NUCLEAR LAW Bulletin

number 10

Contents

Nuclear Energy Agency

Organisation for Economic Co-operation and Development

FOREWORD

With its 10th issue, the Nuclear Law Bulletin rounds off its first five years of existence and, issue after issue, its circle of readers has steadily been increasing. We should like to take this opportunity to thank our correspondents, whose kind assistance has made the publication of this Bulletin possible.

For some time now, readers have been suggesting that we should establish an Index to facilitate research and consultation of the information and texts published in the Bulletin since its inception. This issue is therefore accompanied by an index of the contents of the first ten Bulletins, in addition to its usual supplement. The Index will be updated at regular intervals.

LIST OF CORRESPONDENTS TO THE NUCLEAR LAW BULLETIN

ARGENTINA	- Mr. MARTINEZ FAVINI, Head of Legal Department, National Atomic Energy Commission
AUSTRALIA	- Mr. IKENBERG, International Relations and Technical Policy Division, Australian Atomic Energy Commission
AUSTRIA	- Dr. STEINWENDER, Director at the Federal Chancellery
BELGIUM	- Miss HARDENNE, Attaché to the Cabinet of the Minister of Economic Affairs
	- Mr. STALLAERT, Social Security Administration, Ministry of Employment and Labour
	- The Secretary General of the Prime Minister's Cabinet for Programmation of Scientific Policy
BRAZIL	- Mr. AYRTON SA PINTO DE PAIVA, Legal Adviser, Comissao Nacional de Energia Nuclear
CANADA	- Mr. MacISAAC, Legal Adviser, Atomic Energy Control Board
DENMARK	- Mr. ARILDSEN, Head of Section, Ministry of Justice
	- Mr. ØHLENSCHLAEGER, Chief of Division, National Health Service
FINLAND	- Mr. SUONTAUSTA, President of the Atomic Liability Committee
FRANCE	- Mr. VERGNE, Head of Legal Affairs, Atomic Energy Commission
GERMANY	- The Institute of Public International Law of Gottingen University, Department of Nuclear Law (Dr PELZER)
GHANA	- Mr. LEBRECHT HESSE, State Attorney, Ministry of Justice
GREECE	- External Relations Office, Greek Atomic Energy Commission
INDONESIA	- Mrs. SOEPRAPTO, Head of Legal Division, National Atomic Energy Agency
IRELAND	- Mr. SWEETMAN, Barrister-at-law, and Department of Transport and Power
ISRAEL	Dr. MEIR ROSENNE, Legal Adviser of the Ministry of Foreign Affairs
ITALY	- Mr. MARCHETTI, Head of Legislative Office, Ministry of Industry, Commerce and Crafts

JAPAN	- Mr. OSAKA, Deputy Director General, Atomic Energy Bureau, Science and Technology Agency
	- Mr SHIMOYAMA, Deputy Manager of Financial and Purchasing Department, The Japan Atomic Power Company
KOREA	- Mr SHIYOHL PARK, Chief, Nuclear Power Section, Office of Atomic Energy
MEXICO	- Mr ORTIZ-MONASTERIO, Legal Adviser, National Nuclear Energy Commission
NETHERLANDS	- Miss VAN DE WINKEL, Head of the Desk Atomic Affairs, Ministry of Foreign Affairs
NORWAY	- Mr. SKARPNES, Head of Division, Department of Legislation, Ministry of Justice
PHILIPPINES	- Mr. CRISTOBAL, Chief, Legal Division, Atomic Energy Commission
PORTUGAL	- Mr. NUNES DE ALMEIDA, Expert at the Planning and Study Office, Junta de Energia Nuclear
SPAIN	- Mr DE LOS SANTOS LASURTEGUI, Legal Adviser, Junta de Energia Nuclear
SWEDEN	- Mr. JACOBSSON, Legal Adviser, Ministry of Justice
SWITZERLAND	- Mr PFISTER, Deputy, Office of Energy Economy, Federal Department for Transport, Communications and Energy
TURKEY	- Secretariat of the Turkish Commission for Nuclear Energy
UNITED KINGDOM	- Mr COLEMAN, Assistant Treasury Solicitor, Treasury Solicitor's Department, Department of Trade and Industry
UNITED STATES	- Mr. BRUSH, Office of the General Counsel, United States Atomic Energy Commission
ZAMBIA	- Mr ZULU, Solicitor General, Ministry of Legal Affairs
IAEA	- Mr. SUGIHARA, Director of Legal Division, International Atomic Energy Agency
EURATOM	- Mr GIJSSELS, Legal Adviser, Commission of the European Communities

LEGISLATIVE AND REGULATORY ACTIVITIES

• *Australia*

RADIATION PROTECTION

Regulation No. 38 of 20th March 1968 concerning navigation (nuclear ships)

This Regulation which was made in implementation of the Navigation Act sets out the radiation protection measures to be taken in the case of entry of a nuclear ship in an Australian port. An incident likely to give rise or having given rise to irradiation or any other nuclear hazard must therefore be reported immediately to the Department of Navigation and Transport.

• *Canada*

REGIME OF RADIOACTIVE MATERIALS

Atomic Energy Control Regulations

The Canadian Atomic Energy Control Regulations 1960 (as amended in 1964) were amended on 27th July 1972 /SOR/72-301/ by adding a new subsection (2) to Section 201 of the Regulations. This provides that an export permit for prescribed substances shall not be granted unless the Atomic Energy Control Board is satisfied that the prices and quantities of the substances to be exported meet such criteria as may be specified in the public interest by the Minister of Energy, Mines and Resources in a direction to the Board.

• *Denmark*

REGIME OF RADIOACTIVE MATERIALS

Executive Order No. 315 of 27th June 1972 concerning the control of the peaceful uses of nuclear materials

The Order was issued to implement an Agreement between Denmark and IAEA concerning the prevention of nuclear materials from being used for the production of nuclear weapons or other nuclear explosive devices (see Chapter "Agreements"). The permission of the Atomic Energy Commission is needed for the possession and export of nuclear materials, which include in the meaning of the Order : uranium, plutonium and thorium, processed or unprocessed, in metallic form, in alloy or chemical compound. The holders of these nuclear materials are required to :

- keep records with respect to the nuclear materials and, in so far as nuclear facilities are concerned, maintain records of operational conditions;
- submit reports on the above matters;
- give advance notice to the Atomic Energy Commission of imports of nuclear materials; and
- co-operate in the implementation of control.

The Order authorises persons, designated by the Atomic Energy Commission, to enter installations containing nuclear materials in order to take the necessary control measures such as examination of records, stocks and facilities, measurements and sampling.

• *Finland*

THIRD PARTY LIABILITY

Accession to the Paris Convention

The Government of Finland decided on 8th June 1972 to accede to the Paris Convention on Third Party Liability in the Field of Nuclear Energy. This accession was notified by the Secretary-General of the OECD to the Signatory countries on 29th June 1972. It was subject to a reservation which have been previously accepted by all the Signatory countries, the text of which reads as follows :

"Reservation of the right to consider their national legislation which includes provisions equivalent to those included in the international agreements referred to in Article 6(b) as being international agreements within the meaning of Article 6(b) and and (d)."

It is right to note that this same reservation had already been expressed when the Convention was signed by Austria, Greece, Norway and Sweden. Finland becomes the eighth Contracting Party to the Paris Convention.

The Government of Finland has also announced its intention to accede to the Supplementary Convention which was signed in Brussels on 31st January 1963 and to its Additional Protocol, when this Convention comes into force. This accession requires the unanimous assent of the Contracting Parties.

Act of 8th June 1972 on Nuclear Liability

This Act, the text of which was published in the Supplement to Bulletin No. 8 was promulgated on 8th June 1972 (Decree No. 484) and was brought into force by another Decree on 16th June 1972 (No. 486). Sections 30 to 32 of the Act, which deal *grosso modo* with compensation from public funds for nuclear damage suffered in Finland or on the territory of one of the States which are parties to the Brussels Supplementary Convention, for the time being are not yet in force and will come into force only when Finland accedes to this Convention.

An Order issued on 21st June 1972 by the Council of Ministers (No. 487) adds several supplementary provisions with regard to the application of the Act. In particular, it lists the categories of nuclear fuel and radioactive products which, because of the small extent of the risks involved, are excluded from the scope of the Act. These provisions are in accordance with the Decision of 26th November 1964 of the Steering Committee of the OECD Nuclear Energy Agency relating to the Paris Convention.

In addition, the same Order provides that the authority responsible for deciding that a carrier of nuclear substances is to be held liable instead of the nuclear operator concerned, is the Minister for Industry and Commerce.

• *France*

ORGANISATION AND STRUCTURE

Atomic Energy Commission (CEA)

Section 8 of the Decree of 29th September 1970 concerning the Atomic Energy Commission (see Bulletin No. 6) provided that a Decree of the Council of State would determine the conditions of implementation of that Decree, and in particular define the administrative and financial functioning of the organisation and the duties of the Administrator General Delegate, the High Commissioner and the Atomic Energy Committee respectively. The Decree submitted to the Council of State is currently being signed. It is mainly based on the provisions of the Regulations of 18th October 1945 made in implementation of the Ordinance setting up the Atomic Energy Commission published on the same day.

The duties of the Atomic Energy Committee have been extended concerning perusal of the budget accounts and commitments of the Atomic Energy Commission. They have been restricted on the other hand to the extent that the Committee may now be referred to by the Minister, only in respect of atomic affairs in general. The powers of the Administrator General Delegate which had previously been listed at length are defined in a wider and more flexible form. The Minister for Industrial and Scientific Development, and no longer the Administrator General Delegate will now receive notification from the other ministers of texts relating to nuclear energy. The Minister will submit to the CEA the texts which concern it, and where relevant, those regarding nuclear problems of a general nature.

RADIATION PROTECTION

Decree of 1st September 1972 /Official Gazette of the French Republic of 8th September 1972/

This Decree made by the Prime Minister concerns the creation and organisation of a Defence Corps for civilian protection. In the field of protection against ionizing radiation, this body is responsible for detecting radioactivity, giving the alarm in the case of nuclear warfare, and radioactive decontamination.

REGIME OF NUCLEAR INSTALLATIONS

Within the amendments the Government is making to Regulations on large nuclear installations, three draft Decrees have been notified to the Commission of the European Communities, in implementation of Article 33 of the Euratom Treaty. They are the following . the draft Decree modifying the Decree of 11th December 1963 concerning large nuclear installations, the draft Decree regulating liquid and gaseous releases from such installations, and a draft Decree on the protection of workers in large nuclear installations.

REGIME OF RADIOACTIVE MATERIALS

Order of 11th August 1972 /Official Gazette of the French Republic of 30th August 1972/

This Order made by the Minister for Public Health deals with the licensing of sealed radioactive sources for teletherapy using gamma-rays. Authorisations for charging a telegammatherapy apparatus or for possession and use of sealed radioactive sources to be employed for this purpose, may only be granted for sources meeting certain specifications determined by the Order. A corrigendum to this Order was published in the Official Gazette of 25th October 1972.

TRANSPORT OF RADIOACTIVE MATERIALS

Order of 18th August 1972 /Official Gazette of the French Republic of 15th September 1972/

This Order amends the text of the Regulations of 15th April 1945 relating to the carriage of dangerous goods. The amendment concerns the procedure for the despatch by post of materials exempted from special transport regulations. Certain radioactive materials are also included.

• *Germany*

RADIATION PROTECTION

A Federal Bill concerning medical and technical services ensuring the safety of workers (see Nuclear Law Bulletin No. 9) was examined at a first reading in the Bundesrat and has now been submitted to the Bundestag.

The Government is at present also preparing a draft Ordinance, which is intended to control the use of X-rays for medical and veterinary purposes as well as for technical applications. The draft X-ray Ordinance has already been under discussion in Germany for some time and is still the subject of controversy.

TRANSPORT OF RADIOACTIVE MATERIALS

Revision of Transport Regulations

The Class IV b provisions of the Ordinance on maritime carriage of dangerous goods of 4th January 1960, which deal with radioactive substances, have been revised by the Fifth Amending Ordinance of 29th March 1972 (Bundesgesetzblatt 1972 I, p. 529).

The regulations on the transport of radioactive materials were amended by the Second Ordinance of 27th June 1972 amending Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR),(Bundesgesetzblatt 1972 II, p. 685).

ENVIRONMENTAL PROTECTION

Act on Waste Disposal of 7th June 1972

In pursuance of the Thirtieth Act of 12th April 1972 amending the Basic Law, which transfers to the Federal Government entire responsibility for waste disposal, air pollution control and noise suppression, a Federal Act on waste disposal was passed on 7th June 1972 and came into force on 11th June 1972. The Act does not cover the disposal of nuclear fuels and other radioactive substances. The disposal of these substances continues to be governed by the provisions of the Atomic Energy Act and the First Radiation Protection Ordinance.

In addition the Federal Government is preparing, as part of its efforts towards better environmental protection, a Bill on the protection of nature and landscape management which affects the construction of nuclear installations when the protection of the countryside is involved.

• *Greece*

RADIATION PROTECTION

Regulations No. 1 and 2 on radiation protection in the medical field

The Greek Atomic Energy Commission recently drafted two Regulations on radiation protection in the medical field.

The first Regulation concerns the licensing system for laboratories using radiation for medical purposes as well as the system for importation, exportation and possession of radioactive materials.

Regulation No. 2 deals with the protection of persons exposed to the hazards of ionizing radiation in laboratories using unsealed radioisotopic sources for medical purposes.

Both Regulations have been submitted to the Government for approval; they will be analysed in greater detail in the next issue of the Bulletin.

• *Netherlands*

NUCLEAR LEGISLATION

Nuclear Installations, Fissionable Materials and Ores Decree of 4th September 1969 as amended on 26th April 1972

The Decree, recently amended in certain respects by a Decree of 26th April 1972, implements Sections 16, 17, 21, 26, 73 and 76 of the Nuclear Energy Act of 1963. It lays down the application procedure necessary to acquire the licence, which the Nuclear Energy Act requires for obtaining and disposing of fissionable materials and ores and operating nuclear installations. According to the provisions of the Decree all licence applications must include the applicant's name and address, a factual description of what the applicant wishes to do with the fissionable materials or ores, or a broad statement as to the establishment or equipment and its proposed use, and an indication of the period for which the licence is sought. In addition the Decree determines what particular information has to be provided with respect to each individual application according to the nature of the licence applied for.

The licence applications should be addressed to the Minister of Economic Affairs and the Minister for Social Affairs and Public Health, who have to notify the contents to the local authorities and public bodies of the municipalities in which the nuclear activity is to take place. The local authorities must ensure that a public announcement of the matter is made and that the application in question is available for public inspection. Interested parties may then raise objections against the granting of the licence on the grounds of fear of danger, damage or nuisance. These objections have to be submitted to a committee set up for this purpose by the above Ministers, either during a public session of the committee or in writing. The committee reports its findings to the Ministers and the applicant, who may comment on the objections or on the way he is prepared to meet the objections. Afterwards the decision regarding the licence is made.

In granting the licence the Ministers may attach a number of conditions, provided that they serve one or more of the following purposes : the protection of persons, animals, plants and foods; the security of the State; the safe storage of fissionable materials and ores; the supply of energy, ensuring of the payment of compensation in connection with third party liability or the observance of international obligations.

Finally, the Decree sums up the cases for which no licence is required. The most important exemptions from the licence requirement are the following :

- having available or disposing of non-irradiated fissionable materials consisting solely of natural or depleted uranium or natural thorium containing not more than 100 grammes of each of these elements and no plutonium;

- setting up, putting into or keeping in operation an establishment where only fissionable materials as referred to above can be produced, treated or stored, provided that the establishment is not used or intended to be used for other fissionable materials.

- having available ores packed in watertight metal containers,

- having available or disposing of non-packed ores or ores packed in some other manner than the above-mentioned provided the specific activity of such ores does not exceed 0.01 microcurie per gramme.

The text of the Decree is reproduced in the Supplement to this Bulletin.

• *Norway*

NUCLEAR LEGISLATION

Atomic Energy Act of 12th May 1972

The Act was submitted to the Norwegian Parliament with a view to establishing a permanent atomic energy legislation in Norway, including provisions on third party liability. The third party liability provisions are based on the Paris Convention and the Brussels Supplementary Convention and presuppose ratification of both Conventions. However, special approval by the Parliament is necessary before ratification can take place. The provisions make it also possible to ratify the Vienna Convention.

The Act will enter into force on a date to be appointed by the King and it is under consideration that this will be done as from 1st January 1973. This will depend, however, on Norway's becoming a Contracting Party to the Paris Convention and the Brussels Supplementary Convention by that date. The Act was prepared in close co-operation with the Danish, Swedish and Finnish authorities and deals, among other things, with the licensing, supervision and inspection of nuclear installations, compensation for nuclear damage and insurance for third party liability.

The text of the law when still a Bill was published in the Supplement to Nuclear Law Bulletin No. 1. A translation of the final text is in the course of preparation and will be published as soon as possible.

• *Portugal*

THIRD PARTY LIABILITY

Ratification of the Paris Convention

Decree No. 339, made on 10th August 1972 and published in the Official Gazette of 25th August 1972, has approved the ratification of the Paris Convention on Third Party Liability in the Field of Nuclear Energy signed in Paris on 29th July 1960.

