



2600 Bull Street
Columbia, SC 29201-1708

November 1, 2001

COMMISSIONER:
Douglas E. Bryant

BOARD:
Bradford W. Wyche
Chairman

William M. Hull, Jr., MD
Vice Chairman

Mark B. Kent
Secretary

Howard L. Brilliant, MD

Brian K. Smith

Louisiana W. Wright

Larry R. Chewning, Jr., DMD

Frederick C. Combs, Deputy Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Combs:

This is in response to your request of September 20, 2001, to provide comments on the Draft Revision to STP Procedure SA-500, "Jurisdictional Determinations", (STP-01-071).

Our comments are provided as follows:

1. Overall the document appears concise and comprehensive enough to make an adequate determination.
2. Based on our experience however, there are three areas you may want to consider addressing which have caused questions in the past concerning jurisdiction by the either the NRC or the Agreement State:
 - a. Clarify paragraph E.2. Page 2, by adding fuel fabrication facilities as an example, which are licensed by the NRC due to the Special Nuclear Materials, and also licensed by the agreement state for possession and use of source material and byproduct material. This may avoid future jurisdictional challenges by the licensee.
 - b. Storage of low-level radioactive waste or contaminated plant components outside of the defined exclusion area of a nuclear power reactor facility for an extended or indefinite period of time has been determined to be subject to Agreement State jurisdiction. Normally low-level waste is maintained within the exclusion area and covered by the NRC license. However, we have one case where a reactor facility choose to store a contaminated steam generator in a dedicated facility outside the exclusion area on plant property and was required to obtain a state license. A jurisdictional determination was made by the STP. In addition, it may be note worthy to mention that low level waste disposal on power plant property under the provisions of 10 CFR 20.2002 is also subject to Agreement State jurisdiction.
 - c. Since DOE facilities are not normally subject to either NRC or Agreement State jurisdiction except in special cases, we have had jurisdictional challenges in the past where private, commercial companies wanted to

*3006
etc'd
12/19/01*

locate on federal facilities, such as the Savannah River Site, and conduct laundry and waste processing activities without regard of a Agreement State license even though they did not intend to restrict their activities to the DOE site. The challenge did not come from DOE nor the potential licensee, but rather the DOE prime contractor who contended that as long as the operations were conducted under their purview, the activities were not subject to an NRC or Agreement State license. We, of course, disagreed with this position. However, these activities never materialized. To avoid future conflicts of this nature, perhaps this situation could be reviewed and included in the procedure for jurisdictional determination.

Although any of the above situations could be handled through a case-by-case assessment for a final determination, it would be helpful to mention them in the procedure as potential areas of consideration.

In addition to STP-01-071, my staff and I have also reviewed the two Draft Procedures – Agreement State Liaison to the MRB and Agreement State Participation as IMPEP Team Members (STP-01-072), and have no further comments to offer for either of these documents.

I appreciate the opportunity to provide input and comments for these important program procedures, and look forward to future mutual interests. Should you or your staff have any questions concerning this matter, please do not hesitate to contact me at (803) 896-4245.

Very truly yours,



Henry J. Porter, Assistant Director
Division of Waste Management
Bureau of Land and Waste Management