

(STP-01-071, September 2001, Program, Jurisdictional Determinations, SA-500)

September 20, 2001

ALL AGREEMENT STATES
MINNESOTA, PENNSYLVANIA, WISCONSIN

**PROGRAM MANAGEMENT INFORMATION: DRAFT REVISION TO STP PROCEDURE
SA-500, "JURISDICTIONAL DETERMINATIONS" (STP- 01- 071)**

Enclosed for your review and comment* is the draft Office of State and Tribal Programs (STP) Procedure SA-500, "Jurisdictional Determinations." This procedure describes the process to be used by STP staff to resolve questions of jurisdiction; i.e., whether NRC or an Agreement State is the appropriate licensing agency to regulate the use of Atomic Energy Act Material in certain cases. We would appreciate receiving your comments within one month of receipt of this letter.

Thank you for your attention to this matter. If you have any questions regarding this correspondence, please contact me or the individual named below.

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Enclosure:
As stated

*This information request has been approved by OMB 3150-0029, expiration 06/30/04. The estimated burden per response to comply with this voluntary collection is approximately 6 hours. Forward any comments regarding the burden estimate to the Information and Records Branch (T-6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0029), Office of Management and Budget, Washington, DC 20503. If a document does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information.



STP Procedure Approval

Jurisdiction Determinations - SA-500

Issue Date:

Review Date:

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Date:

NOTE

The STP Director's Secretary is responsible for the maintenance of this master copy document as part of the STP Procedure Manual. Any changes to the procedure will be the responsibility of the STP Procedure Contact. Copies of STP procedures will be distributed for information.



I. INTRODUCTION

This procedure describes the process for resolving questions of jurisdiction; i.e., whether NRC or an Agreement State is the appropriate licensing agency in certain cases. (NOTE: Federal ownership of land does not necessarily mean that licensees are subject to NRC regulatory control when working on that site).

II. OBJECTIVE

To provide guidance to STP staff on the handling of jurisdiction determinations.

III. BACKGROUND

Private sector licensees performing work on Federally-owned or Federally-controlled lands within Agreement States are covered by one of the following forms of jurisdiction listed in III.A., below.

A. Definitions - Categories of Legislative Jurisdiction¹

1. Exclusive legislative jurisdiction - only Federal laws are applicable pursuant to the U.S. Constitution or through cession by a State.
2. Concurrent legislative jurisdiction - the State concerned has reserved to itself the right to exercise concurrently with the Federal government all of the same authority.
3. Partial legislative jurisdiction - the State concerned has granted the Federal government certain of the State's authority but has reserved to itself the right to exercise, by itself or concurrently with the Federal government, other authority.²
4. Proprietary interest - the Federal government has acquired some right or title to an area in a State but has not obtained any measure of the State's authority over the area.

¹ More complete definitions are contained in the background and reference folder for this procedure located in the STP Jurisdiction File.

² When property falls within this category, a determination must be made as to the type of authority reserved to the State (e.g., authority for public health protection).

- B. Jurisdictional determinations are normally made on a case-by-case basis following the guidance set out in Appendix A.
- C. Reservations and General Precedents

A Section 274b Agreement, as implemented by 10 CFR 150, does not transfer regulatory authority to the States over the following:

1. Activities of Federal Agencies located in Agreement States.
2. Activities involving special nuclear material in quantities sufficient to form a critical mass.
3. Construction and operation of production and utilization facilities.
4. Disposal of radioactive wastes into the ocean or sea.
5. Transfer of products to persons exempt from licensing.
6. Import or export of source, byproduct, and special nuclear material.
7. Activities aboard commissioned naval vessels (determined by interpretation, see Reference #4).
8. **American Indian owned companies operating on American Indian lands.**
9. **Private (non-American Indian owned) companies operating on American Indian lands.**

- D. The State will exercise regulatory jurisdiction over:

1. **Non-federal licensees using Agreement material in areas of non-exclusive Federal jurisdiction.**
2. Radiographers on reactor sites in Agreement States (determined by interpretation, see Reference #5).
3. Calibration standards in Agreement States for off-site monitors around reactors.
4. **Private companies operating on Indian lands.**

- E. Byproduct Material Intimately Mixed with large quantities of Special Nuclear Material at Facilities within Agreement States:
 - 1. If the facility falls under the definition of "production or utilization facility" in 10 CFR 50.2, the NRC license covers all material.
 - 2. If the facility is neither a "production or utilization facility as defined" in 10 CFR 50.2, nor an uranium enrichment facility, separate licenses issued by the Agreement State and by the NRC cover the byproduct material and the special nuclear material, respectively.
- F. Offshore Operations Outside the Territorial Waters of a State:
 - 1. Persons using byproduct, source, or special nuclear material in offshore waters are not exempt from NRC regulation (10 CFR 150.7).

