



Department of Energy
Washington, DC 20585

NR:RA:JMMCKENZIE U#94-13608
July 7, 1994

Manager, Pittsburgh Naval Reactors Office, USDOE (2)
Manager, Schenectady Naval Reactors Office, USDOE (2)

**PRICE ANDERSON AMENDMENTS ACT OF 1988 - POLICY ON APPLICATION OF
PENALTY PROVISIONS WITHIN THE NAVAL REACTORS PROGRAM -
PROMULGATION OF**

The Price Anderson Amendments Act of 1988 requires the Secretary of Energy to establish rules for citing, fining, and penalizing contractors who fail to comply with DOE nuclear safety requirements. Those rules, published in August 1993, assign to the Deputy Assistant Secretary for Naval Reactors or his designee authority to take enforcement actions against Naval Reactors Program contractors and subcontractors for violation of Naval Reactors Program nuclear safety requirements.

The attached policy sets forth the general framework through which the Naval Reactors Program will seek to enforce the penalty provisions of the Price Anderson Amendments Act. The policy is applicable to violations of Naval Reactors Program nuclear safety requirements by Naval Reactors Program contractors, subcontractors, and suppliers who are indemnified under the Price Anderson Act.

The Naval Reactors Program has historically applied detailed control and oversight to technical and manufacturing work conducted by Program contractors, subcontractors, and suppliers. The Program has successfully provided for, and carried out, such control and oversight through Program policies, disciplined procedures and practices, and contractual means to assure the continued adequacy and acceptability of such work. The Naval Reactors Program intends to continue to primarily use such means to assure adherence to all Program requirements and direction. The Program therefore intends to reserve action under Price Anderson Act Amendments for use in the event of an egregious situation substantially beyond the ability of established means to rectify.

Request for Action: The Manager, Pittsburgh Naval Reactors Office and the Manager, Schenectady Naval Reactors Office should convey the attached policy to Naval Reactors Program contractors who have a nuclear indemnity clause in their contract. In addition, this policy should be provided to and reviewed with contractors who are indemnified in the future under the Price Anderson Act prior to the provision of such indemnification.

Mgr., PNRO
Mgr., SNRO

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The action taken by this letter is considered by the Government to be within the scope of existing contracts and does not involve or authorize any delay in delivery or additional cost to the Government, either direct or indirect.

B. DeMars

B. DeMars
Director, Naval Nuclear Propulsion

Enclosure

Copy to:
ANSTR, Pittsburgh
ANSTR, Schenectady
Manager, IBO
Manager, WMFO
Manager, WFO
NRRO, All Shipyards
NRRO, MTS
COMNAVSEA (Code 00L)

Enclosure

Naval Reactors Policy on Application of
Price Anderson Amendments Act Penalty Provisions
Within the Naval Nuclear Propulsion Program

NAVAL REACTORS POLICY
ON
APPLICATION OF PENALTY PROVISIONS
WITHIN THE
NAVAL NUCLEAR PROPULSION PROGRAM

The Price-Anderson Amendments Act of 1988 (PAAA) penalty provisions for violation of an applicable Department of Energy (DOE)/Naval Reactors Program nuclear safety requirement are hereby applied within the Naval Reactors Program as set forth in this policy. The Naval Reactors Program is a joint Navy/DOE organization which, as set forth in Presidential Executive Order 12344, statutorily prescribed by Pub. L. No. 98-525, 42 U.S.C. § 7158 note (1984), is solely responsible for the military application of nuclear energy to naval warship propulsion.

BACKGROUND

The PAAA provides for a civil monetary penalty against a DOE contractor, or a subcontractor or supplier thereto, covered by Price-Anderson public liability indemnification, for violation of an applicable DOE requirement related to nuclear safety. The PAAA provides that the following factors shall be taken into account in determining the amount of any PAAA civil monetary penalty, not to exceed \$100,000 per violation: the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violation, the degree of culpability, and such other matters as justice may require. 42 U.S.C. 2282a.

The PAAA also provides for a criminal penalty upon conviction of a knowing and willful violation of an applicable DOE requirement related to nuclear safety which results in or, if undetected, would have resulted in a nuclear incident as defined in subsection 11q of the Atomic Energy Act of 1954, as amended. The PAAA criminal penalty is not to exceed \$25,000, or two years imprisonment, or both. 42 U.S.C. 2273.

DISCUSSION

The Naval Reactors Program has historically applied detailed control and oversight to technical and manufacturing work conducted by Program contractors, subcontractors, and suppliers, and has successfully provided for, and carried out, such control and oversight through Program policies, disciplined procedures and practices, and contractual means to assure the continued adequacy and acceptability of such work. The Naval Reactors Program intends to continue to primarily use such means to assure

adherence to all Program requirements and direction and intends, therefore, that action under PAAA be reserved for use in the event of an egregious situation substantially beyond the ability of established means to rectify.

