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in addition to NRC, only one agency shall be responsible for support services at any one time, and the establishing authority shall designate the agency responsible for providing such services.

[54 FR 26948, June 27, 1989, as amended at 63 FR 15742, Apr. 1, 1998]

PART 8—INTERPRETATIONS

Sec.

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8.5 Interpretation by the General Counsel of §73.55 of this chapter; illumination and physical search requirements.

AUTHORITY: Secs. 152, 161, 68 Stat. 944, 948, as amended; 42 U.S.C. 2182, 2201.

§8.1 Interpretation of section 152 of the Atomic Energy Act of 1954; opinion of the General Counsel.

(a) Inquiries have been received as to the applicability of the provisions of section 152 of the Atomic Energy Act of 1954 (68 Stat. 944) to inventions or discoveries made or conceived in the course of activities under licenses issued by the Atomic Energy Commission.

(b) In my [General Counsel, U.S. Atomic Energy Commission] opinion a license issued by the Atomic Energy Commission is not a ''contract, subcontract, arrangement or other relationship with the Commission'' as those terms are used in section 152 of the act. Hence, the mere fact that an invention or discovery is made by a licensee in the course of activities authorized by a license would not give the Commission rights under section 152 with respect to such invention or discovery. On the other hand, if a licensee has entered into a ''contract,subcontract, arrangement or other relationship with the Commission,'' inventions or discoveries made or conceived by the licensee under the contract or other relationship would come within the purview of section 152.

(c) As used in this section, ''license'' means a license issued pursuant to Chapter 6 (Special Nuclear Material), 7 (Source Material), 8 (Byproduct Material) or 10 (Atomic Energy Licenses) of the Atomic Energy Act of 1954, or a construction permit issued pursuant to section 185 of the act.

[21 FR 1414, Mar. 3, 1956]

§8.2 Interpretation of Price-Anderson Act, section 170 of the Atomic Energy Act of 1954.

(a) It is my opinion that an indemnity agreement entered into by the Atomic Energy Commission under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2011, *et seq.*), hereafter cited as ''the Act,'' as amended by Pub. L. 85–256 (the ''Price-Anderson Act'') 42 U.S.C. 2210 indemnifies persons indemnified against public liability for bodily injury, sickness, disease or death, or loss of or damage to property, or for loss of use of property caused outside the United States by a nuclear incident occurring within the United States.

(b) Section 170 authorizes the Commission to indemnify against ''public liability'' as defined in section 11(u) of the Act.[1] Coverage under the Act therefore is predicated upon ''public liability,'' and requires (1) ''legal liability'' for (2) a ''nuclear incident.'' Determination of the Act's coverage, therefore, necessitates a finding that these two elements are present.

(c) In the case of damage outside of the United States caused by a nuclear facility based in the United States there would be a ''nuclear incident'' as

[1] SEC. 11u. ''The term 'public liability' means any legal liability arising out of or resulting from a nuclear incident, except claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs, and except for claims arising out of an act of war. 'Public Liability' also includes damage to property of persons indemnified: *Provided*, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.''

defined in section 11(o) since there would be an ''occurrence within the United States causing *** damage.''[2] The ''occurrence'' would be ''within the United States'' since ''occurrence'' is intended by the Act to be ''that event at the site of the licensed activity *** which may cause damage rather than the site where the damage may perhaps be caused.'' (S. Rep. 296, 85th Cong., 1st Sess., p. 16 1957) (hereafter cited as Report). In section 11(o) an ''occurrence'' is that which causes damage. It would be, therefore, an event taking place at the site. This definition of ''occurrence'' is referred to in the Report at page 22 and is crucial to the Act's placing of venue under section 170(e).[3] 027 In its definition of ''nuclear incident.'' The Act makes no limitation upon the place where the damage is received but states only that the ''occurrence'' must be within the United States.

(d) Similarly, the requirement of ''legal liability'' would be met. The words of the Act impose no limitation that the liability be one for damage caused in the United States but, on the contrary, are exceedingly broad permitting indemnification for ''any legal liability.'' In the most exhaustive study of the subject, it is stated that the phrase ''any legal liability'' indicates that liability for damage outside the United States is covered by the Act. Atomic Industrial Forum, Financial Protection Against Atomic Hazards 61 n. 355 (1957).

(e) Thus the precise language of the Act provides coverage for damage ensuing both within and without the United States arising out of an occurrence within the United States. There would be no occasion for doubt were it not for a single statement contained in the Report of the Joint Committee on Atomic Energy on the Price-Anderson Act. The Report states, at p. 16 that ''[i]f there is anything from a nuclear incident at the licensed activity which causes injury abroad, or if there is any activity abroad which causes further injury in the United States the situation will require further investigation at that time.'' This sentence follows an explicit and lengthy statement that the ''occurrence'' is an event at the site of the activity:

> * * * The occurrence which is the subject of this definition is that event at the site of the licensed activity, or activity for which the Commission has entered into a contract, which may cause damage, rather than the site where the damage may perhaps be caused. This site must be within the United States. The suggested exclusion of facilities under license for export was not accepted. This is because the definition of ''nuclear incident'' limits the occurrence causing damage to one within the United States. It does not matter what license may be applicable if the occurrence is within the United States. If there is anything from a nuclear incident at the licensed activity which causes injury abroad or if there is any activity abroad which causes further injury in the United States the situation will require further investigation by the Congress at that time * * *

