



National Governors' Association



Lamar Alexander
Governor of Tennessee
Chairman

March 6, 1986

Raymond C. Scheppach
Executive Director

Dear Senator:

As Chairman of the National Governors' Association Energy and Environment Committee, I am writing to urge your support for amendments to the Price-Anderson Act to ensure that adequate liability coverage is available for claims which may arise in connection with accidents or incidents at both NRC licensed nuclear facilities and designated DOE nuclear activities.

As detailed in the enclosed NGA policy position, the Governors recommend that:

- o NRC licensed production and utilization facilities obtain the maximum commercial insurance coverage available.
- o The current retroactive assessment ceiling be increased to not more than \$15 million ██████████ per incident per reactor. These funds should be used to cover all legally valid claims, as determined in the courts of appropriate jurisdiction, relating to a nuclear accident. However, if claims total more than \$2 billion from any single accident, or if two or more occurrences require an assessment of at least \$10 million per reactor in any three year period, the Governors recommend that NRC make recommendations and Congress review the assessment system with an eye towards revising it.
- o The current \$500 million ceiling on indemnity related to accidents involving federal activities be eliminated. We believe the federal government should assume responsibility for providing full indemnity for all claims from accidents or incidents at federal facilities covered by the Price-Anderson Act. We urge you to specifically include federal high-level nuclear waste disposal and storage facilities and the waste isolation project, as well as shipments to such facilities, under Price-Anderson coverage.
- o The emergency response costs which states and localities incur as the result of covered accidents, or from precautionary evacuations ordered by a Governor or his designee, also be covered by the Price-Anderson Act, and



- o The statute of limitations during which victims of a nuclear incident may file a claim for personal or property damages under the Price-Anderson Act allow at least two years after the claimant knows or could reasonably have known of his injury or damage.

I will appreciate your efforts to advance the amendments to the Price-Anderson Act in the Senate, and urge your support for these recommendations. If I may provide additional information on this issue, please don't hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anthony S. Earl". The signature is written in dark ink and is positioned to the right of the typed name.

Anthony S. Earl
Chairman

Committee on Energy and Environment

(held)

METZENBAUM AMENDMENT

Insert at the appropriate place in the bill and make all necessary technical and conforming changes.

ELIMINATION OF LIMITATION ON LIABILITY.

(a) Elimination of Liability Limitation.--Section 178 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by--

(1) striking out, in the second sentence thereof, "", in the amount of \$500,000,000"; and

(2) striking out ": Provided further," and all that follows through the period at the end of the sentence thereof and inserting in lieu thereof a period; and

(3) inserting at the end of such subsection "Any agreement of indemnification entered into pursuant to this subsection shall not limit the amount indemnified."

(b) In General.--Section 170 e. of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by--

(1) striking out "The aggregate liability for a single nuclear incident of persons indemnified," and inserting in lieu thereof "With respect to any nuclear incident to which an agreement of indemnification entered into, other than under the provisions of subsection 170 d., is applicable, the aggregate liability for a single nuclear incident of persons indemnified,"; and

(2) striking out "or contractor".

(3) striking out ": and provided further" and all that follows through the period at the end thereof and inserting in lieu thereof a period.

(c) Conforming Amendments.--(1) Section 2 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2012(i)) is amended by adding at the end thereof "pursuant to section 170.".

(2) The section heading for section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended to read as follows:

"SEC. 170. LIABILITY FOR NUCLEAR INCIDENTS AND
INDEMNIFICATION FOR FEDERAL CONTRACTORS.".

(3) The item relating to section 170 in the table of contents of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) is amended to read as follows:

"Sec. 170. Liability for nuclear incidents and
indemnification for Federal contractors.".

