

## DEPARTMENT OF HEALTH SERVICES

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August 23, 1996

To: Base Commanders  
Interested Parties

Subject: Radioactive Materials Licensing for Cleanup/Remediation

The California Department of Health Services (Department) has been designated as the agency responsible for administering programs to protect the citizens of California from unnecessary exposure to radioactive materials (Health and Safety Code §114705 et. Seq.). As such, it is the Department's responsibility to ensure that radiological cleanup and remediation activities, being performed by contractors and subcontractors at military bases, are conducted in an adequate manner by properly licensed entities. Remediation efforts performed by a contractor who is not properly licensed for radiological work could be called into question when a request is made for unrestricted release of the property.

To assist the military and their contractors in meeting the appropriate requirements, a copy of a transmittal of information from the U.S. Nuclear Regulatory Commission to the Agreement States on this subject and a flow chart which should be used to determine the appropriate radioactive materials licensing needed under varying circumstances, are enclosed. This effort is generated in support of the Interagency Agreement between the Department of Toxic Substances Control (DTSC) and the Department. Through this agreement the Department provides radiological support to the California Environmental Protection Agency to address problems at military facilities identified in the Defense State Memorandum of Agreement.

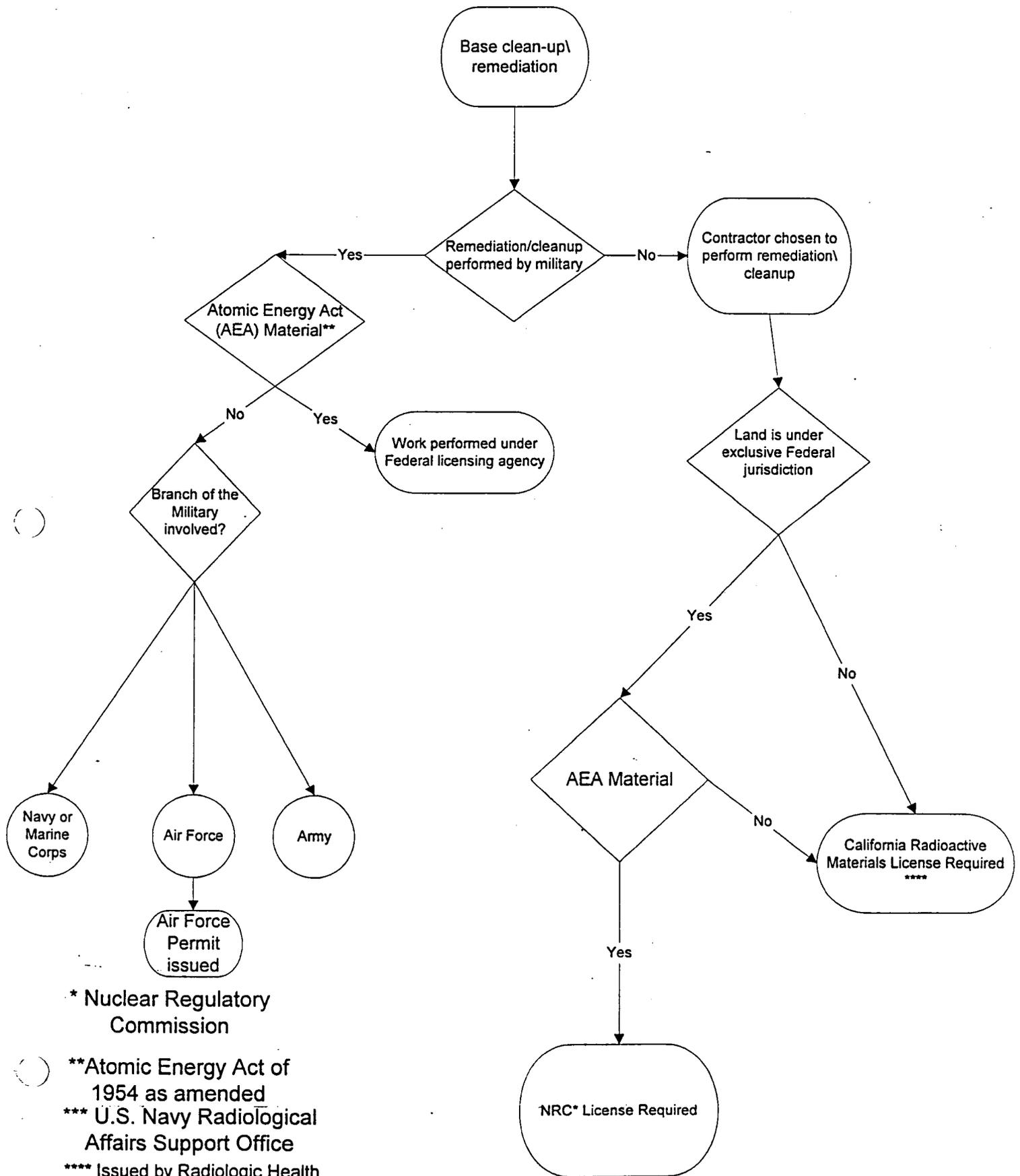
Should you have questions regarding this information, please contact Darice G. Bailey of the Environmental Management Branch at (916) 324-2209 or your DTSC contact.

