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Department of Energy
Washington, DC 20585

WM Record File
MAY 26 1987 409.53

*This hr
sent to
multiple
addressees*

WM Project 10,11,16
Docket No.
PDR w/encl.
LPDR (B,N,S)

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Distribution:
RJB MJB E Tana
JDB RDM Linehan
(Return to WM, 623-SS) F Young w/encl.
Stiller Hildenbrand
Gillen Stoblein

G Sanborn
D Kunihira
B Trojanowski

Dear Mr. President:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed are copies of the Department's reports to Congress on the status of consultation and cooperation negotiations with the State of Texas, the State of Nevada, the State of Washington, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Indian Tribe, and the Yakima Indian Nation together with their comments on those reports.

Sincerely,

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

SEE FILE JACKET

8712100245 870526
PDR WASTE
WM-10 PDR

88132271
WM Project: WM-10
PDR w/encl
(Return to WM, 623-SS)

WM Record File: 409.53
LPDR w/encl





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable J. Bennett Johnston
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures :

cc: Honorable James A. McClure
Ranking Minority Member
Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable J. Bennett Johnston
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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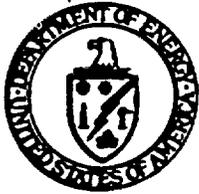
Sincerely,

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Mark O. Hatfield
Ranking Minority Member
Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Quentin N. Burdick
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Robert T. Stafford
Ranking Minority Member
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable John B. Breaux
Chairman, Subcommittee on Nuclear
Regulation
Committee on Environment and
Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Alan K. Simpson
Ranking Minority Member
Subcommittee on Nuclear
Regulation
Committee on Environment and
Public Works
United States Senate
Washington, D.C. 20510





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Jim Wright
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Tom Bevill
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable John T. Myers
Ranking Minority Member
Subcommittee on Energy
and Water Development
Committee on Appropriations
House of Representatives
Washington, D.C. 20515





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Robert A. Roe
Chairman, Committee on Science, Space,
and Technology
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures .

cc: Honorable Manuel Lujan, Jr.
Ranking Minority Member
Committee on Science, Space,
and Technology
House of Representatives
Washington, D.C. 20515





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Marilyn Lloyd
Chairman, Subcommittee on Energy
Research and Development
Committee on Science and Technology
House of Representatives
Washington, D.C. 20515**

Dear Madam Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures

**cc: Honorable Sid Morrison
Ranking Minority Member
Subcommittee on Energy
Research and Development
Committee on Science and Technology
House of Representatives
Washington, D.C. 20515**





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Morris K. Udall
Chairman, Committee on Interior and
Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures :

cc: Honorable Don Young
Ranking Minority Member
Committee on Interior and
Insular Affairs
House of Representatives
Washington, D.C. 20515





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Norman F. Lent
Ranking Minority Member
Committee on Energy
and Commerce
House of Representatives
Washington, D.C. 20515





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Phil Sharp
Chairman, Subcommittee on Energy
and Power
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

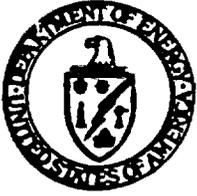
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Carlos Moorhead
Ranking Minority Member
Subcommittee on Energy
and Power
Committee on Energy and
Commerce
House of Representatives
Washington, D.C. 20515



*This Hr sent
to multiple
addresses*



Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Jim Chapman
House of Representatives
Washington, D.C. 20515**

Dear Mr. Chapman:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

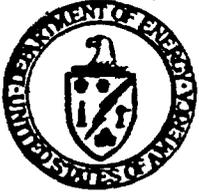
Sincerely,

Ben C. Rusche

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Charles Wilson
House of Representatives
Washington, D.C. 20515**

Dear Mr. Wilson:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

Ben C. Rusche
**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Steve Bartlett
House of Representatives
Washington, D.C. 20515

Dear Mr. Bartlett:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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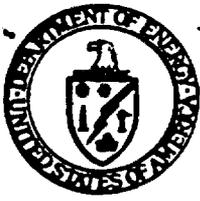
Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Ralph M. Hall
House of Representatives
Washington, D.C. 20515**

Dear Mr. Hall:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

Ben C. Rusche

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures



Celebrating the U.S. Constitution Bicentennial — 1787-1987



Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable John Bryant
House of Representatives
Washington, D.C. 20515**

Dear Mr. Bryant:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

Ben C. Rusche
**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Joe Barton
House of Representatives
Washington, D.C. 20515

Dear Mr. Barton:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

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Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Bill Archer
House of Representatives
Washington, D.C. 20515

Dear Mr. Archer:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

Ben C. Rusche

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures



Celebrating the U.S. Constitution Bicentennial - 1787-1987



Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Jack Fields
House of Representatives
Washington, D.C. 20515

Dear Mr. Fields:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Jack Brooks
House of Representatives
Washington, D.C. 20515**

Dear Mr. Brooks:

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable J.J. Pickle
House of Representatives
Washington, D.C. 20515**

Dear Mr. Pickle:

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**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Marvin Leath
House of Representatives
Washington, D.C. 20515

Dear Mr. Leath:

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Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Beau Boulter
House of Representatives
Washington, D.C. 20515**

Dear Mr. Boulter:

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**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures



Celebrating the U.S. Constitution Bicentennial — 1787-1987



Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Mac Sweeney
House of Representatives
Washington, D.C. 20515

Dear Mr. Sweeney:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

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Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable E de la Garza
House of Representatives
Washington, D.C. 20515**

Dear Mr. de la Garza:

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Sincerely,

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**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Ronald D. Coleman
House of Representatives
Washington, D.C. 20515

Dear Mr. Coleman:

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Sincerely,

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Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Charles W. Stenholm
House of Representatives
Washington, D.C. 20515

Dear Mr. Stenholm:

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Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Mickey Leland
House of Representatives
Washington, D.C. 20515**

Dear Mr. Leland:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script, reading "Ben C. Rusche", is positioned above the typed name.

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Larry Combest
House of Representatives
Washington, D.C. 20515

Dear Mr. Combest:

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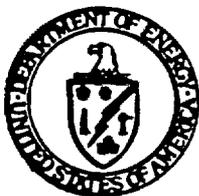
Sincerely,

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Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Henry B. Gonzalez
House of Representatives
Washington, D.C. 20515

Dear Mr. Gonzalez:

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Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Lamar Smith
House of Representatives
Washington, D.C. 20515**

Dear Mr. Smith:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Tom DeLay
House of Representatives
Washington, D.C. 20515**

Dear Mr. DeLay:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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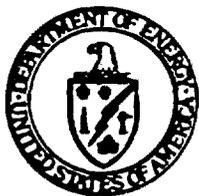
Sincerely,

Ben C. Rusche

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Albert G. Bustamante
House of Representatives
Washington, D.C. 20515

Dear Mr. Bustamante:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

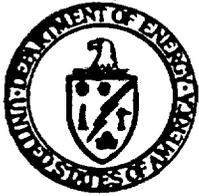
Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Martin Frost
House of Representatives
Washington, D.C. 20515

Dear Mr. Frost:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Michael A. Andrews
House of Representatives
Washington, D.C. 20515

Dear Mr. Andrews:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Richard K. Arney
House of Representatives
Washington, D.C. 20515

Dear Mr. Arney:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

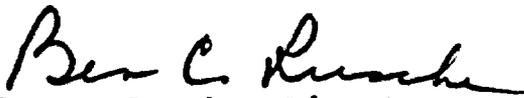
Honorable Solomon P. Ortiz
House of Representatives
Washington, D.C. 20515

Dear Mr. Ortiz:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Lloyd Bentsen
United States Senate
Washington, D.C. 20510

Dear Senator Bentsen:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

A handwritten signature in black ink that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Phil Gramm
United States Senate
Washington, D.C. 20510**

Dear Senator Gramm:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Bill Clements
Governor of Texas
Austin, Texas 78711

Dear Governor Clements:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Texas together with the State's comments on this report.

Sincerely,

Ben C. Rusche

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

DEC 23 1986

Honorable Mark White
Governor of Texas
Austin, Texas 78711

Dear Governor White:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that the sites have been approved for site characterization for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. The Act also specifies that affected States and Indian Tribes have an opportunity to review and comment on this report, and their comments are to be included in the Department's submission to Congress.

Enclosed is a copy of the report which I will be transmitting to Congress. In accordance with the Act, which requires that the Department should transmit this report to Congress no later than 30 days after the end of the six-month period following notification of a site, we will be submitting this report to Congress shortly. We would therefore appreciate receiving your comments as soon as possible.

We look forward to working with the State of Texas on consultation and cooperation negotiations.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosure

Received w/Ltr Dated 5/26/87
8712100245

Report to Congress Concerning Negotiations
with the State of Texas
as Required by
Section 117(c) of the
Nuclear Waste Policy Act of 1982
U.S. Department of Energy
December 1986

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that sites have been approved for site characterization by the President for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. In accordance with the Act, the Department must seek to enter into these agreements not later than 60 days after Presidential approval of a site for site characterization.

On May 28, 1986, President Reagan approved the Department's recommendation that sites in three States - Nevada, Texas, and Washington - be selected for site characterization. On July 25, 1986, Mr. Jefferson O. Neff, manager of the Salt Repository Project Office, wrote to Mr. Steve Frishman, director of the Texas Nuclear Waste Programs Office, to invite the State to initiate the process of developing a Consultation and Cooperation Agreement with a meeting of representatives of all States, within which recommended sites are located, and all three affected Indian Tribes. Mr. Frishman replied in a telephone conversation with DOE Headquarters staff on August 19, 1986, that a joint meeting between the Department and State and Tribal nuclear waste offices would not be appropriate at this time, although such a meeting might be worthwhile in the future.

In response to this interest in individual negotiations, on November 20, 1986, a letter was sent to Governor Mark White of Texas to renew the Department's offer to negotiate a Consultation and Cooperation Agreement, this time directly between DOE and the State of Texas. Although a response from Governor White has not yet been received, the Department is looking forward to working with the State of Texas to pursue negotiations on a Consultation and Cooperation Agreement.

