

Appendix B

ITEM 1

REPORT OF THE NEW ENGLAND COMMITTEE ON ATOMIC ENERGY TO THE NEW ENGLAND GOVERNORS' CONFERENCE

Draft of an Act to Coordinate Development and Regulatory Activities Relating to the Peaceful Uses of Atomic Energy

Be it enacted by, etc.

Section 1. Declaration of Policy

a. The State of.....endorses the action of the Congress of the United States in enacting the Atomic Energy Act of 1954 to institute a program to encourage the widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public ; and therefore declares the policy of the State to be—

1. To cooperate actively in the program thus instituted ; and
2. To the extent that the regulation of special nuclear materials and by-product materials, of production facilities and utilization facilities, and of persons operating such facilities may be within the jurisdiction of the State, to provide for the exercise of the State's regulatory authority so as to conform, as nearly as may be, to the Atomic Energy Act of 1954 and regulations issued thereunder, to the end that there may, in effect, be a single harmonious system of regulation within the State.

b. The State of.....recognizes that the development of industries producing or utilizing atomic energy may result in new conditions calling for changes in the laws of the State and in regulations issued thereunder with respect to health and safety, working conditions, workmen's compensation, transportation, public utilities, life, health, accident, fire, and casualty insurance, the conservation of natural resources, including wildlife, and the protection of streams, rivers, and airspace from pollution, and therefore declares the policy of the State to be—

1. To adapt its laws and regulations to meet the new conditions in ways that will encourage the healthy development of industries producing or utilizing atomic energy while at the same time protecting the public interest ; and
2. To initiate continuing studies of the need for changes in the relevant laws and regulations of the State by the respective departments and agencies of the State which are responsible for their administration ; and
3. To assure the coordination of the studies thus undertaken,

particularly with other atomic industrial development activities of the State and with the development and regulatory activities of other States and of the Government of the United States.

Section 2. United States Licenses or Permits Required

No person shall manufacture, construct, produce, transfer, acquire or possess any special nuclear material, by-product material, production facility, or utilization facility, or act as an operator of a production or utilization facility, wholly within this State unless he shall have first obtained a license or permit for the activity in which he proposes to engage from the United States Atomic Energy Commission if, pursuant to the Atomic Energy Act of 1954, the Commission requires a license or permit to be obtained by persons proposing to engage in activities of the same type over which it has jurisdiction.

Section 3. Conduct of Studies Concerning Changes in Laws and Regulations with a View to Atomic Industrial Development

Each of the following departments and agencies of the State Government is directed to initiate and to pursue continuing studies as to the need, if any, for changes in the laws and regulations administered by it that would arise from the presence within the State of special nuclear materials and by-product materials and from the operation herein of production or utilization facilities, and, on the basis of such studies, to make such recommendations for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it, as may appear necessary and appropriate.

a. The Department of Public Health, particularly as to hazards, if any, to the public health and safety.

b. The Department of Labor, particularly as to hazardous working conditions, if any.

c. The Workmen's Compensation Commission, particularly as to the time and character of proof of claims of injuries and the extent of the compensation allowable therefor.

d. The Department of Public Highways, particularly as to the transportation of special nuclear materials and by-product materials on highways of the State.

e. The Public Utilities Commission, particularly as to the transportation of special nuclear materials and by-product materials by common carriers not in interstate commerce and as to the participation by public utilities subject to its jurisdiction in projects looking to the development of production or utilization facilities for industrial or commercial use.

f. The Department of Insurance, particularly as to the insurance of

persons and property from hazards to life and property resulting from atomic development.

g. The Department of Conservation, particularly as to the hazards, if any, to the natural resources of the State, including wildlife, and as to the protection, if necessary, of rivers, streams, and airspace from pollution.

h. Such other departments and agencies (including departments and agencies of political subdivisions of the State) as the Governor may direct and for the purposes specified by him.

