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GUIDE FOR HANDLING
AEC-AGREEMENT STATE
JURISDICTIONAL PROBLEMS

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Introduction and Purpose

Under Section 274b of the Atomic Energy Act, the Commission is authorized, subject to the conditions prescribed by the Act, to enter into an agreement with the Governor of any State providing for the discontinuance of regulatory authority of the Commission with respect to byproduct materials, source materials and special nuclear materials in quantities not sufficient to form a critical mass. In the implementation of this authority, the Commission has issued its regulation entitled, "Part 150, Exemption and Continued Regulatory Authority in Agreement States under Section 274", effective February 14, 1962.

In applying the provisions of Part 150 of the Commission's regulations, a number of problems have arisen in defining precisely the division of jurisdiction between the AEC and the Agreement States. Although some of these problems are still outstanding and it is anticipated that new problems will develop as more States enter into an agreement with the Commission, many of the problems most often encountered have been resolved through interpretations by the Office of the General Counsel and through discussion and resolution with the present Agreement States. It should be recognized, however, that some of the lines of demarcation of jurisdiction are tentative and may be subject to change and refinement at some future time.

The purpose of this compilation is to bring together the interpretations and resolutions which have been made regarding those areas in which recurring questions of AEC-Agreement State jurisdiction arise. The discussions have been cross-referenced by a footnote designation to a bibliography which is included to show, so far as possible, the origin of the decision.

I. Jurisdiction Retained by AEC

A. Activities on Federally-owned Land

1. Types of jurisdiction exercised by the Federal Government

"In general, the Federal Government exercises various kinds of jurisdiction over lands which are federally owned. Thus, over certain federally-owned lands the Federal Government exercises 'exclusive federal jurisdiction'. This means, as the term indicates, that, with certain exceptions not relevant here, only federal laws are applicable. Over certain other federally-owned lands the Federal Government exercises lesser degree of jurisdiction--which have been commonly designated as 'concurrent jurisdiction', 'partial jurisdiction' and 'proprietary jurisdiction'. 3/

2. Division of Jurisdiction

" . . . only the Federal Government has authority to license and regulate, for purposes of protection against radiation hazards, the activities of persons conducted within an Agreement State on federally-owned land over which the Federal Government has 'exclusive federal jurisdiction.'" Stated in another manner, the execution of a Section 274 Agreement would not affect the continuing exercise by the Atomic Energy Commission of its authority over activities conducted on such lands.

"For federally-owned lands within an Agreement State other than lands subject to 'exclusive federal jurisdiction', or 'partial jurisdiction' sufficiently broad to encompass protection against radiation hazards, the Agreement State would have the authority to license and regulate activities on such lands for purposes of protection against radiation hazards. In other words, activities on such lands would be subject to the authority of the Agreement State to the same extent as activities conducted on lands owned by private persons." 3/

3. Immunity of Federal Agencies and Agents Acting for the Federal Government from State Regulatory Authority

"It is important to note, however, that regardless of the type of jurisdiction exercised by the Federal Government, a person may be immune from State authority because he acts as an arm of the Federal Government by conducting activities essential to the performance of Federal Government functions. And, of course, agencies of the Federal

Government themselves, pursuant to 10 CFR §150.10, are not subject to the licensing and regulatory jurisdiction of the Agreement States." 3/

4. Procedure to be Followed in Determining Status on Federal Lands

"Only the Federal Government has authority to license and regulate for purposes of radiation protection the activities conducted within Agreement States upon federal land over which the Government exercises 'exclusive federal jurisdiction' or certain types of 'partial jurisdiction'. In the cases which have arisen, we have encountered some time delays in establishing precisely where particular activities are to be conducted and the status of that land. We believe, however, that these delays can be substantially reduced as more applicants become aware of the necessity for making these determinations and as our lines of communication with the various Federal agencies which control the lands in question are improved. We suggest the following procedure be used in cases involving questions of jurisdiction:

- a. "As soon as it is recognized that a jurisdictional question of this type is involved, the license applicant should be requested to identify the precise location upon which the activity will be conducted. Such identification should be stated in section numbers and tract numbers, if any.
- b. "In cases where we have not already established a line of communication with the agency controlling the property in question, the Office of the General Counsel will request the assistance of the General Services Administration in establishing the jurisdictional status of the property. In most cases, GSA will not be able to provide a definite answer but will refer us to the appropriate office within the controlling agency.
- c. "After step b above, or in cases where lines of communication have already been established, the Office of the General Counsel will contact the controlling agency and request the needed information.
- d. "The Office of the General Counsel will advise the appropriate Division of the status of the land in question and whether the AEC has jurisdiction over the activities involved." 1/

Comment

Note that Step a of the suggested procedure speaks of requesting information from a license applicant. The procedure should be followed also for persons already holding licenses. The jurisdictional problem cases would most likely be identified at the time a State assumes regulatory authority. However, other cases may become known after transfer of regulatory authority to the States has been made, or may develop when State licensees wish to conduct activities during extended periods of time on land over which the Government exercises "exclusive" or "partial" jurisdiction. It is recognized that there may be a number of such cases outstanding at the present time as a result of the States which have already assumed regulatory authority.