Pursuant to the Act, enclosed are the comments of Governor White on this report. Also enclosed is a copy of the July 25, 1986, letter to Mr. Frishman and a copy of the November 20, 1986, letter to Governor White.

Enclosures



Department of Energy
 Chicago Operations Office
 Salt Repository Project Office
 505 King Avenue
 Columbus, Ohio 43201-2693
 Commercial (614) 424-5916
 F.T.S. 976-5916

July 25, 1986

Mr. Steve Frishman
 Nuclear Waste Program Office
 Office of the Governor
 General Counsel Division
 P.O. Box 12428
 Austin, TX 78711

Dear Mr. Frishman:

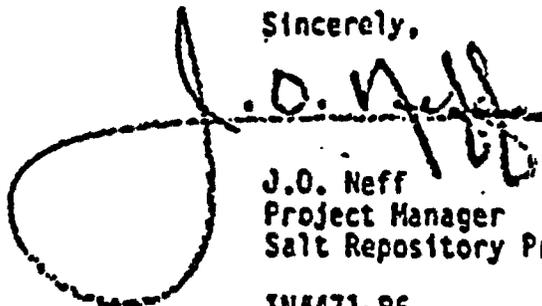
On May 28, 1986, the Department of Energy's recommendation of three sites in Nevada, Texas, and Washington was approved for detailed site characterization for a deep-minded geologic repository for high-level waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982, the Department desires to begin the process that would eventually lead to a signed Consultation and Cooperation (C&C) agreement.

As a starting point, the Department would like to meet with representatives from the three States and three affected Indian Tribes to discuss C&C activities to date, review the scope and parameters of C&C agreements, and talk about provisions that might be in common in all such agreements.

We will be contacting you in the near future to arrange for a time and place that would be acceptable to each of the States and Indian Tribes. Should you desire to discuss this matter with me, please do not hesitate to give me a call.

Sincerely,



J.O. Neff
 Project Manager
 Salt Repository Project Office

IN#471-86

SRPO:LKM:max:118455

FROM BFMDC WDC COLS. 07/28/85 09:41 P. 1

In Outgoing Mail Log

Fax Number 252-9608

Verify Number 252-9761



Department of Energy
Washington, DC 20585

NOV 20 1986

Honorable Mark White
Governor of Texas
Austin, Texas 78711

Dear Governor White:

On May 28, 1986, President Reagan approved the Department of Energy's (DOE) recommendation of three sites in Nevada, Texas, and Washington for detailed site characterization for a deep-mined geologic repository for high-level radioactive waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), not later than 60 days following such approval the Department was required to seek to enter into negotiations leading toward consummation of a written binding consultation and cooperation agreement. The provisions of such an agreement are defined by the Act.

On July 25, 1986, Mr. Jeff Neff, project manager of the Salt Repository Project Office at DOE's Chicago Operations Office, wrote to Mr. Steve Frishman of your staff recommending that we initiate the process of developing consultation and cooperation agreements with a meeting of representatives of all States, within which recommended sites are located, and of all three affected Indian Tribes. Similar letters were sent by our project offices to the other two States and to the three affected Indian Tribes.

We learned from the States and Indian Tribes that negotiations between the Department and the individual State and Tribal nuclear waste offices might prove more fruitful than a general meeting. Therefore, I am renewing the offer to initiate negotiations for a consultation and cooperation agreement, this time between DOE and the State of Texas.

To facilitate the commencement of negotiations, the Office of Civilian Radioactive Waste Management has designated a team to negotiate with your State. This team will be led by Mr. Neff, who will be contacting your office shortly to discuss appropriate arrangements.

We look forward to the participation of the State of Texas in this important statutory process.

Sincerely,



Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management



OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711

MARK WHITE
GOVERNOR

January 16, 1987

Mr. Ben C. Rusche, Director
Office of Civilian Radioactive Waste Management
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Rusche:

I have your letter of December 23, 1986, in which you transmit to Governor Mark White, in accordance with Section 117(c) of the Nuclear Waste Policy Act, your report to Congress concerning negotiations with the State of Texas regarding a Consultation and Cooperation Agreement. Governor White has asked that I review your report and respond with comments, as provided in the NWPA.

Enclosed you will find our review of your December, 1986, report to be forwarded to Congress.

Sincerely,

A handwritten signature in black ink that reads "Steve Frishman".

Steve Frishman, Director
Nuclear Waste Programs Office

SF:dp
enclosure

000215

State of Texas Comments

Regarding
U. S. Department of Energy
December, 1986

Report to Congress Concerning Negotiations

with the State of Texas
as Required by

Section 117(c)
Nuclear Waste Policy Act of 1982

Mark White, Governor
January 1987

COMMENT 1

The U. S. DOE report does not state the "reasons why such agreement has not been completed", as required by Section 117(c) of the Nuclear Waste Policy Act of 1982.

The DOE, during the six month period May 28, 1986 - November 27, 1986, did not pursue the substantive written agreement process in a manner that could reasonably result in completion of an agreement within the stated period. Texas did not submit a written request to the Secretary to begin negotiations seeking an agreement prior to, nor during the 60 days following the (May 28, 1986) date on which the President approved the Deaf Smith County, Texas, site for site characterization. This option is available to Texas, according to the Act, therefore, it was the Secretary's duty to initiate the process during the period of time set out in the Act. The manner in which the Secretary performed this duty, and the responses of Texas will be discussed in comments below. Had the Secretary been more rigorous in the pursuit of his duty to initiate substantive negotiations, other circumstances of the DOE program progress suggest that completion of a written agreement probably could not have been accomplished during the six month period. First, the May 28, 1986, announcement of the President's candidate sites decision, with literally only a few moments prior notice, and the simultaneous issuance of final Environmental Assessments for nomination of sites, left Texas with little to no specific knowledge of DOE's site characterization plans at the time of the candidate site decision. In addition, the land within the Deaf Smith County site is entirely private farmland, and remains as such as this time, without our having knowledge of DOE's specific plans for acquisition during the site characterization process. These two factors put Texas in a position in which it would be undesirable, and impossible to complete a written agreement, as a result of DOE not having made available sufficient information regarding its program plans for us to fully scope the necessary contents of such an agreement.

COMMENT 2

The U. S. DOE report does not fully state the Texas response to the referenced July 26, 1986 letter.

The report states: "Mr. Frishman replied in a telephone conversation with DOE Headquarters staff on August 19, 1986, that a joint meeting between the Department and State and Tribal nuclear waste offices would not be appropriate at this time, although such a meeting might be worthwhile in the future."

The response from Mr. Frishman further stated that the NWPA speaks to a "separate binding agreement" [Section 117(c)], and that prior to any discussion of "scope and parameters of C&C agreements, and talk about provisions that might be in common in all such agreements" (letter of July 25, 1986, Neff to Frishman), the State of Texas and DOE must address issues of particular interest and significance to the unique situation of the Deaf Smith County site in Texas.

The DOE report correctly reflects that there was no further communication of substance on the matter of a written agreement with the State of Texas until the referenced November 20, 1986, letter from Ben Rusche to Governor Mark White, dated just eight days before the close of the statutory six month period.

COMMENT 3

The State of Texas provided timely response to the referenced November 20, 1986 letter.

Upon receipt of the November 20, 1986, letter from Ben Rusche, a December 5, 1986, response was mailed to Mr. Rusche. A copy of that letter is attached to these comments. In that response, the DOE Office of Civilian Radioactive Waste Management designation of a team to initiate negotiations with Texas, led by Mr. Jeff Neff, was acknowledged. We have not been contacted by Mr. Neff on this matter, since his designation as lead negotiator.

COMMENT 4

The DOE's view of the scope of a written agreement, pursuant to Section 117(c) of the NWPA, is unduely restrictive.

The referenced November 20, 1986, letter states, at the end of the second paragraph: "The provisions of such an agreement are defined by the Act." This interpretation of the scope of a written agreement is not supported by the Act, in that the Act [Section 117(c)], when the key language is sufficiently distilled, describes a written agreement as "setting forth

(but not limited to) (emphasis added) the procedures under which the requirements ..., and the provisions of such written agreement, shall be carried out." It is our position that the Act does not, nor did the Congress intend for it to "define" the scope and elements of a written agreement. The Act does contain a recognition of the minimum scope of activities for which procedures should be developed, but in no way does it state or imply any limitation other than the necessity that the provisions not be unlawful.

This is a matter of considerable concern to the State of Texas in view of the fact that the Deaf Smith County site is located on private land which includes and is surrounded by thousands of acres of prime farmland that is continually involved in intensive crop, livestock, and seed production. Agriculture is the mainstay of the economy of Deaf Smith County, which consistently ranks first in Texas in cash receipts for crops and livestock, with annual receipts exceeding \$500 million. Any written agreement with the State of Texas must take into account this, and other unique aspects of the site area. A preconceived notion, by DOE, of the scope of such an agreement is not only unacceptable to Texas, but is contrary to the letter and intent of the NWPA.

COMMENT 5

The DOE did not provide adequate time for the State of Texas to review and comment on its report and submit the report to Congress within the 30 day statutory period.

The NWPA requires that the Secretary's report to Congress within the 30 days following the initial six month period after candidate site designation, if a written agreement of not completed. The Act further requires that the Secretary's report be submitted to the Governor of the affected state for his review and comments, which comments are to be attached to the Secretary's report.

The DOE report was transmitted by letter from Ben Rusche to Governor Mark White dated December 23, 1986, just five days before the close of the 30 day statutory period. The December 23, 1986, letter seeking our early response is attached to these comments. Clearly, it was not possible for the State of Texas to review and transmit comments on the Secretary's report in a manner that would have permitted the Secretary to submit his report to Congress within the statutory period.

enclosures



MARK WHITE
GOVERNOR

**OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711**

December 5, 1986

Mr. Ren C. Rusche, Director
Office of Civilian Radioactive Waste Management
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Rusche:

We have received your letter of November 20, 1986, in which you inform Governor White that Mr. Jeff Neff, manager of the DOE Salt Repository Project Office, will serve as the leader of the DOE negotiating team to begin the process of seeking to develop a consultation and cooperation agreement with the State of Texas, pursuant to Section 117(c) of the Nuclear Waste Policy Act of 1982.