When the instruments of ratification of the Paris Convention and its Additional Protocol have been deposited, Portugal will become the ninth Contracting Party to the Convention.

• *Spain*

REGIME OF NUCLEAR INSTALLATIONS

Decree of 21st July 1972 /Official Gazette No. 255 of 24th October 1972/

The Regulations on nuclear and radioactive installations made in implementation of the Nuclear Energy Act of 29th April 1964, were promulgated by Decree No. 2869 of 21st July 1972 and published on 24th October 1972. These important Regulations are analysed in Nuclear Law Bulletin No. 8.

• *Sweden*

NUCLEAR LEGISLATION

Act No. 179 of 19th June 1972 amending the Atomic Energy Act of 1st June 1956

In consequence of the fact that Sweden has ratified the Treaty on the Non-Proliferation of Nuclear Weapons, a new paragraph has been added to Section 3 of the Atomic Energy Act. The new paragraph provides that the Government may prescribe that equipment or material especially designed or prepared for the processing, use or production of special fissionable materials may not be conveyed out of the country without permission from the Government or the authority appointed by the Government.

• *United Kingdom*

RADIATION PROTECTION

New Code of Practice

A Revised Code of Practice for the protection of persons against ionizing radiations arising from medical and dental use has recently been published by the U.K. Health Departments. This revised Code (which does not have the force of law) applies to the use of ionizing radiations arising from all forms of medical and dental practice and from allied research involving human subjects. It covers both workers, patients and members of the public. Where research procedures are not covered by the present Code, reference should be made to the Code of Practice for the Protection of Persons exposed to Ionizing Radiations in Research and Teaching (published in 1968) which has been designed to harmonise with it.

Although the arrangements recommended relate primarily to institutions they should be applied, as far as possible, by all medical and dental practitioners.

The Code has been drawn up in the light of the recommendation of the International Commission on Radiological Protection (ICRP) and of the views of the Medical Research Council's Committee on Protection against Ionizing Radiations.

• *United States*

NUCLEAR LEGISLATION

The USAEC has recently adopted revisions of its regulations concerning unclassified activities in foreign atomic energy programmes by U.S. persons and companies. The revisions are designed to permit the Commission to give closer scrutiny to anticipation in overseas activities involving the protection of heavy water, the processing of irradiated special nuclear material and the separation of isotopes of uranium, in order to be assured that the requirements of the Treaty on the Non-Proliferation of Nuclear Waapons, and U.S. policy regarding such activities are met. The amendments take the form of new subsections in Title 10 Code of Federal Regulations, paragraph 110.

RADIATION PROTECTION

New standards for diagnostic X-ray equipment

The Food and Drug Administration issued in August 1972 new standards for diagnostic X-ray equipment produced after August 1973. These new standards are expected to bring about a reduction in unnecessary X-ray exposures. The standards provide for the granting of variances for equipment not meeting the standards but required for valid purposes.

Another new national standard recently published concerns X-ray diffraction and fluorescent analysis equipment. This standard reviews the types of injuries resulting from accidental exposure to ionizing radiation produced by the operation of such equipment, establishes equipment design criteria, sets up requirements for approved operating procedures and recommends the establishment of health surveillance and personnel monitoring equipment.

REGIME OF NUCLEAR INSTALLATIONS

Act relating to temporary operating licences

On 2nd June 1972 the U.S. Atomic Energy Act 1954 was amended to add a new Section 192 dealing with the issuance of temporary operating licences by the Commission. Under this amendment an applicant for an operating licence for a nuclear power reactor, where a hearing under Section 189(a) is required, may ask for a temporary licence pending final action by the Commission subject to certain procedural formalities. Any party to the proceeding may support or oppose the request for a temporary licence and the hearing and decision has to be expedited. The temporary licence shall be on such terms and conditions as the Commission deems necessary.

In July 1972 extensive amendments to the USAEC's regulations were adopted to afford improved means for public participation in the licensing process whilst at the same time providing for increased efficiency, and timelier decision-making. These changes (published in Volume 37 of the Federal Register of 28th July 1972) involve thirteen broad categories relating to the licensing review process and came into force 30 days after publication.

• *Yugoslavia*

The Yugoslav Republics have made a new series of Regulations in implementation of the Basic Law concerning protection against ionizing radiation which was published by the Decree of 15th March 1965 (see Nuclear Law Bulletin No. 8).

RADIATION PROTECTION

Regulation No. 02/1-1494 of 9th December 1968

This Regulation which was made by the Federal Secretary for Health and Social Affairs concerns the formalities for declaration and registration laid down within the framework of radiation protection (Official Gazette of the Federation of the Socialist Republic of Yugoslavia of 18th December 1968).

In accordance with this Regulation, sanitary establishments as well as undertakings authorised to carry out activities involving radiation protection must send two annual reports to the administrative agency of the Republic concerned, responsible for sanitary inspection, the first should deal with the status of radiation protection and the measures taken in working premises and the second should mention the radiation doses, in excess of the maximum permissible, which may have been received by workers. Also, a declaration of ionizing radiation sources, to be made within 15 days of the production or importation of such substances, may be required when these establishments are holding radiation sources whose activity exceeds the specified limit. Finally, a record must be made of the medical examinations undergone by workers handling ionizing radiation sources; this information must be preserved during the lifetime of the worker.

Regulation No. 02/1-2882 of 14th October 1969

This Regulation also made by the Federal Secretary concerns monitoring of contamination of persons and objects and control of the working order of measuring devices (Official Gazette of 4th December 1969).

The different controls for the purposes of protection against radiation are carried out by sanitary establishments as well as undertakings whose activities fall within the competency of the different Republics. Such control recurs according to whether it concerns verification of the degree of contamination of persons and objects, the good working order of devices and means of protection and also according to the type of activity of the establishments or undertakings involved, that is by distinguishing establishments using sealed or unsealed radioactive materials from mines containing radioactive ores.

REGIME OF RADIOACTIVE MATERIALS

Regulation No. 02/1-787 of 9th October 1969

This Regulation deals with the conditions for the storage of radioactive wastes (Official Gazette of 8th January 1970).

The Regulation provides that the disposal and storage of radioactive wastes can only be undertaken by users and producers of radioisotopes with the authorisation and under the control of the administrative Agency responsible for sanitary inspection in each Republic concerned. The residual radioactive materials in soluble, liquid or gaseous form are classified and are governed by special detailed provisions. The appropriate administrative Agencies must be informed of the place where these residual materials are unloaded and stored.

TRANSPORT OF RADIOACTIVE MATERIALS

Regulation No. 02/1-807 of 6th November 1969

This Regulation deals with the transport of radioactive materials whose activity exceeds the specified limit.

The provision of this Regulation apply to national transport as well as to transport to or from foreign territories, irrespective of the means of transport used; they concern materials whose activity exceeds the specified limit fixed at 0.002 microcurie per gramme. The authorisation for transport is issued by the administrative Agency of the Republic, responsible for sanitary inspection for internal affairs or by the Federal Administrative Agency in the case of transport to or from a foreign territory. In addition to this authorisation, an inspection may be made during transport by the Republic's administrative Agency, which determines the procedure for such inspection. Following the latter, when the requirements of this Regulation are not met, such transport may be prohibited.

• *Zambia*

RADIATION PROTECTION

Radiation Protection Act 1972, No. 19

The Zambian Ionizing Radiation Act 1972 was enacted on 18th August 1972 but has not yet been brought into operation. Its purpose is to establish a law relating to the protection of the public and workers from dangers arising from the use of devices and materials capable of producing ionizing radiation.

The Act establishes a Radiation Protection Board consisting of 14 persons (including a Chairman) to be appointed by the Minister, to represent a wide field of relevant interests and includes nominees of the interested Government departments. The Board makes recommendations to the Minister to ensure that devices and materials capable of producing dangerous ionizing radiation do not cause danger to the public or workers, or are restricted to acceptable levels of risk. The Board also make recommendations concerning co-ordination of activities so as to make the best use of available resources and concerning amendments to the Act or Regulations.

A Radioisotope Advisory Committee is set up consisting of specialists to be appointed by the Board. The Committee advises the Board on matters referred to it and on measures necessary to ensure public safety and on all appropriate technical matters.

The granting of licences for the use of radioactive material or sources is a matter for the Board after consideration of the application by the Chief R.P.O. and the Radioisotope Committee. Conditions may be imposed in the interests of safety and licences may be amended, suspended or revoked. The licensee is made responsible for ensuring that ionizing radiation does not cause harmful effects to the public, workers or property.

The radiation safety requirements prescribed under the Act do not extend to patients undergoing radiation as part of their medical treatment but extend to medical and technical staff working with radioactive material or sources of radiation. The standards to be met are the maximum levels of the International Commission on Radiological Protection (ICRP). A Radiation Protection Service is established to determine the extent of exposure of the public and workers and to provide a personal radiation dosimetry service.

Powers are given to the Chief Radiation Protection Officer and his staff to enter and inspect premises where radioactive material may be, to require the production of the licence for the use of this material.

Various penalities are laid down, inter alia, for failure to have a valid licence or to comply with the licence and its conditions.

CASE LAW AND ADMINISTRATIVE DECISIONS

CASE LAW

• *Germany*

LICENSING OF NUCLEAR INSTALLATIONS

For the first time the Federal Administrative Court had to give a decision under the Atomic Energy Act on objections to the issue of licences. Citizens who felt concern had lodged a complaint against the issue of partial licences concerning the nuclear power plant Würgassen/Weser. Their complaints were dismissed in both lower Courts. On further appeal to the Federal Administrative Court, the latter by its decision of 16th March, 1972 (IC 49.70) reversed the decision of the lower courts and referred the case to the Administrative Court of Appeal in Münster for further hearing.

Much had been expected of the decision of the Federal Administrative Court. The opponents of the use of nuclear energy had hoped that it would raise the question of the use of this source of power. It was expected to be as significant for German nuclear law as the Calvert/Cliffs Case was for the United States nuclear law (see Nuclear Law Bulletin No. 8, page 27), but this was not the case, although the decision is of great importance for the licensing of nuclear installations.

First, the decision confirmed the legality of the previous practice followed by administrative authorities in authorising the construction of nuclear installations by issuing partial licences in stages, a practice which has the special advantage of enabling the latest scientific and technological developments to be used. In addition the Court, dealing with preliminary licences under Section 7(a) of the Atomic Energy Act, confirmed their binding effect with regard to subsequent licensing procedure. Finally, it gave its opinion on the interpretation of the concept "state of research and technology" which have an important bearing on the future application of Section 7, Sub-section 2, Item 2 of the Atomic Energy Act. It also gave its opinion on questions concerning the law of administrative procedure and on the assessment of the amounts in dispute in complaints brought against the licensing of nuclear installations.

ADMINISTRATIVE DECISIONS

• *Germany*

ORGANISATION AND STRUCTURE

Setting up of a Nuclear Engineering Commission

The Federal Minister for Education and Science published on 1st September 1972 a Notice informing of the establishment of a Nuclear Engineering Commission (Bundesanzeiger 1972, No. 172, page 3). The Commission will be responsible for drawing up safety regulations in the field of nuclear engineering and stimulating their use, after experts representing manufacturers, constructors and operators of nuclear installations and the authorities concerned have reached agreement on them. The Commission will be composed of 50 advisers from industry and the government. It has raised hopes that it will do much to promote standardisation in the field of nuclear engineering, so leading to improved safety and to simplification of the licensing procedure for nuclear installations.

• *Indonesia*

ORGANISATION AND STRUCTURE

Decision to set up a Preparatory Committee for Nuclear Power Station Construction

A decision was reached on 19th April 1972 by the Director General of the National Atomic Energy Agency and the Minister of Public Works to set up a Joint Committee under the name of Preparatory Committee for Nuclear Power Station Construction. This Committee, which was set up for a period of eight years, has as its duty

- to assist the Government in formulating and designating the Government's policy on fuel material and energy sources for generating power;

- to make a feasibility study on the construction of a nuclear power station and to evaluate the proposed budget for this project,

- to make preliminary studies for this project.

For the implementation of its programme working groups can be established to compile technical data. Periodically the Committee shall submit reports both to the Director General of the National Atomic Energy Agency and the Minister of Public Works regarding the progress of its work.

• *Turkey*

ORGANISATION AND STRUCTURE

Reorganisation of the Atomic Energy Commission

The structure of the units attached to the Turkish Atomic Energy Commission has recently been reorganised. The Commission is made up of the Secretary-General, of nine members appointed for a three-year term by the Council of Ministers, and of the Chairman of the Scientific Advisory Board.

Two new Boards have been established within the Commission, the first is the Judiciary and Inspection Board which deals with the staff's legal affairs and is in charge of the inspection of establishments attached to the Commission. The second is the Nuclear Safety Board which is responsible for issuing the licences required under the regulations applicable to nuclear installations; it also considers the safety problems raised by these installations.

INTERNATIONAL ORGANISATIONS AND AGREEMENTS

INTERNATIONAL ORGANISATIONS

• *International Atomic Energy Agency*

SIXTEENTH REGULAR SESSION OF THE GENERAL CONFERENCE

At the invitation of the Mexican Government the Sixteenth Regular Session of the General Conference was held in Mexico City from 26th September to 3rd October 1972. The General Conference, upon recommendation of the Board, approved Bangladesh for membership in the Agency so that the Agency has now 103 Members.

The Conference elected the following five new Members to the Board of Governors: Argentina, Federal Republic of Germany, Indonesia, Mexico and Saudi Arabia. The seven Members elected last year will remain on the Board until next year's session; they are China, Columbia, the Arab Republic of Egypt, Greece, Roumania, the Republic of Sri Lanka (formerly Ceylon) and the Republic of Zaire. The following Members had already been designated by the Board at its June meeting to serve on the Board from the end of the Conference's sixteenth session until the end of its next regular session. Australia, Brazil, Canada, France, India, Japan, South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, under Article VI.A.1 of the Statute; Belgium, Poland and Finland under Article VI.A.2.

ARTICLE VI OF THE STATUTE

The amendment to Article VI of the Statute (see Nuclear Law Bulletin No. 6, page 32 of the English edition) which was approved by the Conference at its fourteenth Regular Session has meanwhile been ratified by 54 Member States. The amendment will come into force when it has been accepted by two-thirds of all Members, that is, at present, 69 out of the total of 103.

SAFEGUARDS

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) has now been ratified or acceded to by 75 States *. Further progress has been made in the past months with respect to the negotiation and conclusion of agreements for the application of safeguards in connection with NPT. 26 such agreements have been signed with the following countries Austria, Bulgaria, Canada, Czechoslovak Socialist Republic, Cyprus, Denmark, Finland, German Democratic Republic, Greece, Holy See, Hungary, Iraq, Iceland, Ireland, Malaysia, Mexico, Mongolia, Nepal, New Zealand Norway, Poland, Roumania, Uruguay, Republic of Viet-nam, Yugoslavia and Zaire. Agreements with Costa Rica, Lesotho, Mauritius, Morocco and the Netherlands in respect of the Netherlands Antilles and Surinam have been approved by the Board and are awaiting signature. The Board has further approved the Agreement with Euratom and the five non-nuclear-weapon States Members of Euratom Belgium, the Federal Republic of Germany, Italy, Luxembourg, and the Netherlands. When signing NPT these States indicated their desire that the conclusion of such an agreement should precede their ratification of NPT. Negotiations with more than twenty other countries are now under way.

TRANSPORT REGULATIONS FOR RADIOACTIVE MATERIALS

At its September meeting in Mexico City, the Board of Governors approved the 1972 revised version of the IAEA Regulations for the Safe Transport of Radioactive Materials as part of the Agency's Safety Standards and also for recommendation to Member States and appropriate international organisations as the basis for national and international regulations.

As a supplement to its Regulations, the IAEA issued in September 1972 a revised list (List No. 5) of national competent authorities responsible for approvals and authorisations in respect of national and international transport of radioactive materials. The list is based on information supplied by the respective Member States and is to be up-dated from time to time.

ADVISORY SERVICES AND TRAINING IN NUCLEAR LAW

At the request of the Mexican authorities, a member of the IAEA Legal Division performed a short-term assignment in Mexico to advise the National Institute of Nuclear Energy on draft regulations for the licensing of nuclear facilities. The IAEA Secretariat also assisted the national authorities on atomic energy in Kuwait, Saudi Arabia and the Syrian Arab Republic in the elaboration of draft acts regulating nuclear activities in those countries.

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* The list appearing on page 32 /of the English edition/ of Nuclear Law Bulletin No. 8 should therefore be completed by adding El Salvador, Fiji * (acc.) and Khmer Republic (acc.), and by underlining Philippines and Republic of Viet-Nam, who have ratified the Treaty.

• *Nuclear Energy Agency*

ADHESION OF JAPAN TO ENEA

Japan, already being an associated country of the European Nuclear Energy Agency since 23rd February 1965, joined the Agency as a full Member as from 20th April 1972. On the decision to join, Japan became the nineteenth Member country of the Agency, which was, prior to the Japanese adhesion, composed only of European OECD Member countries.