A handwritten signature in black ink that reads "Jack S. McGurk".

Jack S. McGurk, Chief  
Environmental Management Branch

Enclosures

# Licensing Authority for Radiological Decommissioning/Clean-up Activities



\* Nuclear Regulatory Commission

\*\*Atomic Energy Act of 1954 as amended

\*\*\* U.S. Navy Radiological Affairs Support Office

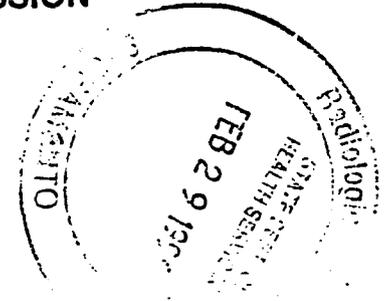
\*\*\*\* Issued by Radiologic Health Branch/ California Department of Health Services (916) 445-0931



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 16, 1996



ALL AGREEMENT STATES  
MASSACHUSETTS, OHIO, OKLAHOMA, PENNSYLVANIA

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-96-022)

Your attention is invited to the attached correspondence which contains:

INCIDENT AND EVENT INFORMATION.....

PROGRAM MANAGEMENT INFORMATION.....

TRAINING COURSE INFORMATION.....

TECHNICAL INFORMATION.....

OTHER INFORMATION.....XX

LICENSEE JURISDICTION  
DETERMINATION PROCEDURE &  
STANDARD LICENSE CONDITION

Supplementary information:

Enclosed is the final recommended procedure for determining jurisdictional status at a Federal facility (e.g., exclusive Federal jurisdiction) (Enclosure 1) and a revised suggested license condition for Agreement State temporary jobsite licenses (Enclosure 2). Attachment 1 to this procedure is designed to be used by Agreement State licensees to obtain jurisdictional determinations when they intend to work at Federally controlled sites. The NRC's intent in preparing this procedure is to increase the efficiency by which jurisdictional determinations are made. NRC cannot effectively maintain accurate information regarding the jurisdictional status of Federal lands or facilities throughout the country, because of the large number of sites and the fact that their status is constantly changing. Accordingly, pursuant to this procedure, NRC is urging licensees to contact the local Federal agency or military base directly, in order to reduce the time and resources required to obtain such information. We request that you send a copy of Attachment 1 of this procedure to your temporary jobsite licensees.

In All Agreement States Letter SP-95-174, we provided information and draft guidance on jurisdictional determinations and reciprocity, and we requested your review and comment. The following is a summary of major comments received to date and staff remarks addressing them:

1. It was suggested that asking licensees to obtain written statements from Federal agencies is costly and time consuming.

Response: The procedure has been modified slightly to indicate that a written response from the cognizant agency is preferable but not necessary. We believe that a written statement from the agency is preferable as it provides a permanent record for use by the licensee in future activities. However, we understand that reciprocity activities often involve time constraints.

In addition, we note that it is not our intent to impose any additional requirements on licensees through this procedure. Accordingly, the language has to be changed to stress that written statements are recommended.

2. It was suggested that Agreement States could, under contract, regulate radioactive materials at Federal facilities in Agreement States.

Response: The use of AEA radioactive material at Federal facilities in Agreement States is subject to regulation by the NRC or the Agreement State in which the facility is located. The following factors determine which agency regulates AEA material in that State:

- a. Federal agency licensees are regulated by the NRC.
- b. Non-Federal licensees operating in areas subject to exclusive Federal jurisdiction are regulated by the NRC.
- c. Non-Federal licensees operating in areas that are not subject to exclusive Federal jurisdiction are regulated by the Agreement State in which the facility is located.

Staff is exploring the possibility that Agreement States could perform NRC functions under contract with NRC, such as inspection of Federal licensee activities or activities conducted in areas of exclusive Federal jurisdiction at Federal facilities. While such activities by Agreement States on NRC's behalf may be possible, we note that wholesale transfers of jurisdictional responsibility cannot be achieved by contract as the comment suggests.

3. It was suggested that there are few areas of exclusive Federal jurisdiction and that the remaining areas are declining. Agreement States should, therefore, assume that they have regulatory authority throughout their State unless challenged. Any violations discovered would be shared with the licensee's issuing agency.

Response: We believe that such an approach may lead to legally invalid enforcement actions by the State in some cases if the State chooses to assume that it has authority unless challenged.

4. A question was raised regarding the fees paid by Agreement State licensees desiring to work in areas subject to NRC regulation. Specifically, Federal agency licensees are exempt from paying fees to the Agreement States in which they are located. Further, NRC licensees and licensees working under reciprocity in areas of exclusive Federal jurisdiction are exempt from paying fees to the Agreement State where the work is being performed. This creates a favorable advantage for the NRC licensee versus the Agreement State licensee.