Governor White has asked that I acknowledge your letter and the information that Mr. Neff will be contacting us to discuss appropriate arrangements. Mr. Neff may contact me at the Nuclear Waste Programs Office at his convenience.

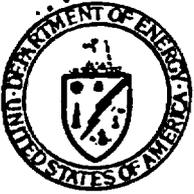
Thank you for informing us of your having initiated the C&C agreement process by naming the DOE's team leader for negotiations.

Sincerely,

A handwritten signature in cursive script that reads "Steve Frishman".

Steve Frishman, Director
Nuclear Waste Programs Office

SF:dp



Department of Energy
Washington, DC 20585

RR GC

ACP

DEC 23 1986

DEC 29 1986 47

Honorable Mark White
Governor of Texas
Austin, Texas 78711

Dear Governor White:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that the sites have been approved for site characterization for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. The Act also specifies that affected States and Indian Tribes have an opportunity to review and comment on this report, and their comments are to be included in the Department's submission to Congress.

Enclosed is a copy of the report which I will be transmitting to Congress. In accordance with the Act, which requires that the Department should transmit this report to Congress no later than 30 days after the end of the six-month period following notification of a site, we will be submitting this report to Congress shortly. We would therefore appreciate receiving your comments as soon as possible.

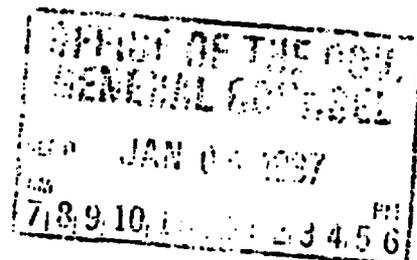
We look forward to working with the State of Texas on consultation and cooperation negotiations.

Sincerely,

Ben C. Rusche

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosure





Department of Energy
Washington, DC 20585

*This ltr
sent to
multiple
addressees*

MAY 26 1987

Honorable Chic Hecht
United States Senate
Washington, D.C. 20510

Dear Senator Hecht:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Nevada together with the State's comments on this report.

Sincerely,

Ben C. Rusche

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 20 1987

Honorable Harry Reid
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Nevada together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable James H. Bilbray
House of Representatives
Washington, D.C. 20515

Dear Mr. Bilbray:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Nevada together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Barbara F. Vucanovich
House of Representatives
Washington, D.C. 20515

Dear Ms. Vucanovich:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Nevada together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Richard H. Bryan
Governor of Nevada
Carson City, Nevada 89710**

Dear Governor Bryan:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed is a copy of the Department's report to Congress on the status of consultation and cooperation negotiations with the State of Nevada together with the State's comments on this report.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

DEC 23 1986

Honorable Richard W. Bryan
Governor of Nevada
Carson City, Nevada 89710

Dear Governor Bryan:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that the sites have been approved for site characterization for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. The Act also specifies that affected States and Indian Tribes have an opportunity to review and comment on this report, and their comments are to be included in the Department's submission to Congress.

Enclosed is a copy of the report which I will be transmitting to Congress. In accordance with the Act, which requires that the Department should transmit this report to Congress no later than 30 days after the end of the six-month period following notification of a site, we will be submitting this report to Congress shortly. We would therefore appreciate receiving your comments as soon as possible.

We look forward to working with the State of Nevada on consultation and cooperation negotiations.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosure

**Report to Congress Concerning Negotiations
with the State of Nevada
as Required by
Section 117(c) of the
Nuclear Waste Policy Act of 1982
U.S. Department of Energy
December 1986**

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that sites have been approved for site characterization by the President for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. In accordance with the Act, the Department must seek to enter into these agreements not later than 60 days after Presidential approval of a site for site characterization.

On May 28, 1986, President Reagan approved the Department's recommendation that sites in three States - Nevada, Texas, and Washington - be selected for site characterization. On July 25, 1986, Mr. Donald Vieth, director of the Waste Management Project Office at DOE's Nevada Operations Office, wrote to Mr. Robert Loux, executive director of the Nevada Nuclear Waste Project Office, to invite the State to initiate the process of developing a Consultation and Cooperation Agreement with a meeting of representatives of all States, within which recommended sites are located, and all three affected Indian Tribes. Mr. Loux replied in a telephone conversation with DOE Headquarters staff on August 19, 1986, that he did not see the need for a joint meeting at this time. In a letter dated August 27, 1986, to Mr. Vieth, Mr. Loux reiterated this, and also indicated that the State of Nevada would likely be in a position to initiate direct negotiations with the Department in the near future.

In response to this interest in individual negotiations, on November 19, 1986, a letter was sent to Governor Richard Bryan of Nevada to renew the Department's offer to negotiate a Consultation and Cooperation Agreement, this time directly between DOE and the State of Nevada. On December 16, 1986 Governor Bryan replied, charging that the implementation of the Nuclear Waste Policy Act by the Department of Energy has made it "impossible for the State of Nevada to have any confidence or trust in any negotiations with the Department of Energy regarding the implementation of the balance of the program..." In spite of Governor Bryan's misgivings, the Department is looking forward to working with the State of Nevada in whatever way possible to pursue negotiations on a Consultation and Cooperation Agreement.

Pursuant to the Act, enclosed are the comments of Governor Bryan on this report. Also enclosed is a copy of the July 25, 1986, letter to Mr. Loux and a copy of the November 19, 1986, letter to Governor Bryan.

Enclosures



Department of Energy
Nevada Operations Office
P. O. Box 14100
Las Vegas, NV 89114-4100

Robert R. Loux, Jr., Executive Director
Nuclear Waste Project Office
State of Nevada
Evergreen Center
Suite 252
1802 North Carson Street
Carson City, NV 89701

JUL 25 1986

Dear Mr. Loux:

On May 28, 1986, the Department of Energy's (DOE) recommendation of three sites in Nevada, Texas, and Washington was approved for detailed site characterization for a deep-mined geologic repository for high-level waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act (NWPA) of 1982, the Department desires to begin the process that would eventually lead to a signed Consultation and Cooperation (C&C) Agreement.

As a starting point, the Department would like to meet with representatives from the three States and three affected Indian Tribes to discuss C&C activities to date, review the scope and parameters of C&C Agreements, and talk about provisions that might be in common in all such agreements.

We will be contacting you in the near future to arrange for a time and place that would be acceptable to each of the States and Indian Tribes. Should you desire to discuss this matter with me, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Donald L. Vieth".

Donald L. Vieth, Director
Waste Management Project Office

WMPO:DLV-1778



Department of Energy
Washington, DC 20585

NOV 19 1986

Honorable Richard W. Bryan
Governor of Nevada
Carson City, Nevada 89710

Dear Governor Bryan:

On May 28, 1986, President Reagan approved the Department of Energy's (DOE) recommendation of three sites in Nevada, Texas, and Washington for detailed site characterization for a deep-mined geologic repository for high-level radioactive waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), not later than 60 days following such approval the Department was required to seek to enter into negotiations leading toward consummation of a written binding consultation and cooperation agreement. The provisions of such an agreement are defined by the Act.

On July 25, 1986, Mr. Donald L. Vieth, director of the Waste Management Project Office at DOE's Nevada Operations Office, wrote to Mr. Robert Loux of your staff recommending that we initiate the process of developing consultation and cooperation agreements with a meeting of representatives of all States, within which recommended sites are located, and of all three affected Indian Tribes. Similar letters were sent by our project offices to the other two States and to the three affected Indian Tribes.

We learned from the States and Indian Tribes that negotiations between the Department and the individual State and Tribal nuclear waste offices might prove more fruitful than a general meeting. Therefore, I am renewing the offer to initiate negotiations for a consultation and cooperation agreement, this time between DOE and the State of Nevada.

To facilitate the commencement of negotiations, the Office of Civilian Radioactive Waste Management has designated a team to negotiate with your State. This team will be led by Mr. Don Schueler, the deputy manager of the Nevada Operations Office. Mr. Schueler will be contacting your office shortly to discuss appropriate arrangements.

-2-

We look forward to the participation of the State of Nevada in this important statutory process.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management



THE STATE OF NEVADA
EXECUTIVE CHAMBER

Carson City, Nevada 89710

RICHARD H. BRYAN
Governor

TELEPHONE
(702) 885-5670

January 19, 1987

The Honorable John S. Herrington
Secretary of Energy
U.S. Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Secretary:

I have reviewed Mr. Rusche's proposed report to Congress which is required by Section 117(c) of the Nuclear Waste Policy Act, 42 U.S.C. 10137(c). It is misleading and incompletely describes the reasons why I believe that "it is now impossible for the State of Nevada to have confidence or trust in any negotiations with the Department of Energy regarding the implementation" of the federal government's nuclear waste program. Section 117(c) specifically requires that the Secretary report "the reasons why [a consultation and cooperation] agreement has not been completed."

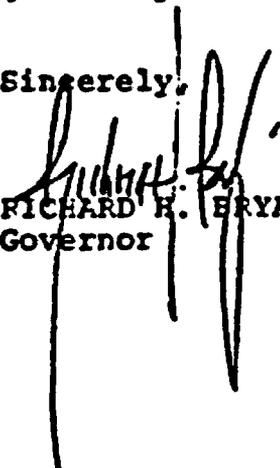
Those reasons are generally stated in my letter of December 6, 1986 to you, which is attached (Attachment 1). Those reasons include the department's repeated unwillingness to consult with the state or to give the state opportunities to participate substantively in departmental decision-making. The most glaring example of this is, of course, the department's refusal to provide for state participation in or knowledge of the site selection methodology and development of the Environmental Assessments. Those documents are now subject to litigation in the Ninth Circuit Court of Appeals (Nevada v. Herrington, No. 86-7307 and consolidated cases).

000155

Honorable John S. Herrington
January 19, 1987
Page Two

I have prepared and submit herewith a statement of position regarding the various shortcomings of U.S. DOE's management of the repository program (Attachment 2). These comments are essential to a full understanding of my letter of December 6, 1986, and to Nevada's reason for declining, at this time, to enter into negotiations for a consultation and cooperation agreement with the department. Please include this letter and attachments in your report as required by Section 117(c).