As a result of the Japanese adhesion the Steering Commission of ENEA proposed some amendments with regard to the Statute, which were adopted by the OECD Council on 17th May 1972. In view of the fact that Japan has become the first non-European Member country the word "European" in the title and in Article 1(a) was deleted and the Agency is now referred to as OECD Nuclear Energy Agency. Japan's full membership means also that Japan is no longer mentioned in Article 12(b) and Article 20(a), which both deal with the associated countries and which now consequently specify only the United States and Canada as such. According to the Council decision the amendments to the Statute entered into force on 20th April 1972, and the Statute applies to Japan as from that date.

SYMPOSIUM ON THE MARITIME CARRIAGE OF NUCLEAR MATERIALS

This Symposium was held in Stockholm from 18th to 22nd June 1972 and was organised jointly by OECD's Nuclear Energy Agency and the International Atomic Energy Agency, with the collaboration of Foratom. There were 177 participants representing 28 countries and a number of international organisations. The participants included representatives of shipping and transport interests (including ports and harbours authorites), nuclear operators, technical experts, safety and health experts, maritime and nuclear insurers, legal experts and representatives of governments and atomic energy commissions. Thirty-two papers were presented to the Symposium.

The first part of the Symposium was devoted to reviewing the technical and regulatory problems concerning maritime carriage of nuclear materials, including the revised IAEA transport regulations and their application. The second part dealt with legal and insurance questions, in particular the likely effect of the Brussels Convention of 1971 relating to civil liability in the field of maritime carriage of nuclear material, which it was considered would help to overcome the problems of indemnities at present demanded by maritime carriers. It was recognised that there would be a need to study other forms of transport (air, road, rail, etc.).

The proceedings of the Symposium will be published in due course by the International Atomic Energy Agency.

NUCLEAR-POWERED SHIPS

The model for bilateral agreements for visits of nuclear ships, which had been prepared by a Working Group of the Group of Governmental Experts on Nuclear Third Party Liability (see Bulletin No. 9), was approved by the Group of Experts in plenary session, and then submitted to the Steering Committee of the Nuclear Energy Agency, accompanied by a recommendation by the Experts to participating countries to make use, so far as possible, of the provisions of the Model when preparing bilateral agreements for visits of nuclear ships. The Steering Committee decided at its meeting on 19th October 1972 to take note of the Model Agreement.

AGREEMENTS

• *Austria - IAEA*

AGREEMENT WITH IAEA FOR THE APPLICATION OF SAFEGUARDS

The Agreement between Austria and IAEA for the Application of Safeguards, concluded in pursuance of the Treaty on the Non-Proliferation of Nuclear Weapons and signed on 21st September 1971, entered into force on 23rd July 1972. In addition, a Protocol became effective on 24th July 1972 suspending an Agreement between Austria, the United States and IAEA of 20th August 1969, which previously provided for the application of safeguards.

• *Denmark - IAEA*

AGREEMENT WITH IAEA ON THE PREVENTION OF NUCLEAR MATERIALS FROM BEING USED FOR PRODUCTION OF NUCLEAR WEAPONS OR OTHER NUCLEAR EXPLOSIVE DEVICES

Pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons, Denmark entered into an Agreement with IAEA on 1st March 1972, with a view to preventing nuclear materials from being used for production of nuclear weapons or other nuclear explosive devices. In order to implement this Agreement the Ministry of Education issued an Order concerning the control of the peaceful uses of nuclear materials (see Chapter "Legislative and Regulatory Activities").

• *France*

INTERNATIONAL LABOUR CONVENTION NO. 115

A Decree of 18th August 1972 (Official Gazette of the French Republic of 27th August 1972) has published the International Convention No. 115 concerning the protection of workers against ionizing radiations which had been adopted in Geneva on 22nd June 1960. France ratified this Convention on 18th November 1971.

It should be recalled that the purpose of this Convention, adopted by the International Labour Conference is to reduce workers' exposure to radiation to the lowest possible level, to fix the maximum permissible doses, to prohibit the exposure to radiation of workers below the age of 16, and to institute compulsory teaching of safety rules, as well as compulsory control of irradiation by dosimetry and medical examinations prior to recruitment of workers assigned to work involving exposure to radiation.

EUROPEAN AGREEMENT CONCERNING THE INTERNATIONAL CARRIAGE OF DANGEROUS GOODS BY ROAD

Decree No. 853 of 8th September 1972 (Official Gazette of the French Republic of 21st September 1972) has published further amendments (see Bulletin No. 9) to technical annexes A and B of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) of 30th September 1957. These amendments were decided on 30th December 1971.

• *Germany*

TREATY ON THE SEA-BED AND HIGH SEAS CONVENTION

Germany has ratified the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and the Subsoil thereof of 11th February 1971 (Bundesgesetzblatt 1972 II, page 325).

Germany has also ratified the Geneva Convention on the High Seas of 29th April 1958 (Bundesgesetzblatt 1972 II, page 1089) which contains, among other things, provisions on the dumping of radioactive waste in the sea.

• *Germany-Brazil*

NUCLEAR-POWERED SHIPS

The Federal Republic of Germany and Brazil signed on 7th June 1972 a Treaty concerning the entry of nuclear-powered ships into Brazilian territorial waters and ports. N.S. Otto Hahn had already entered the Brazilian waters in March 1972 under the terms of a previous Exchange of Notes.

• *Turkey*

TREATY ON THE SEA-BED

The Treaty of 11th February 1971, on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and the Subsoil thereof has been ratified by Turkey and published in the Official Gazette of 25th August 1972.

• *IMCO*

BRUSSELS CONVENTION OF 17TH DECEMBER 1971

The Brussels Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material which opened for signature on 17th December 1971 and was signed on that date by nine countries (see Nuclear Law Bulletin No. 9), has now been signed by Finland (12th April 1972), Norway (10th August 1972) and Denmark (25th September 1972). The Convention remains open for signature until 31st December 1972.

MISCELLANEOUS

NEA ANALYTICAL STUDY ON NUCLEAR LEGISLATION

• *Finland*

UPDATING OF THE VOLUME ON "NUCLEAR THIRD PARTY LIABILITY"

The Finnish Act on nuclear third party liability was promulgated on 8th June 1972, and was brought into force by Decree (No. 486) on 16th June 1972. In addition, an Order of 21st June 1972 (No. 487) added several supplementary provisions with regard to its implementation. The provisions of Sections 30, 31 and 32 of the Act are not yet in force and will only come into force when Finland has acceded to the Brussels Supplementary Convention of 31st January 1963.

NATURE OF THIRD PARTY LIABILITY

I - DAMAGE ENTAILING LIABILITY

Act of 8.6.1972 Section 1 (R)

Under this Act, nuclear damage for which an operator may be liable is, first, damage caused by the radioactive properties of nuclear fuel and radioactive products or by the combined radioactive, toxic, explosive and other dangerous properties of such fuel and products, and secondly, damage resulting from ionizing radiations emitted by any source of radiation inside a nuclear installation, other than nuclear fuel and radioactive products.

Section 4

Nuclear damage resulting from incidents occurring on the territory of a non-contracting State of the Paris Convention does not come within the scope of this Act. The law which applies in the case of the liability of an operator of an installation situated outside Finland is that of the State in which such installation is situated. However, it may be decided, by Order, that compensation for nuclear damage suffered on the territory of a non-contracting State can be awarded if the latter makes reciprocal provision with regard to Finland.

Section 2

Moreover, the Government, if the risk involved is negligible, can exclude any nuclear installations, nuclear fuel or radioactive products from the application of this Act. In pursuance of this provision, an Order made in the Council of Ministers has removed certain categories of nuclear fuel and radioactive products from the scope of application of this Act.

Order No. 487 of 21.6.1972

Section 17 (1)

The right to compensation for nuclear damage provided by this Act can be extended to other damage insofar as such damage cannot reasonably be separated from the nuclear damage.

II - PERSONS LIABLE

(a) Installations

The operator of a nuclear installation is liable for damage resulting from a nuclear incident which occurs within his installation. However, he may be exonerated from liability, in the absence of express provision in a contract, for an incident brought about by the storage in his installation of nuclear substances in the course of transport. In the latter case, the operator responsible for the carriage of the said substances will be liable for compensation for such damage.

Section 6

Claims for compensation for nuclear damage may only be made against the operator or his insurer.

Section 15

Moreover, the operator is liable to pay compensation even in the absence of fault or negligence on his part.

Section 12

Unless otherwise provided in this Act, such compensation will be awarded according to the general rules applicable to liability for tort.

Section 14

(b) Carriage

The operator is liable for nuclear damage caused by an incident occurring in the course of transport of substances coming from a nuclear installation situated in Finland or on the territory of a Contracting State. The liability for damage caused by an incident occurring in the course of transport to a nuclear installation in Finland or to an installation situated in the territory of a Contracting State falls upon the receiving operator from the time stipulated in the written contract entered into with the consignor. In the absence of such a contract the transfer of liability takes effect from the moment when the receiving party takes charge of the nuclear substances.

Section 7

Section 7

In addition, the operator sending substances to a nuclear reactor forming part of a ship or any other means of transport (using the reactor as the source of power) shall be exempt from all liability from the moment that the person authorised to operate or to be in charge of the reactor takes charge of the nuclear substances. The same rule applies when the process is reversed in the case of transport from such a reactor

Section 8

to an installation in Finland or in a Contracting State.

Section 8

The operator of a nuclear installation situated in Finnish territory or in the territory of a Contracting State shall be liable for all nuclear damage caused by an incident occurring in the course of transport of nuclear substances which are being sent to him, with his written consent, by a consignor situated in a non-contracting State.

Section 8

In the case of transport of nuclear substances in transit causing an incident on Finnish territory, liability shall be with the carrier duly authorised under this Act.

Section 9

The foregoing provisions apply equally to carriage itself and to storage of nuclear substances incidental thereto, unless the operator, under a written contract, accepts liability for damage which may occur during such storage in his installation.

Section 11

The Government may render the carrier at his request, instead of the operator of a nuclear installation situated in Finland liable to pay compensation for damage caused by a nuclear incident occurring in the course of transport or in connection therewith. Such a decision requires the consent of the operator concerned and also proof supplied by the carrier that he has taken out a contract of insurance or has provided financial security.

Section 10

If the incident takes place at a time where no operator was in possession of the nuclear substances, liability shall fall on the last operator to have been in possession of the substances.

(c) Rights of recourse

Section 16

Any person held liable to pay compensation by virtue of an international agreement in force, open for signature, ratification or accession on 29th July 1960, or pursuant to any national legislation, shall acquire by subrogation the rights against the operator vested in the victim of the nuclear damage.

Section 21

'An operator who has paid compensation under this Act has a right of recourse against any individual who wilfully caused the damage or against any other person expressly made liable under a written contract.

III - EXONERATION FROM LIABILITY

Section 12 — The operator of a Finnish nuclear installation is exonerated from liability in the case of damage caused by an incident directly due to an act of war, armed conflict, civil war or insurrection. He is also exonerated from liability in the case of a grave natural disaster of an exceptional character.

Section 13 — In the same way, the operator is not liable for damage caused to the nuclear installation itself or to property which was situated on the site of the installation and was being used in connection with it.

Section 14 — In addition, the operator may be exonerated, wholly or partially, when the incident was caused by a wilful act or gross negligence of the person suffering the damage.

FUNCTIONING OF THIRD PARTY LIABILITY

I - FINANCIAL SECURITY

(a) Limits of liability and insurance

Section 18 — The liability of the operator of a nuclear installation situated in Finland is limited to FM 42 million (about 10 million EMA u/a). However the Government may fix a lower figure provided that it shall in no case be less than FM.21 million (5 million EMA u/a), according to the size and type of installation concerned. The same applies to carriage of nuclear substances.

Section 19 — When two or more operators are liable they shall be jointly and severally liable to pay compensation of an amount up to the limits referred to above. However, when the damage has occurred during transport or storage of several consignments of nuclear substances by one and the same means of transport or during their storage in a single installation, the aggregate liability of all the operators may not exceed the maximum liability established for any one of them. The apportionment of such liability shall depend on the proportions in which the damage can be attributed to each of the nuclear installations involved in the operation.

Section 23 — The operator of a nuclear installation is required to have and maintain insurance to cover his liability. Such insurance must have prior approval from the Ministry of Social Affairs and Public Health.

Section 23 — The carriage of nuclear substances may be covered by a separate insurance.

When the insurance covers each nuclear incident, its amount must be at least equal to the amount of liability incurred by the operator in accordance with
Section 24 Section 18. On the other hand, when the insurance covers the installation at all times (and not each separate incident), its amount must at least be one-fifth higher than the maximum liability of the operator.

The State is exempted from the obligation to
Section 27 insure, and may moreover, if the operator provides
Section 28 adequate financial security, release him of the obligation to take out insurance.

(b) State Intervention

When a person has a right to receive compen-
Section 29 sation for nuclear damage from the operator of a Finnish installation and can show that he has not recovered such compensation from the operator's insurer, compensation will be paid by the State at the same rate as that laid down for the liability of the operator.

Furthermore, when the amount of liability of the operator proves to be insufficient, public funds can be
Section 30 used to make up the amounts necessary to compensate for the nuclear damage suffered.

(i) in Finland or on the territory of another State which is a party to the Brussels Supplementary Convention;

(ii) on the high seas or over the sea, on board a ship or aircraft registered in Finland or in the territory of a state which is a party to the said Convention;

(iii) and in any other case or over the high seas, by a state which is a party to the Supplementary Convention (or by a national of such a state), provided however, that the damaged ship or aircraft be registered in the territory of a state which is a party to the Supplementary Convention at the time of the incident.

Compensation for the damage may also be paid by the state in the case where the operator of a nuclear installation situated in Finland is liable for damage
Section 33 suffered by persons in that country where the damage did not become apparent before the right to compensation became statute-barred. The same applies in situations where the victim, having omitted to institute proceedings against the operator, is able to justify such omission on valid grounds.

The Government may also decide, in certain circum-
Section 33 stances, to award compensation for nuclear damage occurring outside Finland but liability for which falls on the operator of an installation situated in Finland.

II - COMPENSATION

Section 32

The total amount of compensation which may be awarded by one or several operators and by the State cannot exceed an amount equal to 120 million units of account as defined in the European Monetary Agreement of 5th August 1955.

Section 25

Persons having a right to compensation for nuclear damage may bring their claims directly against the operator's insurer.

Section 20

If the amount allocated for the compensation payable by the operator is insufficient, such compensation may be reduced in proportion to the claims.

Section 32

The same applies when compensation is awarded from public funds.

III - LIMITATION IN TIME

Section 22

An action for damages against the operator or his insurer is statute-barred three years after the date at which the person suffering damage has, or ought reasonably to have had, knowledge of the damage.

Section 22

If proceedings have not been instituted within ten years after a nuclear incident, the right to compensation for nuclear damage shall be extinguished. Where the nuclear damage was caused by nuclear substances which have been stolen, lost or abandoned, the action for compensation must be brought within a period of twenty years.

IV - COMPETENT COURT AND MISCELLANEOUS PROVISIONS

Section 36

Actions for compensation for nuclear damage brought against the operator or his insurer under this Act must be brought before the Finnish courts

- in cases where the incident occurs wholly or partly in Finland,
- in cases where the nuclear installation involved is situated in Finland, even if the incident occurred outside the territory of a Contracting State or the location of the incident cannot be ascertained with certainty.

Section 37

The Act provides that actions for compensation brought in the Finnish courts pursuant to the foregoing provisions, and also actions brought against the State, shall be heard only by the general court of first instance within whose jurisdiction the nuclear incident occurred. Should no court have jurisdication under the foregoing provision, the action must be brought before the Court of the City of Helsinki.

Comments

The passing of the Act on nuclear third party liability made it possible for Finland to accede as a first step, to the Paris Convention. The Act also contains provisions which provide for the accession of Finland to the Brussels Supplementary Convention when it comes into force. Generally speaking, the wording of this Act is very close to that of other Scandinavian legislation on the same subject-matter, and in particular the Swedish Act. This can be explained by the fact that those countries worked in close collaboration in drafting their respective nuclear laws.

TEXTS

• *Germany - Argentina*

TREATY BETWEEN THE REPUBLIC OF ARGENTINA AND THE FEDERAL REPUBLIC OF GERMANY ON THE ENTRY OF NUCLEAR SHIPS INTO ARGENTINE WATERS AND THEIR STAY IN ARGENTINE PORTS

Introductory note by the Secretariat

The first bilateral agreement to be concluded regarding the operation of the nuclear ship "Otto Hahn" was the Treaty signed between the Federal Republic of Germany and the Kingdom of the Netherlands on 28th October 1968; the text of this Treaty is reproduced in Nuclear Law Bulletin No. 3. Since then, several visiting agreements have been negotiated and concluded, either in the form of treaties as with Portugal, or simply by an exchange of diplomatic notes as was the case with a certain number of African countries. Recently, on 21st May 1971 (see Bulletin No. 9), a new Treaty was concluded with the Argentine Republic. The provisions of this Agreement which concern the safety of the ship are, on the whole, patterned on those of the Treaty with the Netherlands, and are closely based on the regulations established by the SOLAS Convention. The provisions concerning nuclear third party liability, however, are different from those of the other Treaty which referred expressly to the 1962 Brussels Convention; in effect this had resulted somewhat in a partial ratification of that Convention. The Treaty with Argentina, on the other hand, lays down special provisions in this respect which have been summarised in Bulletin No. 9. As the drafting is clearer and more concise than that of the other Agreement it was considered useful to reproduce this Treaty in full in the "Texts" chapter of the Bulletin.