Section 4. Coordination of Studies and Development Activities

a. The Governor and Council shall appoint a citizen of this State to serve as adviser to the Governor with respect to atomic industrial development within the State; as coordinator of the development and regulatory activities of the State relating to the industrial and commercial uses of atomic energy; and as deputy of the Governor in matters relating to atomic energy, including participation in the activities of any committee formed by the New England States to represent their interest in such matters and also cooperation with other States and with the Government of the United States. The person so appointed shall have the title of Coordinator of Atomic Development Activities.

b. The Coordinator of Atomic Development Activities shall have the duty of coordinating the studies, recommendations, and proposals of the several departments and agencies of the State (and its political subdivisions) required by Section 3 of this Act with each other and also with the programs and activities of the Department of Industrial Development of the State. So far as may be practicable, he shall coordinate the studies conducted, and the recommendations and proposals made, in this State with like activities in the New England and other States and with the policies and regulations of the United States Atomic Energy Commission. In carrying out his duties, he shall proceed in close cooperation with the Department of Industrial Development.

c. The several departments and agencies of the State (and its political subdivisions) which are directed by Section 3 of this Act to initiate and pursue continuing studies are further directed to keep the Coordinator of Atomic Development Activities fully and currently informed as to their activities relating to atomic energy. No regulation or amendment to a regulation applying specifically to an atomic energy matter which any such department or agency may propose to issue shall become effective until 30 days after it has been submitted to the Coordinator, unless, upon a finding of emergency need, the Governor by order waives all or any part of this 30-day period.

d. The Coordinator of Atomic Development Activities shall keep the Governor and Council and the several interested departments and agencies

informed as to private and public activities affecting atomic industrial development and shall enlist their cooperation in taking action to further such development as is consistent with the health, safety and general welfare of this State.

e. The Coordinator of Atomic Development Activities shall be paid a salary of \$—— per annum.

Section 5. Injunction Proceedings

Whenever, in the opinion of the Attorney General, any person is violating or is about to violate Section 2 of this Act, the Attorney General may apply to the appropriate court for an order enjoining the person from engaging or continuing to engage in the activity violative of this Act and upon a showing that such person has engaged, or is about to engage in any such activity, a permanent or temporary injunction, restraining order, or the other order may be granted.

Section 6. Funds Provided

There is hereby authorized to be appropriated the sum of \$—— for the salary of the Coordinator of Atomic Development Activities and for secretarial, travel, printing, and other necessary expenses incurred by him in the performance of his duties.

Section 7. Definitions

As used in this Act,

a. The term "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

b. The term "by-product material" means any radioactive materials (except special nuclear materials) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear materials.

c. The term "production facility" means (1) any equipment or device capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device.

d. The term "special nuclear material" means (1) plutonium and uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Governor declares by order to be special nuclear material after the United States Atomic Energy Commission has determined the material to be such; or (2) any material artificially enriched by any of the foregoing.

e. The term "utilization facility" means (1) any equipment or device,

except an atomic weapon, capable of making use of special nuclear materials in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device.

f. The term "operator" means any individual who manipulates the controls of a utilization or production facility.

ITEM 2

A SUGGESTED STATE RADIATION PROTECTION ACT

From the National Bureau of Standards Handbook No. 61,

"Regulation of Radiation Exposure by Legislative Means."

(December 9, 1955)

"AN ACT for the Control of Radiations from Machines and Radioactive Materials, for the Purpose of Protecting Health."

Short Title. This Act may be referred to as the Radiation Hygiene Act. (State)

Section 1. *Statement of Policy.* Whereas, radiation can be instrumental in the improvement of health, welfare, and productivity of the public if properly utilized, and may impair the health of the people and the industrial and agricultural potentials of the State if improperly utilized, it is hereby declared to be the public policy of this State to encourage the constructive uses of radiation and to control any associated harmful effects.

Section 2. *Definitions.* For the purposes of this Act, the following words and phrases are defined:

(a) *Radiation* is gamma rays and X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(b) *Radiation machine* is any device that produces radiations when the associated control devices are operated.

(c) *Radioactive material* is any material, solid, liquid, or gas, that emits radiation spontaneously.

Additional definitions may be included.

Section 3. *Creation and Organization of Agency: Advisory Board, Meetings, Employees.*

(a) There is hereby created and established a State Radiation-Control Agency hereinafter referred to as the Agency. The Agency shall be an

organizational component of the State Department of (Alternate: There is hereby created and established an independent State Radiation-Control Agency, hereinafter referred to as the Agency.)

(b) The Governor shall appoint a Director of the Agency (hereinafter called the Director) who shall perform and carry out all functions and duties given to the Agency under this Act, and shall direct, carry out, and enforce all radiation safety control activities and measures vested in the Agency. The Director shall be a person having extensive training and experience in the field of health and of radiation protection.

(c) In accordance with the laws of the State, the Agency may employ, compensate, and prescribe the powers and duties of such persons as may be necessary to carry out the provisions of this Act. However, technical, legal, and other services shall be performed, insofar as practicable, by personnel of existing State departments, agencies, and offices.

(d) The Director may delegate to officers and employees of the Agency such function, duties, and authority as are vested in the Agency by this Act; except the authority to adopt and promulgate standards, rules, and regulations, and to issue or modify orders.

(e) There is hereby established within the Agency a State Radiation Technical Advisory Board, hereinafter referred to as the "Board," consisting of five members. The Director of the Agency shall be a member of the Board. The other four members shall be persons with scientific training in one or more of the following fields: health, agriculture, medicine, radiology, radiation physics, biology, industry, labor, atomic energy. The Governor shall appoint these four members after seeking recommendations of established authorities or organizations in the above-specified fields. The members' term of office shall be four years, except that the terms of those first appointed shall expire as follows:

- 1 at the end of 1 year after such date,
- 1 at the end of 2 years after such date,
- 1 at the end of 3 years after such date, and
- 1 at the end of 4 years after such date

as designated by the Governor at the time of appointment. If a vacancy occurs, the Governor shall appoint a member for the remaining portion of that term. The Director of the Agency shall be Chairman of the Board. The Board shall hold four regular meetings each calendar year, and special meetings as deemed necessary by the Board or the Director. It shall be the duty of the Board to review the policies and program of the Agency as developed under authority of this Act; to make recommendations thereon to the Agency; to provide the Agency with such technical advice and assistance as may be required relative to permissible exposure levels, standards of practice, radiation instrumentation, and other technical matters. Members of the Board, other than the Director, shall be entitled to receive compensation

at dollars per diem and reimbursement for actual and necessary traveling and subsistence expenses while engaged in the business of the Board.

Section 4. *Powers and Duties of the Agency.* The Agency shall have the following powers and duties :

(a) Shall develop comprehensive policies and programs for the evaluation and determination of hazards associated with the use of radiation, and for their amelioration ;

(b) Shall advise, consult, and cooperate with other agencies of the State, the Federal Government, other States and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this Act ;

(c) May accept and administer loans, grants, or other funds or gifts from the Federal Government and from other sources, public or private, for carrying out any of its functions ;

(d) May encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of radiation hazard, the measurement of radiation, the effects on health of exposure to radiation, and related problems as it may deem necessary or advisable for the discharge of its duties under this Act ;

(e) Shall collect and disseminate information relating to the determination and control of radiation exposure and hazard ;

(f) Shall adopt and promulgate such rules and regulations as may be necessary to further the purposes of this Act ; such rules and regulations may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection such as the National Committee on Radiation Protection or the American Standards Association ;

(g) Shall devise, modify, repeal, promulgate, and enforce rules and regulations as necessary to implement or effectuate the powers and duties of the Agency under this Act ;

(h) May issue, modify, or revoke orders prohibiting or abating the discharge of radioactive material or waste into the ground, air, or waters of the State in accordance with the provisions of this Act and rules and regulations adopted thereunder ;

(i) Upon request, shall render opinion concerning such plans and specifications on the design and shielding for radiation sources as may be submitted before or after construction, for the purpose of determining the possible radiation hazard ;

(j) May make inspections of radiation sources shielding, and immediate surroundings for the determination of any possible radiation hazard ; and shall provide the owner, user, or operator thereof with a report of any known or suspected deficiencies ;

(k) May exercise all incidental powers necessary to carry out the purposes of this Act.

Section 5. *Registration*

(a) It shall be unlawful for any person to produce radiation, or to produce, use, store, or dispose of radioactive materials, or to modify, extend, or alter such activities, unless he registers in writing with the Agency in accordance with the procedures prescribed by such Agency, except that a period of 90 calendar days shall be allowed for such registration after the effective date of this Act.