Sincerely,



RICHARD H. BRYAN
Governor

RHB/dkl

Enclosures



True
C&C

THE STATE OF NEVADA
EXECUTIVE CHAMBER
Carson City, Nevada 89710

RICHARD H. BRYAN
Governor

TELEPHONE
(702) 883-3670

ATTACHMENT 1

December 16, 1986

The Honorable John S. Herrington
The Secretary of Energy
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Secretary:

I have reviewed Mr. Rusche's November 19, 1986 letter seeking to enter into a binding written agreement with the State of Nevada pursuant to Section 117(c) of the Nuclear Waste Policy Act, 42 U.S.C. 10137(c). His letter proposes commencement of negotiations with a "team" of Department of Energy personnel headed by Mr. Don Schueler, Deputy Manager of the Nevada Operations Office.

I believe that the concept of the development of a written agreement between an affected State, such as Nevada, and the Department of Energy, as originally envisioned by Congress, has considerable merit and Congress should be commended for their foresight in this regard. However, I do not believe that Congress or any of the affected states envisioned that the Department of Energy would have acted irresponsibly and illegally in implementing the Act as has now become so apparent.

As you know, I, along with the Attorney General and the entire congressional delegation have filed actions challenging the legality of nearly every major decision that the Department has made in this program. These challenges are supported by a broad spectrum of the citizens of Nevada. These actions challenge the validity, as well as the legality, of this program.

Honorable John S. Herrington

December 16, 1986

Page Two

and to the extent that they are successful, major program decisions regarding site selection that you have made may be declared null and void and the entire siting process restarted. This may include the development of new siting guidelines, rescreening for potentially acceptable sites, the development of new environmental assessments, and restarting the second repository program.

Given the way in which the department has implemented the Act, it is now impossible for the State of Nevada to have confidence or trust in any negotiations with the Department of Energy regarding the implementation of the balance of the program until the uncertainties surrounding the aforementioned concerns are resolved by the courts, Congress or by the Department.

To the extent that our concerns regarding the legality of the siting guidelines, the site selection process, the environmental assessments and the timing of the preliminary determination of suitability required by Section 114(f) of the Act and the second repository program are negotiable, then perhaps discussion regarding a possible written agreement may be appropriate, and I'd appreciate your consideration of those matters.

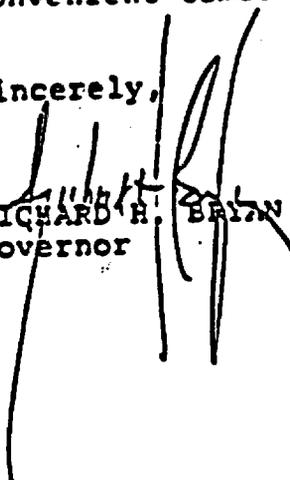
Additionally, the manner in which the Department of Energy has treated the State of Nevada in attempting to consult and cooperate, as required by the Act, has compounded this situation. The Department has conducted its grants application process in an arbitrary fashion. As you know, Nevada has been forced to seek review by the courts of the way in which the Department has used the grants process to limit the State's participation in the program, and it appears that, even though the court ruled in our favor, we now may be forced back to court over our current grant application.

This lack of cooperation also diminishes our confidence that the Department would honor the terms of a written agreement any more than it has lived up to the statutory requirements of the Act. Should the Department be sincerely interested in consulting and cooperating with the State of Nevada, it can demonstrate that commitment by fulfilling our grant request without the continuing difficulties which has been present in nearly every one of our past, as well as our current, grant requests.

The Honorable John S. Herrington
December 16, 1986
Page Three

I'd appreciate your consideration of these concerns, and I would be happy to provide any further information you may require. Robert Loux, Director of State Nuclear Waste Project office will be available to discuss our concerns with Mr. Rusche or Mr. Schueler at any mutually convenient time.

Sincerely,


RICHARD H. BRYAN
Governor

RHB/dkl

cc: Mr. Ben Rusche
Mr. Don Schueler
Mr. Grant Sawyer

ATTACHMENT 2

NEVADA'S STATEMENT OF POSITION

RE: SHORTCOMINGS IN THE REPOSITORY PROGRAM

PREDETERMINED SELECTION OF SITES

The selection of Yucca Mountain in the State of Nevada (as well as Hanford in the State of Washington), by the Department of Energy (DOE) for site characterization was actually made long prior to the passage of the Nuclear Waste Policy Act (NWPA). The Department's actions since passage of the NWPA have merely served to confirm that predetermined selection. The site selection process that the Act requires, which was designed by Congress to insure objectivity and adherence to some technical criteria, has been manipulated to insure that its predetermined choices would be maintained. Nevada has enunciated this concern to the Department on several occasions, most notably in Nevada's comments on the Draft Environmental Assessment for Yucca Mountain. (Attachment 2-A). The Department has not responded to these comments in any meaningful manner.

The Department, in its Environmental Assessments (EA), as well as in public testimony before the Congress and other bodies both before and subsequent to the issuance of the EAs, cites diversity of rock type as its primary justification for the selection of Yucca Mountain. That justification is, in the case

of Yucca Mountain, entirely pretextual. Otherwise, why was granite not among the suite from which the sites for characterization was chosen?

THE SITING GUIDELINES ARE FATALLY FLAWED

The Department's site selection guidelines, the fundamental vehicle which Congress intended to insure the objectivity and sound technical basis for site selection in the entire program, are hopelessly flawed, and violate the fundamental standard adopted by Congress in the Act. They are incapable of objective application, but were rather designed to insure that none of the current sites would be disqualified early, thus maintaining the Department's predetermination in the selection of sites for characterization.

In adopting the guidelines the Department ignored relevant input from the states, tribes, and other interested parties. The guidelines themselves wholly ignore important areas, such as national transportation impacts, in the selection of the repositories. Nevada's concerns on this subject went unheard by the Department. They are summarized in Attachment 2-A. This problem is the subject of litigation in EPI v. Herrington, Ninth Circuit Cause No. 85-7854 and Consolidated Cases.

THERE HAS BEEN NO MEANINGFUL CONSULTATION AND COOPERATION WITH THE STATES

Despite Congress' intent, the repository program currently being implemented by the Department has many of the characteristics that foreshadowed problems from past efforts. The program is driven by a schedule that is itself propelled by a fixed and, some would argue, unrealistic target date. The framework by which siting and suitability decisions will be made, the siting guidelines, is overly general, lacking in specificity and capable only of subjective application.

There has been a breakdown in the institutional system of checks and balances that Congress so carefully wrought in the Act, and the cause of this failure stems directly from DOE's inability or unwillingness to understand the fundamental nature of the state/federal relationship established by the Act. Nevada has even repeatedly used the information-demand process contemplated by ~~Section 117(a) of the Act with very poor results.~~ The Department has chosen to pursue a project-oriented role with zeal. However, at the same time, it has attempted, at nearly every turn, to limit state involvement in order to thwart states' efforts to carry out their role under the Act. The Department refuses to recognize the oversight role of the states, which Congress found so essential, including technical oversight, and refuses to cooperate with, and adequately fund, that role. The Department

spoon-feeds information of its choosing to the states and tribes and has consistently attempted to keep them at arms length. DOE has prohibited the states from attending meetings, from reviewing documents, and from any involvement in the decision-making process.

Unless balance is restored to this critical relationship the federal government will never be able to develop the level of public confidence essential to success in this controversial undertaking.

THE ENVIRONMENTAL ASSESSMENTS ARE INADEQUATE

The environmental assessments themselves, upon which the Department's nomination and recommendation of sites for characterization are based, are themselves totally inadequate under the Act. In the case of Yucca Mountain the EA is based on incomplete, inaccurate, and sometimes manipulated data. Significant State input to and comments upon the EA have been totally ignored. (Attachment 2-A). The ranking methodology applied by the Department in selecting sites for characterization is itself flawed, and has been clearly manipulated in order, again, to justify the Department's predetermined selection of sites. This was confirmed by the Subcommittee on Energy Conservation and Power, of the Committee on Energy and Commerce investigation reported on October 20, 1986. (Attachment 2-B).

One document uncovered by that investigation showed that Yucca Mountain had 994 expected fatalities in the post-closure period whereas Davis Canyon, Utah had 32 and Deaf Smith, Texas 47. Yet Yucca Mountain was rated first in the Department's preference. (See Attachment 2-C).

DISCONTINUANCE OF SECOND REPOSITORY PROGRAM

In abandoning the second repository program, the Secretary of Energy has violated not only the clear letter of the NWPA, but its essential spirit as well. Fundamental to the passage of the Act was the concept of regional equity. In its abandonment of the second repository program, the Secretary has also abandoned this concept altogether.

At various congressional hearings Department officials have cited the lack of need for a second repository as the primary rationale for this unilateral decision, which even the Department's General Counsel now concedes to be illegal. The Department's own internal documents show clearly, however, that the decision to abandon the second repository search was based primarily, if not exclusively, on political considerations.

PREMATURE DETERMINATIONS OF SITE SUITABILITY

Together with the announcement of the selection of sites for characterization, on May 28, 1986, the Secretary also made a preliminary determination that each of the sites chosen was suitable for development as a repository. This further fuels Nevada's concerns that the Department is attempting to rig the selection process.

Congress intended, in Section 114(f) of the NWPA, to insure that, at the end of the site characterization, DOE would have three bona fide alternate sites from which to select one for development as a repository. Thus the requirement for the Secretary to certify that three sites were suitable for development as a repository after having been characterized (i.e. studied in detail and at the repository depth). Congress was concerned that, without such conditions, the Department might select a preferred site for characterization, along with two less suitable sites, in order that its preferred site would be the only site available after characterization. In order to reduce the likelihood that DOE would be able to choose a repository based on political and other non-technical criteria, Congress clearly intended to provide for three real alternatives from which to choose after testing and evaluation had been completed. A determination of suitability made prior to even the commencement of characterization simply serves to further convince the states that the entire process of selecting a repository is being skewed by the Department.