IV. ROLES AND RESPONSIBILITIES

A jurisdiction file containing appropriate supporting information is maintained by the Office of State and Tribal Programs.

- A. Procedure
 - 1. NRC staff with questions on determining the jurisdictional status of lands or facilities should refer to the "NRC Procedure for Determining Exclusive Federal Jurisdiction" (see Appendix A).
 - 2. If a determination cannot be made in accordance with paragraph one, the Federal Agency whose facility is involved shall be contacted. Federal Agency contacts and telephone numbers may be obtained by consulting the Federal Executive Directory or the local telephone director (the White Pages).
 - 3. If a jurisdiction question arises which involves a Federal Agency for which no contact has been established, inquiries should be directed to those offices (normally in Washington, D.C.) which maintain the real estate for the Federal Agency.
 - 4. Questions involving jurisdiction should be referred to the NRC's Office of the General Counsel for assistance.

V. GUIDANCE

- A. The NRC staff may receive inquiries or questions from licensees on the jurisdictional status of lands or facilities controlled by a federal agency. These licensees should be encouraged to contact the federal agency controlling the proposed worksite and to obtain a jurisdiction determination.
- B. Upon obtaining information on the jurisdictional status of the proposed worksite, the licensee shall be advised to either file for reciprocity to work in NRC Jurisdiction (for Agreement State licensees only) or file for reciprocity with the Agreement State where the work is to be conducted (for NRC licensees or licensees from other Agreement States).

VI. APPENDIX

Appendix A - NRC Procedure for Determining Exclusive Federal Jurisdiction
Attachment 1 - Recommended Procedures for Licensees to Obtain Jurisdiction Determinations

VII. REFERENCES

The following documents are located in the background and reference folder for this procedure in the Office of State and Tribal Programs Jurisdiction file:³

1. Memorandum Parler to Shapar, Jurisdiction to Regulate Private Licensees Conducting Activities On Federal Enclaves in Agreement States, May 22, 1963.
2. Guide for handling AEC-Agreement State Jurisdictional Problems, September 25, 1965.
3. AEC Jurisdiction Over Nuclear Facilities and Materials Under the Atomic Energy Act, Office of the General Counsel Opinion, March 14, 1969.
4. All Agreement States - Interpretative Letter No. 76-02, dated October 20, 1976 on commissioned naval vessels.
5. Radiography operations at reactor sites - Memorandum from R.E. Cunningham to Regional Administrators and Branch Chiefs dated September 16, 1983.

³ Several of these documents are not current. Before using these references, coordinate the review with OGC to assure that aspects of the document to be used are still valid.

6. Reciprocity in Areas of Federal Jurisdiction Within Agreement States, memo from S.A. Treby to C. Kammerer and R. E. Cunningham, dated September 10, 1992.
7. NUREG-1556, Volume 19: “Guidance For Agreement State Licensees about NRC Form 241 “Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters” and Guidance For NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity) (Final Report) Published: November, 2000.

Appendix A

NRC PROCEDURE FOR DETERMINING EXCLUSIVE FEDERAL JURISDICTION

I. Introduction

This procedure describes the process for resolving questions of jurisdiction over facilities and sites where NRC and Agreement State licensees may propose to operate, which determines whether NRC or an Agreement State is the appropriate licensing agency. (NOTE: Federal ownership of land does not necessarily mean that licensees are subject to NRC regulatory control when working on that site.)

II. Areas of Exclusive Federal Jurisdiction

An area of exclusive Federal jurisdiction is an area over which the Federal government exercises legal control without interference from the jurisdiction and administration of State law. The creation of an area of exclusive Federal jurisdiction occurs as a result of State consent at the time the Federal government acquires control over the land.