(b) It shall be unlawful for any person to produce radiation, or to produce, use, store, or dispose of radioactive materials, except in accordance with the provisions of this Act and rules and regulations promulgated thereunder.

Section 6. *Classification of Sources and Hazards and Standards of Protection*

(a) The Agency is authorized, with the concurrence of the Board, to classify radiation sources, exposures, and hazards for the purpose of (1) making inspections, (2) determining the competence of the radiation users, (3) determining the adequacy of radiation-protective devices and procedures, and (4) other purposes compatible with the present and future utilization of all forms of radiation, taking into account the protection of the health of the people of this State.

(b) Prior to the establishment of a system of classification of sources or uses, or setting standards of protection, or modifying such classifications or standards, the Agency shall conduct public hearings in connection therewith. Notice shall be given of time, date, and place of public hearing and shall specify the technical area in which a classification is sought to be made or for which standards are sought to be adopted. Such notice shall be published at least twice in a newspaper of general circulation in the area affected, and shall be mailed at least 20 days before such public hearing to the chief executive of each political subdivision of the geographical area affected, and may be mailed to such other persons as the Agency has reason to believe may be affected by such classification and the setting of such standards. The Agency shall utilize the assistance of the Board in connection with such hearings.

(c) The adoption of standards of protection and the classification of radiation sources, or any modification or change thereof, shall, upon approval of the Board, be issued as an order of the Agency and shall be published in a newspaper of general circulation in the area affected. In classifying sources and setting radiation-protection standards, or making any modification thereof, the Agency shall permit and announce a reasonable

time for the persons or users involved to comply with such classification and standards, if their operations create a known hazard to health; except that a user may be directed to abate without delay a serious known hazard to health.

Section 7. *Examination for Compliance: Statement of Non-compliance*

(a) The Agency shall itself, or by its duly designated representatives, inspect and examine such sources of radiation as it desires, in order to determine their compliance with the adopted classification and radiation-protection standards of the Agency.

(b) If such inspection and examination indicates that the source of radiation is not in compliance with the adopted classification and radiation-protection standards, the owner, operator, or user shall be so notified in writing, with full particulars regarding any deficiencies.

Section 8. *Proceedings Before Board*

(a) Whenever the Agency determines there are reasonable grounds to believe that there has been a violation of any of the provisions of this Act or of any order of the Agency, it may give written notice to the alleged violator or violators specifying the causes of complaint. Such notice shall require that the alleged violations be corrected or that the alleged violator appear before the Agency at a time and place specified in the notice, and answer the charges. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection (d) of this section not less than days before the time set for the hearing.

(b) The Agency shall afford the alleged violator or violators an opportunity for a fair hearing in accordance with the provisions of section 9 at the time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing the Agency shall make findings of fact and conclusions of law and enter such order as in its opinion will best further the purposes of this Act and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the Agency itself, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Agency, which shall thereupon enter its order on the basis of such record and recommendations. The order of the Agency shall become final and binding on all parties unless appealed to the courts as provided in section 12 within days after notice has been sent to the parties.

(c) Whenever the Agency finds that an emergency exists requiring immediate action to protect the public health or welfare, it may, without

notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Notwithstanding the provisions of subsection (b) of this section, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the Agency shall be afforded a hearing as soon as possible. On the basis of such hearing the Agency shall continue such order in effect, revoke it, or modify it.

(d) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the Agency may be served, personally or by publication, on any person affected thereby, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the Agency; or such service may be made by mailing a copy of the notice, order, or other instrument by registered mail, directed to the person affected at his last known post office address as shown by the files or records of the Agency, and proof of such service may be made by the affidavit of the person who did the mailing, such proof to be filed in the office of the Agency.

(e) Every certificate or affidavit of service made and filed as herein provided shall be *prima facie* evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

Section 9. Hearings. The hearings herein provided may be conducted by the Director, or the Director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Agency, at any time and place. A record or summary of the proceedings of such hearings shall be made and filed with the Agency, together with findings of fact and conclusions of law made by the Agency. A member of the Agency or a hearing officer, designated by the Agency, shall have the power to issue in the name of the Agency notice of the hearings or subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter involved in such hearing, and to administer oaths and examine witnesses during such hearings. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the Court shall have jurisdiction, upon application of the Agency or its representative, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt thereof.