From a practical standpoint, it is anticipated that the Division of Compliance would only assist in identifying cases involving jurisdictional problems, and in determining the precise location at which the activity will be conducted, including section or tract numbers of such locations, if any. Therefore, as soon as practicable after cases involving jurisdictional problems are identified, Regional Offices will notify Compliance Headquarters. If such cases have not been resolved or are in the process of being resolved, Regional Offices may be requested to develop the information contained in Step a of the suggested procedure in order to assist in the expeditious resolution of the problem.

B. Activities Involving Special Nuclear Material in Quantities Sufficient to Form a Critical Mass

1. Division of Jurisdiction

"Special nuclear material may or may not be subject to the licensing and regulatory jurisdiction of an Agreement State--depending on the quantity of the material involved. If the total quantity of special nuclear material which a person is to be authorized to receive, possess or use in a particular Agreement State at any one time is sufficient to form a critical mass, then an AEC license--rather than an Agreement State license--is required. 'Critical mass' is defined in Section 150.11(a). The number of locations within an Agreement State at which the special nuclear material is to be possessed or the fact that the quantity of special nuclear material to be possessed at any one location within the Agreement State is insufficient to form a critical mass does not alter this conclusion. Similarly, should a person holding an Agreement State license to possess and use special nuclear material (in quantities not sufficient to form a critical mass) desire

to obtain additional special nuclear material so that the total quantity to be possessed by him within the Agreement State at any one time will be greater than the critical quantity, the person will become subject to AEC licensing jurisdiction." 6/

2. Status of 91b Material

"Several questions have been raised regarding the status within Agreement States of special nuclear material which has been delivered to the Department of Defense pursuant to Section 91 b. of the Atomic Energy Act.

"This will advise you that

- a. possession, use, etc., of § 91 b. material by the Department of Defense is not subject to licensing or regulation by the States, and
- b. possession, use, etc., by a DOD contractor of a quantity of § 91 b. material which, alone or in combination with other material which the contractor is authorized to possess within a State, exceeds a critical mass is not subject to licensing or regulation by that State.

"Statement b above should not be interpreted as implying that possession, use, etc., within an Agreement State by a DOD contractor of quantities of § 91 b. material less than a critical mass is subject to State licensing and regulation. Since there apparently are no such cases at the present time, we are not now expressing an opinion on that aspect." 5/

3. Determining Total Possession Limit

"To determine whether a person possesses a quantity of special nuclear material in excess of a critical mass (i.e., whether he is licensed by the AEC), do we examine (1) only the quantity which he is licensed to possess or (2) the total quantity which he is permitted to possess whether by license or under contracts with AEC or DOD (91 b. material)? The latter alternative is correct. Section 150.11(b) of the Commission's Regulations states that in computing one shall include 'the total quantity which he is authorized to receive, possess, or use in any particular agreement state at any one time' (emphasis added).

Thus, for the purpose of this determination, the nature of the authority to possess is irrelevant." 4/
(In this regard, see also Section III F., below.)

C. Activities at Production and Utilization Facilities

1. Division of Jurisdiction

"Some of the more difficult problems arising from the implementation of Section 274 agreements stem from the multiple and varied activities carried on at production and utilization facilities. In some cases of reactor operation those activities involve not only special nuclear material but source and byproduct material as well. Special nuclear material removed from the reactor may be in quantities either sufficient or insufficient to form a critical mass. Such special nuclear material contains byproduct material fission products. Separate byproduct material licenses have been issued in the past when such byproduct material is to be experimented with or separated. Hot cell facilities may be operated at or near the location of the reactor.

"Any conclusions as to the line between AEC and Agreement State jurisdiction over the varied activities performed at these facilities depend, of course, to a large extent on the precise nature of, and the factual circumstances surrounding, the activities at each facility. Some of the factors which obviously merit attention are:

- a. "The extent to which specific activities are closely interrelated with or dependent on other activities clearly subject to AEC licensing authority.
- b. "The facility description contained in the applicable Price-Anderson indemnity agreement.
- c. "Past AEC licensing practices with respect to materials licenses as distinguished from facility licenses.