This policy sets forth the general framework through which the Naval Reactors Program will seek to enforce the penalty provisions of the PAAA. The policy set forth herein is applicable to violations of Naval Reactors Program nuclear safety requirements (as defined below) by Naval Reactors Program contractors who are indemnified under the Price-Anderson Act, 42 U.S.C. § 2210(d), and their subcontractors and suppliers.

Except as modified herein, the provisions, procedures and definitions for implementing the PAAA penalty provisions located in Part 820 of title 10 of the Code of Federal Regulations (10 CFR Part 820) apply to any enforcement action pursuant to the PAAA penalty provisions taken by the Naval Reactors Program against its contractors and subcontractors. In accordance with 10 CFR Part 820, the Deputy Assistant Secretary for Naval Reactors (hereafter referred to as the Director, Naval Nuclear Propulsion Program) acts exclusively as the PAAA penalty authority over Program contractors. All adjudicatory and appeal procedures provided for in the PAAA statute and 10 CFR Part 820 will be available to Program contractors. However, Naval Reactors has determined that the guidance provided in the Appendix to 10 CFR Part 820 does not apply to Naval Reactors Program contractors and subcontractors. Further, as set forth in the other DOE PAAA regulations, the requirements of 10 CFR Parts 830, 834 and 835 do not apply to Naval Reactors Program contractors and subcontractors.

Owing to the military nature and classified or sensitive unclassified content of Naval Reactors Program nuclear safety requirements, these requirements are prescribed separate from DOE Directives (e.g., DOE Orders) and DOE regulations published in the Code of Federal Regulations, and pursuant to the Administrative Procedure Act (5 U.S.C. 553), are not required to be promulgated by rule. Accordingly, DOE Directives and such regulations are not incorporated into the definition of "Program nuclear safety requirements."

This policy does not alter any Naval Reactors Program technical requirements, policies, practices, or procedures, all of which remain in effect.

POLICY

The PAAA penalty provisions will be applied within the Naval Reactors Program (hereinafter "Program") as follows:

a. As used in this policy, the term "Program nuclear safety requirement" constitutes those requirements of relevance to

nuclear safety set forth in subparagraph (1) below, contained in the documents set forth in subparagraph (2) below, approved and issued, and specifically invoked as mandatory (i.e., not discretionary guidance), by Naval Reactors Headquarters for

- the design, configuration, manufacture, inspection, operation, testing, servicing, maintenance, or inactivation of a Program naval nuclear reactor plant system, component or safety-related support system (e.g., a land-based naval nuclear propulsion prototype);

- the KAPL Full Core Physics Experiment;

- the Expended Core Facility; or

- special nuclear or radioactive material control, handling, storage, or transportation (other than transportation performed solely under Department of Transportation requirements or regulations) under the cognizance of a Program contractor.

(1) Requirements of relevance to nuclear safety are necessary to ensure the protection of the health and safety of operators and the general public and for reactor protection and constitute:

(a) those system and component functional requirements established by, or described in, the associated Safety Analysis/Assessment Report, Reactor System Performance Analysis, Reactor Test Protection Analysis, Safety Analysis Report for Packaging, Refueling Safety Assessments, and Facility Safety Assessments (which pertains to the assessment of safety of special nuclear or radioactive materials);

(b) those technical design and manufacturing requirements which are necessary to achieve system and component operation in accordance with the foregoing functional requirements;

(c) those procedures required for the configuration, inspection, operation, testing, servicing, maintenance, or inactivation of systems and components to achieve system and component operation in accordance with the foregoing functional requirements; and

(d) established Federal limits on occupational exposure to ionizing radiation (i.e., not limits or control levels which are set lower than established Federal limits for procedural or administrative reasons).

(2) Requirements of relevance to nuclear safety, as set forth in subparagraph (1) above, are contained in the following documents. Those requirements of relevance to nuclear safety in the following documents are incorporated into the

definition of "Program nuclear safety requirements" as used in this policy:

(a) Reactor plant operating manuals prescribing the configuration, operation, testing, or maintenance of a reactor plant system, component, or a safety-related system or component of the foregoing;

(b) Reactor plant component and certified shipping container technical manuals;

(c) Technical specifications, design manuals and technical requirements invoked as mandatory on the design, manufacture or repair of a reactor plant system or component;

(d) Reactor servicing and refueling manuals;

(e) KAPL Full Core Physics Experiment Standard Operating Procedure Manual;

(f) Special nuclear material safety manuals and supporting analyses; and

(g) Radiological controls manuals.

b. As used in this policy, the term "Program contractor" constitutes:

(1) The operating contractor of the Bettis Atomic Power Laboratory (Bettis Site and Naval Reactors Facility), Knolls Atomic Power Laboratory (Knolls Site, Kesselring Site, Windsor Site), and subcontractors and suppliers thereto pursuant to DOE/Naval Reactors Program contracts who are covered by Price-Anderson indemnification and who carry out work subject to Program nuclear safety requirements;

(2) The Plant Apparatus Division and Machinery Apparatus Operation contractor(s), and subcontractors and suppliers thereto pursuant to DOE/Naval Reactors Program contracts who are covered by Price-Anderson indemnification and who carry out work subject to Program nuclear safety requirements; and

(3) Contractors to DOE/Naval Reactors Program and subcontractors or suppliers thereto who are covered by Price-Anderson indemnification and who carry out work subject to Program nuclear safety requirements.

c. Subject to the following conditions and taking into account the following factors, the Director, Naval Nuclear Propulsion Program will consider applying a PAAA civil monetary penalty, through issuance of a Notice of Violation, upon violation of a Program nuclear safety requirement by a Program contractor. These conditions and factors will be applied by the

Director, Naval Nuclear Propulsion Program in the context of the unique Naval Reactors Program structure, policies, practices, and technical discipline which have been recognized in the statutorily prescribed Executive Order 12344 and which are central to the achievement of Program safety. It is not intended that the Director, Naval Nuclear Propulsion Program will issue a Notice of Violation without the application of a PAAA civil monetary penalty.

Conditions:

- (1) If the violation of the requirement represents and gives rise to an egregious situation substantially beyond the ability of established means to rectify and such situation is relevant to nuclear safety; and
- (2) If the culpability of the contractor for the violation is clear and certain; and
- (3) If the nature, circumstances, extent, and gravity of the violation warrant PAAA action.

Factors:

- (1) Whether the contractor detected and reported the violation to the Naval Reactors Program (note: all reporting should be conducted through the established channels); and
- (2) Whether the contractor took action to correct the violation and prevent a recurrence of the violation; and
- (3) Whether the contractor has a relevant history of past violations of a similar nature; and
- (4) Whether imposing a penalty would promote nuclear safety; and
- (5) How egregious the violation is and whether the violation is being addressed adequately through established Program mechanisms; and
- (6) Whether the violation was caused by the act or omission of a responsible manager of the contractor; and
- (7) Whether the contractor's conduct was known to or approved by responsible Naval Reactors personnel.
- (8) Any other factors germane to the specific situation.

d. It is recognized that due to the joint Navy/DOE nature of the Program, Navy personnel are integrated into certain aspects of Program contractor operations under the responsibility

of Program contractors, such as Navy personnel who stand operator watches at land-based prototype naval reactor plants under the supervision of Program contractor personnel. The conditions and factors set forth in paragraph c., including condition (3), will be applied in full regard to this unique joint nature of the Naval Reactors Program.

e. When nuclear safety aspects of DOE/Naval Reactors Program contractor site operations are regulated by the Nuclear Regulatory Commission (e.g., the Program fuel and core vendors), the PAAA penalty provisions are not applicable to such aspects of site operations. However, to the extent that such contractors are subject to Program nuclear safety requirements (e.g., design or manufacturing requirements) and are covered by Price-Anderson indemnification for liability associated with the end-products delivered to DOE pursuant to contract, such contractors are subject to PAAA penalty provisions as applied by this policy for violation of such requirements.

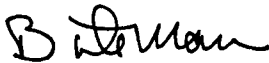
f. Managers of Naval Reactors Program Field Offices shall promptly advise the Director, Naval Nuclear Propulsion Program and notify the Program contractor of the facts and circumstances pertaining to any potential or alleged violation of a Program nuclear safety requirement which may warrant action by the Director, Naval Nuclear Propulsion Program under this policy.

g. The PAAA penalty provisions will apply within the Program only to actions, including design and manufacture, taken by Program contractors after the date of this policy.

h. Action under the PAAA penalty provisions will only be taken by the Director, Naval Nuclear Propulsion Program through formal issuance of a Notice of Violation to a Program contractor to assess a penalty. Accordingly, usage of terms such as "violation," "deficiency," "discrepancy," "failure," "citation," or "non-compliance" in any context by the Program or by Program contractors (such as in Program or internal Program contractor audit or inspection notes or reports), or issuance by a Program contractor of a trouble record or incident report, absent a formal Notice of Violation issued by the Director, Naval Nuclear Propulsion Program, will not directly or indirectly involve, or exercise, the PAAA penalty provisions.

i. The procedure referred to in the DOE PAAA regulations (10 CFR 820.72) pertaining to referral of potential criminal violations shall apply to Program work.

Dated: 7-7-94



B. DeMARS
Director, Naval Nuclear Propulsion