Evans' Amendment

Amendment to Extend Price-Anderson Act for Fifteen Years

- 1 On page 7, line 23, strike "2012," and insert "2002,"
- 2 On page 20, line 21, strike "2012," and insert "2002,"
- 3 On page 21, line 13, strike "2012," and insert "2002,"
- 4 On page 21, line 15, strike "2012," and insert "2002."
- 5 On page 22, line 15, strike "2012" and insert "2002"
- 6 On page 23, line 3, strike "2008," and insert "1998,"

Analysis of Evans' Amendment to Extend Price-Anderson Act
for Fifteen Years

This amendment would require that the Price-Anderson Act be renewed within fifteen years, instead of twenty-five as proposed under S. 1225. Operation of the geologic repository is scheduled to begin in 1998, with emplacement of waste beginning soon after. Additionally, the MRS facility could begin operating by 1996. 2002 would be a time to review these and other developments which could have a profound affect on commercial nuclear reactors and DOE facilities.

EVANS' AMENDMENT

AMENDMENT TO REMOVE THE 20-YEAR STATUTE OF LIMITATIONS

UNDER PRICE-ANDERSON

1 Section 170 n. (iii) of the Atomic Energy Act of 1954, as
2 amended, is amended by striking all from ", " through
3 "incident".

Analysis of Evans' Amendment to Remove Statute of Limitations

Under the Price-Anderson Act

Under the terms of the amendment, individuals could file suit for damages within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause of this injury.

This is an appropriate modification to the existing Price-Anderson statute of limitations due to the type of injuries, such as latent cancers, associated with exposure to radioactive materials. In addition, an incident which allowed radioactive materials to enter the environment from a deep geologic repository might not be recognized for years after the leak.

Thirty-seven states currently have some sort of discovery rule in place, noting the unique characteristics of injuries which can result from accidents involving ultra-hazardous materials such as those covered by Price-Anderson.

While this rule will preempt state tort law in some cases, the federal government has taken full responsibility for the disposal, storage, and transportation of radioactive materials under the Nuclear Waste Policy Act of 1982 and other provisions of law, and should therefore take the lead in protecting those injured as a result of these activities.

passed

DOMENICI AMENDMENT - PRECAUTIONARY EVACUATIONS

On p. 12, Between line 7 and 8 of S. 1225, add a new paragraph (7):

"(7) Such agreements entered into pursuant to subsection 170d (1) shall include reimbursement for costs of precautionary evacuations ordered by a State or local official provided that such evacuation is deemed reasonable in any one of the following manners:

(A) prior to the evacuation, by the Secretary of Energy or his designee agreeing to the decision

(B) subsequent to the evacuation, by the Secretary of Energy or his designee concurring with the evacuation decision, or

struck

(C) subsequent to the evacuation and in the event that the Secretary does not concur, by an overriding of the Secretary's determination by a panel consisting of three members, one appointed by the Nuclear Regulatory Commission, one appointed by the Administrator of the Federal Emergency Management Administration, and one appointed by the Governor of the State in which the precautionary evacuation took place.

BINGAMAN AMENDEMENT IN THE NATURE OF A SUBSTITUTE

On pp. 11-12 of S.1225, delete paragraph (6) and insert in lieu thereof the following:

"(6) Such agreements entered into pursuant to subsection 170d (1) shall include reimbursement for costs of precautionary evacuations ordered by a State or local official provided that such evacuation is deemed reasonable, given due consideration to information available to the state or local officials at the time of the decision to evacuate, in any one of the following manners:

(A) prior to the evacuation, by the Secretary of Energy or his designee agreeing with the decision

(B) subsequent to the evacuation, by the Secretary of Energy or his designee agreeing with the evacuation decision, no later than 60 days after issuance of the evacuation order or

(C) if subsequent to the evacuation and in the event that the Secretary does not agree within 60 days after issuance of the evacuation order,^{by} agreement with the evacuation decision by a panel consisting of three members, one appointed by the Nuclear Regulatory Commission, one appointed by the Administrator of the Federal Emergency Management Administration, and one appointed by the Governor of the State in which the precautionary evacuation took place. The Panel shall have 60 days to make its decision.

Domenici's Amendment to S. 1225

This amendment adds additional findings which include the Federal Government's responsibility (1) in handling and disposal of high level radioactive waste, and (2) in the research and development, demonstration, and storage of waste resulted from defense activities. It recognizes that these new responsibilities of the Federal government, since the extension of the Act in 1975, should be explicitly covered under Price-Anderson Act.

