



AAG1-2

PDR

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MAR 2 1981

MEMORANDUM FOR: R. G. Smith, Acting Director
Office of Standards Development

FROM: W. E. Campbell, Jr.
Reactor Systems Standards Branch
Division of Engineering Standards, SD

SUBJECT: ATOMIC ENERGY ACT, SECTION 223(b)

On February 23 and 24, 1981, there were numerous discussions concerning the actions that SD had taken and would take in regard to Section 223(b). That section was added to the Atomic Energy Act by Public Law 96-295.

During discussions with W. M. Morrison on February 24, I became aware that in Section 223(b) and the portions of the Joint Explanatory Statement of the Committee on Conference (House Report 96-1070) that relate to Section 223(b) there is no mention of "reporting." I consider the action that NRC must take in response to Section 223(b) (that is, limit setting for enforcement purposes) is not directly linked to the action that the conferees desire NRC to take with regard to considering changes to Part 21.

Below are listed the actions that I believe NRC should address to be responsive to the new 223(b), to be responsive to the expressed desires of the conferees, and in anticipation of the report of the Comptroller General in regard to extending the authority of Section 223(b) to operation of commercial nuclear power plants.

1. Commission must establish limits for unplanned offsite release of fission products. This is required to "fill the gaps in existing criminal penalty authority" related only to construction and fabrication. The normal method of the Commission establishing such a limit is by a Commission Paper. There is no statutory requirement that this limit when established be converted to a regulation. This limit would become operative if IE commenced an enforcement proceeding against an employee who knowingly and willfully is involved under specific circumstances in a significant impairment of a basic component.
2. The Commission should consider making the public aware of the limit established. This could be by a regulation, possibly by a policy statement or possibly by the development of a form to be posted at the appropriate locations.

8104010083 XA

4pp

3. The Commission should be responsive to the expressed desires of the conferees by considering the advisability of amending an existing reporting of defects regulation (10 CFR Part 21) to delete the current reporting threshold in 21.3(a)(3) and substitute the limit established in 1 above. The vehicle to address the possible amending should be a Commission Paper. The result of the Commission action should be either an amended regulation or a record that the Commission considered the advisability as desired by the conferees and decided not to amend.
4. The inspection arm of the Commission should at some time commence inspecting to see if the provisions of Section 223(b) are posted. The posting is required by Section 223(b). I assume that the failure to post could be penalized under Section 223(a).
5. If the Comptroller General recommends extension beyond the consciously limited area of construction and fabrication to include operation and a new public law is enacted then the work in items 1 and 2 above would need to be modified.

Before any work in SHSS, based on the meeting of February 23, 1981 (Smith, Goller, Arlotto, et al), gets too far along, I recommend that the scope of work be set as follows and the current task (RS 123 1) and WITS (612247) item be revised accordingly:

SHSS: Prepare and present the Commission Paper to (a) accomplish the establishment of the limit to be used for enforcement purposes and (b) make the public aware of the limit in the manner determined appropriate.

ES : Subsequent to establishment of the limit noted above, prepare a Commission Paper to consider the advisability of amending 21.3(a)(3) and if appropriate an amended regulation.

W. E. Campbell, Jr.
 Reactor Systems Standards Branch
 Office of Standards Development

- Enclosure:
1. AEA 5223(b) (Pub. Law 96-295 5203)
 2. House Report 96-1070, pg. 30-31

bcc: I. C. Roberts, SD
 J. Guibert, SD
 W. E. Campbell, Jr.

- cc: G. A. Arlotto, SD
 W. M. Morrison, SD
 K. R. Goller, SD
 E. C. Wenzinger, SD
 N. Noseley, IE
 B. Bertsch, ELD

DISTRIBUTION:
 CENTRAL FILE SD TASK: 0123-1
 SD ALPHA SD RD WITS 612247
 RSSB WR
 RSSB RD
 RSSB SUBJ: 5030

OFFICE 2/27/81	SD:RSSB Wenzinger 2/27/81	SD:AD:RES W.Morrison 2/27/81	SD:DIS:SDI Goller 2/27/81	SD:DHS:DIR KGoller 2/27/81	<i>W. E. Campbell, Jr.</i> 2/27/81
-------------------	---------------------------------	------------------------------------	---------------------------------	----------------------------------	---------------------------------------

Commission to make a recommendation on the advantages, disadvantages and desirability of the options studied.

The conferees recognize the need for predictability by licensees in determining those situations for which this provision requires notification. The conferees therefore intend that the Commission shall establish requirements as soon as possible providing specific guidelines for the identification of an accident that could result in a release of radioactivity in excess of allowable limits. The conferees intend that the license condition established by this section will take effect when these guidelines have been established by the Commission.