Section 10. Inspections and Investigations: Maintenance of Records.

The Agency or its duly authorized representative shall have the power to enter at reasonable times, and after prior notice of at least 2 days, upon any

private or public property for the purpose of inspecting and investigating conditions relative to the purposes of this Act; except that such entry into security areas under the direct or indirect jurisdiction of the Federal Government shall be permitted only by and with the concurrence of the Federal Government Agency or its duly designated representative.

Any authorized representative of the Agency may examine any records or memoranda pertaining to the operation of radiation machines and radioactive materials. The Agency may require the maintenance of records relating to the operation of disposal systems. Copies of such records must be submitted to the Agency on request.

Section 11. *Penalties: Injunctions*

(a) Any person who violates any of the provisions of, or who fails to perform any duty imposed by, this Act, or who violates any order of the Agency promulgated pursuant to this Act, shall be guilty of a misdemeanor, and in addition thereto may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

(b) It shall be the duty of the Attorney General on the request of the Agency to bring any action for an injunction against any person violating the provisions of this Act, or violating any order of the Agency. In any action for an injunction brought pursuant to this section, any findings of the Agency after hearing or due notice shall be *prima facie* evidence of the fact or facts found therein.

Section 12. *Review*

(a) An appeal may be taken from any final order, or other final determination of the Agency, by any person who believes himself adversely affected thereby, or by the Attorney General on behalf of the State of the Court of Within 30 days after receipt of a copy of the order, or other determination, or after service of notice thereof by registered mail, the appellant or his attorney shall serve a notice of appeal on the Agency through its (Director) provided that during such 30-day period the court may, for good cause shown, extend such time for an additional period not to exceed 60 days. The notice of appeal shall refer to the action of the Agency appealed from, shall specify the grounds of appeal, including both points of law and fact which are asserted or questioned by the appellant. A copy of the original notice of appeal with proof of service shall be filed by the appellant or his attorney with the clerk of the court within 10 days of the service of the notice and thereupon the court shall have jurisdiction of the appeal.

(b) The appellant and the Agency shall in all cases be deemed the original

parties to an appeal. The State, through the Attorney General or any other person affected, may become a party by intervention, as in a civil action, upon showing cause therefor. The Attorney General shall represent the Agency, if requested, upon all such appeals unless he appeals or intervenes in behalf of the State. If the Attorney General or a member of his staff is not available to represent the Agency in any particular proceeding, the Agency is empowered to appoint special counsel for such proceeding. No bond or deposit for costs shall be required of the State or Agency upon any such appeal or upon any subsequent appeal to the Supreme Court or other court proceedings pertaining to the matter.

(c) The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and the answer thereto according to the rules relating to a trial in the nature of an appeal in equity of an administrative determination. All findings of fact by the Agency are to be deemed final, unless it is shown that such findings were not supported by substantial evidence produced before the Agency at the hearing. In any appeal or other proceeding involving any order, or other determination of the Agency, the action of the Agency shall be *prima facie* evidence reasonable and valid and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with. A copy of the proceedings before the Agency shall be certified to the court in connection with each appeal.

(d) A further appeal may be taken to the Supreme Court of the State in the same manner as appeals in equity are taken.

Section 13. *Conflicting Laws.* This Act shall not be construed as repealing any laws of the State relating to radiation sources, exposures, radiation protection, and professional licensure, but shall be held and construed as auxiliary and supplementary thereto, except to the extent that the same are in direct conflict herewith.

Section 14. *Existing Rights and Remedies Preserved.* It is the purpose of this Act to provide additional and cumulative remedies to evaluate, control, and prevent impairment to health from radiation and to encourage the constructive use of radioactive materials and radiation machines. Nothing herein contained shall be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor shall any provision of this Act, or any act done by virtue thereof, be construed as estopping the State, or any municipality or person, in the exercise of their rights in equity or under the common law or statutory law to protect the public health and encourage commerce and industry.

Section 15. *Severability.* If any section, subsection, sentence, clause, phrase, or word of this Act is for any reason held to be unconstitutional, such decree shall not affect the validity of any remaining portion of this Act.