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The Governments of the Federal Republic of Germany and of the Republic of Argentina, being desirous of promoting, in their mutual interest, the uses of nuclear energy, and more particularly the application of such energy to merchant ships*,

HAVE AGREED as follows

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* This is the translation of an unofficial French translation by the Secretariat.

Article 1

For the purpose of this Treaty·

1. "Authority" means those authorities of the Republic of Argentina which are competent for the application of the present Treaty.

2. "Licensing State" means the Federal Republic of Germany as the country authorising operation of the ship under its flag.

3. "Ship" means the nuclear ship "Otto Hahn" registered in the Federal Republic cf Germany and any other ship to which this Agreement may be extended under Article 10 hereof.

4. "Operator" means the person authorised by the Licensing State to operate the ship.

5. "Brussels Convention" means the Convention on the Liability of Operators of Nuclear Ships, opened for signature on 25th May 1962 in Brussels.

6. "SOLAS Convention" means the International Convention for the Safety of Life at Sea, London, 17th June 1960.

7. "Argentine Waters" means the expanse of sea from the coast of Argentina to a distance of 200 nautical miles measured from the base line as determined in international law and practice, without prejudice to the rights or the views of the Contracting Parties as to their concepts of territorial waters or their jurisdiction on the high seas.

8. "Nuclear fuel" means any material capable of producing energy by a self-sustaining process of nuclear fission which is used for intended for use in the ship.

9. "Radioactive products or waste" means any material including nuclear fuel made radioactive by neutron irradiation incidental to the utilisation of nuclear fuel in the ship.

10. "Nuclear damage" means loss of human life, personal injury and loss or damage to property arising out of or resulting from the radioactive properties or a combination of radioactive properties with toxic explosive or other hazardous properties of nuclear fuel or of radioactive products or waste; any other loss, damage or expense so resulting shall be included in this definition only to the extent that national law so provides.

11. "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage.

Article 2

1. Save as otherwise provided in the present Treaty the ship shall be subject to the ordinary provisions of local law.

2. Entry of the ship into Argentine waters shall be subject to prior authorisation from the Authority.

3. In order that authorisation to enter may be granted it shall be a necessary prerequisite that the Authority be furnished in due time with the ship's Safety Assessment of such extent and on such conditions as provided in Regulation 7 of Chapter VIII of the SOLAS Convention.

4. The Authority shall also be given such prior notification as provided in paragraph 3, and in detail, of all shipping operations, and especially those of loading and unloading, which the ship is to carry out in Argentine waters or harbours.

5. The ship shall comply with instructions from the Authority as to navigation in Argentine waters; the Authority may specify the harbours in which the ship shall be permitted to stay and the conditions under which it must perform any shipping operations, especially those of loading and unloading.

Article 3

1. The ship shall submit to special inspection as provided for by Regulation 11 of Chapter VIII of the SOLAS Convention, before entering harbour, and at a place to be determined by the Authority.

2. The Master of the ship shall receive on board such persons as may be appointed by the Authority to carry out a proper inspection of the radiation protection measures.

Article 4

1. When the ship is staying in an Argentine harbour the Authority shall co-ordinate with the Master the necessary steps for optimum implementation of the safety precautions to be adopted in compliance with the SOLAS Convention, without prejudice to any special rules which the Authority may make under local law.

2. When the Master of the ship considers that it will be impossible to comply with any of the rules referred to above he shall immediately notify the Authority which shall then be entitled to order the ship to leave at once or to move to a different berth irrespective of the stage reached in any loading or unloading operation.

Article 5

1. Except with the written agreement of the Authority the ship shall not be entitled to discharge radioactive products or waste in Argentine harbours or waters.

2. In addition to the costs incurred by ordinary ships, the ship shall bear pilotage and towing costs incurred in implementing safety measures in Argentine harbours and waters, and costs incurred as a result of the emergency measures referred to in paragraph 4.

3. Matters relating to the repair in Argentine harbours and waters of the ship's nuclear installation, to maintenance operations and to the corresponding inspections by the Authority shall be covered by the instructions referred to in Article 2(5).

4. Without prejudice to the measures referred to in Article 4(1), the Master of the ship shall take any emergency measures he deems necessary, and shall immediately notify the Authority which shall provide him with all necessary help.

5. When external circumstances make it necessary for emergency measures to be taken with respect to the ship, the Master shall follow the instructions of the Authority.

Article 6

1. The operator shall be absolutely liable for any nuclear damage upon proof that such damage has been caused by a nuclear incident involving nuclear fuel of the ship or radioactive products or waste emanating therefrom.

2. If the operator proves that the nuclear damage was caused wholly or partly by the individual who suffered it acting with intent to cause damage, the competent courts may exonerate the operator wholly or partially from his liability to such individual.

3. The liability of the operator shall be limited to the sum of DM 400 (four hundred) million in respect of any one nuclear incident.

4. The Licensing State undertakes with the Republic of Argentina that it will guarantee the payment of compensation in respect of claims against the operator for nuclear damage in accordance with this Treaty and will make the necessary funds available for the purpose, to a maximum limit of DM 400 (four hundred) million to the extent that the insurance or financial security provided by the operator should prove inadequate for the purpose.

5. The right to claim compensation shall be extinguished after the lapse of ten years from the date of the nuclear incident.

6. Where nuclear damage is caused by nuclear fuel, radioactive products or waste which were stolen, lost jettisoned or abandoned, the period laid down in paragraph 5 shall be computed from the date of the nuclear incident causing the nuclear damage but shall in no case exceed a period of twenty years from the date of such theft, loss, jettison or abandonment.

7. In the event of aggravation of damage, any claim filed within the periods specified above may be increased even after the expiry of such periods, provided that final judgment has not been entered.

Article 7

Article 6 of this Treaty shall apply to nuclear damage occurring in Argentine waters or territory if the nuclear incident has occurred

- within Argentine waters or territory, or
- outside Argentine waters, in the course of a voyage to or from an Argentine harbour or to or from Argentine waters.

Article 8

1. Actions for compensation in respect of nuclear damage may be instituted in the courts of either one of the Contracting States at the option of the claimant.

2. Claims against the operator shall be brought in the Federal Republic of Germany, against "Gesellschaft für Kernenergieverwertung in Schiffbau und Schiffahrt m.b.H," Hamburg 11, Grosse Reichenstrasse 2 and in the Republic of Argentina against a representative of the said Company appointed pursuant to Article 2(3) hereof.

3. Judgment entered by an Argentine court having jurisdiction under paragraph 1 above shall be recognised as valid in the Federal Republic of Germany except

(a) where the judgement was obtained by fraud on the part of the claimant, or

(b) where the operator was not given a fair opportunity to present his case.

4. Judgments of Argentine courts recognised as valid shall, after being submitted for execution in accordance with the formalities of the Federal Republic of Germany, be as fully enforceable as if they were judgments of a ccurt of that State.

5. Once such a judgment as is mentioned in paragraphs 3 and 4 has been entered, it shall not be subject to further proceedings on the part of the Federal Republic of Germany.

Article 9

1. The Contracting Parties shall endeavour to resolve any dispute arising out of the interpretation or application of the present Treaty through diplomatic channels; for this purpose they shall especially refer in respect of liability for nuclear damage, to the provisions of the Brussels Convention.

2. A dispute which cannot be so resolved shall be submitted, at the request of either one of the Contracting Parties to a Board of Arbitrators.

3. The Board of Arbitrators shall be formed, as and when occasion requires, by each Contracting Party designating one member, the two members so appointed shall jointly agree on the choice of a national of a third State as Chairman who shall be appointed by the governments of the two Contracting Parties. The members of the Board shall be appointed within a period of two months, and the Chairman within three months, from the notification by one of the Contracting Parties to the other of its desire to submit the dispute to a Board of Arbitrators.

4. In the event of failure to act within the time limits specified in paragraph 3 above, either Contracting Party shall be entitled, in the absence of agreement, to request the President of the International Court of Justice to make the necessary appointments. Should the President be a citizen of either of the Contracting Parties or should he be prevented for any other reason, his deputy shall make the appointments. Should his

deputy be a citizen of either of the Contracting Parties or be prevented in any other way from acting, the appointments shall be made by the member of the Court of Justice who, not being a citizen of either of the Contracting Parties, comes next in order of rank.

5. The Board of Arbitrators shall reach its decision by a majority of votes. Each Contracting Party shall bear the expenses of its member and of its own representation in the arbitration proceedings. The expenses of the Chairman and any other expenses shall be shared equally by the two Contracting Parties. The Board of Arbitrators shall be entitled to make a different apportionment of expenses. In all other respects the Board of Arbitrators shall adopt its own rules of procedure.

Article 10

This Treaty may be extended, by means of an Exchange of Notes, to other ships of the Licensing State.

Article 11

This Treaty shall also apply to Land Berlin unless the Federal Republic of Germany shall have notified the Government of the Republic of Argentina to the contrary within three months of its coming into force.

Article 12

1. The present Treaty shall be ratified. Instruments of ratification shall be exchanged by the two Parties at Bonn as speedily as possible.

2. The Treaty shall come into force from the moment the instruments of ratification are exchanged.

3. The present Treaty is made for a period of three years and shall be renewable automatically for periods of one year; either Party shall be entitled to denounce it by giving not less than six months' notice.

DONE at Buenos Aires, Capital of the Republic of Argentina, on 21st May 1971 in two originals in the German and Spanish languages, each text being equally authentic.

STUDIES AND ARTICLES

ARTICLES

NEW TRENDS IN ATOMIC LAW *

Josef K. Pfaffelhuber
Ministerialrat
Federal Ministry of Education and Science, Germany

I

For years a broad spectrum of public opinion has been demanding the protection of the environment from the hazards of modern technology. The fact that pollution of the waters and the air is obvious to everyone and the fact that the offensive practice of unrestricted refuse disposal is threatening to destroy natural amenities in densely populated areas make it easy to understand man's defensive reactions and his appeal to the Legislator and the Government to take effective remedial measures.

Radioactive contamination of our environment as a result of the utilisation of nuclear energy (e.g. the operation of large nuclear installations) on the same scale as the environmental pollution of the conventional type would be intolerable because of the hazards involved. This has been recognised by the Legislature, not just at a relatively late point in time, after contamination of the environment had become unbearable, but several years ago when it began to promote the legislation, development and utilisation of nuclear energy by passing the Atomic Energy Act (AtG)(1). While pursuing its promotional objective the Legislature also prescribed a system of protection against the hazards of nuclear energy and the harmful effects of ionizing radiations

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* Lecture delivered on 24th February 1972 as part of the programme of the Permanent Seminar on Nuclear Questions in the Haus der Technik, Essen. Publication does not constitute endorsement of the author's personal views. This article is reproduced by kind permission of "Energiewirtschaftliche Tagesfragen" (1972, No. 5).

(1) Act of 23rd December 1959 on the peaceful uses of nuclear energy and protection against its hazards (Bundesgesetzblatt I, page 814), last amended by the Levying of Charges Amendment Act of 23rd June 1970 (Bundesgesetzblatt I, page 805).

partly through provisions in the Act itself and partly by means of a full range of delegated powers. It did not wait until nuisance and danger to the environment had become a reality before takings its remedial measures in the nuclear field, but acted in such a way that the programmes for protecting the environment from the hazards of nuclear technology kept pace with the development of that technology.

This is apparent today from the fact that nuclear installations constructed to date in the Federal Republic have not changed the environment, thanks to adequate statutory provisions respecting the layout of these installations from the safety standpoint, the elimination of gaseous and liquid radioactive effluents and the effective, if costly, disposal of radioactive waste, this is because the operating conditions to which these installations must conform do not allow the operators to produce outside the installations a radioecological situation in which the limits of natural background radioactivity are exceeded.

We must also acknowledge that the administration of the Atomic Energy Act by the Länder acting for the Bund (2), as laid down by the Legislature, has ensured optimum apportionment between the Länder and the Bund of responsibility for discharging the obligation to the applicant to take action on the one hand, and responsibility for exercising supervision to ensure that such action is lawful and expedient, on the other (3). The Bund's delegation machinery makes it possible for the fundamental problems constantly recurring in the field of nuclear safety and radiation protection to be properly solved at national level by the Bund with due regard to the views of different localities, to the preservation of the legal and economic unity of the Federal Republic and to the practice of the Land authorities; meanwhile the Länder - which are responsible for the issue to the applicant of administrative approval in matters within the ambit of the law on water, energy, nature conservancy, building, trade and industry and (in the future) the law on protection against immissions* are in close contact with the applicant, both under the procedure for the granting of the licence in accordance with nuclear law and for purposes of supervision.

II

The question arises, of course, whether the existing statutory provisions respecting atomic energy and the hitherto accepted administrative practice are adequate in view of the constant expansion of nuclear energy, and whether they permit satisfactory solution of the problems. In putting this question I am assuming two things, i.e. that inadequate statutory provisions and an inadequate administrative practice must not be allowed to jeopardise the power supply and that the situation with regard to the law and its administration should be such as to take into consideration the need for protecting the population.

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(2) Section 24(1) and (2) of the Atomic Energy Act.

(3) Article 85 of the Basic Law.

* New term meaning the introduction of a harmful element into the environment (Note by the Secretariat).

The questions to be examined fall into the following three main categories

1. Legislative questions

   1.1. Physical planning and the location of nuclear installations

   1.2. Should the licensing procedure for installations under Section 7 of the Atomic Energy Act be replaced by a planning procedure ?

   1.3. Can the licensing procedure be accelerated, through facilitating the imposition of stipulations at a later stage ?

   1.4. Demarcation between nuclear law, on the one hand, and the law on water and on protection against immissions, on the other

   1.5. Should the Paris Nuclear Third Party Liability Convention and the Brussels Supplementary Convention be ratified ?

   1.6. Does the law on radiation protection need updating ?

2. Questions relating to the administration of the law

   2.1. Decision-making by the authorities of the Federal State in consultation with the Commission on Reactor Safety

   2.2. Nuclear regulations

   2.3. Concentration of the discussion period

3. Organisational questions

   Federal supreme authority for reactor safety and radiation protection.

III

Legislative questions

1. Physical planning and the location of nuclear installations

At the present time the siting of nuclear installations, particularly of large nuclear power stations, is chosen mainly from the standpoint of the energy economy, but business interests of the electricity supply enterprise are often an important factor. It is only then that the enterprise concerned makes application for the issue of an interim decision on the site question (4) or for the construction of the nuclear power station (5). The licensing authority and the Bund authority behind it (Article 85 of the Basic Law) often find that the other siting factors (6)

(4) Section 7a of the Atomic Energy Act.

(5) Section 7 of the Atomic Energy Act.

(6) Cf. the findings of the Main Committee of the Ministerial Conference on Physical Planning of 16th June 1971, printed in the series "Offentlichkeitsarbeit des Bundesinnenministeriums" (Public Relations Services of the Federal Ministry of the Interior), Vol. 11, p. 39 et seq.

relevant from the safety and radioecological standpoint have been inadequately attended to either in some physical planning procedure, or prior to the applicant's own decision. The result is that the authorities competent under atomic law are sometimes in the difficult position of having to refuse a licence for a site in a "yes" or "no" decision because the Atomic Energy Act does not enable them to approve, on the basis of a site study to be submitted by the applicant, sites, other than those applied for, which could be considered more suitable in the light of physical planning factors, including the safety and radioecology problems. The yes or no decision resulting from the Atomic Energy Act means that the applicant risks being refused a licence for a site for which he may already have incurred preliminary expenses in connection with the acquisition of the land. Such a situation is unsatisfactory not only for the individual firm but also for the national economy, and should be remedied. Obviously the remedy cannot be to oblige the licensing authority to license every site applied for by the applicant. An effective remedy might, however, be for the electricity supply enterprise - following the United States model - to switch to longer-term site planning, such plans would have to be submitted to the authorities in good time so that the latter could - before the applicant had incurred preliminary expenses - decide on the correct sites having regard to physical planning considerations, including safety and radioecological problems. If the claims of open space, and the safety and radioecological requirements, are to be taken into account before a decision is taken as to the site for an individual installation, the problems arising out of the growing numbers of nuclear power stations in our densely populated territory are insoluble by any other means than the foregoing. The existing provisions of the Atomic Energy Act and of the Physical Planning Act (7) do not go far enough, at any rate, higher ranking aspects of the safety and radioecological significance of nuclear installations must also play a greater part than hitherto in the administration of the Physical Planning Act.

2. Should the licensing procedure for installations under Section 7 of the Atomic Energy Act be replaced by a planning procedure?

Anyone making an application under Section 7 of the Atomic Energy Act to construct and operate a nuclear installation has to obtain a large number of administrative approvals, e.g. under atomic energy law, water law, building law, energy law, industrial law, the law on nature conservancy and (in the future) the law on protection against immissions. These administrative procedures are conducted in the various Länder by different authorities at very different levels (lower, intermediate and highest Land authority) and usually result in separate administrative decisions.

