

April 22, 2014

ALL AGREEMENT STATES

CLARIFICATION ON THE DETERMINATION OF REGULATORY JURISDICTION OF NON-FEDERAL ENTITIES CONDUCTING CLEANUP ACTIVITIES ON FEDERAL PROPERTY IN AGREEMENT STATES (FSME-14-039)

Purpose: To provide the Agreement States additional guidance to that in SA-500, "Jurisdiction Determinations" (Agencywide Documents and Access Management System Accession number ML110600350) to assist in making determinations of regulatory jurisdiction involving non-federal entities conducting cleanup activities on federal property in Agreement States.

Background: There are several military and former military sites around the country where the responsible Federal agency, i.e., U.S. Department of the Air Force, U.S. Department of the Army, or U.S. Department of the Navy, is implementing site reclamation activities to address the removal or remediation of hazardous materials, including radiological material, under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.*, also known as Superfund. The U.S. Nuclear Regulatory Commission's (NRC) Office of Federal and State Materials and Environmental Management Programs (FSME) has received a number of inquiries into its regulatory jurisdiction at various sites where the responsible Federal agency utilizes non-federal entities, i.e., private service providers, to conduct remediation activities involving Atomic Energy Act, of 1954, as amended (AEA), 42 U.S.C. §§ 2011-2297h (2006), regulated radioactive materials (byproduct, source, or special nuclear materials) on federal property located in an Agreement States. To assist it in making future determinations, NRC staff has developed a decision process that is consistent with the procedures in SA-500.

Discussion: In AEA Section 274b., Congress authorized the NRC and States to enter into agreements where a State assumes, and the NRC relinquishes regulatory authority over specified radiological materials to protect public health and safety. To the extent that a State has entered into an 274b. Agreement with the NRC, the Agreement State has the ability to regulate the use of such AEA radioactive material within its borders, subject to some limitations. One such limitation is that under a Section 274b Agreement, as implemented by 10 CFR Part 150, an Agreement State does not have the ability to regulate a Federal entity. Another limitation is that depending upon the jurisdictional status of the land on which a private-entity is working; an Agreement State may not have regulatory authority over the private entity's use or possession of byproduct, source, or special nuclear material while on that land. FSME staff have recently evaluated whether an Agreement State has the ability to regulate a private entity's use or possession of AEA radioactive material on Federally-owned or Federally-controlled property.

As stated in SA-500, the determination of jurisdiction in these cases depends on whether the Federal government exercises exclusive legislative jurisdiction over the property or some other lesser degree of legislative jurisdiction, i.e., concurrent jurisdiction, partial jurisdiction, or proprietary jurisdiction. SA-500 provides the basic process for determining whether regulatory jurisdiction for Federally-owned or Federally-controlled property rests with the NRC or the Agreement State.

FSME staff has recently developed a more detailed process for determining jurisdiction at sites within Agreement States, particularly at current or former military facilities. Attachment 1 outlines a process to assist in determining whether the Agreement State or the NRC has regulatory jurisdiction over a non-federal entity working at a federal facility in an Agreement State. Since these determinations can be complex, Agreement States and licensees are encouraged to contact FSME staff if they have questions or need clarification on the process in Attachment 1.

If you have any questions regarding the correspondence, please contact me at 301-415-3340 or the individual named below.

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Attachment:
Jurisdiction Decision Process

As stated in SA-500, the determination of jurisdiction in these cases depends on whether the Federal government exercises exclusive legislative jurisdiction over the property or some other lesser degree of legislative jurisdiction, i.e., concurrent jurisdiction, partial jurisdiction, or proprietary jurisdiction. SA-500 provides the basic process for determining whether regulatory jurisdiction for Federally-owned or Federally-controlled property rests with the NRC or the Agreement State.

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Attachment:
Jurisdiction Decision Process

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