FUNDING STATE PARTICIPATION

In FY 1984, the Department denied Nevada's request for funding to engage in independent technical monitoring and analysis of the Yucca Mountain site. Nevada challenged DOE in the Ninth Circuit Court of Appeals. The court determined that the State was entitled to funding because of the "independent oversight role that Congress envisioned for the states." Nevada v. Herrington, 775 F. 2d 529, 536 (1985). (Attachment 2-D). Notwithstanding the court's order, DOE procrastinated funding the requested activities until after its May 28, 1986, announcement that Yucca Mountain would be characterized.

Even now the Department has refused to evaluate and fund Nevada's requests. Nevada's 1987 calendar year grant application was submitted in early October 1986. As of January 14, 1987, the Department had not evaluated the application sufficiently to advise Nevada what additional information may be required. Nevada now faces the likely possibility that the intended technical work will be compromised. The only conclusion is that DOE does not want anyone looking over its shoulder. Two relevant letters, dated December 19 and December 29, 1986, are attached and describe the current situation. (Attachments 2-E and 2-F).

ENVIRONMENTAL MONITORING

The Nuclear Waste Policy Act requires that the potential environmental impacts of site characterization be identified in a site characterization plan, and minimized throughout site characterization (Section 113(a)), and that the Department prepare an Environmental Impact Statement (EIS) after site characterization (Section 114(f)). The Department proposes to conduct all of its environmental analysis of activity at Yucca Mountain without first doing any site specific environmental study to establish the baseline from which impacts might be measured. This approach is unscientific and a probable legal defect in any subsequent EIS. The establishment of an environmental baseline before characterization begins and the site is disrupted would not slow down commencement of actual site characterization if it were started now. If the Department persists in its refusal to establish the current environmental conditions at Yucca Mountain, Nevada will seek funding to perform this same work.

CORRECTIONS NEEDED

The entire repository siting program is threatened with collapse. In order to avoid that outcome a restructuring of the entire program, consistent with the Act, is essential.

The Department should rescind its nominations and recommendations of sites for characterization, and the

environmental assessments upon which they are based. Its siting guidelines should be withdrawn. New siting guidelines, based on sound technical criteria and capable of objective application, should be drafted by a body entirely independent of the Department of Energy. All interested parties, including the federal government, the states, affected Indian tribes, the nuclear industry, and environmental organizations, should be involved in drafting those new guidelines.

The new guidelines should then be applied, in a restarted nation-wide search, to all geologic media, including granite, to find a suite of sites for formal characterization which will provide the technical confidence that real alternatives will be available from which to select a site for the nation's first repository.

Anything less than a new start, with objective, workable guidelines based on sound technical criteria, will not be enough. ~~To continue along the path which DOE insists upon traveling is to~~ doom the entire process to failure. Unless we move to address the problems inherent in this entire process now, the country will have no solution to the problem of the disposal and isolation of nuclear waste, even by the turn of this century.

*This letter
sent to
multiple
addressees*



Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Al Swift
House of Representatives
Washington, D.C. 20515

Dear Mr. Swift:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed are copies of the Department's reports to Congress on the status of consultation and cooperation negotiations with the State of Washington, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Indian Tribe, and the Yakima Indian Nation together with their comments on those reports.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

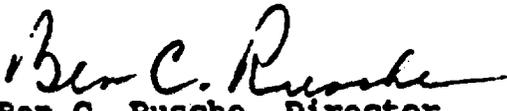
**Honorable Don Bonker
House of Representatives
Washington, D.C. 20515**

Dear Mr. Bonker:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,


**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Thomas S. Foley
House of Representatives
Washington, D.C. 20515

Dear Mr. Foley:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Norman D. Dicks
House of Representatives
Washington, D.C. 20515**

Dear Mr. Dicks:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Mike Lowry
House of Representatives
Washington, D.C. 20515**

Dear Mr. Lowry:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Rod Chandler
House of Representatives
Washington, D.C. 20515

Dear Mr. Chandler:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Brock Adams
United States Senate
Washington, D.C. 20510

Dear Senator Adams:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Daniel J. Evans
United States Senate
Washington, D.C. 20510

Dear Senator Evans:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Mr. Allan V. Pinkham, Chairman
Nez Perce Tribal Executive Committee
Box 305, Main Street
Lapwai, Idaho 83540

Dear Mr. Pinkham:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Mr. Elwood Patawa, Chairman
Board of Trustees
Confederated Tribes of the
Umatilla Indian Reservation
P.O. Box 638
Pendleton, Oregon 97801**

Dear Mr. Patawa:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures .





Department of Energy
Washington, DC 20585

MAY 26 1987

Mr. Melvin R. Sampson, Chairman
Yakima Tribal Council
Yakima Indian Nation
P.O. Box 151
Toppenish, Washington 98948

Dear Mr. Sampson:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Booth Gardner
Governor of Washington
Olympia, Washington 98504**

Dear Governor Gardner:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable John R. Miller
House of Representatives
Washington, D.C. 20515**

Dear Mr. Miller:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed are copies of the Department's reports to Congress on the status of consultation and cooperation negotiations with the State of Washington, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Indian Tribe, and the Yakima Indian Nation together with their comments on those reports.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Les AuCoin
House of Representatives
Washington, D.C. 20515

Dear Mr. AuCoin:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

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Sincerely,

A handwritten signature in black ink that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Robert F. Smith
House of Representatives
Washington, D.C. 20515

Dear Mr. Smith:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed are copies of the Department's reports to Congress on the status of consultation and cooperation negotiations with the State of Washington, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Indian Tribe, and the Yakima Indian Nation together with their comments on those reports.

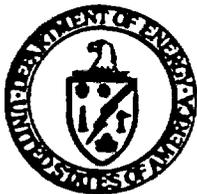
Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Ron Wyden
House of Representatives
Washington, D.C. 20515

Dear Mr. Wyden:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed are copies of the Department's reports to Congress on the status of consultation and cooperation negotiations with the State of Washington, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Indian Tribe, and the Yakima Indian Nation together with their comments on those reports.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Peter A. DeFazio
House of Representatives
Washington, D.C. 20515

Dear Mr. DeFazio:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed are copies of the Department's reports to Congress on the status of consultation and cooperation negotiations with the State of Washington, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Indian Tribe, and the Yakima Indian Nation together with their comments on those reports.

Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

**Honorable Denny Smith
House of Representatives
Washington, D.C. 20515**

Dear Mr. Smith:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed are copies of the Department's reports to Congress on the status of consultation and cooperation negotiations with the State of Washington, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Indian Tribe, and the Yakima Indian Nation together with their comments on those reports.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Bob Packwood
United States Senate
Washington, D.C. 20510

Dear Senator Packwood:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed are copies of the Department's reports to Congress on the status of consultation and cooperation negotiations with the State of Washington, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Indian Tribe, and the Yakima Indian Nation together with their comments on those reports.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

MAY 26 1987

Honorable Neil Goldschmidt
Governor of Oregon
Salem, Oregon 97310

Dear Governor Goldschmidt:

The Department of Energy is required by Section 117(c) of the Nuclear Waste Policy Act of 1982 to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such Agreements are not completed within six months after notification that sites have been approved for site characterization for a nuclear waste repository.

Enclosed are copies of the Department's reports to Congress on the status of consultation and cooperation negotiations with the State of Washington, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Indian Tribe, and the Yakima Indian Nation together with their comments on those reports.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures





Department of Energy
Washington, DC 20585

DEC 2 1984

Honorable Booth Gardner
Governor of Washington
Olympia, Washington 98504

Dear Governor Gardner:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that the sites have been approved for site characterization for a nuclear waste repository. The report must include the reasons why such agreements have not been concluded. The Act also specifies that affected States and Indian Tribes have an opportunity to review and comment on this report, and their comments are to be included in the Department's submission to Congress.

On September 26, 1984, the Department of Energy transmitted a report to Congress describing the consultation and cooperation negotiations which had been initiated by the State of Washington on July 27, 1983, along with the State's comments on the report.

The enclosed report to Congress provides an update on the status of consultation and cooperation negotiations between the Department and the State of Washington since the last report was submitted. I will be transmitting this report, as well as reports for the other States and affected Indian Tribes, to Congress shortly. We would therefore appreciate receiving your comments as soon as possible.

Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosure

**Report to Congress Concerning Negotiations
with the State of Washington
as Required by
Section 117(c) of the
Nuclear Waste Policy Act of 1982
U.S. Department of Energy
December 1986**

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that sites have been approved for site characterization by the President for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. In accordance with the Act, the Department must seek to enter into these agreements not later than 60 days after Presidential approval of a site for site characterization, or at the written request of the State or affected Indian Tribe within any State notified as having a potentially acceptable site under Section 116(a) of the Act, whichever occurs first.

On July 27, 1983, the State of Washington initiated consultation and cooperation negotiations with the Department. These negotiations, which were suspended by the State of Washington pending resolution of several issues, were described in the enclosed report transmitted to Congress on September 26, 1984. This report provides an update on the status of consultation and cooperation negotiations since that report.

On May 28, 1986, President Reagan approved the Department's recommendation that sites in three States - Nevada, Texas, and Washington - be selected for site characterization. On July 25, 1986, Mr. Lee Olson, director of the Basalt Waste Isolation Division at DOE's Richland Operations Office, wrote to Mr. Terry Husseman, program director, Washington Office of High-Level Nuclear Waste Management, to invite the State to renew the process of developing a Consultation and Cooperation Agreement with a meeting of representatives of all States, within which recommended sites are located, and all three affected Indian Tribes. Mr. Husseman replied in a telephone conversation with DOE Headquarters staff on August 19, 1986, that the State did not see the need for the consultation and cooperation process to be a joint effort, and that the State of Washington wanted only direct negotiations with DOE. The State of Washington requested an informal meeting to discuss negotiation procedures in a letter sent to Mr. Mike Lawrence, Richland Operations Office, on August 25, 1986. Such a meeting was held between DOE and the State on October 9, 1986.

In response to the State's interest in individual negotiations, on November 19, 1986, a letter was sent to Governor Booth Gardner of Washington to renew the Department's offer to negotiate a Consultation and Cooperation Agreement, this time directly between DOE and the State of Washington. On December 18, 1986, the Governor and the Director of the Office of Civilian Radioactive Waste Management met and among the topics discussed were Consultation and Cooperation. The Governor indicated a reluctance to participate in consultation and cooperation negotiations unless certain conditions were met. He indicated that he would make a more specific proposal shortly.