"Finally, it should be recognized that none of these factors are necessarily determinative of the jurisdictional questions arising under Section 274 of the Act." 6/

"Under Section 274, the AEC is required to retain authority over the construction and operation of any production or utilization facility and over use of special nuclear materials in quantities sufficient to form a critical mass. Because of the nature of these activities, it does not appear possible to define a distinct line between AEC and state jurisdiction. In the fall of 1962, there was adopted as a tentative policy decision a proposal to use the site description in the applicable Price-Anderson indemnity agreement as the jurisdictional dividing line. In other words, all materials within the Price-Anderson site prima facie will be considered to be used in operation of the facility; all materials outside the Price-Anderson site prima facie will be considered as not used in operation of the facility. This principle is a starting point. Its use is not intended to imply that activities which should be subject to state control will be regulated by the AEC simply because they occur within the Price-Anderson site description." 10/

2. Construction and Operation of a Facility

"Section 150.15(a)(1) provides that persons in Agreement States are not exempt from AEC licensing and regulatory requirements with respect to the construction and operation of any production or utilization facility. 'Operation' of a facility is stated to include, without being limited to, (i) the storage and handling of radiation wastes at the facility site by the person licensed to operate the facility, and (ii) the discharge of radioactive effluents from the facility site. Section 150.15(a)(4) provides that persons in Agreement States are not exempt from AEC licensing and regulatory requirements with respect to the transfer, storage or disposal of radioactive waste material resulting from the separation in a production facility of special nuclear material from irradiated nuclear reactor fuel, but goes on to provide that Section 150.15(a)(4) does not apply to the transfer, storage or disposal of contaminated equipment. The legislative history of Section 274 makes it clear, with respect to the facility operation which continues to be subject to AEC jurisdiction, that such activities include, without being limited to, the possession and storage at the site of the licensed activity of nuclear fuel and of course, special nuclear material and byproduct material used or produced in the operation of the facility; the transportation of nuclear

fuels to and from the reactor site; and the discharge of effluent from the facility." ^{6/}
(With regard to the "use" of byproduct material within a facility, see the last paragraph, Item IV.A, below.)

3. Activities Not Considered Part of Operation of a Facility

"The use and possession of source and byproduct materials in hot cells, laboratories, and shops which are located outside the reactor building and excluded from the site description in the applicable Price-Anderson indemnity agreement are not considered as associated with the operation of the reactor facility. Therefore, such materials are subject to the licensing and regulatory authority of the State at such locations." ^{10/}

D. Disposal of Radioactive Wastes into the Ocean or Sea

"By virtue of the provisions of Section 150.15(a)(3), persons in Agreement States are not exempt from AEC licensing and regulatory requirements with respect to the disposal into the ocean or sea of byproduct, source or special nuclear waste materials. Special nuclear material in quantities sufficient to form a critical mass is, of course, subject to AEC licensing--irrespective of whether the particular act is disposal or any other form of possession. 'Ocean' or 'sea' is defined as any part of the territorial waters of the United States and any part of the international waters. This reservation of AEC licensing authority should be construed as applying only to the act of disposal and not as affecting the authority of an Agreement State to license and regulate the possession, use and transfer of materials (otherwise subject to the licensing jurisdiction of the Agreement State) to the extent that such possession, use and transfer do not constitute part of the act of disposal. It will be recalled that one of the major objectives of Section 274 of the Atomic Energy Act is to preclude regulation of the same activity by the AEC and the Agreement State (that is, 'dual licensing'). The circumstances and temporal sequence of the activities involving sea disposal operations will have to be carefully scrutinized to determine what part of the activities can be legitimately considered as constituting the act of disposal. It is recognized that there will be grey areas and that in some cases it will be quite difficult to isolate the act of disposal from ancillary acts that are closely related. In this connection, Part 150 appears to distinguish between 'transfer', 'storage', and 'disposal'. Section 150.15(a)(3) speaks only of 'disposal' into the ocean or sea, while Section 150.15(a)(4) speaks of

the 'transfer, storage or disposal' of certain radioactive waste material. Section 150.15(a)(1)(i) speaks of the 'storage and handling' of certain radioactive wastes but not the 'disposal' thereof, while Section 150.15(a)(5) speaks of the 'disposal' of certain byproduct, source and special nuclear material but not their transfer and storage. Close coordination with the officials of the affected Agreement State is obviously indicated in cases involving sea disposal operations." ^{6/} (In this regard, see also Section II.B, below.)

Comment:

With regard to "disposal into the ocean or sea" as used in 10 CFR 150.15 (a)(3), certain disposals may be regarded as releases to unrestricted areas and not "disposal into the ocean or sea" per se. In a letter to the Texas State Department of Health from E. R. Price, Director, SLR, dated June 16, 1965, concerning the Todd Shipyards' operation for the U. S. Maritime Administration, it was stated:

"It appears to us, as you indicate it has to you, that Todd's present operations on the Atomic Servant barge and in the nuclear facilities building are not subject to AEC's jurisdiction. This conclusion would, in our view, also cover releases of wastes from the Atomic Servant barge, since we do not consider the area of Galveston Bay adjacent to the Todd Shipyards' location on Pelican Island as being the 'ocean or sea' as that term is used in 10 CFR 150.15 (a)(3)".

Other such cases may be encountered by the Compliance Regional Offices and when questionable or controversial should be referred to Compliance Headquarters.

E. Use of Radioactive Materials in Products Intended for Use by the General Public

"Section 150.15 (a)(6) provides that persons in Agreement States are not exempt from AEC licensing and regulatory requirements with respect to the transfer of possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material, intended for use by the general public. Consequently, such transfers may not be effected--either within or without an Agreement State--except pursuant to an AEC license.

"With respect to the meaning of 'products intended for use by the general public', the Statement of Considerations accompanying Part 150 reads, in part, as follows:

'Control over consumer type devices, such as luminous watches, would be retained by the Commission. The uncontrolled distribution of atomic materials in products designed for distribution to the general public, such as consumer type devices, and the ultimate uncontrolled release of these materials into the environment, involve questions of national policy which have not yet been resolved. It is for this reason that the Commission is retaining control over such products. The Commission recognizes that the phrase 'products designed for distribution to the general public' is not precise. The purpose of the provision, however, will be discussed with each Agreement State; serious difficulties in interpretation of the phrase are not anticipated.' " 6/

F. Control of Import and Export of Radioactive Materials

1. Import-Export Activities Subject to AEC Control

"AEC specific licenses may authorize the conduct, within a given State, of various activities, included among which may be the export or import of radioactive material. Should the State in question assume licensing and regulatory jurisdiction pursuant to a Section 274 agreement, the AEC license will continue to be applicable to the authorized acts of exportation and importation--notwithstanding the fact that other activities specified in the AEC license become subject to the licensing jurisdiction of the Agreement State.

"By virtue of the provisions of Section 150.15 (a)(2), persons in Agreement States are not exempt from AEC licensing and regulatory requirements with respect to the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility. The same principles set forth above in connection with the sea disposal of radioactive wastes are applicable also to the export-import area. That is, the reservation of AEC licensing authority with respect to exporting and importing should be construed as applying only to the act of exportation or importation and not as affecting the authority of an Agreement State to license and regulate the possession, use and transfer of the materials to the extent that such possession, use and transfer do not constitute part of the act of exportation or importation.

"The general licenses issued under Sections 40.23(a) and 40.23(b) authorize any person, whether located in an Agreement State or a non-Agreement State, to export certain source material (but subject to specified conditions). The general export license issued under Section 40.23(c), however, is subject to the condition, among others, that the defined counterweights have been manufactured under a specific license issued by the Commission. Thus, although an Agreement State would have jurisdiction to license the manufacture of the counterweights, the general AEC license under Section 40.23(c) would not authorize the export of counterweights manufactured under an Agreement State license.

"Section 30.33(a) provides that no licensee shall export byproduct material from the United States except as authorized pursuant to Section 30.33. Sections 30.33(b) and 30.33(c) authorize any licensee to export byproduct material covered by his license to certain foreign countries (subject to certain conditions). While the term 'licensee' is not defined in Part 30, the term 'license' is defined in Section 30.4(f) as meaning (except where otherwise specified) a license issued pursuant to the regulations in Part 30. Consequently, the general licenses issued under Sections 30.33(b) and 30.33(c) apply only to AEC licensees and not to Agreement State licensees." 6/

2. Authorization to Import and Export under a Valid or Unexpired AEC License

"The preamble to byproduct material licenses issued by the AEC states in part '. . . a license is hereby issued authorizing the licensee to receive, acquire, own, possess, transfer and import byproduct material listed below. . .' (emphasis added). In addition, 10 CFR 30.32(c) states, 'Except as otherwise provided in the license, a license issued pursuant to the regulations in this part shall carry with it the right to receive, acquire, own, possess and import byproduct material and to transfer such material to other licensees within the United States authorized to receive such material.'

"The provisions of 10 CFR 150.15(a)(2) state that persons in Agreement States are not exempt from the Commission's licensing and regulatory requirements with respect to the export from or import into the United States of byproduct, source, or special nuclear material.

"Recently SLR has issued to licensees in Agreement States specific licenses authorizing the import of byproduct material. We have been informed by SLR that the issuance of such licenses is not really necessary if the AEC license held by the person in an Agreement State has not expired and authorizes the same material. Therefore, all AEC licenses, the responsibility for which has been completely or partially transferred to Agreement States, still allow the import of byproduct material to the same extent which they did before the effective date of a State agreement. This applies even though the licensee may have received a State license authorizing all or some of the activities (except for import) previously authorized by his AEC license. When the AEC license expires and the licensee operates only under a State license, he is no longer allowed to import byproduct material.

"If an AEC license is issued to an address within an Agreement State for use only in non-Agreement States, then the licensee would be allowed to import byproduct material only to locations in the non-Agreement States.

"Because of the problems in explaining to licensees the above situation, SLR has found it administratively expedient to issue specific licenses authorizing the import of byproduct material to licensees operating within Agreement States when such licensees have applied for a separate import license. However, the issuance of such licenses should not be construed to imply that such a license is necessary for those persons still holding a valid (unexpired) AEC license." 8/

II. Jurisdiction Transferred to an Agreement State

A. Activities Conducted on Federal Lands not Subject to "Exclusive Federal Jurisdiction"

"For federally-owned lands within an Agreement State other than lands subject to 'exclusive federal jurisdiction', or 'partial jurisdiction' sufficiently broad to encompass protection against radiation hazards, the Agreement State would have the authority to license and regulate activities on such lands for purposes of protection against radiation hazards. In other words, activities on such lands would be subject to the authority of the Agreement State to the same extent as activities conducted on lands owned by private persons." 3/

B. Activities Conducted on the High Seas

"Section 274 authorizes the Commission to discontinue its regulatory authority with respect to the specified 'materials within the State'. The Agreement states that 'the Commission shall discontinue . . . the regulatory authority of the Commission in the State.' We believe that the underlined terms refer to jurisdictional limits rather than geographical boundaries. This conclusion is implicit in the prior decision that activities conducted on lands subject to exclusive federal jurisdiction remain subject to AEC regulation.

"U. S. law recognizes that a State may govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest so long as there is no conflict with federal law. We are not aware of any conflicts which would prevent the state from adopting and enforcing state laws and regulations applicable to the activities in question." 2/

Comment:

That is, an agreement State has regulatory authority over activities conducted by its licensees upon the high seas, except where such authority has been retained by the Commission (as for example, sea disposals of byproduct, source, or special nuclear material wastes).

C. Amendment of AEC Licenses within the State to Reflect the Assumption by the State of Certain Regulatory Responsibilities

"Certain AEC licensees are authorized by their licenses to conduct activities in several States. Upon the execution of a Section 274 agreement with one of those States, the activities in the Agreement State (covered by the agreement) are no longer subject to AEC licensing and regulatory jurisdiction and the AEC license should be amended to reflect that fact." 6/

III. Areas of Shared Responsibility - Cooperative Effort

A. Reciprocity

Section 150.20 of Part 150 grants a general license to Agreement State specific licensees to conduct the same activity in non-Agreement States as authorized by the Agreement State specific license. This general license is conditioned with, among other things, a provision authorizing temporary use in non-Agreement States of up to 20 days in any period of 12 consecutive months. The

temporary use provision includes use on lands subject to "exclusive federal jurisdiction" when such lands are located within any Agreement State. That is, Section 150.20 authorizes temporary use on lands subject to "exclusive federal jurisdiction" within Agreement States as though such lands were non-Agreement States.

In this regard, when an Agreement State assumes regulatory authority over a licensee's activities within the State, an unexpired AEC specific license remains valid for those activities authorized in non-Agreement States and on lands within the Agreement State which are subject to "exclusive federal jurisdiction". While the AEC license remains valid, the licensee may conduct those activities authorized on federal property within Agreement States and in those non-Agreement States specified in the license without being subject to the reciprocity limitations contained in Section 150.20. From the date of expiration or termination of the AEC license, however, the reciprocity provisions apply provided the Agreement State specific license remains valid.

B. Transfer of Materials Between Agreement and Non-Agreement State Licensees

"The general AEC regulatory provisions relating to the transfer of materials are as follows: Sections 30.3, 40.3 and 70.3 preclude, among other things, the transfer of byproduct material, source material and special nuclear material, respectively, except as authorized in a license issued by the Commission. Sections 30.32(a) and 40.41(c) provide, among other things, that except as otherwise provided in the license, licenses issued pursuant to Parts 30 and 40 carry with them the right to transfer the byproduct material and source material, respectively, to other licensees within the United States authorized to receive the material; Section 70.42(b)(2) provides that any licensee may transfer special nuclear material to a licensee whose license authorizes him to receive the material.

"While it may be presumed that the Agreement States will have counterpart or similar regulations, the regulations of the Agreement State are applicable, of course, only to activities carried on within the State. However, Section 150.20(a) provides that, subject to the provisions of Section 150.20(b), any person who possesses a specific license from an Agreement State is granted a general license to conduct the same activity in non-Agreement States.

This general license is subject to the further condition that the specific license (from the Agreement State) does not limit the activity authorized by the license to specified installations or locations. The restrictions set forth in Section 150.20(b) are applicable to a person who engages in activities in a non-Agreement State under the AEC general license provided in Section 150.20(a)--notwithstanding any provision to the contrary in any specific license issued by the Agreement State. The most directly pertinent of those restrictions is found in Section 150.20(b)(2) which provides that the AEC general licensee shall not in any non-Agreement State transfer or dispose of radioactive material possessed or used under the general license except by transfer to a person specifically licensed by the Commission to receive such material. The AEC general license is also subject to Parts 20 and 31, as well as to certain specified provisions of Parts 30, 40 and 70." 6/

C. Generally-Licensed Devices

"There are certain classes of devices (not products designed for distribution to the general public) containing byproduct material which may be used under AEC general licensing provisions contained in Section 30.21(c). Such products, if manufactured in an Agreement State pursuant to a specific license from the State, may be transferred to users in non-Agreement States and used by the users, under the AEC general licensing provisions of Part 30. More specifically, Section 30.21(c)(1) provides that, subject to the provisions of Sections 30.21(c)(2) to 30.21(c)(6), a general license is issued to own, receive, acquire, possess and use byproduct material when contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation leakage, or qualitative or quantitative chemical composition, or for producing light in an ionized atmosphere. Section 30.21(c)(2) provides that this general license applies only to devices which have been manufactured in accordance with the specifications contained in a specific license issued by the AEC to the manufacturer of the device pursuant to Section 30.24(f), or in accordance with the specifications contained in a specific license issued to the manufacturer by the Agreement State; and installed on the premises of the general licensee by a person authorized to install such devices under a specific license issued to the installer by the Commission pursuant to Part 30 or by an Agreement State, provided that the specific license issued to the manufacturer by the AEC or the Agreement State contains provisions authorizing the transfer of such devices to, and the installation of such devices on the premises of, general licensees. However,

the person possessing or using the device under the AEC general license may not, in view of the provisions of Section 30.21(c)(4)(i), transfer, abandon or dispose of the device, except by transfer to a person authorized by a specific license from the AEC or an Agreement State to receive the device; nor may the AEC general licensee, in view of the provisions of Section 30.21(c)(5), export the byproduct material without a specific AEC license authorizing the export. In addition, it should be noted that any person holding a specific license issued by an Agreement State authorizing the holder to manufacture, install or service a device described in Section 30.21(c)(1) within the Agreement State is granted, under Section 30.21(c)(6), a general AEC license to install and service the device in any non-Agreement State, subject to certain reporting, labelling and other requirements.

"There are (in addition to the general license provided for in Section 30.21(c)) other general AEC licenses, relating to devices, granted under Section 30.21--more specifically, under Sections 30.21(a)(1) and 30.21(d)(1). With respect to the manufacture within the borders of an Agreement State of any devices of the types specified in those two general licenses, such manufacture is, of course, subject to the licensing jurisdiction of the Agreement State. (The important point to note here is that, except as provided in Section 150.15, the manufacture, production, receipt, possession, use, and transfer in an Agreement State of all byproduct material, source material, and special nuclear material in quantities not sufficient to form a critical mass are exempt from AEC licensing and subject to licensing by the Agreement State. The retained AEC jurisdiction (Section 150.15(a)(6) over products intended for use by the general public relates not to the manufacture or other use of the material in the Agreement State, but only to the transfer of possession or control by the manufacturer, processor, or producer.) As to their distribution and transfer after manufacture, the two AEC general licenses in question are inapplicable since they are conditioned upon manufacture pursuant to an AEC license. Hence, the transferee in non-Agreement State is required to have a specific AEC license." 6/

Comment:

With regard to the AEC general licenses granted under 30.21(d)(1) as discussed immediately above, this section was amended by publication in 30 F.R. 3374 on March 13, 1965. The new 30.21(d)(1) revised the general license provisions to permit transferees in non-Agreement States to own, receive, acquire, possess and use those devices specified when manufactured, assembled, or imported pursuant to an AEC

specific license or manufactured or assembled in accordance with a specific license issued by an Agreement State which authorizes manufacture or assembly of the devices for distribution to persons generally licensed by the Agreement State. A similar revision has not been made with regard to 30.21(a)(1); therefore, the above discussion is appropriate for devices generally licensed in that section, some of which are intended for distribution to the general public and some of which are not.

D. General Licenses Issued by AEC and Agreement States

"AEC regulations provide for a variety of general licenses-- for example, Sections 40.22 and 30.21(a). In general, any legal entity, such as a corporation, possesses only one general license of any given type. The fact that branches (not separately incorporated) of a corporation may be in separate locations does not affect that conclusion. Presumably, Agreement States will grant general licenses which are similar to or the counterparts of certain AEC general licenses. With respect to any general license of a given type which is granted by both the AEC and an Agreement State, the State license will, of course, be applicable only within the borders of the State and the AEC general license will be applicable in all non-Agreement States. Assuming that the State and AEC general licenses are the same, the same person can be generally licensed to possess twice the amount permitted by the AEC general licenses. And the total amount permitted to be possessed within the United States would, of course, be proportionately increased if other Agreement States (with the same general license) were involved. A person, then, may have a generally licensed quantity from each of the several licensing authorities so long as the quantity he possesses in any one jurisdiction does not exceed the quantity authorized by the general license of the jurisdiction." 6/

E. AEC Inspection of AEC General Licensees Holding Agreement State Licenses

"The general AEC license granted under Section 150.20(a), which has been discussed above, authorizes any person who possesses a specific license from an Agreement State to conduct the same activity in non-Agreement States. That AEC general license, however, is specifically made subject to certain provisions of Sections 30, 40 and 70--among which are Sections 30.43, 40.62 and 70.55. These three Sections afford the AEC the right to inspect the materials, premises, and facilities in question, as well as the relevant records. Consequently, the AEC general licensees' activities in non-Agreement States are clearly subject to inspection by the AEC.

"Section 30.21(c)(6) (also discussed above) provides that any person who holds a specific license issued by an Agreement State authorizing the holder to manufacture, install or service a device described in Section 30.21(c)(1) within the Agreement State is granted an AEC general license to install and service the device in any non-Agreement State. All the general AEC licenses granted under Section 30.21 are, by virtue of Section 30.21(b), made subject to the provisions (relating to AEC inspection) of Section 30.43 (among others). (Further, Section 30.21(c)(5) makes the AEC general license granted under Section 30.21(c)(1) subject to the provisions of Section 30.43.) Thus, a person holding an AEC general license under Section 30.21(c)(6) is subject to AEC inspection. This may mean, of course, that the same person will be inspected by both the Agreement State and the AEC--with the Agreement State inspecting the manufacturing activities which are conducted within the Agreement State pursuant to State license and the AEC inspecting the servicing and installation activities conducted in the non-Agreement State. In addition, one of the purposes of the AEC inspection might be to determine whether or not the device was in fact manufactured in accordance with the specifications contained in the specific license issued to the manufacturer by the Agreement State since this is one of the requirements of the AEC general license." 6/

F. "Bucket" Type Activities

"Several questions have been raised with regard to the respective responsibilities of the AEC and the State for licensing in situations in which a quantity of special nuclear material is intimately mixed in a single 'bucket' with a quantity of source and/or byproduct material and possessed by a person who is authorized to possess a total quantity of special nuclear material in excess of a critical mass.

"Because of the division of jurisdiction required under Section 274, it does not appear that agreement could be reached for either the AEC or the State to have total jurisdiction of the 'bucket'. We suggest that the present procedure whereby the AEC and the State license the materials and activities under their respective jurisdictions be continued, subject to reconsideration if problems develop in the joint regulation of 'bucket' type activities." 10/

Comment:

It is expected that the more common 'bucket' problems which will be encountered will involve irradiated reactor fuel elements, and, to a

much lesser extent, separated byproduct materials which decay to special nuclear material. Such problems will most likely be encountered at production or utilization facilities where source or byproduct materials are intimately mixed with special nuclear materials and the licensee is authorized to possess a total quantity of special nuclear material sufficient to form a critical mass. Such problems may also be related to the site description contained in the applicable Price-Anderson indemnity Agreement (see Section I.C, above).

Where 'bucket' problems are encountered and jurisdiction is uncertain or controversial, the responsible Compliance Regional Office should promptly notify Compliance Headquarters of the nature of the problem and the circumstances involved so that GC may be consulted as necessary or desirable to resolve the problem. In such cases, however, it may be desirable for the responsible Compliance Regional Office to pursue the matter in cooperation with the Agreement State involved until final resolution of the matter of jurisdiction has been made. (See, for example, Section IV.B, below.)

IV. Examples of Resolution of AEC-Agreement State Jurisdiction Problems

A. A Licensed Facility Problem (Price-Anderson Boundary)

During a routine inspection of the Triga-Mark I Nuclear Reactor at the University of Texas, Austin, Texas, it was noted that the licensee was utilizing a 23-millicurie cobalt 60 sealed source within the facility for demonstrations to students, detector calibration and dosimetry studies.

Although use of the sealed source was confined to the Nuclear Reactor Laboratory, which is within the Price-Anderson boundary, the source was licensed by the State of Texas.

During the course of the inspection, it was noted that as a result of use of the source in the Nuclear Reactor Laboratory, two items of noncompliance had resulted: (1) excessive levels of radiation had been created in an unrestricted area, and (2) the licensee had failed to perform a survey to evaluate the radiation levels in the unrestricted area.

In forwarding the inspection report for formal enforcement action, the memorandum of transmittal stated in part:

"The jurisdiction question was raised regarding a cobalt-60 source, licensed by the State of Texas, and normally used in the Reactor Laboratory building. It was found that the use of this source resulted in noncompliance with provisions of 10 CFR Part 20 with respect to radiation levels and radiation surveys in unrestricted areas. While State authorities appeared to feel that this matter was under AEC jurisdiction, the licensee was of the opinion that, since the source was licensed by the State, any enforcement action related to its use should be initiated by the State. . . . It is now our understanding that since the activities in question at Texas were being carried out within the Price-Anderson indemnity area, they are subject to AEC regulation."

In informing the licensee of the Commission's position regarding jurisdiction at the facility, a subsequent letter from the Division of State and Licensee Relations to the University of Texas dated October 27, 1964, stated in part:

"We understand that a 23 millicurie cobalt-60 source is being used in the Main Reactor Laboratory, Room 131 of Taylor Hall, on a continuing basis. Since the site of use of the source is within the reactor location, as described in Indemnity Agreement No. E-25 between the University and the Atomic Energy Commission, the possession and use of the source is subject to regulation by the Commission rather than the State of Texas. Accordingly, it will be necessary that the University file an application for an AEC license covering the source."

Comment:

Because of the definition of "the radioactive material" as used in 10 CFR 140, the above decision that the University obtain a specific license for use of the 23 millicurie cobalt-60 source within the facility was reversed by a letter from E. R. Price, Director, SLR, to the University, dated March 25, 1965, which was concurred in by OGC. This letter states in part:

"Based on our further review of your possession and use of the 23 millicurie cobalt-60 source, - - - we have concluded that the source is subject to regulation by the State of Texas rather than by the Commission. Accordingly, it is not necessary that the University file an application for an AEC license as stated in our letter of October 27, 1964."