The advantage over this of a planning procedure, as proposed by the Federal Government in the Administrative Procedure Bill (8) would be that the sponsor of the project would only have to deal with the hearing authority and the planning authority; the first of these would have to obtain of its own motion the views of the authorities competent for sectors involved by the project, and the second would have to issue the planning decision. Special provision would have to be made in the Atomic Energy Act for the planning procedure described in this Bill if the provisions respecting planning procedure are to be applicable. The planning procedure establishes the admissibility of the project, including the

(7) Act of 8th April 1965 (Bundesgesetzblatt I, page 306)

(8) Bundestag Publication VI/1173 (subject 201) - Preamble.

consequential measures necessary at other establishments in the light of all public interests affected by the project. The planning procedure obviates the need for other decisions by the authorities, such as licences granted under public law, concessions, authorisations, permits, consents and plan approvals. The planning procedure would have a considerable concentrating effect.

One must not forget, however, that planning procedure can also delay the start of the construction of a nuclear installation, e.g. when individual authorities which have to express their views to the hearing authority fail to do so in time. In many cases the first partial construction licence for a nuclear power station may already have been granted while at the same time the formalities necessary for operation under other enactments have not been completed. Only the building licence is needed at the time when construction is to start. In its commentary on Section 62 of the Bill the Federal Council has recognised the problem and it would like to empower the planning approval authority at the time of issuing the planning approval decision to refuse to deal with licence applications which cannot be finally disposed of at the time because of the need for large-scale investigations. In its reply to the Federal Council's commentary, however, the Federal Government wishes to see a reservation inserted in the planning approval decision, and at the same time it wish to require the sponsors of the project to submit in good time particulars which are still lacking or which are requested by the planning authority. In this way the Federal Government is seeking to ensure that an unconditional power of refusal by the planning authorities does not lead to a weakening, in favour of participating authorities, of the concentration effect which is essential for and peculiar to the planning approval procedure. None of the formulae proposed by the Federal Government and Federal Council, however, ensures that construction of the nuclear power station will be able to start in future at the time now possible outside the planning approval procedure by virtue of the first partial construction licence. In some cases this could delay the building of nuclear power stations. It will be wiser to wait and see how the provisions of the Bill which relate to the planning approval procedure will read when they come into operation. It is only then that one will be able to judge whether this procedure is suited to atomic law.

3. <u>Can the licensing procedure be accelerated through facilitating the imposition of stipulation at a later stage ?</u>

Applicants attach particular importance to the acceleration of the licensing procedure because they have to construct the nuclear power station within a specified time so that it will be available in time for power generation. In many cases in the past the licensing procedure has failed to fit in sufficiently with the applicant's forward planning. Many applicants do not realise the function of the licensing procedure and are inclined to think that the licensing decision is a state service to be provided by the licensing authority for a small fee. This misconception often causes delays, with the result that the nuclear power station cannot go into operation on time. Applicants must, therefore, be urged to include the licensing procedure in their planning schedule. It should also be ascertained, however, whether improvements can be made on the authority's part. Licensing procedures are often delayed because one small item in the entire set of conditions for a licence cannot be immediately satisfied. This raises the question whether the problem can be solved later by means of a stipulation to be inserted in the licence or even after the conclusion of the licensing procedure by a subsequently imposed requirement.

It is true that a general distinction can be made between the licence conditions and such requirements, in that the problems which have to be cleared up concurrently with the conception and fundamental layout of the installation form part of the licence conditions and cannot be "slipped" into the requirements. This distinction is not, however, hard and fast enough to provide a reliable solution in borderline cases. A good deal can be inserted in the requirements if the Order alone is immediately necessary and if compliance with the requirements can be deferred to a later date. The greatest difficulties arise if it becomes necessary to deal with a factual situation by "subsequent requirements", after the conclusion of the licensing procedure. In such cases the authority is hindered from carrying this desire into effect because it is linked with the compensation obligation under Section 18 of the Atomic Energy Act. The provision could also have an inhibiting effect in a case where it becomes apparent subsequently, i.e. after the licence has been granted, that the state of affairs previously licensed must now be reappraised because of a change in the status of the art. While the authority has power to impose a subsequent requirement, the compensation obligation compels it to consider at the same time how and when the necessary budgetary resources can be made available for the compensation so fixed. Other fields of law, such as water law and the law on protection against immissions, do not have such a compensation obligation in respect of subsequently imposed requirements. This obligation is, moreover, primarily attributable to the ideal of "promotion" underlying the Atomic Energy Act at the end of the 1950's. Now that nuclear energy has become competitive the question must be asked whether the compensation obligation in respect of subsequent requirements is still justifiable or whether it should be replaced having regard to the principle of causality which is otherwise applicable in regard to the protection of the environment.

4. Demarcation between nuclear law, on the one hand and the law on water and on protection against immissions on the other

The Atomic Energy Act is based on the provision in Article 74, No. 11a, of the Basic Law, which was the first provision empowering the Federal Legislature to enact legislation on protection against the hazards caused by the release of nuclear energy or by ionizing radiations. A constitutional interpretation of the relevant provisions of the Atomic Energy Act (9) shows that they can only ensure protection from specific nuclear and radioecological hazards. For this reason Section 34(6) of the First Radiation Protection Ordinance provides explicitly that other statutory provisions concerning the(non-radioecological) protection of air, water and soil shall not be affected. In cases involving demarcation between atomic law and water law it has never yet been disputed that the water law procedure must be completed in addition to the procedure under atomic law.

In years gone by when no importance was attached to protection against immissions in connection with the operation of (smaller) reactors the demarcation from industrial law provided for in Section 8(1) of the Atomic Energy Act was considered appropriate and sufficient. Recently

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(9) E.g., Section 7(2), No. 5 of the Atomic Energy Act, Section 3(2), No. 6 and Section 34 of the First Radiation Protection Ordinance, in the version officially published on 15th October 1965 (Bundesgesetzblatt I, page 1653)

the building of large closed cycle cooling systems used in large nuclear power stations has raised the question as to the procedure under which cooling towers, for instance, are tested for causing damage or nuisance to the environment, inter alia by air pollution of a non-radioecological nature, heat or noise. In the absence of a statutory basis these circumstances cannot be gone into under the procedure provided for in atomic law (10). It is obvious that cooling towers associated with large nuclear power stations cannot be treated differently from those belonging to the installation burning fossil fuels. That is why the Federal Government has, in its reply to the commentary of the Federal Council on the Federal Bill on protection against immissions, (11) proposed that Section 8(1) of the Atomic Energy Act be worded so as to make it possible to evaluate the non-radioecological hazards of cooling towers under the procedure provided for in the Act on protection against immissions.

It might be objected that cooling towers are also subject to building law and water law. Neither of these procedures, however, is designed to safeguard the interests of non-radioecological protection against immissions; they have other objectives and are therefore just as little suited as atomic law to deal with the special non-radioecological problems of protection against immissions.

Any inconvenience caused by the need to complete two procedures can be rectified by the Länder by joint notification of the procedural documents and insofar as possible by carrying out the two procedures simultaneously, especially as the problems of protection against immissions have hitherto been raised by objections during the discussion periods provided for in atomic law. There is one result which I do not find desirable, i.e. to set aside the appraisal of the non-radioecological problems of protection against immissions or to deal with these incidentally and only in passing in some other procedure, without an adequate legal basis.

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(10) Even the licence conditions prescribed in Section 7(2), No. 5 of the Atomic Energy Act, to the effect that a licence can only be issued if, for instance, the choice of the site of the installation is not inconsistent with preponderant public interests, inter alia, that of preserving the purity of the water, the air and the soil, is merely intended to avert nuclear and radioecological hazards, and constitutional interpretation shows that it is not applicable to non-radioecological hazards. Some people believe that the provision should also cover non-radioecological repercussions, but in that event should be administered by the Länder not as agents for the Bund but on their own responsibility. The clear and unequivocal wording of Section 24(1) of the Atomic Energy Act makes such a split application of the licence condition self-prohibiting (cf. Section 87c of the Basic Law).

(11) Bundestag Publication VI/2868 (Subject 2129) - Preamble /Vorblatt/ - page 64.

5. Should the Paris Nuclear Third Party Convention and the Brussels Supplementary Convention be ratified ? (12)

In earlier years discussion of these two Conventions centred on whether they were acceptable with legal or economic channelling. Some further arguments - of a more legal nature - have also been put forward (13), partly in favour of and partly against ratification.

In a Europe which is starting to form a large economic bloc by increasing the membership of the European Communities to ten, it obviously seems a good idea to move from the national systems of liability and cover for nuclear damage to an international system. This could greatly benefit exports and imports and international transportation (14), and the exemptions from liability in respect of damage outside the scope of the Paris Convention would not take effect (Articles 2 and 6(c)(ii) of the Paris Convention). We must, however, ask ourselves whether the international system of liability and cover offered by the Paris Convention and the Brussels Supplementary Convention is suited in its present state effectively to supersede the system based on the Atomic Energy Act. The two Conventions were drafted at a time when people were thinking of research reactors and nuclear powers stations of up to 100 MWe. Actual developments, which have resulted in large nuclear power stations of 1300 MWe and will not stop there, have given a new dimension to the problems. What is important today is the legal policy question whether the system of liability and cover offered by the two Conventions still matches up at all, in nature, scale and amount, to the nuclear hazards that may come from large installations.

Because of the licensing procedure under atomic law we know that nuclear safety in the installations is highly advanced, that installations are adequately laid out to prevent earthquake damage, that they are protected against repercussions of outside events,(e.g. aircraft crashes, explosions, etc.) and that special importance is attached to the spatial and functional over-sufficiency of the parts designed to ensure nuclear safety. Nevertheless, all safety precautions, however intensive, fall short of achieving the aim of making a residual risk inconceivable, even where it is altogether improbable in the light of existing criteria (15). This means that, even for highly improbable contingencies, precautions must be taken which will effectively safeguard the individual citizen whatever happens. Do the two Conventions meet this requirement ? In answering this question we must express serious reservations because of

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(12) Convention on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28th January 1964, Additional Agreement to the Paris Convention of 29th July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28th January 1964.

(13) Cf. the paper read by P. Strohl and the ensuing discussion forming part of the programme of the Permanent Seminar on Nuclear Questions in the Haus der Technik, Essen, on 16th February 1971 (Energiewirtschaftliche Tagesfragen 1971, pages 309 et seq.)

(14) Cf. the statements made by Timm in connection with the Seminar mentioned in the preceding note (op. cit., page 319).

(15) Cf. the statements made by Federal Minister Professor Dr.-Ing. Leussink at the press conference of 17th August 1970 (Press Service of the Federal Ministry of Education and Science of the same date).

the exemptions from liability provided for in Article 9 of the Paris Convention (inter alia, for damage caused by a nuclear incident, if it is directly due to acts of insurrection or to a grave natural disaster of an exceptional character), and because of the limited amount of liability and cover, which falls considerably short of that prescribed in the Atomic Energy Act. The Federal Republic could, of course, exclude the exemptions in Article 9 of the Paris Convention by virtue of its reservation when signing, but only with regard to liability and cover in cases where the cause is to be sought in installations within the Federal Republic itself. Other States have adhered in full to Article 9 of the Paris Convention, and the owners of installations accordingly enjoy the exemptions from liability described in that Article, the scale of which is almost incomprehensible having regard to present-day technological possibilities.

Consequently, even after ratification by the Federal Republic the Paris Convention and the Brussels Supplementary Convention will not immediately bring about a liability and cover situation of the kind already existing for the national territory under the provisions of the Atomic Energy Act. Nevertheless ratification in a modified form should be considered, so that the advantages already described can be enjoyed. The purpose of ratification must, however, be to seek without delay the revision of both Conventions, in order that liability and cover for nuclear damage can be made more comprehensive than before (inter alia, abolition of the exemptions from liability, adjustment of the maximum amounts to the hazard situation created by large nuclear power stations and improvement of the rules governing limitation in time, especially for delayed damage) and in order that the system of joint constitution of financial cover /Article 3(b)(iii) of the Brussels Supplementary Convention/ may be supplemented by a system of joint action regarding the layout of nuclear power stations from the safety standpoint and the drafting of safety criteria for this purpose in matters coming within the scope of the Conventions. It is hard to understand why this latter aspect has been entirely overlooked until now. Once the members of a community decide on joint cover for damage it is only logical that measures to prevent damage should also be the subject of joint action within that community.

Pending satisfactory completion of the revision of the two Conventions these latter should not supersede, but merely supplement, the national law on nuclear liability and cover in the Federal Republic; the solution opted for should be a cumulative not an alternative one, because it would be unfair to leave the individual citizen, who will have to live with large nuclear reactors, worse off as regards the nature, the scale and the amount of liability and cover. One way of achieving this would be to ratify the two Conventions with all their advantages and disadvantages, subject to the proviso that liability and cover should conform to them in the first place but that, in addition, any person who receives nothing or can only obtain insufficient compensation because of the exemption from liability provided for in Article 9 of the Paris Convention, because of exhaustion of the maximum amount or because of the less favourable rules on time-limits contained in the Conventions, will obtain compensation up to the amounts now prescribed in the Atomic Energy Act. It will be clear to everyone who is familiar with the subject that this aim, desirable as it is from a legal policy standpoint, will not be very easily attained. Many legal problems will have to be clarified and solved. These difficulties can, however, be overcome; they should not be a reason for abandoning a solution which is necessary in the interests of legal policy.

6. Does the law on radiation protection need updating?

To put this question is to answer it in the affirmative. The la on radiation protection now in force in the Federal Republic (16) nas been in operation since 1960. While it has been amended a few times the amendments have not been of a fundamental nature. It is fully consistent with the Euratom Basic Standards (17), but as these have not been amended it has likewise not been adjusted to the latest knowledge of the International Commission on Radiological Protection (ICRP), as set out in publications Numbers 9 to 13. In addition, there are still no rules governing protection from hazards in the operation of particle accelerators. The admission of three more States to membership of the European Communities will be an occasion for amending the Euratom Basic Standards. Then the way will be clear for bringing the law on radiation protection into line with the latest scientific and technological knowledge.

IV

Questions relating to the administration of the law

1. Decision-reaching by the authorities of the Federal State in consultation with the Commission on Reactor Safety

Recently, by a Notice issued on 21st November 1971 (18), the Federal Minister of Education and Science reorganised the Commission on Reactor Safety which has been in existence since the middle of the 1950s. The purpose of the reorganisation was to increase the efficiency of the Commission, strengthen the independence of its members and make its activity more easily understood.

The Commission's status in the various procedures is often misunderstood. It is not a Federal (supreme) licensing authority, but exclusively an advisory body of the Federal Minister of Education and Science. It advises the Minister in the discharge of his obligation under Article 85 of the Basic Law to supervise the action of the Länder with a view to determining whether they have acted properly in their investigation of the technical conditions for a licence as laid down in Section 7(2) of the Atomic Energy Act. Obviously, because of the complexity of the licensing procedure, only the Land licensing authority will be fully conversant with the details. Thus the Commission is only competent for questions which can also be examined by the Federal Minister as part of his supervision, i.e. novel questions and problems of fundamental significance.

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(16) Also included is the Ordinance on Protection against Hazards caused by Ionizing Radiations in Schools (Second Radiation Protection Ordinance) of 18th July 1964 (Bundesegesetzblatt I, page 500), amended by the Ordinance of 12th August 1965 (Bundesegesetzblatt I, page 759).

(17) Euratom Guidelines of 1959 to establish basic standards for protecting the health of the population and of workers against the hazards of ionizing radiations, revised in 1962 and 1966 (Official Journal of the European Communities, 1966 page 3693.

(18) Bundesanzeiger, No. 228 of 8th December 1971.

Since the discussions in the Commission reach a high standard of expert knowledge because of the outstanding qualifications of the members, it has in practice acquired a significance exceeding its actual functions. This can be seen from the fact that the Länder and the applicants endeavour to discuss matters within the Commission, although this is not provided for in the licensing procedure as such, as prescribed by the Atomic Energy Act. This mingling of certain features of the licensing procedure with decision-reaching within the Federal State is justified by practical considerations and - even bearing in mind a hybrid administration that is open to criticism - constitutionally unobjectionable.

2. Nuclear regulations

By directing that a licence can be granted only if the necessary precautions have been taken, in the light of scientific and technological progress, against damage caused by the construction and operation of the installation (Section 7(2), No. 2, of the Atomic Energy Act) the Legislature has circumscribed, by means of an undefined legal concept, its view of the aim to be attained. It would be beyond the powers of the Legislature to define the state of the art in this field and would have been so especially in 1959 before the Atomic Energy Act was passed, since this has only developed over the years. Meanwhile it has not been placed on record by either science or technology, since recording presupposes not only knowledge, but reaching a decision on the shape it is to take. The decision-reaching is not yet concluded; there must first be an organisation in which it can be done.

