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Seneca Nation of Indians

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PROPOSED RULE PR 71+73
(64FR 71331)

March 29, 2000

The Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Rulemakings and Adjudications Staff

SUBJECT: Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste, 64 FR 713312 (December 21, 1999)

To Whom It May Concern:

The Seneca Nation has reviewed the above referenced advance notice of proposed rulemaking. We think the advance notification approach is a good way to get pertinent input before writing a proposed rule. Our responses to the questions published in the federal register notice are attached.

Sincerely,

Duane J. Ray, President
SENECA NATION OF INDIANS

Attachment
Xc: Tribal Councilors and Executives
Environmental Protection Department

TEMPLATE = SECY-067

SECY-02

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 BIA. Is this an appropriate approach? Are there any other sources that the NRC should consider?

The contact list should be drawn from the list of federally recognized tribes maintained by the BIA. State-recognized tribes should be included by the state. The state should take the responsibility to notify these tribes.

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?

The NRC should follow the same approach for tribal contacts that it uses for state contacts. The size of the tribe is irrelevant. The NRC could utilize e-mail or methods other than postal mail to facilitate this effort. A uniform contact database could be maintained by each NRC region and forwarded to headquarters using a consistent nationwide database design. The BIA could lend some assistance in keeping the contact information current.

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?

Presumably the licensees will have the contact information. The information could include primary and secondary points of contact, or be an answering machine or an email address. The tribes will indicate their points of contact and contact information. The size of the tribe is irrelevant.

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

There will not be an "administrative burden." After all, there is a finite number of routes over which these shipments can take place, and a finite list of tribes along the routes.

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

No. Indian tribal governments have legal jurisdiction over their territory and a responsibility to serve and protect their members. It is essential that they remain informed and receive as much as advance notification as the states.

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

There are detailed maps that show Native American land. The tribes can assist by sending accurate digital or geographically referenced maps showing roads and political boundaries. These maps should be posted on an NRC web site and made available to licensees.

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?

Yes.

C.3. What types of tribal lands should the rule apply to (e.g., trust lands, fee lands)?

The rule should apply to federally (or state) recognized tribes regardless of their land status.

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

Yes, for the reasons stated above. The shipments should occur only with tribal council approval. NRC has to recognize tribes have sovereign jurisdiction over their land. NRC should develop relationships and agreements with the tribes prior to notification and transport.

D.2. The NRC's "need-to-know" requirement of 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?

Yes. Native American tribal governments have a need to know about transportation across their land.

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?

It is not appropriate for the NRC to assume that a tribal contact would be of any more risk than a state contact. As noted in the background information, DOE has taken a position of notifying tribes when transportation occurs across their land. The NRC should follow the DOE model for notifying tribes and safeguarding information. The procedure to safeguard the information would be equal to that of state and local police.

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

The tribes should be given the same consideration regarding Safeguards Information. Tribes already have confidentiality requirements for certain court cases, medical records, mental health counseling services, etc. Tribal laws and procedures should be deemed to satisfy the Safeguards Information protection requirements in 10 CFR 73.21

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?

Tribes obviously have less financial resources than states. Therefore, they should not be subject to onerous requirements. We suppose that most tribes will want to know what day, what time, and what material will be shipped through their territory. We do not expect that a significant amount of resources would be required to safeguard these basic facts. For tribes who want more information, simple rules can be developed for safeguarding it. It should be the tribe's decision to determine if it can or wants to handle Safeguards Information. Some tribes may want the option of delegating this information to another responsible party.

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

The tribes should be given equal consideration regarding Safeguards Information.

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?

No. The tribes are sovereign governments that keep confidential information in many areas, and our methods should be deemed appropriate. There should not be the assumption that tribes cannot safeguard information. The NRC could take appropriate action when and if lapses in safeguarding occur.

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?

No. If a tribe can not protect the Safeguards Information then an alternate shipment route should be used. As far as we are aware, there are no exemptions for state and local governments. Similarly there should be no exemptions for tribes.

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?

No. Licensees must be required to release the Safeguards Information. The NRC has a federal trust responsibility to Native American governments. A failure to notify a tribe regarding shipments across their land would constitute a failure to fulfill its federal trust obligations. Furthermore, NRC must comply with the Consultation and Coordination With Indian Tribal Governments Executive Order 13084, May 14, 1998 and the Government to Government Relations with Native American Tribal Governments Executive Memorandum of April 29, 1994. NRC's legal responsibilities to Native American governments supercede any perceived inconvenience on the part of the licensee to notify tribal governments.