

This statutory purpose is frustrated if the atomic energy industry is not protected from bankrupting liabilities for damages caused abroad by an accident occurring in the United States.⁹ In the Report, the Joint Committee on Atomic Energy made explicit mention of the fact that the private insurance to be provided for reactor operators included coverage for damage in Canada and Mexico and, at another point, noted the Committee's hope that the insurance contract in its final form would cover the same scope as the bill.¹⁰

(i) It is my opinion that since the language of the Act draws no distinction between damage received in the United States and that received

abroad, none can properly be drawn. To read the Act as imposing such a limitation in the absence of statutory direction and in the light of an avowed Congressional intention to encourage the development of the atomic energy industry would be unwarranted. The confusing sentence cited in the Report must, therefore, be read consistently with the language of the Act in the manner suggested above, i.e., as recognizing Congressional inability to limit foreign liability, or must be ignored as inconsistent with the broad coverage of the statutory language.

[25 FR 4075, May 7, 1960]

§ 8.3 [Reserved]

§ 8.4 Interpretation by the General Counsel: AEC jurisdiction over nuclear facilities and materials under the Atomic Energy Act.

(a) By virtue of the Atomic Energy Act of 1954, as amended,¹¹ the individual States may not, in the absence of an agreement with the Atomic Energy Commission, regulate the materials described in the Act from the standpoint of radiological health and safety. Even States which have entered into agreements with the AEC lack authority to regulate the facilities described in the Act, including nuclear power plants and the discharge of effluents from such facilities, from the standpoint of radiological health and safety.

(b) The Atomic Energy Act of 1954 sets out a pattern for licensing and regulation of certain nuclear materials and facilities on the basis of the common defense and security and radiological health and safety. The regulatory pattern requires, in general, that the construction and operation of production facilities (nuclear reactors used for production and separation of plutonium or uranium-233 or fuel reprocessing plants) and utilization facilities (nuclear reactors used for production of power, medical therapy, research, and testing) and the possession and use of byproduct material (radioisotopes), source material (thorium and uranium ores), and special nuclear material (enriched uranium and plutonium, used as fuel in nuclear

⁹The Atomic Industrial Forum study notes that "[T]o be adequate, the governmental indemnity must cover industry's liability to residents of the countries who suffer as a result of an accident at an installation based in the United States." p. 61. This is certainly the case and one of the major Congressional purposes is frustrated should the Act be said to be unclear on this point. The principal reason for the conclusion that there is coverage reached in the Forum study is the fact that Price-Anderson provides indemnity for "any legal liability." Arthur Murphy, Director of the study, in a recent article, has stated that the confusing sentence in the Report is " * * * inconsistent with the flat coverage of any legal liability by the indemnity." Murphy, Liability for Atomic Accidents and Insurance, in Law and Administration in Nuclear Energy 75 (1959). In the testimony before the Joint Committee last year, Professor Samuel D. Estep, one of three authors of the comprehensive study of Atoms and the Law apparently relying upon the legislative history, stated that the problem of a reactor accident in the United States causing damage in a foreign country was unclear, presumably since he considered the phrase "any legal liability" directed at a different problem. Hearings before the Joint Committee on Atomic Energy, Indemnity and Reactor Safety, 86th Cong., 1st Sess., p. 77 (1959); Stason Estep, and Pierce, Atoms and the Law, 577 (1959). Professor Estep stated that there "surely ought to be" coverage and suggested a clarifying amendment. His statement that the phrase "any legal liability" covers only the question of time restrictions for claims seems to me erroneous since the language used, "any legal liability," seems intentionally broad. Additionally, should this very narrow reading be given to admittedly broad statutory language, the Congressional purpose would be frustrated.

¹⁰Report, p. 11.

¹¹Pub. L. 83-703, 68 Stat. 919.