The status of the art in the nuclear safety field is a factual element in arriving at a licence condition. It is obvious that the authorities which have to use this factual element in setting a licence condition should be given a decisive say in determining this state in so far as the drafting of safety regulations is concerned. These safety regulations define the requirements that must be satisfied before the factual criterion can be held to be met. Because of the relevance of the safety regulations to the Atomic Energy Act this activity - which is very much geared to the administration of the Act - must be carried out under the outwardly visible authority of the State. A private organisation would seem less suited for the task. Consequently a Nuclear Committee, visibly-acting under authority, will be the appropriate body for the drafting of the regulations. On the other hand, operators, manufacturers and constructors of reactors, and consultants, must also be allowed to participate, since the knowledge needed for drafting the nuclear regulations can only be brought together by close co-operation among all four groups concerned.

3. Concentration of the discussion period

The discussion period does not constitute a public hearing but makes it possible for objections not based on special heads of private law to be discussed verbally with the applicant and the objectors (19). This indicates that prominence is given to the dialogue between the authority and the objector. Unfortunately, some discussion periods are

(19) Section 3(2) of the Atomic Installations Ordinance in the version of 29th October, 1970 (Bundesgesetzblatt I, page 1518)

not consistent with this aim of the framers of the Ordinance. On many occasions long lectures have been delivered by the applicant and experts before the start of the talks with the objector. While the lectures may be of general interest to the latter he cannot properly understand them because they do not relate directly to the point of his objection. Such introductory lectures should therefore be discontinued; instead, the objector should be allowed to speak from the very start. Statements by experts and by the applicant should be requested whenever necessary.

Objectors often complain that the consultants' reports are not available in the discussion period and that they have therefore had no opportunity to study the facts. With this they link their request that the data should be completed. Is it right to have the discussion period at a time when even the licensing authority itself, in the absence of a consultant's report, is not yet sufficiently conversant with the facts to provide information on an adequate scale ? The discussion period should be arranged slightly later, i.e. once the main consultants' reports are available and the authorities involved are participating. It is only then that the licensing authority can submit the most important excerpts from the consultants' reports and thus make a substantial contribution towards the creation of a practical atmosphere.

In addition, objectors who take the floor in the discussion period should be requested to intimate on which specific point of their objections they wish to make their statement. Otherwise discussion periods degenerate into general propaganda campaigns against nuclear energy, which is something that the framers of the Ordinance certainly did not intend.

V

Organisational questions

Press reports have make known the intention of the competent agencies of the Bund to set up a Federal supreme authority or a Federal office for nuclear safety and radiation protection. Accordingly, many people, who are not aware of the needs that have arisen on the part of the authorities as a result of the quantitative expansion of atomic energy (especially the increase in the number of licensing procedures and supervisory procedures for atomic installations that must be carried out simultaneously) think that a central office is to be created which will eliminate the need for licensing authorities and consultants. This conclusion is natural in view of the organisational development of the authorities set up abroad in the field of nuclear safety.

Planning operations in the Federal Republic, however, have other prerequisites and a different objective. Apart from the fact that any change in the hitherto accepted situation would be inexpedient if it involved relieving the Länder of the licensing procedures under the Atomic Energy Act because of the linking of these procedures with those in the field of building law, water law, energy law, the law on nature conservancy and (in the future) the law on protection against immissions, it is also unlikely that the Bund would obtain a big enough majority in the Federal Council for an enabling Act. The sole purpose of creating a Federal supreme authority or a Federal office is to ensure better and more effective discharge of the Bund's obligations in connection with the Federal system of delegation. It is already foreseeable that the power

supply needs will lead to the expansion of nuclear energy in the Federal Republic and that the Land and Bund authorities must equip themselves for the tasks ahead. The duties of the Bund in connection with the Federal delegation machinery cannot be delegated to the Länder or to consultant organisations, but they cannot all be entrusted to one ministry. For constitutional and political reasons it will be advisable to keep one ministry responsible for preparing the legislation and discharging the functions coming more within the sphere of safety policy. The obligations of the Bund towards the Länder which are more geared to the administration of the law can, however, be transferred from the ministry to a high-level Federal authority. There will, of course, still be a need for consultant organisations, without which neither a licensing procedure nor the Bund's supervisory role in determining expediency would be conceivable.

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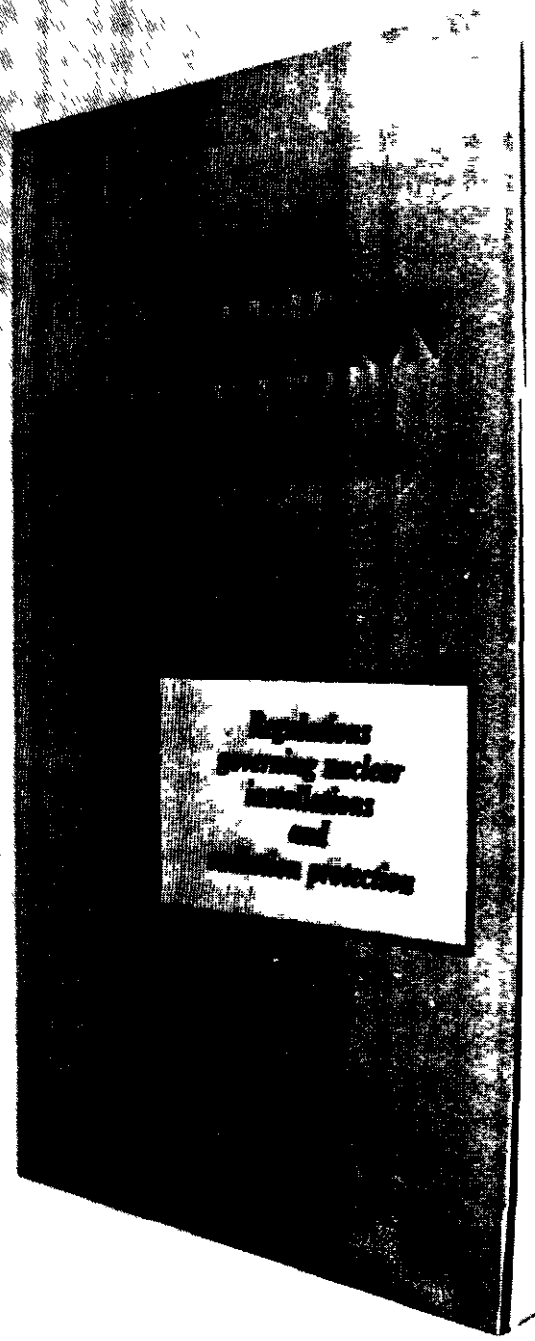

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Bulletin

SUPPLEMENT TO N° 10

NETHERLANDS : NUCLEAR INSTALLATIONS, FISSIONABLE MATERIALS AND ORES DECREE

November 1972

N E T H E R L A N D S

403 DECREE OF 4TH SEPTEMBER 1969 GOVERNING THE IMPLEMENTATION OF SECTIONS 16, 17 19(1) AND 21 OF THE NUCLEAR ACT (NUCLEAR INSTALLATIONS, FISSIONABLE MATERIALS AND ORES DECREE) AS AMENDED BY DECREE NO. 242 OF 26TH APRIL 1972 *

CHAPTER I

INTRODUCTORY PROVISIONS

Section 1

(1) In the application of the provisions of this Decree the following definitions shall apply :

Act :	The Nuclear Energy Act (Bulletin of Acts, Orders and Decrees No. 62 of 1963)
Our Ministers :	Our Ministers for Economic Affairs and for Social Affairs and Public Health

(2) Section 2 of the Nuclear Energy Act Definition Decree (Bulletin of Acts, Orders and Decrees No. 358, of 1969) shall be applicable.

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* Unofficial translation prepared by the Dutch Authorities.

Section 2

The present Decree shall not be applicable to the transportation or having available during storage in connection with transportation of fissionable materials or ores, or the moving, or the causing to be moved into or out of Netherlands territory of such fissionable materials or ores.

CHAPTER II

APPLICATION FOR LICENCES

Part 1: General Provisions

Section 3

(1) Application for licences as referred to in Section 15 of the Act shall be submitted in writing. They shall be addressed to our Ministers and shall be submitted to our Minister for Economic Affairs with a copy at the same time to Our Minister for Social Affairs and Public Health.

(2) Each application shall include :

(a) the applicant's name and address;

(b) a factual description of what the applicant wishes to do with the fissionable materials or ores, or a broad statement as to the establishment or equipment stating the use which the applicant wishes to make of the establishment or equipment;

(c) in so far as one or more of the provisions incorporated in Sections 4 - 14 are applicable to the application concerned, the data which the application is expressly required to provide under the relevant Section or Sections, or else, if such data are provided in a separate document, a brief summary of the nature of these particulars, including a reference to the annex concerned;

(d) an indication of the period for which the licence is sought.

(3) Applications for licences which fall under different provisions of paragraphs (2) to (4) of this Section may, in so far as they relate to the same establishment or equipment, or to establishments which together form one unit and which are situated in close proximity to one another, or to equipment which is to be or has been installed in the same ship, be submitted in the form of a single combined application. All provisions relating to the individual applications composing such a combined application shall be applicable to the combined application, with the proviso that in cases where the application in full of these provisions would lead to repetition of the same data, such data need only be stated once.

(4) If an application for a licence relates to an establishment or equipment in respect of which an application has already been submitted, reference to the earlier application will suffice, in so far as data are concerned that have been furnished for that earlier application and have not since undergone any change.

(5) The application should be dated and signed by or on behalf of the applicant. The copy referred to in (1) of this Section should be signed by or on behalf of the applicant to certify that it is a true copy.

(6) Either of Our Ministers may require submission of further copies of the application or of the annexes.

(7) If one of our Ministers, or one of Our other Ministers involved, is of the opinion that an application does not contain all the data necessary, he may require additional data to be furnished within a time limit to be set by him.

Part 2: Applications for licences to have available or dispose of fissionable materials or ores

Section 4

(1) Applications for licences to have fissionable materials available should include :

(a) a statement of the quantities, the chemical and physical state, the form, the content and the degree of enrichment, and, for irradiated fissionable materials, as accurate a statement as possible of the activity of these fissionable materials;

(b) a statement of the purpose for which the applicant wishes to have the said fissionable materials available;

(c) a statement as to and description of the place where the fissionable materials are being held available or, if a licence is referred to in Section 15(b) or (c) of the Act is required for the establishment or equipment where the fissionable materials are being held available, a statement as to that establishment or equipment, reference being made to the licence granted in respect of it or to the application submitted for such a licence.

(2) Applications for licences to have ores available should include :

(a) a statement of the nature, quantity and average uranium or thorium contents of these ores;

(b) a statement of the purpose for which the applicant wishes to have the said ores available;

(c) a description of the place where the ores are to be held available, and a description of the measures which will be taken by or on behalf of the applicant for the protection of persons, animals, plants and goods.

Section 5

(1) Applications for licences to dispose of fissionable materials should include :

(a) a statement of the quantities, the chemical and physical state, the form, the content and the degree of enrichment, together with as accurate a statement as possible of the activity of these fissionable materials;

(b) a description of the place where and in what manner the applicant wishes to dispose of the fissionable materials;

(c) a description of the measures which will be taken by or on behalf of the applicant for the protection of persons, animals, plant and goods.

(2) Applications for licences to dispose of ores should include in particular :

(a) a statement of the nature, quantity and average uranium or thorium contents of these ores;

(b) a description of the place where and the manner in which the applicant wishes to dispose of the ores;

(c) a description of the measures which will be taken by or on behalf of the applicant for the protection of persons, animals, plants and goods.

Part 3: Applications for licences in respect of establishments as referred to in Section 15(b) of the Act

Section 6

(1) Applications for licences to erect establishments where nuclear energy can be released should include :

(a) a statement as to and a description of the place where the establishment shall be set up, stating all relevant geographical, geological, climatological and other conditions;

(b) a description of the establishment, including the installations to be employed in it, and of the functioning of the establishment and installations, listing the suppliers of the components which are important for the assessment of the safety of the establishment and installations, and stating the highest capacity at which the establishment will operate;

(c) a statement of the chemical and physical state, the form, the content and the degree of enrichment of the fissionable materials which will be used in the establishment, stating the maximum quantity of each fissionable material which will be present in the establishment at any particular time;

(d) a description of the manner in which the fissionable materials as referred to under (c) preceding will be used in the establishment, and of the manner in which they will be stored before and after utilization;

(e) a statement of the appropriate total number of persons who will be employed in the establishment during normal operations, together with a statement of the number of experts and other personnel who will be directly concerned with the releasing of nuclear energy, and of the distribution of duties between these personnel and - as regards the supervisory personnel - of the grounds on which they may be deemed to be sufficiently expert for the discharge of their duties;

(f) a description of the manner in which the applicant proposes to dispose of the fissionable materials as referred to under (c) of this Section after utilization.

(g) a description of the manner in which the applicant proposes to dispose of the radioactive materials which will be produced during the utilization of the fissionable materials as referred to under (c) of this Section;

(h) a description of the measures which will be taken by or on behalf of the applicant for the protection of persons, animals, plants and goods, including measures to prevent danger, damage or nuisance outside the establishment during normal operation, and for the protection of persons, animals, plants and goods against dangers resulting from the accidents to be stated in the description and which may reasonably be deemed credible and liable to result in contamination of the surroundings (safety report);

(i) a statement of the financial security which the applicant shall provide and maintain in order to satisfy special statutory requirements governing liability in the field of nuclear energy, stating all relevant details.

(2) Should the safety report referred to in paragraph (1) (h) of this Section contain information which in the opinion of Our Ministers must be kept secret in the interests of the State or for other reasons, Our Ministers may, (when the interests of the State are involved) demand that the applicant give the full report in a separate annex to the application and attach to the application a second copy not containing the said secret information which second copy shall be made available for public inspection pursuant to Section 18, or (when other reasons are involved) may permit the applicant on request to give the full report in a separate annex to the application and attach to the application a second copy not containing the said secret information which second copy shall be made available for public inspection pursuant to Section 18.

Section 7

(1) Applications for licences to erect an establishment in which fissionable materials containing plutonium or enriched uranium, or irradiated fissionable materials can be made, processed or worked up should include the data referred to in Section 6(1), with the proviso that :

(a) under (b), "the highest capacity at which the establishment will operate" shall be replaced by "the greatest quantity of the individual fissionable material which can be made, processed or worked up in the establishment in a set period";

(b) where the terms "used" and "utilization", or "the releasing of nuclear energy" occur, these shall be replaced by "made, processed or worked up" or "the making, processing or working up", respectively.

(2) Section 6(2) shall be correspondingly applicable.

(3) Paragraphs (1) and (2) of this Section shall be correspondingly applicable to applications for licences to put into or keep in operation an establishment as referred to in (1) of this Section.

Section 8

(1) Applications for licences to erect an establishment in which fissionable materials as referred to in Section 7(1) will be stored should include :

(a) a statement as to and a description of the place where the establishment is to be set up, stating all relevant geographical, geological, climatological and other conditions;

(b) a statement of the chemical and physical state, the form, the content and the degree of enrichment of the fissionable materials, adding for irradiated fissionable materials as accurate a statement of their activity as possible, and indicating the maximum quantities of the individual fissionable materials which will be present in the establishment at any time;

(c) a statement of the approximate total number of persons who will be employed in the establishment under normal conditions, together with a statement of the number who will be directly concerned with the storage of fissionable materials, and of the distribution of responsibilities between these personnel and - as regards the supervisory personnel - of the grounds on which they may be deemed to be sufficiently expert for the discharge of their responsibilities;

(d) a safety report as referred to in Section 6(1)(h);

(e) the financial security as referred to in Section 6(1)(i)

(2) Section 6(2) shall be correspondingly applicable.

(3) Paragraphs (1) and (2) of this Section shall be correspondingly applicable to applications for licences to put into and keep in operation an establishment as referred to in paragraph (1).

Section 9

(1) Applications for licences to erect an establishment in which non-irradiated, fissionable materials not containing plutonium or enriched uranium, can be made, processed or worked up, should include :

(a) a description of the place where the establishment is to be set up;

(b) a description of the establishment;

(c) a statement of the chemical and physical state; the form and the content of the fissionable materials, indicating the maximum quantities of the individual fissionable materials which will be present in the establishment at any time;

(d) a statement of the number of personnel who will be responsible for the making, processing or working up of fissionable materials in an expert manner, stating the grounds on which they may be deemed to be sufficiently expert;

(e) a description of the measures which will be taken by or on behalf of the applicant for the protection of persons, animals, plants and goods, including the measures to prevent danger, damage or nuisance outside the establishment.

(2) Paragraph 1 of this Section shall be correspondingly applicable to applications for licences to put into or keep in operation an establishment as referred to in (1) of this Section.

Section 10

Deleted by Decree No. 242 of 26th April 1972.

Section 11

(1) Applications for licences to modify an establishment as referred to in Sections 6, 7, 8, 9 or 10 should include :

(a) a statement of the licence under which the establishment has been set up or put into or kept in operation;

(b) a description of the modification proposed;

(c) if the application relates to an establishment as referred to in Sections 6, 7 or 8, and the modification proposed would affect one or more of the data incorporated in the safety report submitted in order to obtain the licence as referred to under (a) of this Section, a relevant supplement to the report.