Response: The NRC fee schedule is based on a Congressional mandate that NRC operate on user fees. Agreement States can elect not to charge fees, but NRC cannot. It should be noted that just as Agreement State licensees have to pay a fee to operate in areas of NRC jurisdiction, NRC licensees often have to pay a fee to Agreement States to operate in areas of Agreement State jurisdiction. We do not believe, in general, that NRC licensees enjoy an economic advantage over Agreement State licensees when it comes to fees.

5. It was suggested that the temporary jobsite standard license condition be expanded to address Agreement State licensees working in other Agreement States.

Response: We agree and have enclosed a revised standard license condition which we believe addresses this comment (see Enclosure 2).

A copy of the final Information Notice on temporary jobsite work on Federally controlled land in Agreement States will be sent to you at the time it is issued through routine distribution.

  
Richard L. Bangart, Director for  
Office of State Programs

Enclosures:  
As stated

Date: February 16, 1996

## **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 affect 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 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:

1. 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. 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.

ENCLOSURE 1

2. 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. A list of Federal agency headquarters contacts is contained in Attachment 2. Staff should also use these Federal agency headquarters contacts for assistance on jurisdiction determinations.
3. 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. A list of Agreement State agency contacts is contained in Attachment 3.

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 under 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 under 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 record should be made of the name and title of the person at the Federal agency who provided the determination and the date that it was provided.

Attachments:

Recommended Procedure For Licensees  
List of Federal Agency Contacts  
List of Agreement State Contacts

## **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 for your records the name and title of the person at the Federal agency who provided the determination and the date that it was provided.
  - i. If the work site is identified as falling 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.
  - ii. 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 under 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 under 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.

## LIST OF FEDERAL AGENCY HEADQUARTERS CONTACTS

1. Department of Agriculture (National Forests)  
Forest Service  
National Forest System  
Realty Management Branch  
P.O. Box 96090  
Washington, DC 20090-6090  
Contact: Mr. J. Kenneth Myers  
Tel# (703) 205-1248
2. Department of Defense -
  - a. U. S. Army - Corps. of Engineers (Army & Air Force)  
Real Estate Division  
20 Massachusetts Ave., NW  
Washington, DC 20314-1000  
Contact: Mr. Barry J. Frankel, Director  
Tel# (202-761-0483)
  - b. U.S. Navy (Navy & Marines)  
Installations & Facilities  
2211 Jefferson Davis Highway  
Arlington, VA 20360-2000  
Contact: Mr. John Simeon, Facilities Director  
Tel# (703) 602-2686
3. General Services Administration (VA & other non-military facilities)  
18th & F Street, N.W.  
Washington, DC 20405  
Contact: Ms. Sharon Roach, Associate General Counsel  
Real Property Division  
Tel# (202) 501-0430
4. Department of the Interior
  - a. National Park Service (National Parks)  
Land Resources Division  
800 N. Capitol Street, N.W.  
Washington, DC 20002  
Contact: Mr. William D. Shaddock, Director  
Tel# (202) 343-4828
  - b. Bureau of Land Management (BLM Lands)  
1849 C Street N.W.  
Washington, DC 20240  
Contact: Mr. W. Hord Tipton, Assistant Director  
Tel# (202) 208-4201

**FOR THE LATEST LISTING OF FEDERAL AGENCY CONTACTS AND TELEPHONE NUMBERS,  
CONSULT THE FEDERAL EXECUTIVE DIRECTORY OR YOUR LOCAL TELEPHONE DIRECTORY.**

Kirksey E. Whatley, Director  
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**SUGGESTED LICENSE CONDITION FOR AGREEMENT STATES  
TO INCLUDE ON TEMPORARY JOBSITE LICENSES**

Radioactive material shall be used only at the following locations:

- a. Street Address, City, State
- b. Radioactive materials may be used at temporary jobsites, in areas not under exclusive Federal jurisdiction, throughout the State of \_\_\_\_\_.

Before radioactive materials can be used at a temporary job site at any Federal facility, the jurisdictional status of the job site must be determined. If the jurisdictional status is unknown, the Federal agency should be contacted to determine if the job site is under exclusive Federal jurisdiction. A response should be obtained in writing or a record should be made of the name and title of the person at the Federal agency who provided the determination and the date that it was provided. Authorization for use of radioactive materials at job sites under exclusive Federal jurisdiction shall be obtained either by: (1) filing a NRC Form-241 in accordance with 10 CFR 150.20(b), "Recognition of Agreement State Licenses,"; or (2) by applying for a specific NRC license.

Before radioactive material can be used at a temporary job site in another State, authorization shall be obtained from the State if it is an Agreement State, or from the NRC for any non-Agreement State, either by filing for reciprocity or applying for a specific license.