PROTECTION OF NUCLEAR INSPECTORS—SECTION 202

Section 401 of the House amendment would make it a Federal crime to murder, assault, intimidate or otherwise interfere with any construction or quality assurance inspector on a project licensed by the NRC.

The Senate bill contained no similar provision. Section 202 of the conference agreement makes it a Federal crime to murder, assault, intimidate or otherwise interfere with any construction or quality assurance inspector on a project licensed by the NRC. The agreement achieves the intent of section 401 of the House amendment through addition of a new "Section 235, Protection of Nuclear Inspectors" to the Atomic Energy Act of 1954, as amended.

EXTENSION OF CRIMINAL PENALTIES—SECTION 203

The Senate bill established a criminal penalty of \$50,000 per day, or 2 years in prison, for each knowing and willful violation of an NRC safety standard relating to the construction or operation of a commercial utilization or production facility.

The House amendment contained no similar provision. The conferees agreed to a compromise provision that applies to any director, officer, or employee of a firm constructing or supplying the components for a utilization facility licensed under sections 103 or 104(b) of the Atomic Energy Act of 1954, as amended. Any of these individuals engaged in such construction or supply, who knowingly and willfully violate, or cause to be violated, any section of the Atomic Energy Act of 1954, any rule, regulation or order issued under any such section, or any license condition, which results or, if undetected, could have resulted in a significant impairment of a basic component may receive a fine of up to \$25,000 per day, or up to 2 years imprisonment, or both. A second conviction is subject to a fine of up to \$50,000 per day, or 2 years imprisonment, or both. For the purposes of this section, the term "supply" includes fabrication of components.

The compromise provides for an intent of "knowing and willful." By this standard, the conferees intend to require a high standard for state of mind.

Finally, the compromise directs the Commission to prescribe a threshold level of accidental release in paragraph (3) of the definition of the term "basic component." Although the cognate provision in the current regulatory definition of this term (10 CFR 21.2) specifies

such a level, the conferees desire the Commission to specifically consider the advisability in this context of revising that level to one that includes any accidental release in excess of allowable limits established by the Commission for normal operations.

With this provision, the conferees intend to fill gaps in existing criminal penalty authority under section 223 of the Atomic Energy Act of 1954, as amended, by providing a more severe penalty where a knowing and willful violation of an NRC safety standard in the construction of a plant, or in the fabrication of a structure, system, component, or part of a plant significantly impairs a basic component or, if undetected, could have done so. Ultimately, the provision seeks to deter such violations.

The conferees are aware that during the past year allegations have been made about irregularities in construction at several sites for new commercial nuclear power plants. These allegations include both intentional violations of NRC regulations and orders for assuring quality control of construction and intimidation of quality control inspectors. The Commission has investigated such allegations at the Marble Hill site in Plainfield, Indiana, and at the south Texas site in Bay City, Texas. The Justice Department is currently investigating the allegations at Marble Hill. More recently, the NRC has begun to investigate similar allegations about irregularities in the construction of the Bellefonte plant near Scottsboro, Alabama.

The conferees have agreed to direct the Comptroller General to study the need for extending the authority provided by this provision to the operation of a commercial nuclear power plant. In particular, the study should examine recent allegations about leakage rate testing and reporting prior to the accident at Three Mile Island, and about Arkansas Nuclear Unit One at Kussellville, Arkansas.

SECTION 204—SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Both the House amendment and Senate bill contained provisions that would criminalize activities constituting "sabotage" of various types of nuclear facilities and materials. The language in both provisions, however, included activities other than those causing damage or destruction, as well as states of mind less than "intentional" or "willful."

The conference agreement tightens this language to achieve more precisely the intended purpose of both the House and Senate provisions.

First, the criminal penalty established by the conference agreement would apply to any person who willfully and intentionally destroys or causes physical damage to, or who willfully and intentionally attempts to destroy or cause physical damage to those nuclear facilities and nuclear materials covered by the provision.

By including a "willfully and intentionally" standard in this provision, the conferees intend to require a high standard for state of mind.

Second, the conference agreement eliminates ambiguity over the specific types of actions that come within this provision by deleting "injure" and inserting in its place "causes physical damage to." The

42 USC 2273.

SEC. 203. Section 223 of the Atomic Energy Act of 1954 is amended by striking out "Whoever" and substituting:

"a. Whoever"

and by adding at the end thereof the following:

"b. Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104 b. of this Act who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a

facility shall, upon conviction, be subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than \$50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term 'basic component' means a facility structure, system, component or part thereof necessary to assure—

"Basic
component"

"(1) the integrity of the reactor coolant pressure boundary,

"(2) the capability to shut down the facility and maintain it in a safe shut-down condition, or

"(3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 103 or 104 b. of this Act is under construction and on the premises of each plant where components for such a facility are fabricated."

42 USC 2133,
2134.