Part 4: Applications for licences in respect of equipment as referred to in Section 15(c) of the Act

Section 12

(1) Applications for licences to fit out a ship with equipment capable of propelling it by nuclear power and intended to be put into or kept in operation in Netherlands territory, should include :

(a) a statement as to the place where the equipment is to be fitted in the ship;

(b) a statement as to and a description of the place where the equipment is to be put into operation for trial purposes for the first time (if that place is in the Netherlands, the statement to include all relevant geographical, climatological and other conditions) and listing the ports where the ship will berth when in the Netherlands;

(c) a description of the equipment, including all appurtenant apparatus and of the functioning of the equipment and apparatus, listing the suppliers of the components important for the evaluation of the safety of the equipment and apparatus and stating the highest capacity at which the equipment will operate;

(d) a statement of the chemical and physical state, the form, the content and the degree of enrichment of the fissionable materials which will be used in the equipment stating the maximum quantities of the individual fissionable materials which will be present in the equipment at any time;

(e) a description of the manner in which the fissionable materials as referred to under (d) of this Section will be used in the equipment and of the way in which they will be stored before and after use;

(f) a statement of the approximate total number of persons who will be carried by the ship as crew and passengers under normal operation, together with a statement of the number of experts and other crew members who will be directly involved in putting the equipment into and keeping it in operation and of the division of duties among the members of the crew and - as regards the supervisory personnel - of the grounds on which they may be deemed to be sufficiently expert for the discharge of their duties;

(g) a description of the manner in which the applicant proposes to dispose of the fissionable materials as referred to under (d) of this Section after utilization;

(h) a description of the manner in which the applicant proposes to dispose of the radioactive substances which will be produced during the utilization of the fissionable materials as referred to under (d) of this Section;

(i) a description of the ship, stating such details as are necessary to assess the danger which the equipment could cause to persons, animals, plants and goods;

(j) a description of the measures which will be taken by or on behalf of the applicant for the protection of persons, animals, plants and goods, including measures to prevent danger or damage outside the ship, during normal operation, and for the protection of persons, animals, plants and goods against dangers resulting from the accidents to be stated in the said description and which may reasonably be deemed credible and liable to result in contamination of the surroundings (safety report);

(k) a statement of the financial security which the applicant shall provide and maintain in order to satisfy special statutory regulations in respect of liability in the field of nuclear energy, stating all relevant details.

(2) Should the safety report referred to in paragraph (1)(j) of this Section contain information which in the opinion of our Ministers must be kept secret in the interests of the State or for other reasons, Our Ministers may, (when the interests of the State are involved) demand that the applicant give the full report in a separate annex to the application and attach to the application a second copy not containing the said secret information, which second copy shall be made available for public inspection pursuant to Section 25, or (when other reasons are involved) may permit the applicant on request to give the full report in a separate annex to the application and attach to the application a second copy not containing the said secret information, which second copy shall be made available for public inspection pursuant to Section 25.

(3) With the exception of the case for which provision is made in (5) below, paragraphs (1) and (2) of this Section shall be correspondingly applicable to applications for licences to keep the ship fitted out with or to put into or keep in operation equipment as referred to under (1) of this Section.

(4) Applications for licences to fit out or keep fitted out a Netherlands ship with equipment capable of propelling it by nuclear power, but not intended to be put into or kept in operation in Netherlands territory, should, except in the case provided for in (5) below, include in particular the data as referred to under (c) - (k) of this Section, together with a statement to the effect that the equipment is not intended to be put into or kept in operation in Netherlands territory, and in the case of an application for a licence to fit out a ship with equipment, a statement of the place where fitting the equipment in the ship will be carried out.

(5) If with respect to a ship, a certificate and a safety dossier as referred to in Regulations 10 and 7 of Chapter VIII of the Regulations attached to the 1960 International Convention for the Safety of Life at Sea (Netherlands Treaty Series 1961, Nos. 83 and 84) can be submitted, an application for a licence as referred to in (3) or (4) of this present Section should include in particular :

(a) the certificate concerned;

(b) the dossier concerned;

(c) a list of the ports at which the ship concerned will berth when in the Netherlands, or, if the application relates to equipment as referred to in (4) of this Section, the statement to the effect that the equipment is not intended to be put into or kept in operation in Netherlands territory.

(d) a statement as referred to in (1)(k) of this Section.

Section 13

(1) Applications for licences to modify equipment as referred to in Section 12(1), or equipment fitted in a Netherlands ship as referred to in Section 12(4), shoul include :

(a) a statement of the licence by virtue of which the equipment has been or is kept fitted in the ship;

(b) a description of the proposed modification;

(c) a statement of the place where the equipment will be modified;

(d) if the place where the equipment will be put into operation for the first time for trial purposes after modification is in the Netherlands, a description of that place, stating all relevant geographical, geological, climatological and other circumstances;

(e) if the proposed modification affects one or more data stated in the safety report or safety dossier submitted in order to obtain the licence as referred to under (a) of this Section, a relevant supplement to the report or dossier.

(2) With respect to the supplement as referred to under (e) of this Section, Section 12(2) shall be correspondingly applicable, in so far as the supplement relates to equipment as referred to in Section 12(1).

Section 14

(1) Applications for licences to fit out a non-Netherlands ship or keep it fitted out with equipment capable of propelling it by nuclear power, but not intended to be put into or kept in operation in Netherlands territory, should include the statement that the equipment is not intended to be put into or kept in operation in Netherlands territory, together with an indication of the place where the fitting of the equipment in the ship will be carried out, or of the ports where the ship will berth when in the Netherlands, or, if it is not to call at any Netherlands ports, a description of the route which it will follow through Netherlands waters.

(2) Applications for licences to modify equipment fitted in a non-Netherlands ship as referred to in (1) of this Section should state :

(a) the licence by virtue of which the equipment in question has been fitted into or is kept fitted in the ship concerned;

(b) the place where the equipment will be modified.

CHAPTER III

NOTIFICATION OF APPLICATIONS AND OBJECTIONS PROCEDURE RELATING TO LICENCES AS REFERRED TO IN CHAPTER II

Part 1: Notification of applications and objections procedure relating to the holding available or disposing of fissionable material

Section 14(a)

With respect to an application for :

(a) a licence for holding available fissionable materials in a manner other than in an establishment or in equipment for which a licence is referred to in Section 15(b) or (c) of the Act is required, or

(b) a licence for disposal of fissionable materials not coming directly from an establishment or from equipment as referred to under (a);

Sections 12 - 14, Section 15, paragraphs 1 and 3, and Sections 16 and 17 of the Nuclear Energy Act (Radioactive Materials) Decree (Staatsblad 1969, No. 404) shall be correspondingly applicable, it being understood that the phrase "Our Minister" shall each time be read as "Our Minister for Economic Affairs and Our Minister of Environmental and Public Health".

Part 1a: Notification of applications for licences in respect of establishments as referred to in Sections 6 - 8

Section 15

(1) Applications for :

(a) licences to erect, put into operation or keep in operation establishments as referred to in Sections 6, 7 or 8, or

(b) licences for the modification of such establishments

shall be notified by Our Ministers to the Executive Council of the province in which the place where the establishment is to be erected or put into or kept in operation is situated or is substantially situated. This notification shall not include the data of the documents which have to accompany the applications.

(2) If the place where the establishment as referred to under (1) of this Section is to be erected or is situated is less than ten kilometres from the boundary of another province, the executive council of that other province shall also be notified.

Section 16

(1) Upon receipt of a notification as referred to in Section 15(1), the provincial executive council shall immediately notify the Council of the municipality in which the place where the establishment is to be erected or put into or kept in operation is situated or is substantially situated of the application. If that place is less than ten kilometres from the boundary of another municipality within the province the council of that other municipality shall also be notified of the application.

(2) Upon receipt of a notification as referred to in Section 15(2), the provincial executive council shall immediately notify the councils of municipalities in the province which are ten kilometres or less from the place where the establishment is to be erected or is situated.

(3) The provincial executive council shall further immediately notify the bodies responsible for the prevention of pollution of surface waters in the province which are completely or partially within ten kilometres of the place where the establishment is to be erected or is situated.

(4) The provincial executive council shall immediately inform Our Ministers of the municipalities whose councils have been notified in accordance with (1) or (2) of this Section, stating the date on which they were notified.

Part 2: Objections procedure relating to applications for licences in respect of establishments as referred to in Sections 6 - 8

Section 17

(1) A municipal council which receives a notification as referred to in Section 16 shall ensure that within three weeks of the date of receipt of the notification :

(a) a public announcement of the matter is made in the manner customary in the muncipality; and further that:

(b) if the site on which the establishment concerned is to be erected or is situated is located entirely or partially within the municipality:

(i) the matter is publicly announced by means of bills posted on the site, and that

(ii) the owners and occupants or users of all premises adjoining the site receive written notification.

(2) The municipal council shall at the same time ensure that the application in question shall be available for public inspection in the municipality from the day on which it makes the public announcement as referred to under (1)(a) of this Section.

(3) The public announcement which the council has to make and the notification which it has to provide in accordance with (1) of this Section shall include the fact that the application is available for public

inspection, stating the place where it may be inspected and specifying the procedure by which interested parties may submit objections against the granting of the licence sought on the grounds of fear of danger, damage or nuisance.

(4) Our Ministers shall be informed immediately of the date on which the public announcement as referred to under (1)(a) of this Section is made.

Section 18

The council of the municipality in which the place where the establishment is to be erected or put into or kept in operation is situated or is substantially situated shall ensure that a copy, to be provided by our Ministers, of the safety report accompanying the relevant application shall be made available for public inspection. The fact that this safety report is available for public inspection and the place where it may be inspected shall be stated in the announcements and notifications which are the responsibility of the council pursuant to Section 17(1).

Section 19

(1) Interested parties may submit objections to Our Ministers against the granting of the licence sought on the grounds of fear of danger, damage or nuisance by informing a committee to be set up by Our Ministers of such objections either verbally or in writing.

(2) Our Ministers shall nominate the members of a committee as referred to under (1) of this Section after consultation with Our other Ministers involved. The members of the said committee shall in any case include :

(a) a member of the executive council of the province in which the municipality is situated where the public session of the Committee as referred to under (4) of this Section will be held;

(b) the Inspector of Public Health responsible for supervision over the hygiene of the environment, within whose district the municipality as referred to under (a) preceding is situated;

(c) the district head of the Labour Inspectorate within whose district the municipality as referred to under (a) above is situated;

(d) if the establishment to which the application relates will discharge waste into surface waters, a representative of the State Institute for the Purification of Waste Water.

(3) The chairman of the committee shall be the provincial executive council member appointed to it. Our Ministers shall arrange for the secretarial services required by the committee.

(4) Objections as referred to under (1) of this Section may be made verbally at a public session of the committee referred to therein. Such objections may be communicated in writing by the submission in quadruplicate of a statement of objection addressed to the committee, either at the public session or to the council of the municipality where this public session is held, at least one day before the opening of the

session. The municipal council concerned shall ensure that statements of objection submitted to it are handed over to the committee before the opening of the public session.

(5) The public session as referred to under (4) of this Section shall be held at least one month but not more than two months after the date on which the public announcement as referred to in Section 17(1)(a) has been made in the municipality concerned, or, if more than one

municipality is concerned, in all the municipalities concerned, in the municipality where the establishment is to be erected or is situated or substantially situated, at a place, on a day and at a time to be determined by Our Ministers and which shall be announced at least three days in advance in one or more newspapers.

(6) Interested parties may attend the session in person or have themselves represented by a proxy. Proxies who are not registered as barristers or solicitors have to be provided with a written mandate.

(7) Minutes shall be kept of the proceedings of the meeting and shall be signed in quadruplicate by the chairman and by the person responsible for the secretariat. One copy of the minutes and of each of the objections submitted shall be sent at the earliest opportunity to each of Our Ministers and to the council of the municipality where the session is held.

(8) The municipal council as referred to under (7) of this Section shall ensure that the copy of the minutes sent to it shall be made available within the municipality for perusal by interested parties. The fact that the minutes are available for perusal and the place where they are available shall be publicly announced in the manner customary in the municipality.

Section 20

(1) Sections 17, 18 and 19 of the present Decree shall not be applicable to applications for licences as referred to in Section 15(1) if a licence as therein referred to has previously been granted in respect of the establishment concerned, and if in the opinion of our Ministers the erection, putting into or keeping in operation or modification of the establishment cannot cause any greater danger, damage or nuisance than that already taken into consideration when a previous licence in respect of the establishment was granted.

(2) In the cases as referred to in (1) preceding interested parties may, not later than three weeks after the application has been published in the Government Gazette and one or more newspapers pursuant to Section 17(1) of the Act, submit objections in writing to Our Ministers against the granting of the licence sought on the grounds of fear of danger, damage or nuisance. This opportunity shall be notified in the publications above referred to.

Part 3: Notification of applications and objections procedure relating to establishments as referred to in Sections 9 and 10

Section 21

(1) Applications for :

(a) licences to erect, put into or keep in operation an establishment as referred to in Sections 9 or 10, or

(b) licences for the modification of such an establishment,

shall be notified by Our Ministers to the council of the municipality, or the councils of the municipalities, in which the place where the establishment is to be erected or is situated. This notification shall not include the documents which have to accompany the applications.

(2) Section 17 shall be correspondingly applicable.

(3) Interested parties may, not later than one month after the public announcements as referred to in Section 17(1)(a) have been made in the municipality concerned, or in all the municipalities concerned if there are more than one, submit objections in writing to Our Ministers against the granting of the licence sought on the grounds of fear, danger, damage or nuisance.

(4) The provisions of (2) and (3) preceding shall not be applicable in cases as referred to in Section 20(1). In such cases Section 20(2) shall be correspondingly applicable.

Part 4: Modification of applications for licences in respect of equipment as referred to in Section 12(1)

Section 22

(1) Applications for :

(a) licences to fit out or keep fitted out a ship with equipment as referred to in Section 12(1) or to put into or keep in operation such equipment, or

(b) licences for the modification of such equipment,

shall be notified by Our Ministers to the executive council of the province in which the place is situated, where the equipment will be put into operation for trial purposes, and also the executive councils of the provinces in which the ports are situated in which the ship will berth when in the Netherlands. This notification shall not include the documents which have to accompany the applications.

(2) If a place or port as referred to in (1) preceding is less than two kilometres from the boundary of another province, the executive council of that other province shall also be notified of the application.

Section 23

(1) Upon receipt of a notification as referred to in Section 22(1), the provincial executive council shall immediately notify the council of the municipality in which the place is situated, where the equipment will be put into operation for trial purposes, and also the councils

of the municipalities in which the ports are situated in which the ship will berth when in the Netherlands. If that place or such a port is less than two kilometres from the boundary of another municipality in the province, the council of that other municipality shall also be informed of the application.

(2) Upon receipt of a notification as referred to in Section 22(2), the provincial executive council shall immediately notify the councils of municipalities in the province which are less than two kilometres from a place or port as referred to in (1) preceding.

(3) The provincial executive council shall further immediately notify the bodies responsible for the prevention of pollution of surface waters in the province which are situated wholly or partially less than two kilometres from a place or port as referred to in (1) of this Section.

(4) The provincial executive council shall immediately inform Our Ministers of the municipalities whose councils have been notified in accordance with (1) or (2) of this Section, stating the date on which they were notified.

Part 5: Objections procedure relating to applications for licences in respect of equipment as referred to in Section 12(1)

Section 24

(1) The council of a municipality which receives a notification as referred to in Section 23 shall ensure that the matter is publicly announced in the manner customary in that municipality within fourteen days of the receipt of the notification.

(2) The council of the municipality shall ensure at the same time that the application shall be available for public inspection in the municipality from the day on which the public announcement as referred to in (1) preceding is made.

(3) The public announcement which the council is required to make in accordance with (1) of this Section shall include the fact that the application is available for public inspection pursuant to (2) preceding, stating the place where it may be inspected and specifying the procedure by which interested parties may submit objections against the granting of the licence sought on the grounds of fear of danger, damage, or nuisance.

(4) Our Ministers shall be immediately informed of the date on which the public announcement as referred to in (1) of this Section is made.

Section 25

(1) The council of the municipality in which the place is situated where the equipment will be put into operation for trial purposes shall ensure that a copy, to be provided by Our Ministers, of the safety report or safety dossier accompanying the relevant application is available for public inspection in the municipality. The fact that the safety report or safety dossier is available for public inspection,

and the place where it may be inspected, shall be stated in the public announcement which the municipality is required to make in accordance with Section 24(1).

(2) The provisions of (1) preceding shall be correspondingly applicable to the council of the municipality or the councils of the municipalities in which the ports are situated in which the ships concerned will berth when in the Netherlands.

Section 26

Interested parties may submit objections in writing to Our Ministers against the granting of the licence sought on the grounds of fear of danger, damage or nuisance, within one month of the date on which the public announcement as referred to in Section 24 is made in the municipality concerned or, if there are more than one, in all the municipalities concerned.

Section 27

(1) Sections 24, 25 and 26 of the present Decree shall not be applicable to applications for licences as referred to in Section 22(1) if a licence as therein referred to has previously been granted in respect of the same equipment in the same ship, and if in the opinion of Our Ministers the fitting out or keeping fitted out of the ship with the equipment or the putting into operation or keeping in operation of the equipment or the modification thereof cannot cause any greater damage than that already taken into consideration when the previous licence in respect of the equipment was granted.