Pursuant to the Act, enclosed are the comments of Governor Gardner on this report. In addition to the previous report to Congress, the Department is enclosing copies of the July 25, 1986, letter to Mr. Husseman and the November 19, 1986, letter to Governor Gardner.

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable George Bush
President of the Senate
Washington, D. C. 20510

Dear Mr. President:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures



Washington
State Senate

Senator Al Williams
Chairman
Senator Margaret Murley
Vice Chairman
Senator Max Benz
Senator Wm "Bill" Fuller
Senator M.A. "Bernie" Goltz
Senator Dick Memsted
Senator Mae McKenney
Senator Ray Moore
Senator JT Ougs

Energy and Utilities Committee

4th Floor, Senate Office Building • Olympia, Washington 98504 QW-41 • (206) 753-9107

March 5, 1984

Mr. Donald Paul Hodel
Secretary of Energy
Department of Energy
Washington, DC 20585

Dear Mr. Hodel:

This letter is in response to your request for review and comment of the report to Congress required by section 117(c) of the Nuclear Waste Policy Act of 1982.

I believe the report stresses past working relationships between the state and the department at the expense of the current process created pursuant to RCW 43.200. Specifically, references to the state working group and the Governor's Task Force on High-Level Nuclear Waste Management are not necessary since these two bodies are no longer in existence.

It is important to note that it was not the state of Washington but the Governor who requested that negotiations for a written agreement begin on June 30, 1983. The Legislature did not participate in the request.

With respect to the legislative designees to the state negotiating team it must be noted that the designees were not empowered to bind the legislature as a body. Only the full legislature acting as a body can bind itself.

As of February 21, 1984 there have been seven, not six, formal negotiating sessions with the last session held on February 9, 1984.

I appreciate the opportunity to submit these comments on the written report required by the Nuclear Waste Policy Act.

Sincerely,

Al Williams, Chairman
Senate Energy and Utilities Committee

AW:d4-B

Report to Congress Concerning Negotiations
with the State of Washington
as Required by
section 117(c)
of the
Nuclear Waste Policy Act of 1982

U.S. Department of Energy

September 26, 1984

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those Agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. Since a written Agreement with the State of Washington was not completed within the time (no later than January 7, 1984) required by section 112(f) of the Act, this report is being submitted.

Site characterization work on Hanford basalts near Richland, Washington has been ongoing since 1976 as part of the National Waste Terminal Storage Program. An informal process of consultation and cooperation with the State has been underway since 1979. A working group was established by the State and DOE in 1979, consisting of representatives from the Governor's office and members of the legislature. The working group was continued by Governor Spellman in 1981 when he designated Mr. David Stevens, Energy Advisor to the Governor; Mr. Nicholas Lewis, Chairman, Energy Facilities Site Evaluation Council; Mr. Richard Watson, Acting Director of the State Energy Office; State Senator Hayner; and State Representative Hastings to be on the State Working Group. On August 16, 1982, Governor Spellman issued an Executive Order which established the State's High Level Nuclear Waste Management Task Force, consisting of seven executive branch members and four members from the legislature. This Task Force was instructed to serve as a liaison body between the State and DOE.

Pursuant to requirements of the Act and Substitute Washington State Senate Bill No. 3273, which designated the State organizations to implement the requirements of the Act, the State requested, by letter dated June 30, 1983, that negotiations commence for the purpose of entering into a Consultation and Cooperation Agreement. By letter dated July 15, 1983, the Chairmen of the State Senate and House Energy and Utilities Committees named the legislative designees to the State negotiating team. By letter dated July 21, 1983, the Manager of DOE's Richland Operations Office designated the DOE negotiating team. Negotiations were initiated on July 27, 1983. There have been a total of twelve negotiating sessions to date, the latest being held on June 29, 1984. The negotiating teams have been able to reach essential agreement on all but two articles of the draft Agreement.

The two primary Articles on which agreement has not been reached involve issues dealing with: (1) liability; and (2) defense waste. With respect to liability, it is the policy position of the State that the United States should be strictly and absolutely liable, without regard to fault, and without any dollar limitation, for any nuclear incident at a repository site, or any incident associated with transportation of waste to the repository. The model used for the indemnity provisions proposed by DOE to the State is the Price-Anderson Act indemnity (section 170.d of the Atomic Energy Act of 1954, 42 U.S.C. section 2210(d)) included in the "Supplemental Stipulated

Agreement Resolving Certain State Offsite Concerns Over Waste Isolation Pilot Plant." That Agreement was negotiated between DOE and the State of New Mexico for the Waste Isolation Pilot Plant which is being constructed in the State of New Mexico. DOE also advised the State that the Secretary of Energy, by letter dated August 1, 1983, recommended to Congress that authority to provide Price-Anderson coverage be extended beyond August 1987, that the dollar limits be raised, and that the extraordinary nuclear occurrence feature be enlarged to include commercial and defense waste facilities. DOE has represented to the State that its authority to indemnify for a nuclear incident involving a repository, including transportation, is circumscribed by the Price-Anderson Act amendments to the Atomic Energy Act of 1954 (42 U.S.C. section 2210(d), et. seq.). DOE has proposed to include in the Agreement a provision to the effect that DOE will assist the State in presenting the State's views with respect to liability to Congress without any obligation that DOE would concur in any State recommendation for amendment of the Price-Anderson Act or any other law.

With respect to defense waste, the State has requested that a provision be included in the Agreement that would formally provide the State with an opportunity to comment and make recommendations on the disposal of existing defense waste at Hanford prior to the evaluation to be made under section 8 of the Act. DOE has advised the State that DOE will continue to discuss the relationship between DOE's current activities at Hanford, which includes the preparation of an Environmental Impact Statement on disposal of defense high level and transuranic wastes, and the decisions to be made under section 8 of the Act.

In addition to the two unresolved issues, the Agreement could not be concluded by January 7, 1984, as required by the Act, because of a request for State legislative review of the Agreement. The State legislature formally convened on January 9, 1984, and subsequently passed Engrossed Substitute House Bill No. 1637, which was signed by Governor Spellman on March 8, 1984. The Bill re-established a Nuclear Waste Board as the initial point of contact in the State with DOE on high-level radioactive waste matters. The Bill also prescribes the procedure for State review and approval of a Consultation and Cooperation Agreement, including approval by the legislature. On July 20, 1984, the State negotiating team presented the draft Agreement to the Nuclear Waste Board. The draft Agreement is being reviewed by the Board members, who will submit their recommendation to the State negotiating team in August 1984. DOE is ready at the State's request to discuss further the two unresolved issues, and any concerns conveyed by the Board.



State of Washington

JOHN SPELLMAN, Governor

March 12, 1984

OFFICE OF THE GOVERNOR

The Honorable Donald Hodel, Secretary
U. S. Department of Energy
Washington, D.C. 20585

Dear Secretary Hodel:

Thank you for your letter of January 27 outlining your department's proposed report to Congress on the status of the negotiations between the state and the U.S. Department of Energy (DOE) on a proposed Consultation and Cooperation Agreement. Since your letter was not received in my office until after the suggested date for review and comment, I hope that you will, nevertheless, be willing to transmit my comments on the draft material.

I think basically the report accurately describes the background and negotiation activities. I am aware of the hard work by members of both negotiating teams, and I am satisfied that substantial progress has been made in many areas that the agreement proposes to cover.

I would, however, like to add a clarification to the language in the last paragraph of the first page of your draft report where it indicates that the negotiating teams "have been able to reach essential agreement on all but two articles of the proposed agreement." The two major items that have yet to be fully resolved are further described by your report. Those issues, i.e., liability and existing defense wastes at Hanford, must be adequately dealt with prior to the conclusion of any negotiations.

It should also be stated for the record that, while the negotiating team for the state feels confident that we have made significant progress in the development of an agreement, we still may well have additional items for discussion and negotiation with the Department of Energy that have been identified during the public review period, as well as issues arising during current legislative review. It is the state negotiating team's position that all issues will have to be looked at in the context of final negotiations.

Nevertheless, I am pleased with the work accomplished to date, and I continue to feel that having a satisfactory and binding agreement with the Department of Energy will enable the state to carry on a comprehensive and independent review of DOE's repository siting efforts as called for in the Federal legislation. It is, of course, essential that the state have a means of adequately judging the activities under the Nuclear Waste Policy Act of 1982 which can have significant impacts on our environment and the health and safety of our citizens.

The Honorable Donald Hodel

March 12, 1984

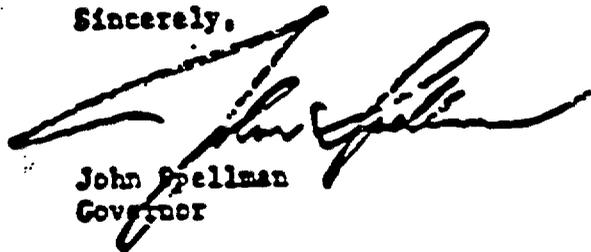
Page 2

I am confident that, upon completion of the legislative review process and after full consideration of other issues raised since the distribution of the draft agreement, we will be able to complete a document fully protecting state interests.

Thank you for the opportunity to review your draft report.

With best wishes,

Sincerely,

A handwritten signature in black ink, appearing to read "John Spellman", written over the typed name and title.

John Spellman
Governor

**Department of Energy**

Richland Operations Office
P.O. Box 850
Richland, Washington 99352

86-BWI-19

JUL 25 1988

Mr. Terry Husseman, Program Director
Office of High-Level Nuclear
Waste Management
Washington State Department
of Ecology, MS PV-11
Olympia, WA 98504

Dear Mr. Husseman:

CONSULTATION AND COOPERATION AGREEMENT

On May 28, 1986, the Department of Energy's recommendation of three sites in Nevada, Texas, and Washington was approved for detailed site characterization for a deep-mined geologic repository for high-level waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982, the Department wishes to continue the process that would eventually lead to a signed Consultation and Cooperation (C&C) Agreement.

