



STATE OF KANSAS

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December 10, 1986

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ATTORNEY GENERAL OPINION NO. 86- 169

Randy Wetmore
Office of the City Manager
Sixth & Lincoln
Concordia, Kansas 66901

Re: Public Health and Welfare--Atomic Energy Act of
1954--Price-Anderson Act; Indemnification and
Limitation of Liability

Synopsis: Although the liability for damages resulting from
transportation accidents involving nuclear waste is
determined by state tort law, the Price-Anderson
Act, 42 U.S.C. §§2014, 2210, provides for
reimbursement of these damages for all responsible
parties. While the long-term clean-up costs
are generally reimbursable through this
insurance/indemnity system, the immediate,
emergency response costs probably are not, and
will be borne by the state or local government.
Cited herein: 42 U.S.C. §2014; 42 U.S.C. §2210.

* * *

Dear Mr. Wetmore:

As City Manager for the city of Concordia, you request our
opinion regarding liability for clean-up costs associated
with a nuclear waste transportation accident. Specifically,
you ask if the city, state, or shipping company will be
responsible for paying for the needed clean-up of such an
accident occurring in a city.

Although the nuclear industry is controlled primarily by federal law, liability for such an accident will be determined by the tort law of the state with the most significant relationship to the incident. In the scenario you frame, the law of the state in which the accident occurred would most probably control.

The Price-Anderson Act, 42 U.S.C. §§2014, 2210, establishes an insurance/indemnity system which provides for compensation for damages suffered by the public as a result of a nuclear incident. Once liability and damages have been established under state tort law, the Price-Anderson Act reimburses these damages through a system of private insurance and government indemnification. The reimbursement for damages provided for by the system currently is limited to an amount not to exceed of \$500 million. 42 U.S.C. §2210(e). It is unclear whether the federal government is covered under the Price-Anderson Act or the Federal Tort Claims Act. For this reason, the standard of liability and mechanism for paying damages may differ if the federal government is a responsible party.

The clean-up costs incurred after an accident such as you describe in your inquiry can be divided into two distinct categories. Emergency response costs refer to immediate life-saving and containment activities. Clean-up costs refer to less immediate response measures designed to restore the accident site to its normal condition, such as debris removal and decontamination of the surrounding environment. Generally, states will be reimbursed for clean-up costs, but may not be reimbursed for emergency response costs.

Clean-up costs will generally be covered by either a Price-Anderson insurance policy or indemnity agreement. These costs usually fall under the coverage for property damage provided for in both the insurance and indemnity agreements.

Emergency response costs, however, would probably not be reimbursed under the Price-Anderson system of compensation. These costs would include the costs of police, fire and ambulance response, and the cost of any response team from, for example, the Department of Health and Environment. Although the insurance policies do not contain any specific exclusion for emergency response costs, the policies would only provide compensation for these costs in the event that they were found to be a "public liability", and therefore

specifically covered. "Public liability" is defined at 42 U.S.C. §2014(w) as follows:

"(w) The term 'public liability' means any legal liability arising out of or resulting from a nuclear incident, except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in section 2210(a), (c), and (k) of this title, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. 'Public liability' also includes damage to property of persons indemnified: Provided, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs."

The general rule, however, is that the costs of emergency response services fall under the general obligation of state and local governments to provide emergency response in the event of a nuclear waste transportation accident, just as it is their responsibility with any other type of accident.

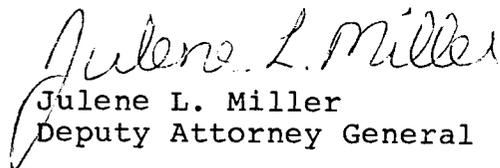
In conclusion, although the liability for damages resulting from transportation accidents involving nuclear waste is determined by state tort law, the Price-Anderson Act, 42 U.S.C. §§2014, 2210, provides for reimbursement of damages from all responsible parties. While the long-term clean-up costs are generally reimbursable through this

insurance/indemnity system, the immediate, emergency response costs probably are not, and will have to be borne by the state or local government.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm