

46  
OCT 11 1983

Ref: SA/KNS

Mr. Joel Smith, Administrator  
Office of Air Quality and Solid Waste  
South Dakota of Water and Natural  
Resources  
Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501

Dear Mr. Smith:

This is in response to your letter dated September 13, 1983 to Mr. Gary Sanborn requesting NRC review of South Dakota's Radiation Control Laws. For our review, we compared South Dakota's laws to the Radiation Control Act from the Suggested State Legislation (SSL) 1983, Volume 42 published by the Council of State Governments (Enclosed).

You specifically requested comments on the following questions:

1. Do they allow us and NRC to enter into agreement status,
2. Are the provisions of the law adequate to address low-level waste disposal,
3. Are the penalty provisions adequate, and
4. Any other needs that NRC feels South Dakota should address in future legislation.

In response to Question 1, Section 34-21-3 authorizes the Governor to enter into agreement with the federal government and this aspect appears adequate. However, we have identified a number of significant problems. For example, some of the definitions are not consistent with the Atomic Energy Act of 1954 as amended, and some provisions of the South Dakota Laws raise questions of federal preemption.

With regard to question 2, the provisions of the law do not adequately address low-level radioactive waste disposal. For example, Section 34-21-2, Definitions does not contain definitions for low level radioactive waste, disposal of low-level radioactive waste, high level waste, or closure. The law also contains no provisions on Low-Level Radioactive Waste Disposal (Section 9 of SSL) or Surety Requirements (Section 11 of SSL).

8501300541 840809  
PDR FOIA  
PAYB4-550 PD/r

With regard to question 3 the State appears to have provisions for criminal proceedings but no civil penalties. We encourage Agreement States and States entering into agreements to obtain civil penalty authority.

In response to your last question, we believe South Dakota can benefit by adopting legislation that closely follows the Suggested State Legislation. As Mrs. Schneider discussed with you on October 4, 1983, there are also a number of provisions and areas that should be covered by the law. Our detailed comments on Chapter 34-21 are enclosed.

We would be willing to meet to discuss our detailed comments on your present law and the proposed legislation that South Dakota is preparing if you feel that would be beneficial. In addition, we will need a copy of chapter 1-26 to complete our review.

If I can be of further assistance, please contact me at 301-492-7767.

Sincerely,

Donald A. Nussbaumer  
Assistant Director for  
State Agreements Program  
Office of State Programs

Enclosure:  
As stated

Distribution:  
KNSchneider  
SA R/F  
Dir R/F  
R.Doda, w/encl.  
RFonner, w/encl.  
South Dakota file (fc) w/encl.

SA

SA

ELD

KNSchneider/bh DANussbaumer RFonner

10/7/83

10/11/83

10/ /83

Comments on South Dakota Law - Chapter 34-21

<u>No.</u>	<u>Reference</u>	<u>Comment</u>
1	1	This section, which addresses State Policy encourages the constructive uses of radiation and control of harmful effects. In comparison to Section 2 of the Suggested State Legislation (SSL), we would expect more emphasis on the regulatory aspect and less on "promoting."
2	1.1	This section deals with the Governor's approval for all waste disposal in the State of South Dakota. There is no definition for low-level radioactive waste, disposal or containment. In addition, it is not clear what containment refers to. Would this apply to storage for decay? Some of the areas referred to may presently be preempted by the Federal government.
3	2	<p>This section contains 11 definitions and has several significant problems.</p> <p>(a) The definitions of byproduct, source and special nuclear material are inconsistent with the Atomic Energy Act of 1954, as amended.</p>

(b) The law has no definition for civil penalties, closure, decommissioning, disposal of low-level radioactive waste, high level waste, low-level radioactive waste, non ionizing radiation, registration sources material mill tailings, sources material milling spent nuclear fuel and transuranic.

(c) The definition of "Person" should be reworded to indicate that person does not include federal government agencies. South Dakota's definition only excluded AEC, successors and federal agencies licensed by AEC. This would not exclude DOD.

4

13

Programs for Regulation and Inspection - Preoperational Environmental Radiological Monitoring Plans require any governmental agencies involved in uranium exploration mining, milling, or processing to submit monitoring plans to the State. This raises a question of Federal preemption.

5

17

(Need ELD input regarding this section. Does it raise any federal preemption problem since it only requires the S.D. agency to request information from federal agencies).

- 6        28        This section deals with the States authority for inspections. It does not include language that exempts entry by the State into areas under the jurisdiction of the federal government unless concurred in by the federal government.
- 7        31,32,14        The State appears to have the authority to issue orders and impound sources of radiation. However, we need to review chapter 1-26 to substantiate this conclusion.
- 8        34-41        These sections deal with administrative procedures and judicial review and refer to chapter 1-26. We will need to review this chapter to judge the acceptability of these sections.
- 9        47,48,49        These sections require the U.S. government to notify the Governor before transportation of any radioactive waste in the State. This raises the issue of Federal preemption. (Note, any VA hospital could not dispose of its low-level radioactive waste until it notified the Governor).
- 10               The law contains no provisions on the following items (Section reference are for the SSL):

Section 6 - Advisory Committee on Radiation

Section 8 - Sources Material Processing and

related [Byproduct Material][Mill Tailings]

Section 9 - Low-Level Radioactive Waste Disposal

Section 10 - Radiation User Fees

Section 11 - Surety Requirements

Section 16 - Conflicting Laws

Section 18 - Injunction Proceedings - may be covered  
in sections referred to in comment 7

Section 21(b) - Civil penalties