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Navajo Superfund Program
Navajo Nation EPA
PO Box 6738
Window Rock, AZ 86515

OFFICE
OF
ADJUDICATION

U.S. Regulatory Commission
11555 Rockville Pike
Rockville, Maryland

DOCKET NUMBER
PROPOSED RULE **PR 71-73**
(64FR71331)

RE: Comments on Low Level Radioactive Waste Transport

Dear Rulemaking and Adjudications Staff

It has come to my attention the U.S. Department of Energy (DOE) has released their Record of Decision on low level radioactive waste (LLW) and mixed low level waste (MLLW) transport. These transport and disposal decisions will impact the Navajo Nation by increasing the amount of LLW and MLLW transported through and near the Nation. Various LLW and MLLW from Sandia National Labs, Fernald Facility, Mound Facility and Rocky Flats Facility will pass through (Interstate 40) or near the Navajo Nation on the way to the Nevada Test Site for permanent disposal.

Some DOE funds will be available to states and tribes to mitigate the impacts of this increase in radioactive waste transport. It is in the best interest of the Nation to apply for these monies. They can be used for public outreach, emergency response planning and the establishment of an official Navajo contact for this initiative and possibly other DOE projects, such as WIPP waste transport. The point of contact could be housed in either NNEPA, or in DEM. This Record of Decision does not list any details on the impact mitigation funds, so I would be interested in receiving the appropriate information.

If you have any questions, please contact me at 520.871.6861. Thank you for this opportunity to comment.

Sincerely,

George Padilla, Program Manager
Navajo Nation Environmental Protection Agency

attachment

xc: File w/o attachment

DS10

March 28, 2000

Page 2

NUCLEAR REGULATORY COMMISSION
10 CFR Parts 71 and 73

RIN 3150-AG41

Advance Notification to Native American Tribes of Transportation
of Certain Types of Nuclear Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering an amendment to its regulations that would require NRC licensees to notify Native American Tribes of shipments of certain types of high-level radioactive waste, including spent nuclear fuel, prior to transport to or across the boundary of Tribal lands. Current NRC regulations require advance notification of these shipments to States. In recognition of Tribal sovereignty and the need for Tribes to be informed about activities that occur on Tribal lands, the NRC seeks to extend these regulations to include advance notification of these shipments to Federally recognized Native American Tribes. This advance notice of proposed rulemaking is issued to invite early input from affected parties and the public on the issue of advance notification.

DATES: The comment period expires March 22, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (<http://ruleforum.llnl>). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415-5905; e-mail CAG@nrc.gov

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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 March 28, 2000
Page 3

the Interior. Is this an appropriate approach? Are there any other sources that the NRC should consider? (See the BIA website at <http://>).

Comment: This is an appropriate approach. Special considerations may be needed to accommodate the special nature of "Indian Country" in Oklahoma.

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?

Comment: Yes, the NRC should contact the Nations and provide each one with the opportunity to provide the initial contact information and an annual update protocol. The Tribe could also provide a map indicating where the waste transport routes impact their lands, assisting the NRC determine which licensees impact which Tribes.

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?

Comment: The notification procedure should be addressed in the initial contact information and the annual updates.

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?

Comment: One possible procedure could be that:
The NRC contacts each Tribe to gather initial contact information.
During the initial contact period, the annual update protocol is established and a transport route impact map is drafted.
The NRC distributes the initial contact information to the licensees.
The NRC gathers the annual updates and verifies the tribal contact information.
The NRC distributes the updated contact information to the licensees.
The Tribes would provide the NRC with contact changes, taking effect after the annual update.

The NRC distributes the changes to the appropriate licensees.

The administrative burden of maintaining current contact information is carried by the NRC. In good faith, it is the responsibility of the Tribes to keep their contact information current.

March 28, 2000

Page 4

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

Comment: If the Tribe cannot be contacted, whomever that Tribe has listed as the provider of chemical/highway emergency response should be contacted. Arrangements for such a contingency could be made during the initial/annual

C. Identifying the Location of Tribes Along Shipment Routes

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

Comment: When contacting the BIA for the listing of Tribal Nations, the NRC should also obtain a description and/or map of each Nation's jurisdiction and/or external boundaries. Licensees will be able to consult the listing and maps to determine which Tribes will be impacted along any given transport route.

C.2. Should DOE and NRC licensees develop and maintain a central database 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?

Comment: It is reasonable for the NRC to utilize GIS resources to provide licensees with timely and accurate information regarding the location of Tribal lands the extent of "Indian Country".

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.)?

Comment: the rule should apply to all types of tribal lands: trust, fee, allotted, etc. Lands should only be exempt at the written request of 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?

Comment: Yes, the Nations have a right to know.

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
March 28, 2000
Page 5

this requirement be broadened to include other entities, such as Federally recognized Native American Tribes?

Comment: Yes, the 10 CFR 73.21 notification requirement should be broadened to include Tribes.

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?

Comment: Since Tribes have not previously had this responsibility, they should not be excluded, nor penalized for lacking the skills and infrastructure needed to meet security requirements. Before providing any sensitive information, the NRC should provide adequate training and funding to the Tribes. If a Tribe does not want this responsibility, an exemption can be awarded. At that point, the NRC would authorize the licensees to provide the required notice to the State.

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

Comment: Some Tribes may want to develop the skills and infrastructure to meet the security requirements. The NRC may have to provide some type of assistance or mentoring to some of the Tribes. As the training and infrastructure development progresses, the NRC and the Tribe will create the necessary contact and safeguards.

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?

Comment: If a Tribe does not want this responsibility, an exemption can be awarded. At that point, the NRC would authorize the licensees to provide the required notice to the State.

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

Information?

Comment: Before distributing sensitive information, the NRC should provide adequate training and funding to the Tribes.

D.7. 10 CFR 73.21(a) states that "information protection procedures employed by State and local police forces are deemed to meet March 28, 2000
Page 6

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?

Comment: If the Tribes have received proper training and funding, they should be able to ensure the security of the information. In these cases, the NRC will likely have a performance standard.

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?

Comment: Yes, there should be an exemption to the notification requirement. Such an exemption should be granted on the basis of a written tribal request. A Tribe may or may not want to meet the financial and security responsibility for this rule. A Tribe may not want the responsibility or have the resources for any necessary emergency response.

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?

Comment: No, licensees should be required to notify Tribes of these radioactive shipments adjacent to or across their lands.

The authority citation for this document is: 42 U.S.C. 2201; 42 U.S.C. 5841.

Dated at Rockville, Maryland, this 14th day of December, 1999.

For the Nuclear Regulatory Commission.
Annette L. Vietti-Cook,
Secretary of the Commission.
[FR Doc. 99-32929 Filed 12-20-99; 8:45 am]
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