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Office of Governor



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March 17, 2000

The Secretary
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001
Attn: Rulemakings and Adjudications Staff

Re: Advance Notice of Proposed Rulemaking: Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste

Dear Mr. Secretary:

The Pueblo of San Ildefonso vigorously supports proposed NRC rule changes requiring advance notification to Native American Tribes of shipments of certain types of high-level radioactive wastes as is currently required in 10 CFR Parts 71 and 73 for States. Attached are the Pueblo's considered comments to the specific considerations and inquiries addressed in the advanced notice.

I would like to emphasize, however, that the Pueblo takes specific exception to the suggestion in the notice that some form of special exemption might be needed for Tribes (as opposed to States) under a presumption that they could not be trusted to protect this Safeguards Information from disclosure. Such presumptions perpetuate a paternalistic attitude and stereotype that demean the spirit and intent of the President's Memorandum, a government-to-government relationship, and tribal sovereignty.

If you should require any further support, assistance or clarification of our position in this matter, please feel free to contact either myself directly at (505) 455-2273 or Neil Weber, Director of the Pueblo's Department of Environmental and Cultural Preservation at (505) 455-1120.

Sincerely:

Perry Martinez
Governor

Neil Weber, DECP
Carmen M. Rodriguez, LANL, ERP/EM

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Listed below are the “Specific Considerations” as listed in the *Advance Notice of Proposed Rulemaking: Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste*, along with the Pueblo de San Ildefonso’s comments and responses (Res.) to each.

Specific Considerations

Before the NRC prepares a proposed rule on the subject, the NRC is seeking advice and recommendations on this matter from all interested persons. Comments accompanied by supporting reasons are particularly requested on the following questions arranged by topic:

A. Developing a List of Native American Tribe Contacts

A.1. In preparing the list of Tribal contacts, the NRC would most likely look to the list of federally recognized Native American Tribes maintained by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior. Is this an appropriate approach? Are there any other sources that the NRC should consider?

Res. Use of the list of Federally recognized Native American Tribes as maintained by the BIA would be the most appropriate means of identifying and updating the list of Tribal contacts.

A.2. How can the NRC ensure that contact information is kept current, particularly for smaller Tribes? In maintaining State contacts, the NRC provides each State with the opportunity to update its information annually. Should NRC follow the same approach for Tribal contacts?

Res. As for States, an annual request/opportunity to update contact information should be sufficient for maintaining current information. Participation should not be conditional, however, solely on a response or lack of response to this request.

A.3. How can licensees effectively and efficiently provide notification to Native American Tribes, particularly smaller Tribes, of a schedule change that would require updated notification by telephone at any time of day?

Res. As is the case for States, many Tribes have their own law enforcement and emergency response capabilities, and along with these institutions, provisions for 24-hour notification by telephone. For those Tribes that do not, these services are often provided by local Federal (e.g., BIA), or State agencies, with provisions for contacting Tribal authorities as necessary.

B. Minimizing the Licensees' Administrative Burden

B.1. In what ways can licensees comply with this advance notification requirement, while keeping their administrative burden at a minimum?

Res. Maintenance of a comprehensive list of Tribal contacts as that proposed above, providing this list to all licensees, and an unambiguous guidance requiring notification would reduce confusion and facilitate administration of notifications.

B.2. If a shipper is unable to make contact with a Tribe prior to or during a shipment, should the shipment proceed?

Res. NO.

C. Identifying the Location of Tribes Along Shipment Routes



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C.1. How can licensees effectively and comprehensively identify the location of Native American Tribes along a particular vehicle, rail, or vessel shipment route?

Res. Maps identifying major transportation corridors adjoining or passing through Tribal lands are readily available, and the identification of such lands along a proposed shipment should be a condition of licensure.

C.2. Should DOE and NRC licensees develop and maintain a central data base regarding the location of Tribal lands? Should NRC look to Geographic Information System (GIS) resources to provide licensees with information regarding the location of Tribal lands?

Res. Should it facilitate licensee compliance with the notification requirements, a central database would be an effective tool. Licensee compliance should not, however, be conditional or forestalled by the availability of such a database.

C.3. What types of Tribal lands should the rule apply to (e.g., Trust Lands, Fee Lands (i.e., lands owned by Native Americans but not held in trust by the Federal government), etc.)?

Res. The rule should apply to all lands for which Tribes have a vested interest, be they proprietary or recognized traditional use areas not specifically owned by a tribe.

D. Safeguards Information

D.1. Should advance notification of spent fuel shipments be provided to any federally recognized Native American Tribe when spent fuel shipments are transported to or across tribal boundaries?

Res. YES.

D.2 The NRC's "need-to-know" requirement for advance notification of spent fuel shipment information is found in 10 CFR 73.21. Should this requirement be broadened to include other entities, such as Federally recognized Native American Tribes?

Res. YES.

D.3. Does wider dissemination of shipment information increase the risk to safeguarding spent fuel shipments (i.e., protecting public health and safety)? How should the NRC address any increase in risk compared with the benefits to be gained from Tribal notification?

Res. There is no need or basis to presume that notifications to Tribes would constitute any greater risk than does notification to States or others.

D.4. How should the rule address the point of contact for Safeguards Information in the context of Tribal notification?

Res. As is the case for States, Tribes have recognized administrative and organizational infrastructures, elected officials, points of contact (i.e., governments) designed to deal with these issues on a day-to-day basis. As is the case for States, Tribes would be responsible for annually revisions as to point of contact.

D.5. A recipient of Safeguards Information must expend resources to ensure the information is handled properly. Are there Tribes who may not wish to be recipients of Safeguards Information?

Res. Such decisions would best be addressed on a case-by-case basis.



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D.6. If a Tribal government receives Safeguards Information, should the NRC review the Tribe's actions to control and protect Safeguards Information?

Res. The NRC should extend to Tribes, at the least, the same courtesies it extends to States in this respect.

D.7. 10 CFR 73.21(a) states that ``information protection procedures employed by State and local police forces are deemed to meet the information protection requirements of Sec. 73.21(b) through (i).'' Should the NRC determine the ability of Tribal governments to protect Safeguards Information and, if so, how?

Res. Federally recognized Tribes are sovereign governments recognized by the U.S Constitution, and as such, should be afforded a consideration comparable to that of any state, public, or private entity without “special” determination.

D.8. Should the contemplated rule include an exemption to the notification requirement if there is reason to believe that a Tribe will not be able to protect the Safeguards Information from disclosure? What basis would the NRC need for granting such an exemption?

Res. No, unless specifically requested by an individual Tribe as a matter of policy.

D.9. Should 10 CFR 73.37(f) be changed to a permissive form? That is, should the licensee be permitted rather than required to release Safeguards Information to responsible Tribal government officials?

Res. No, notification of Tribal governments should be a required condition on licensure.