(2) In the cases as referred to in (1) preceding, interested parties may, not later than three weeks after the application has been published in the Government Gazette and one or more newspapers pursuant to Section 17(1) of the Act, submit objections in writing to Our Ministers against the granting of the licence sought on the grounds of fear of danger, damage or nuisance. This opportunity shall be notified in the publications above referred to.

Part 6: Notification of applications and objections procedure relating to equipment as referred to in Sections 12(4) and 14(1)

Section 28

(1) An application for a licence as referred to in Section 12(4) or Section 14(1) shall be notified by Our Ministers to the council of the municipality in which the place is situated where the ship will be fitted out with the equipment, and to the councils of the municipalities in which the ports are situated in which the said ship will berth when in the Netherlands.

(2) An application for a licence to modify equipment as referred to in Section 12(4) or in Section 14(1) shall be notified by Our Ministers to the council of the municipality in which the place is situated where the equipment will be modified.

(3) Section 27(2) shall be correspondingly applicable to applications as referred to in (1) and (2) accordingly.

Part 7: Objections by public bodies

Section 29

The public bodies which are notified of applications for licences in accordance with Sections 15, 16, 21, 22, 23 or 28 may submit objections against the licences sought to Our Ministers not later than the latest date on which interested parties may submit their objections pursuant to Sections 19, 20, 21, 26, 27 or 28.

Part 8: Procedure for dealing with objections submitted

Section 30

(1) The Committee set up pursuant to Section 19 shall inform the applicant for the licence of the objections submitted by forwarding to him a copy of the minutes of the public session and of each of the statements of objections submitted to it. If Section 19 has not been applicable and if the licence is not a licence as referred to in Section 15(a) of the Act, our Ministers shall inform the applicant for the licence of the statements of objection submitted to them.

(2) The applicant for the licence may inform Our Ministers in writing, within a period to be set by them, of his comments on the objections submitted, or the way in which he is prepared to meet such objections.

(3) Within one week of the despatch of their decision regarding an application for a licence as referred to in Section 15(b) or (c) of the Act, Our Ministers shall inform all who have submitted objections against the granting of the licence of their decision, stating, if the licence has been granted, the points which have been taken into account when considering these objections.

(4) If Section 19 has been applied, Our Ministers shall further, within one week of the despatch of their decision regarding the application inform the executive council of the province in which the public session has been held of their decision, stating, if the licence has been granted, the points which have been taken into account when considering the objections submitted.

(5) Within one week of the despatch of their decision regarding an application Our Ministers shall inform the councils of the municipality or municipalities referred to in the first sentence of Section 16(1), or the first sentence of Section 23(1), respectively of their decision.

CHAPTER IV

RULES IN RESPECT OF REQUIREMENTS TO BE ATTACHED TO LICENCES AS REFERRED TO IN SECTION 15 OF THE ACT

Part 1: Protection of persons, animals, plants and goods

Section 31

(1) With a view to the protection of persons, animals, plants and goods, requirements shall be attached to licences as referred to in Section 15 of the Act to ensure that :

(a) irradiation or contamination of persons, animals, plants and goods shall be prevented to the maximum extent possible;

(b) in cases where irradiation or contamination is unavoidable, this shall be restricted to the minimum possible;

(c) in cases where irradiation or contamination is unavoidable, the number of persons exposed to ionizing radiation shall be restricted to the minimum possible, taking into account the necessity to avoid an amount of radiation or contamination per person exceeding the maximum permissible level.

(2) The requirements as referred to in (1) preceding shall include, except in the case of licences as referred to under Section 14, requirements to ensure that :

(a) work involving fissionable materials or ores shall be carried out by or under the direction or supervision of persons who are sufficiently expert for the work to be safety carried out;

(b) in cases where persons could receive a dose equivalent to over 0.5 rem in one year for the blood-making organs and the gonads, or where persons can be exposed to radiation, periodical or, if the circumstances so require, continuous measurements of the rate of dosage shall be carried out at places where persons have to work to determine the level of contamination, and that on the grounds of the results of the readings the necessary measures shall be taken;

(c) the apparatus used for the work and all appurtenances thereto shall be kept in a good state of repair.

Section 32

(1) The requirements as referred to in Section 31(1) shall include, in the case of licences for the disposal of fissionable materials or ores other than by means of delivery to third parties, requirements relating to the place where, the manner in which and the circumstances under which the licence-holder may dispose of the fissionable materials or ores.

(2) The requirements as referred to in Section 31(1) shall include, in the case of licences for the disposal of waste materials containing fissionable materials or ores by means of delivery to third parties, requirements relating to :

(a) the persons to whom the said waste materials may be delivered;

(b) the place where, the manner in which and the circumstances under which the licence-holder may ultimately have these waste materials discharged or dumped .

Section 33

(1) The requirements as referred to in Section 31(1) shall include, in the case of licences as referred to under Section 15(b) of the Act, requirements to ensure that :

(a) the floors, ceilings and walls and all hatches, doors, windows, and sight glasses therein of rooms in which fissionable materials or ores are present shall be composed or constructed in such a way that persons outside such rooms cannot receive a dose equivalent to over 0.5 rem for the blood-making organs and the gonads in one year;

(b) the radiation-reducing capacity of means of protection against radiation and parts of the buildings which serve to provide protection against radiation shall be clearly and ineffaceably marked on such means of protection and parts of buildings, or else data shall be kept available from which the radiation-reducing capacity of such means of protection or parts of buildings shall be apparent;

(c) appropriate and clear warning boards or signs shall be put up at suitable points at all places where persons can receive a dose equivalent to over 0.5 rem for the blood-making organs and the gonads per year and where there is danger of contamination.

(2) The requirements as referred to in Section 31(1) may include, in the case of licences as referred to under Section 15(b) of the Act, a requirement setting out the obligation to ensure that there shall be in the establishment a sufficient number of experts responsible for the protection of the health of the persons in that establishment, the number of experts being in proportion to the size and nature of the establishment and of the work to be carried out therein, and also to the number of persons regularly present therein.

(3) In order to prevent danger, damage or nuisance outside the establishment, other requirements in addition to those as referred to in Section 31(1) may be attached to licences as referred to under Section 15(b) of the Act.

Section 34

(1) The requirements as referred to in Section 31(1) shall include, in the case of licences as referred to under Section 15(c) of the Act, a requirement relating to the Netherlands waters in which the ship concerned may sail and the ports in which the said ship may berth when in the Netherlands.

(2) The requirements as referred to in Section 31(1) shall include, in the case of licences as referred to under Section 15(c) of the Act which are not licences as referred to under Section 14, conditions as referred to in Section 33(1).

(3) The requirements as referred to in Section 31(1) may include, in the case of licences as referred to under Section 15(c) of the Act which are not licences as referred to under Section 14:

(a) a requirement as referred to in Section 33(2);

(b) the requirement that the ship concerned may only sail in the Netherlands waters designated pursuant to this Section, and may only berth in the Netherlands ports designated pursuant to this Section, if notice thereof at least prior to a period specified in the requirement has been given to the authorities designated thereby;

(c) the requirement that in the Netherlands fissionable materials may only be introduced into the equipment or removed therefrom at a place designated by Our Minister for Social Affairs and Public Health;

(d) the requirement that, once the fissionable materials have been introduced therein, the equipment may only be put into operation for trial purposes in the Netherlands at a place to be stated in the requirement or to be designated by Our Minister for Social Affairs and Public Health.

Part 2: Security of the State

Section 35

(1) Requirements with a view to the security of the State shall be attached to licences as referred to in Section 15 of the Act, if such licences relate solely or partially to the carrying out of operations.

(a) involving the utilization of information, sevices, or materials, or an establishment or equipment regarding which Our Ministers, in conjunction with Our other Ministers involved, consider that the interests of State security require that an obligation to observe secrecy be imposed or that the use of the information, devices, materials, establishment or equipment be restricted, or

(b) in the course of which research is carried out or methods are employed regarding which Our Ministers, in conjunction with Our other Ministers involved, consider the interests of State security require that an obligation to observe secrecy be imposed; or

(c) which, according to a declaration by Our Ministers concerned, are of vital importance for military or civil defence.

(2) Requirements as referred to in (1) above may include the obligation:

(a) to ensure that secrecy be observed with regard to information, devices, materials, an establishment or equipment or research or methods as referred to in (1) of this Section;

(b) to utilize information, devices, materials or an establishment or equipment as referred to in (1) of this Section with due observance of the restrictions laid down in the relevant requirement;

(c) to render safe in a manner as specified by the relevant requirement all sites, buildings and rooms where operations as referred to in (1) of this Section are carried out, or information, devices or materials utilized in such operations are stored;

(d) to regulate in a manner as laid down in the relevant requirement the utilization of information, devices or materials, or an establishment or equipment as referred to in (1) of this Section, together with the application of knowledge acquired from such utilization;

(e) to inform Our Ministers or the Netherlands supervisory agencies designated by the relevant requiremnnt well in advance of any proposed replacement of the person or persons responsible for the management of the enterprise or institution to which the licence has been granted;

(f) to cause all or certain operations to be carried out by persons concerning whom Our Minister as designated by the relevant requirement has declared that there may in his opinion be deemed to be adequate guarantees that they will duly observe the obligation to maintain secrecy;

(g) to provide bodies as designated by the relevant requirement which are entrusted with responsibilities relating to the implementation of the Act with information as specified in that requirement regarding data, devices or materials, or an establishment or equipment, as referred to in (1) of this Section, and to keep records for furnishing such information from which the accuracy of the information furnished may be proved in a straightforward manner;

(h) immediately to inform Our Ministers as designated by the relevant requirement, or the Netherlands supervisory agencies as designated by that requirement, should either serious failures to observe the requirements laid down with a view to the security of the State or espionage be suspected or discovered;

(i) to appoint an officer of the enterprise or institution who shall be specially responsible for the drawing up of measures for the implementation of the requirements attached to the licence with respect to the security of the State, and for ensuring that the said measures are observed.

Part 3: Storage and guarding of fissionable materials and ores

Section 36

(1) Requirements relating to the storage and guarding of fissionable materials and ores shall be attached to licences as referred to in Section 15 of the Act, if and in so far as is necessary for the protection of the interests as referred to in Section 19(1)(a), (b), (d) or (f) of the Act.

(2) Requirements as referred to in (1) above may include the obligation :

(a) to store fissionable materials or ores at a place and in a manner to be specified in the relevant requirement, in order to preclude any danger of radiation or contamination to persons, animals, plants or goods;

(b) to store fissionable materials or ores in such a manner that they are protected to the fullest extent possible against fire, theft or loss through any other cause;

(c) to guard sites, buildings and rooms where fissionable materials or ores are stored in a manner to be specified in the relevant requirement;

(d) to appoint one or more persons employed by the enterprise or institution to which the licence has been granted who shall be specially responsible for the drawing up of measures for the implementation of the requirements attached to the licence with respect to storage and guarding, and for ensuring that these measures are observed.

Part 4: Energy Supply

Section 37

(1) Requirements with a view to energy supplies shall be attached to licences as referred to under Section 15(a) of the Act, if regular supplies of fissionable materials or ores are not adequately ensured.

(2) Requirements as referred to in (1) above may include the obligation to obtain fissionable materials or ores solely from suppliers to be designated in the relevant requirement, or to supply fissionable materials or ores solely to users to be designated in the relevant requirement.

Section 38

(1) Requirements with a view to energy supplies shall be attached to licences as referred to under Section 15(b) of the Act in respect of establishments for the generation of thermal or electric energy for public energy supplies, if:

(a) regular supplies of the fissionable materials required for the establishment are not adequately ensured, or

(b) the uninterrupted operation of the establishment is not adequately ensured.

(2) Requirements as referred to in (1)(a) above may include the obligation to maintain a stock of fissionable materials, of a nature, composition and size to be specified in the relevant requirement and for periods to be laid down in that requirement.

(3) Requirements as referred to under (1)(b) of this Section may include the obligation to cause the establishment to be connected to a national grid or to have available through other means reserve capacity of such a nature that energy supplies will be ensured for a period to be specified in the relevant requirement.

Part 5: The security to be provided as guarantee of payment of the indemnification due to theird parties in respect of damage or injury caused to them

Section 39

Licences as referred to in Section 15(b) or (c) of the Act and which relate exclusively or partially to an establishment or equipment to which a special statutory regulation governing liability in the field of nuclear energy is applicable, shall, with a view to ensuring payment of the indemnification due to third parties in respect of damage or injury caused to them, include the requirement to have and maintain appropriate insurance or other financial security in accordance with the said statutory regulations.

Part 6: Observance of international obligations

(1) Requirements with a view to the observance of international obligations may be attached to licences as referred to in Section 15 of the Act, if the licences relate exclusively or partially to the carrying out of operations in which information, devices or materials, or establishments or equipment are utilized concerning which international agreements or resolutions of international organisations, which are binding on the Netherlands and which relate entirely or partially to nuclear energy or ionizing radiation, impose obligations on the State.

(2) Requirements as referred to in (1) above may include the obligation :

(a) to ensure secrecy with respect to information, devices or materials, or an establishment or equipment, as referred to in (1) above, or to utilize the same with due observance of the restrictions laid down in the relevant requirement;

(b) for bodies as designated in the relevant requirement and entrusted with responsibilities relating to the implementation of the agreements or resolutions as referred to in (1) above, to cause information as specified in the requirement to be provided concerning data, devices or materials, or an establishment or equipment, as referred to in (1) above, and to keep records for the furnishing of such information from which the accuracy of the information furnished may be demonstrated in a straightforward manner.

CHAPTER V

EXEMPTIONS FROM THE PROHIBITION CONTAINED IN SECTION 15 OF THE ACT

Part 1: Fissionable materials and ores

Section 41

(1) The prohibition in Section 15(a) of the Act shall not apply to having available in an establishment non-irradiated fissionable materials containing solely natural or depleted uranium or natural thorium in quantities of not more than 100 grammes of each of these elements, and no plutonium.

(2) Paragraph (1) shall not apply if the fissionable materials contain, in addition to uranium or thorium and their natural decay products, any other radioactive nuclides and if, for that reason, the ban contained in Section 6 of the Nuclear Energy Act (Radioactive Materials) Decree would apply to them, in the event of that Section being applicable.

Section 42

The prohibition in Section 15(a) of the Act shall not apply to having available :

(a) ores, if packed in watertight metal containers;

(b) ores, which are not packed, or are packed in a manner other than that referred to in (a) above, if the specific activity of the said ores does not exceed 0.01 microcurie per gramme;

(c) ores held available solely for educational purposes or to be shown at exhibitions.

Section 43

(1) The prohibition in Section 15(a) of the Act shall not apply to the disposing of :

(a) fissionable materials in cases where these may be held available without a licence in accordance with Section 41;

(b) ores the specific activity of which does not exceed 0.01 microcurie per gramme;

(c) fissionable materials or ores, in so far as they are disposed of to a person who is authorised by law to have such materials available, or to a person who is authorised by law to transport such materials, and the materials are destined for a person who is authorised by virtue of Netherlands, Belgian or Luxembourg law to have such materials available, or for a person in a country other than the Netherlands, Belgium or Luxembourg;

(d) fissionable materials or ores containing waste materials, by means of handing over to a collection service for radioactive waste recognised by Our Minister for Social Affairs and Public Health.

(2) (1)(a) above shall not be applicable to the disposing of fissionable materials by discharging the materials into the air or water, if:

(a) upon discharge into the air the concentration of the fissionable materials concerned leaving the discharge channel is higher than 1 picocurie per cubic metre;

(b) upon discharge into water the concentration of uranium or thorium containing fissionable materials leaving the discharge channel is higher than 10,000 or 1,000 picocuries per litre, respectively.

(3) All persons who in cases as referred to in (1) above dispose of fissionable materials or ores by handing them over for transportation elsewhere are required to ensure that the relevant regulations governing the forms of packing to be used and the inscriptions and danger labels to be applied are complied with.

Part 2: Establishments

Section 44

The ban in Section 15(b) of the Act shall not apply to the erection, putting into or keeping in operation or modifying of an establishment in which fissionable materials may be made, processed or worked up, or in which fissionable materials are stored, if the establishment is not intended for and is not used for a production process linked with the nuclear fuel cycle or for the holding available of fissionable materials other than non-irradiated substances, and :

(a) if the fissionable materials available do not contain any plutonium or enriched uranium, or

(b) if the largest quantity of fissionable materials held available in the establishment at any one time does not contain more than 375 grammes of plutonium 239, plutonium 241 or uranium-233, or more than 600 grammes of uranium 235, it being understood that in the event of more than one of those nuclides being held available, the sum of the fractions obtained by dividing the number of grammes of each of those nuclides by the maximum quantity fixed for that nuclide above shall not exceed 1.

CHAPTER VI

CONCLUDING PROVISIONS

Section 45

(1) This Decree may be cited as the Nuclear Installations, Fissionable Materials and Ores Decree.

(2) It shall enter into force at a time to be determined by Us.

Our Ministers for Economic Affairs and for Social Affairs and Public Health shall be charged with the implementation of this Decree, which shall be placed in the Bulletin of Acts, Orders and Decrees together with the relevant explanatory memorandum and whereof a copy shall be sent to the Council of State.