

AAG1-2

PDR

Benson

October 3, 1980

MEMORANDUM FOR: Robert B. Minogue, Director
Office of Standards Development

FROM: Howard K. Shapar, Executive Legal Director

SUBJECT: ATOMIC ENERGY ACT, SECTION 223(b) IMPLEMENTATION OF --

This responds to the questions raised in your memorandum of September 22, 1980 on actions to implement Section 203 of P.L. 96-295. For clarity, your questions are repeated before the answers are given.

1. You state that the Conference Report (H.Rep. No. 96-1070) and various places in P.L. 96-295 (§§ 108(d), 201, 203, and 306(b)) define accidental release or accident. Since accidental release and accident can be significantly different, you ask is it required or appropriate that a different scenario be utilized for each of the definitions.

Answer:

For purposes of the implementation of Section 203, as a matter of law you need only be concerned with the language in subsection 223b.(3) and the accompanying explanation on pp. 30-31 of the Conference Report. Beyond this, if you believe that the definitions should from a technical standpoint be reconciled and, in your judgment, they cannot be, then it may be appropriate that this be noted in the definition of accidental release for section 223 purposes. Your memorandum does not suggest that this situation exists and we have no reason to think that it does.

2.(a) What is the effect of the new (P.L. 96-295) statutory definition of accident in the Atomic Energy Act 223(b), as amended June 30, 1980, on the different definition in 10 C.F.R. 21.3(a) that was established by the Commission to implement a different statute; that is the Energy Reorganization Act of 1974?

Answer:

The definition of accidents in subsection 223b(3) has no direct legal effect on the definition in 10 C.F.R. § 21.3(a). As noted on p. 5 of my memorandum of July 3, 1980, which you should have received, the intent of the conferees, is clear on this point (Conf. Rep. 30-31):

Although the cognate provision in the current regulatory definition of this term [basic component] (10 C.F.R. 21.3) specifies such a level [of accidental release], the conferees desire the Commission to specifically consider the advisability in this context of

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revising that level to one that includes any accidental release in excess of allowable limits established by the Commission for normal operations. (emphasis supplied)

2.(b) Section 223b. appears to be a binding requirement on the Commission, but in the Conference Report on page 31, "it appears to be discretionary." In regard to the § 223b., what is discretionary?

Answer:

Section 223b. is a part of the criminal sanctions in the Atomic Energy Act of 1954, as amended. There is nothing discretionary about this. Subsection 223b.(3) calls on the Commission to establish limits for an unplanned offsite release of quantities of fissions products which are the consequences of accidents. As noted in the answer to your question 2(a), 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."

3. To which facilities is section 223b. applicable?

Answer:

Any utilization facility required to be licensed under sections 103 or 104b. of the Atomic Energy Act of 1954, as amended.

Although it asks no question, the concluding paragraph of your memorandum appears to give a broad schedule for the implementation of section 223b. in a phased manner. The requirement in subsection 223b. that its provisions be prominently posted would not appear to be dependent on the related work referred to in your concluding paragraph. Moreover, until that related work is completed (probably after many months or years) you do not indicate what, if anything, you plan to do to implement subsection 223b.(3) on an interim basis. We mention these things so that silence on our part is not deemed to indicate agreement with the substance of your concluding paragraph.

Original signed
by H. K. Shapar

Howard K. Shapar
Executive Legal Director

cc: W. J. Dircks
H. R. Denton
V. Stello

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