As a starting point, the Department would like to meet with representatives from the States and three affected Indian Tribes to discuss C&C activities to date, review the scope and parameters of C&C agreements, and talk about provisions that might be in common in all such agreements.

We will be contacting you in the near future to arrange for a time and place that would be acceptable to each of the States and Indian Tribes. Should you desire to discuss this matter with me, please do not hesitate to give me a call.

Sincerely,

O. L. Olson, Director
Basalt Waste Isolation Division

BWI:DLO



Department of Energy
Washington, DC 20585

NOV 19 1986

**Honorable Booth Gardner
Governor of Washington
Olympia, Washington 98504**

Dear Governor Gardner:

On May 28, 1986, President Reagan approved the Department of Energy's (DOE) recommendation of three sites in Nevada, Texas, and Washington for detailed site characterization for a deep-mined geologic repository for high-level radioactive waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), not later than 60 days following such approval the Department was required to seek to enter into negotiations leading toward consummation of a written binding consultation and cooperation agreement. The provisions of such an agreement are defined by the Act.

On July 25, 1986, Mr. Lee Olson, director of the Basalt Waste Isolation Division at DOE's Richland Operations Office, wrote to Mr. Terry Husseman of your staff recommending that in the case of the State of Washington we renew the process of developing consultation and cooperation agreements with a meeting of representatives of all States, within which recommended sites are located, and of all three affected Indian Tribes. Similar letters were sent by our project offices to the other two States and to the three affected Indian Tribes.

We learned from the States and Indian Tribes that negotiations between the Department and the individual State and Tribal nuclear waste offices might prove more fruitful than a general meeting. Therefore, I am renewing the offer to begin negotiations once again for a consultation and cooperation agreement, this time between DOE and the State of Washington.

To facilitate the commencement of negotiations, the Office of Civilian Radioactive Waste Management has designated a team to negotiate with your State. This team will be led by Mr. John Anttonen, an assistant manager of the Richland Operations Office. Mr. Anttonen will be contacting your office shortly to discuss appropriate arrangements.

-2-

We look forward to the participation of the State of Washington in this important statutory process.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

OLYMPIA
98504-0413

BOOTH GARDNER
GOVERNOR

January 27, 1987

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
1000 Independence Avenue
Washington, D.C. 20585**

Dear Mr. Rusche:

**Enclosed is the state of Washington report to Congress concerning consulta-
tion and cooperation negotiations with the U.S. Department of Energy. I
understand you will soon be transmitting this report to Congress along with
your report.**

**Please contact Curt Eschels or Terry Husseman if you have any questions
about this report.**

Sincerely,

**Booth Gardner
Governor**

Enclosure

000261

STATE OF WASHINGTON

Report to Congress Concerning Consultation and Cooperation Negotiations with the U.S. Department of Energy

January 1987

The state of Washington report to Congress Concerning Consultation and Cooperation Negotiations with the U.S. Department of Energy (USDOE) will review past actions, assess the current situation, and summarize the reasons why agreements have not been concluded.

PAST ACTIONS: From July 1983 until December 1984, the state of Washington and USDOE made a good faith effort to negotiate. In spite of many long negotiating sessions, the parties were unable to resolve many serious issues such as federal liability, defense waste, water rights, foreign waste, transportation, work suspension, emergency response planning and other issues. The state became convinced that the C&C process was not effective when two Section 117(b) Governor's letters obtained positive results in the areas of defense waste and water rights, even though the subjects had been subjects of intense negotiations for eighteen months.

From December 1984 until May 1986, the state of Washington and USDOE were heavily involved in the Environmental Assessment process. Governor Gardner asked that USDOE do a credible comparative analysis with input from states, tribes and independent experts. The May 28 decision to include Hanford as one of the three sites selected for characterization even though it ranked lowest of all sites under consideration, and the illegal decision to indefinitely postpone the search for a second repository led litigation and the overwhelming ratification of Referendum 40 which directs state officials to continue challenges to the federal site selection process.

CURRENT SITUATION: The site selection process to date was a flawed, politically-based program that has destroyed USDOE credibility. Past actions and continuing litigation have created a situation where C&C negotiations at this time, are not a reasonable option.

WHY AGREEMENTS HAVE NOT BEEN CONCLUDED: Agreements have not been concluded because past negotiations were not effective and because the May 28th decisions have destroyed USDOE's credibility. C&C negotiations cannot be successful until credibility is restored. USDOE must take the lead in bring the program back on track. Governor Gardner's conflict resolution process is a reasonable, attainable proposal which could lead to a mid-course correction consistent with the Nuclear Waste Policy Act.

STATE OF WASHINGTON

Consultation and Cooperation (C&C) Chronology

July 1983: Negotiations began because construction of the exploratory shaft appeared imminent. From July 1983 to July 1984 there were twelve negotiating sessions with USDOE and twenty-one state negotiating team meetings.

December 1983: An early draft document was prepared and forwarded to the Nuclear Waste Board and the Legislature for review and comment. The Legislature passed Concurrent Resolution 142 which directed the negotiating team to place more emphasis on issues relating to foreign waste, work suspension, injunctive relief, federal liability, commingling defense wastes, emergency response planning. The Legislature passed a bill which provides specific procedures for negotiating, reviewing, approving and modifying agreements.

July 1984: Another preliminary draft document was forwarded to the Nuclear Waste Board. The Board considered using the document for public hearings, but many unresolved issues and the December 1984 release of draft Environmental Assessments put an indefinite hold on further review.

March 1985: Governor Gardner wrote Section 117 30-day letters to Secretary Herrington concerning defense waste and state water right laws and permit requirements for site characterization activities. Although the C&C teams had been unable to resolve these issues after nearly two years of negotiations, the Secretary's responses to Governor Gardner documented significant changes to earlier USDOE negotiating positions.

May 1986: USDOE announced its decision to include Hanford as one of three sites selected for characterization even though USDOE scientists and their consultants had ranked Hanford lowest of all sites considered for pre-closure factors, for post-closure factors, and composite overall ranking.

July 1986: Detloff von Winterfeldt, a nationally respected decision analyst who had been a consultant to the National Academy of Sciences (NAS) Board on Radioactive Waste Management, expressed serious concerns about the value judgments used by USDOE to make its decisions.

August 1986: Lee Olson, Richland Operations Office, wrote to Terry Husseman, Program Director, asked for a joint C&C meeting with other states and the tribes. Mr. Husseman's response questioned the need for joint meetings and suggested USDOE decision making be the first issue to be discussed.

October 1986: Congressional subcommittees reported conclusive evidence which lead to the conclusion that USDOE distorted and disregarded its own scientific analysis in order to support selection of Hanford.

November 1986: Ralph L. Keeney, a nationally respected decision analyst who had been a USDOE consultant during EA negotiations, issued a report which confirmed that Hanford is the least desirable site because of its enormously greater costs and its greater health effects are not compensated for its relatively slight advantage in environmental and socioeconomic impacts.

November 1986: Washington State citizens, in unprecedented numbers, support Referendum 40, which directs state officials to continue challenges to the site selection process.

December 1986: Eco Northwest, a consultant to the Nuclear Waste Board, concluded that the Recommendation Report fails to document its assumptions or its conclusions, and is a travesty of nearly everything that decision-aiding methods stands for.

December 1986: USDOE, in a letter to Governor Gardner, renewed the offer to negotiate. Governor Gardner and Ben Rusche met on December 18 to discuss C&C negotiations. In a December 30 response to the Office, Governor Gardner indicated that past actions and continuing litigation have created a situation where C&C negotiations, at this time, are not a reasonable option. He pointed out that negotiations cannot be successful until program credibility is restored, and that USDOE must take the lead in bringing the program back on track. He enclosed his proposal for a conflict resolution process which could restore credibility to the program. He asked Secretary Herrington to review and seriously consider the proposal.

DATE SEP 14 1984

U.S. DEPARTMENT OF ENERGY
memorandumREPLY TO
ATTN OF RW-25SUBJECT **ACTION:** Reports to Congress Pursuant to section 117(c) of the Nuclear Waste Policy Act of 1982

TO The Secretary

ISSUE

Submittal of the attached Reports to Congress

DISCUSSION

Section 117(c) of the Nuclear Waste Policy Act of 1982, Public Law 97-425 (the Act), requires a report to be submitted to Congress if a written Consultation and Cooperation Agreement is not completed within one year of the date of enactment as per section 112(f). The Department is required to report to Congress on the status of negotiations to develop such an agreement and the reasons why such an agreement had not been completed. Draft Reports to Congress on the status of negotiations with the State of Washington and the Yakima Indian Nation were transmitted to them for review and comment. The comments of the Governor of the State of Washington, the Chairman of the State of Washington Energy and Utilities Committee, and the Yakima Indian Nation Tribal Counsel are attached to the Reports to Congress as required by the Act.

RECOMMENDATION

I recommend that you sign the attached letters of transmittal to Congress.


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Attachments



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable George Bush
President of the Senate
Washington, D. C. 20510

Dear Mr. President:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Model".

DONALD PAUL MODEL

Enclosures

cc: Honorable J. Bennett Johnston
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,


DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Tom Bevill
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures

cc: Honorable John T. Myers
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures

cc: Honorable Manuel Lujan, Jr.
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,


DONALD PAUL HODEL

Enclosures

cc: Honorable James T. Broyhill
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Don Fuqua
Chairman, Committee on Science
and Technology
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures

cc: Honorable Larry Winn, Jr.
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Melvin Price
Chairman, Committee on Armed Services
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures

cc: Honorable William L. Dickinson
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Marilyn Lloyd
Chairman, Subcommittee on Energy
Research and Production
Committee on Science and Technology
House of Representatives
Washington, D. C. 20515

Dear Madam Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures

cc: Honorable Robert S. Walker
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Samuel S. Stratton
Chairman, Subcommittee on Procurement and
Military Nuclear Systems
Committee on Armed Services
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures

cc: Honorable Marjorie S. Holt ---
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable John G. Tower
Chairman, Committee on Armed Services
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures

cc: Honorable Sam Nunn
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Alan K. Simpson
Chairman, Subcommittee on Nuclear
Regulation
Committee on Environment and
Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in dark ink, reading "Donald Paul Hodel", is written over a horizontal line.