On page 2, line 21, replace "," after the word "system" with "; and", and insert the following before the word "it":

"(4) the Federal Government has the responsibility to provide for the permanent disposal of high level radioactive waste pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222), and the research and development, demonstration and storage activities authorized as Waste Isolation Pilot Project (Project 77-13-f) pursuant to FY1980 Department of Energy for National Security Programs Appropriations (P.L. 96-164-Dec. 29, 1979),"

passed

BINGAMAN AMENDMENT

On page 2, line 2, of the amendment with respect to funding of claims from Nuclear Waste Accidents, after the words "not specified in clause (ii), insert the following: "including all activities authorized for the Waste Isolation Pilot Plant under P.L. 96-164 and."

passed

BINGAMAN AMENDMENT

Wherever the phrase "storage or disposal of" occurs in S.1225, insert at the end thereof the phrase, "or research and development on,"

Withdrawn to assess
- impact

BINGAMAN AMENDMENT

On page 11, strike lines 16 thru 19 and insert the following:

"(4) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary pursuant to this subsection shall not exceed the maximum amount of financial protection required of licensees pursuant to subsection 170a.,

STAFF AMENDMENT TO REVISE S. 1225 WITH RESPECT TO FUNDING OF CLAIMS FROM NUCLEAR WASTE ACCIDENTS.

(1) Starting on p. 8, line 16, amend S. 1225 as indicated in the following line-in/line-out version.

"(ii) For the purpose of compensating public liability claims, as defined in section 11 w. of this Act, arising out of activities involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste produced as a result of the generation of electricity in a civilian nuclear power reactor, authorized under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) and funded by the Nuclear Waste Fund, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, the Secretary shall make available such funds as may be necessary, in an amount not to exceed the maximum amount of financial protection required of licensees pursuant to subsection 170 a., from the Nuclear Waste Fund established pursuant to section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).

"(iii) Public liability claims arising out of activities involving the transportation, storage or disposal of all other spent nuclear fuel, high-level radioactive waste, or transuranic

waste nuclear waste that is a Federal responsibility but not specified in clause (ii), including the transportation of such materials to a storage or disposal site or facility the construction and operation of any such site or facility, shall be compensated in accordance with the provisions of this Act, and from the same source of funds applicable to all other contractors indemnified pursuant to this subsection."

(2) Delete clause (iv)(I) and (iv)(II) on pp. 9-10.

Explanation

This amendment revises S. 1225 language to reflect the contributions to be made by Defense Programs directly into the Waste Fund in proportion to their relative cost to the commercial repository.

AMENDMENT NO. _____ Ex. _____ Calendar No. _____

Purpose: Fill in purpose of amendment.

IN THE SENATE OF THE UNITED STATES 99th Cong., 2nd Sess.

S. 1225

To amend the Atomic Energy Act of 1954, as amended, to establish a comprehensive, equitable, reliable, and efficient mechanism for full compensation of the public in the event of an accident resulting from the activities undertaken under contract with the Department of Energy or activities undertaken by Nuclear Regulatory Commission licensees involving nuclear materials.

() Referred to the Committee on _____
and ordered to be printed

() Ordered to lie on the table and to be printed

Intended to be proposed by Mr. Johnston.

Viz:

1 At the end of the bill add a new section 15 as follows:

2 "PUNITIVE DAMAGES

3 "SEC. 15. Section 170 of the Atomic Energy Act of 1954, as
4 amended, is further amended by adding a new subsection q as
5 follows:

6 (1). No court may award exemplary or punitive damages
7 under State law in any action with respect to a nuclear incident
8 or with respect to an extraordinary nuclear occurrence against a

1 contractor on behalf of whom the United States is obligated to
2 make payments under an agreement of indemnification under section
3 170d. covering such incident or occurrence.

4 '(2) Nothing in this subsection affects the authority of any
5 court to award exemplary or punitive damages under State law in
6 any instance other than an instance subject to paragraph (1).'"