B. A "Bucket" Problem

In June, 1964, the General Electric Company, Vallecitos Atomic Laboratory, Pleasanton, California, reported to the AEC and the State of California an incident involving the overexposure of an individual to radiation which occurred when licensee personnel were conducting a hydrostatic test on an irradiated reactor fuel element in a hot cell in the Radioactive Materials Laboratory. The incident occurred when a fitting on the water input line developed a leak which was repaired prior to discovery that the water released was contaminated with byproduct materials, principally cesium-137. The high-level contamination caused an overexposure to the hands and whole body of one individual.

From the outset of this case, there was a question of whether AEC or the State of California had jurisdiction. All work with byproduct materials at the Vallecitos Atomic Laboratory is done under State of California license. No AEC byproduct material license exists for this facility. However, all work with special nuclear material and all reactor activities at this location are licensed by the AEC.

The incident involved a section of reactor fuel containing special nuclear material, but the contaminating material which caused the overexposure was all byproduct material. The building in which the incident occurred was not included in the Price-Anderson Indemnity site description.

Because a question of jurisdiction was involved from the outset of this case, a joint AEC-State of California investigation was conducted. However, it was subsequently decided at Headquarters that since the material which caused the overexposure was byproduct material and since the incident occurred outside the Price-Anderson boundary, the State of California was responsible for conducting the investigation and for taking any necessary enforcement action.

C. A Problem of Determining the Status of Land at a Government-Owned Facility

On November 3, 1964, during conduct of radiography at the NASA Mississippi Test Facility, Hancock County, Mississippi, a licensee's radiographer was overexposed to a sealed source of iridium 192 when he failed to return the source to its shielded condition prior to preparing for the next exposure. The licensee involved was licensed both by AEC and the State

of Mississippi. However, because the radiography was being conducted at a Government-owned facility for which the jurisdictional status had not been determined, an investigation was conducted by the AEC with the results discussed in detail subsequently with representatives of the State of Mississippi.

During the conduct of the investigation it was learned that the facility was being constructed for NASA by the U. S. Army Corps of Engineers. Subsequently, in November 1964, Region II, Division of Compliance, determined that the Real Estate Division, Corps of Engineers, Mobile, Alabama, was acquiring the land at the Mississippi Test Facility for NASA and that, so far as they were aware, the land was not subject to "exclusive federal jurisdiction". This information was transmitted to the Office of the General Counsel, AEC, on November 9, 1964, with a request to make a determination in writing of the jurisdictional status of the NASA Mississippi facility.

On December 1, 1964, OGC inquired of the Office of the Chief of Engineers, Headquarters, Department of the Army, Washington, D. C., concerning the land in question and was advised on December 15, 1964 by their General Counsel:

"This is in further reply to your letter of 1 December 1964 concerning the status of Federal jurisdiction over that portion of the Mississippi Test Facility, NASA, located in Hancock County, Mississippi.

"The Division Engineer, U. S. Army Engineer Division, South Atlantic, at Atlanta, Georgia, which office has field responsibility for construction and real estate at the facility, reports that no request has been received from NASA to initiate action to secure cession to the United States of jurisdiction over lands at that location."

As a result of this communication, on December 23, 1964, OGC advised Compliance:

"From this information it appears that activities involving radioactive materials at the NASA Mississippi Test Facility in Hancock County, Mississippi, are subject to regulation by the State of Mississippi (unless some other reserved authority of the Commission is encountered, e.g., special nuclear materials in quantities sufficient to form a critical mass.)"

It is of significance to note that section and tract numbers at the NASA site were not necessary, and, in fact, may not be necessary in a majority of cases, in determining the jurisdictional status on federal lands. However, the effort expended in determining verbally who was responsible for acquiring the land and construction of the facility, materially assisted in making the final determination in writing of the jurisdictional status in this case.

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3. Memorandum, H. K. Shapar, OGC, to Those Listed Below, Subject: "Regulation of Atomic Energy Activities Conducted on Federally-Owned Land in Agreement States", dated June 5, 1963.
4. Memorandum, H. K. Shapar, OGC, to F. Western, RPS, R. Lowenstein, LR, L. D. Low, CO, Subject: "Determining Whether a Person Possesses Special Nuclear Material in a Quantity Not Sufficient to Form a Critical Mass", dated June 25, 1963.
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7. Memorandum, E. R. Price, LR, to L. Johnson, LR, Subject: "License Condition Providing Temporary Use in Other States", dated August 17, 1962.
8. Memorandum, L. Dubinski, CO:HQ, to D. I. Walker, CO:IV, Subject: "Import of Byproduct Material by Licensees in Agreement States", dated June 20, 1963.
9. Letter, E. R. Price, SLR, to General Dynamics Corporation, dated September 12, 1963.
10. Extract from "AEC Views on Remaining Open Items Discussed at May 8-9 Meeting of Agreement States".

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