The determination of whether a Federal enclave is an area of exclusive Federal jurisdiction must be made on a case-by-case basis since the status of such land is subject to change. The most effective and efficient way to make determinations is to contact the Federal agency responsible for exercising Federal control over the enclave.

III. Responsibilities and Procedures

Jurisdiction determination requests or questions should be handled utilizing one of the following approaches:

- A. In response to inquiries or questions on jurisdictional status, the licensee should be asked to determine, from their Federal agency contact at the site or the facility where the work is to occur, the jurisdictional status of the areas where the licensee plans to work. See Attachment 1, "Recommended Procedure for Licensees to Obtain Jurisdiction Determinations," for guidance to be followed by licensees proposing to work at federally controlled jobsites in Agreement States. If the area is under exclusive Federal jurisdiction, an Agreement State licensee should obtain, if practicable, a written statement from the Federal facility to that effect and submit the statement along with the reciprocity notification or application to the appropriate NRC regional office. An Agreement State licensee may not work in areas of exclusive Federal jurisdiction without either: (1) filing a Form 241 in accordance with 10 CFR 150.20(b), "Recognition of Agreement State Licensees;" or (2) by applying for a specific NRC license.

- B. If a licensee has been unable to obtain a jurisdictional determination on a proposed Federally controlled jobsite or is unable to identify a local or regional Federal agency representative, the NRC staff (Regional or Headquarters) should direct the licensee to contact the appropriate Federal agency headquarters contact for assistance in identifying the name of the appropriate local or regional representative the licensee should contact to obtain the determination. Federal agency headquarters contacts and telephone numbers may be obtained by consulting the Federal Executive Directory or the local telephone director (the White Pages).
- C. An NRC licensee planning to conduct operations at a Federal facility, where the Agreement State has jurisdiction (i.e., it is not an area of exclusive Federal jurisdiction), must file for reciprocity with the Agreement State regulatory authority in accordance with the State's regulations or obtain a specific license from that State. Agreement State radiation control program contacts may be accessed on the Office of State and Tribal Programs Web Site at:
<http://www.hsrdo.nrc.gov/nrc/asframe.htm>.

Attachment 1

RECOMMENDED PROCEDURE FOR LICENSEES TO OBTAIN JURISDICTION DETERMINATIONS

If you intend to conduct licensed activities at a federally controlled site (e.g., a federally controlled site in an Agreement State), the jurisdictional status of the site should be determined. If you are uncertain regarding the jurisdictional status of a proposed work site, it is recommended that you take the following steps:

- A. Obtain specific information regarding the location of the proposed work site (e.g., street address, Range/Township, building or hangar number, distance from a specific intersection, or other identifying details) and identity of the Federal agency controlling the proposed work site.
- B. Call the Federal agency's local contact (contract officer, base environmental health officer, district office staff, regional office staff, etc.) and request information regarding the jurisdictional status of the proposed work site. We recommend that you request such a statement in writing. Otherwise, you should document, in your records, the name and title of the person at the Federal agency who provided the determination and the date that it was provided.
 1. If the work site is identified as failing under "Exclusive Federal Jurisdiction" and you are an Agreement State licensee, your notification of proposed work (NRC Form 241) and, if available, a copy of the statement of jurisdiction from the agency should be submitted to NRC. In lieu of submitting an NRC Form 241, Agreement State licensees may apply for a specific NRC license to operate in areas under NRC jurisdiction. If you are an NRC licensee, no action is required.
 2. If the work site is identified as other than "Exclusive Federal Jurisdiction" you should contact the Agreement State within which the facility resides.

An Agreement State licensee found to be involved in an area of exclusive Federal jurisdiction without a prior NRC license or without prior filing for reciprocity in accordance with 10 CFR 150.20 is potentially subject to escalated enforcement action, including civil penalties and orders. However, NRC will not take enforcement action against an Agreement State licensee for such violations if the licensee has evidence that it received a determination from the Federal agency that the area of work is not subject to exclusive Federal jurisdiction. This evidence may be a written statement from the Federal agency that provided the determination and the date that it was provided or a written statement signed and dated by the licensee documenting the name and title of the person at the Federal agency who provided the determination that the work site was not in an area of "Exclusive Federal Jurisdiction" and the date the determination was provided.