would have to be created to pay contractors for those costs long after contracts have been completed and closed.

12. Remain the same.

13. An increase should be considered if the United States intends to ask its contractors to become more involved with disarmament, demilitarization or response actions with respect to United States nuclear weapons in foreign countries.

14. Since the DOE is considering making its facilities subject to NRC regulation, this distinction would not appear meaningful for those facilities. To the extent commercial NRC licensees not engaged in DOE work can include in their costs to customers the potential contingent liabilities covered by Price Anderson, some consideration could be give to that distinction.

15. Yes.

16. Yes.

17. Yes, there should be no restrictions placed on indemnification for transportation activities associated with DOE Nuclear Material.

18. The source of cleanup contamination from nuclear operations conducted for the DOE, indemnification should continue. On-site clean-up activities does not generate new nuclear material. CERCLA and other environmental statutes apply to hazardous materials, which may be non-nuclear materials.

19. Because mixed waste contains nuclear material, Price Anderson should apply to mixed wastes in the same manner it applies to nuclear materials.

20. Yes, the coverage should be mandatory.

21. Yes, Tort law applicable to nuclear incidents in the territorial waters should be defined by federal law.

22. No such change to the definition of"nuclear incident" should be made.

23. The reliance of the Act on state tort law should continue in the current form. No modification should be made to the current Act rules.

24. No, see response to questions 4, 5, & 6.

25. No procedural changes should be made unless there are fatal flaws in their constriction or application.

26. Not familiar with all of the types of claims made under the PAAA System.

27. No specific recommendations

28. Yes, if the provision of the Act are clarified to specify that the civil penalty provisions of the Act are the only penalty actions authorized for enforcement of the codified nuclear safety management requirements. This provision of the Act provides a provision for penalties for violating the regulations published for ensuring nuclear safety. This provision is not the only method currently used or proposed for inflicting monetary penalties for such regulatory violations. Contractors and Subcontractors are currently penalized in their individual performance evaluations and are penalized in fee awards.

    The civil penalty provisions should only be applied to activities that are given indemnification by the PAAA provisions.

    The DOE should not be given authority to issue civil penalties absent the Price

Anderson indemnification.

29. The authority to issue civil penalties is not required to attain safe and efficient management of DOE activities, but it can be supportive of that goal. Other measures, such as appropriate award fee criteria, specific performance objectives, and DOE oversight and audit could be used and have been used in the past. However, if civil penalty authority exists, it should be the sole and exclusive enforcement mechanism. The authority to issue civil penalties can be exercised in a manner which does not interfere with DOE/Contractor cooperation. We know of no private insurance available to cover fines and penalties.

30. No, the playing field should be leveled for all DOE contractors regardless of whether their is a profit or non-profit. They certainly derive some type of benefit for the efforts, whether they are obvious or not. No, distinction should be made for their subcontractors.

31. No, the civil penalty provisions should be applied equally to all contractors, subcontractor, and suppliers.

32. No, the current level is adequate to get the attention of the contractors, subcontractors, and suppliers.

33. No, they are adequate as written.

34. No, they are adequate as written. There are adequate provisions for punishment of criminal acts in other statutes which are applicable to nuclear activities.