Read literally, the last sentence would seem inconsistent with the preceding statement. It is, however, possible to read the sentence as consistent with the preceding statement if it is taken as indicating a recognition by Congress of the fact that the statutory limitation of liability to $500,000,000 would probably not limit claims by foreign residents to that amount in foreign courts and that therefore the persons indemnified were not fully protected against bankrupting claims, one of the primary purposes of the bill.[4]

(f) The point in question received scant consideration during the hearings preceding adoption of the bill held

[2] SEC. 11*o*. ''The term 'nuclear incident' means any occurrence within the United States causing bodily injury, sickness, disease, or death, or loss of or damage to property, or for loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: ***''

[3] ''In order to provide a framework for establishing the limitation of liability, the Commission or any person indemnified is permitted to apply to the appropriate district court of the United States which has venue in bankruptcy matters over the site of the nuclear incident. Again it should be pointed out that the site is where the occurrence takes place which gives rise to the liability, not the place where the damage may be caused *** '' Report. p. 22.

[4] Atomic Industrial Forum, Financial Protection Against Atomic Hazards, The International Aspects, p. 52 (1959).

by the Joint Committee on Atomic Energy. A summary of the study of the Atomic Industrial Forum, cited above, was introduced into the record of the hearing and included a conclusion that the provisions of the bill seemed to cover the situation.[5] That conclusion would seem entitled to more than ordinary weight since the Forum study received the careful consideration of the Joint Committee.[6] and the study referenced a statement from the 1956 Report very similar to the confusing statement in the 1957 Report noted above.[7]

(g) There was also a rather ambiguous colloquy in the hearings between Representative Cole and Mr. Charles Haugh in which Representative Cole indicated that the Joint Committee

> "* * * will do pretty well if we successfully protect the American people and property owners in this country without worrying about those that live abroad."[8]

(h) Congress, in enacting the Price-Anderson Indemnity Act added to section 2 of the Atomic Energy Act of 1954, a new subsection which stated, inter alia:

> In order * * * to encourage the development of the atomic energy industry, * * * the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents and may limit the liability of those persons liable for such losses.

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

[5] Hearings before the Joint Committee on Atomic Energy, Governmental Indemnity and Reactor Safety, 85th Cong., 1st Sess., p. 181 (1957) (hereinafter referred to as "Hearings.")

[6] Hearings, p. 168.

[7] Hearings, p. 182.

[8] Hearings, p. 97. It is significant to note that Mr. Haugh stated at that point the problem of the reactor operator who is concerned with any type of liability. He noted that the insurance contracts would cover "*** the instance where *** something happen[ed] out of the country and a suit is brought in the United States on that."

[9] The 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.

[10] Report, p. 11.

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 reactors), be licensed and regulated by the Commission.[12] In carrying out its statutory responsibilities for the protection of the public health and safety from radiation hazards and for the promotion of the common defense and security, the AEC has promulgated regulations which establish requirements for the issuance of licenses (Parts 30–36, 40, 50, 70, 71, and 100 of this chapter) and specify standards for radiation protection (part 20 of this chapter).

(c) The Atomic Energy Act of 1954 had the effect of preempting to the Federal Government the field of regulation of nuclear facilities and byproduct, source, and special nuclear material. Whatever doubts may have existed as to that preemption were settled by the passage of the Federal-State amendment to the Atomic Energy Act of 1954 in 1959.[13]

(d) Prior to 1954, all nuclear facilities and the special nuclear material produced by or used in them were owned by the AEC.[14] This Federal monopoly of atomic energy activities was due in large part to the use of atomic energy materials and facilities in our national weapons program, and the large capital investment required for their development. The Atomic Energy Act of 1954 permitted private ownership of nuclear facilities for the first time, but only under a comprehensive, pervasive system of Federal regulation and licensing. That Act recognized no State responsibility or authority over such facilities and materials except the States' traditional regulatory authority over generation, sale, and transmission of electric power produced through the use of nuclear facilities.[15] As interest grew in the private construction of facilities and the use of atomic energy materials, and the numbers of persons qualified in the field increased, questions arose as to the role State authorities should play with regard to the public health and safety aspects of such activities. Several bills were introduced with respect to Federal-State cooperation in 1956 and 1957.[16] An AEC proposed bill which

[11] Pub. L. 83–703, 68 Stat. 919.

[12] The terms ''byproduct material,'' ''source material,'' and ''special nuclear material'' are defined in the Atomic Energy Act, sections 11e, 11z, and 11aa, respectively. The terms ''production facility'' and ''utilization facility'' are defined in sections 11v and 11cc of the Act, respectively.

[13] Pub. L. 86–373, 73 Stat. 688.

[14] Atomic Energy Act of 1946, Pub. L. 79–585, 60 Stat. 755.

[15] Sec. 271, 42 U.S.C. 2018.

[16] S. 4298 and H.R. 8676, 84th Cong., second session; S. 53, 85th Cong., first session.