DONALD PAUL HODEL

Enclosures

cc: Honorable Gary Hart
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Pete V. Domenici
Chairman, Subcommittee on Energy
Research and Development
Committee on Energy and Natural
Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures

cc: Honorable Wendell H. Ford
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Mark O. Hatfield
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures

cc: Honorable J. Bennett Johnston
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures

cc: Honorable Jennings Randolph
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Slade Gorton
United States Senate
Washington, D. C. 20510

Dear Senator Gorton:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

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DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Daniel J. Evans
United States Senate
Washington, D. C. 20510

Dear Senator Evans:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

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Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Richard L. Ottinger
Chairman, Subcommittee on Energy Conservation
and Power
Committee on Energy and Commerce
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

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Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures

cc: Honorable Carlos J. Moorhead
Ranking Minority Member



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Rod Chandler
House of Representatives
Washington, D. C. 20515

Dear Mr. Chandler:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Norman D. Dicks
House of Representatives
Washington, D. C. 20515

Dear Mr. Dicks:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON D. C. 20585

September 26, 1984

Honorable Thomas S. Foley
House of Representatives
Washington, D. C. 20515

Dear Mr. Foley:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Model".

DO:IALD PAUL MODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Mike Lowry
House of Representatives
Washington, D. C. 20515

Dear Mr. Lowry:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,


DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Sid Morrison
House of Representatives
Washington, D. C. 20515

Dear Mr. Morrison:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D. C. 20585

September 26, 1984

Honorable Don Bonker
House of Representatives
Washington, D. C. 20515

Dear Mr. Bonker:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

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Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in cursive script that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Joel Pritchard
House of Representatives
Washington, D. C. 20515

Dear Mr. Pritchard:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable Al Swift
House of Representatives
Washington, D. C. 20515

Dear Mr. Swift:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

A handwritten signature in black ink that reads "Donald Paul Hodel".

DONALD PAUL HODEL

Enclosures



Washington
State Senate

Senator Al Williams
Chairman
Senator Margaret Hurley
Vice Chairman
Senator Max Bantz
Senator Wm. "Bill" Fuller
Senator M.A. "Barney" Gottz
Senator Dick Hemstad
Senator Mike McManus
Senator Ray Moore
Senator JT Ougg

Energy and Utilities Committee

6th Floor, Senate Office Building • Olympia, Washington 98504 DW-41 • (206) 753-9107

March 5, 1984

Mr. Donald Paul Hodel
Secretary of Energy
Department of Energy
Washington, DC 20585

Dear Mr. Hodel:

This letter is in response to your request for review and comment of the report to Congress required by section 117(c) of the Nuclear Waste Policy Act of 1982.

I believe the report stresses past working relationships between the state and the department at the expense of the current process created pursuant to RCW 43.200. Specifically, references to the state working group and the Governor's Task Force on High-Level Nuclear Waste Management are not necessary since these two bodies are no longer in existence.

It is important to note that it was not the state of Washington but the Governor who requested that negotiations for a written agreement begin on June 30, 1983. The Legislature did not participate in the request.

With respect to the legislative designees to the state negotiating team it must be noted that the designees were not empowered to bind the legislature as a body. Only the full legislature acting as a body can bind itself.

As of February 21, 1984 there have been seven, not six, formal negotiating sessions with the last session held on February 9, 1984.

I appreciate the opportunity to submit these comments on the written report required by the Nuclear Waste Policy Act.

Sincerely,

Al Williams, Chairman
Senate Energy and Utilities Committee

AW:d4-B

Report to Congress Concerning Negotiations
with the State of Washington
as Required by
section 117(c)
of the
Nuclear Waste Policy Act of 1982

U.S. Department of Energy

September 26, 1984

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those Agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. Since a written Agreement with the State of Washington was not completed within the time (no later than January 7, 1984) required by section 112(f) of the Act, this report is being submitted.

Site characterization work on Hanford basalts near Richland, Washington has been ongoing since 1976 as part of the National Waste Terminal Storage Program. An informal process of consultation and cooperation with the State has been underway since 1979. A working group was established by the State and DOE in 1979, consisting of representatives from the Governor's office and members of the legislature. The working group was continued by Governor Spellman in 1981 when he designated Mr. David Stevens, Energy Advisor to the Governor; Mr. Nicholas Lewis, Chairman, Energy Facilities Site Evaluation Council; Mr. Richard Watson, Acting Director of the State Energy Office; State Senator Hayner; and State Representative Hastings to be on the State Working Group. On August 16, 1982, Governor Spellman issued an Executive Order which established the State's High Level Nuclear Waste Management Task Force, consisting of seven executive branch members and four members from the legislature. This Task Force was instructed to serve as a liaison body between the State and DOE.

Pursuant to requirements of the Act and Substitute Washington State Senate Bill No. 3273, which designated the State organizations to implement the requirements of the Act, the State requested, by letter dated June 30, 1983, that negotiations commence for the purpose of entering into a Consultation and Cooperation Agreement. By letter dated July 15, 1983, the Chairmen of the State Senate and House Energy and Utilities Committees named the legislative designees to the State negotiating team. By letter dated July 21, 1983, the Manager of DOE's Richland Operations Office designated the DOE negotiating team. Negotiations were initiated on July 27, 1983. There have been a total of twelve negotiating sessions to date, the latest being held on June 29, 1984. The negotiating teams have been able to reach essential agreement on all but two articles of the draft Agreement.

The two primary Articles on which agreement has not been reached involve issues dealing with: (1) liability; and (2) defense waste. With respect to liability, it is the policy position of the State that the United States should be strictly and absolutely liable, without regard to fault, and without any dollar limitation, for any nuclear incident at a repository site, or any incident associated with transportation of waste to the repository. The model used for the indemnity provisions proposed by DOE to the State is the Price-Anderson Act indemnity (section 170.d of the Atomic Energy Act of 1954, 42 U.S.C. section 2210(d)) included in the "Supplemental Stipulated

Agreement Resolving Certain State Offsite Concerns Over Waste Isolation Pilot Plant." That Agreement was negotiated between DOE and the State of New Mexico for the Waste Isolation Pilot Plant which is being constructed in the State of New Mexico. DOE also advised the State that the Secretary of Energy, by letter dated August 1, 1983, recommended to Congress that authority to provide Price-Anderson coverage be extended beyond August 1987, that the dollar limits be raised, and that the extraordinary nuclear occurrence feature be enlarged to include commercial and defense waste facilities. DOE has represented to the State that its authority to indemnify for a nuclear incident involving a repository, including transportation, is circumscribed by the Price-Anderson Act amendments to the Atomic Energy Act of 1954 (42 U.S.C. section 2210(d), et. seq.). DOE has proposed to include in the Agreement a provision to the effect that DOE will assist the State in presenting the State's views with respect to liability to Congress without any obligation that DOE would concur in any State recommendation for amendment of the Price-Anderson Act or any other law.

With respect to defense waste, the State has requested that a provision be included in the Agreement that would formally provide the State with an opportunity to comment and make recommendations on the disposal of existing defense waste at Hanford prior to the evaluation to be made under section 8 of the Act. DOE has advised the State that DOE will continue to discuss the relationship between DOE's current activities at Hanford, which includes the preparation of an Environmental Impact Statement on disposal of defense high level and transuranic wastes, and the decisions to be made under section 8 of the Act.

In addition to the two unresolved issues, the Agreement could not be concluded by January 7, 1984, as required by the Act, because of a request for State legislative review of the Agreement. The State legislature formally convened on January 9, 1984, and subsequently passed Engrossed Substitute House Bill No. 1637, which was signed by Governor Spellman on March 8, 1984. The Bill re-established a Nuclear Waste Board as the initial point of contact in the State with DOE on high-level radioactive waste matters. The Bill also prescribes the procedure for State review and approval of a Consultation and Cooperation Agreement, including approval by the legislature. On July 20, 1984, the State negotiating team presented the draft Agreement to the Nuclear Waste Board. The draft Agreement is being reviewed by the Board members, who will submit their recommendation to the State negotiating team in August 1984. DOE is ready at the State's request to discuss further the two unresolved issues, and any concerns conveyed by the Board.



State of Washington

JOHN SPELLMAN, Governor

March 12, 1984

OFFICE OF THE GOVERNOR

The Honorable Donald Model, Secretary
U. S. Department of Energy
Washington, D.C. 20585

Dear Secretary Model:

Thank you for your letter of January 27 outlining your department's proposed report to Congress on the status of the negotiations between the state and the U.S. Department of Energy (DOE) on a proposed Consultation and Cooperation Agreement. Since your letter was not received in my office until after the suggested date for review and comment, I hope that you will, nevertheless, be willing to transmit my comments on the draft material.

I think basically the report accurately describes the background and negotiation activities. I am aware of the hard work by members of both negotiating teams, and I am satisfied that substantial progress has been made in many areas that the agreement proposes to cover.

I would, however, like to add a clarification to the language in the last paragraph of the first page of your draft report where it indicates that the negotiating teams "have been able to reach essential agreement on all but two articles of the proposed agreement." The two major items that have yet to be fully resolved are further described by your report. Those issues, i.e., liability and existing defense wastes at Hanford, must be adequately dealt with prior to the conclusion of any negotiations.

It should also be stated for the record that, while the negotiating team for the state feels confident that we have made significant progress in the development of an agreement, we still may well have additional items for discussion and negotiation with the Department of Energy that have been identified during the public review period, as well as issues arising during current legislative review. It is the state negotiating team's position that all issues will have to be looked at in the context of final negotiations.

Nevertheless, I am pleased with the work accomplished to date, and I continue to feel that having a satisfactory and binding agreement with the Department of Energy will enable the state to carry on a comprehensive and independent review of DOE's repository siting efforts as called for in the Federal legislation. It is, of course, essential that the state have a means of adequately judging the activities under the Nuclear Waste Policy Act of 1982 which can have significant impacts on our environment and the health and safety of our citizens.

The Honorable Donald Model
March 12, 1984
Page 2

I am confident that, upon completion of the legislative review process and after full consideration of other issues raised since the distribution of the draft agreement, we will be able to complete a document fully protecting state interests.

Thank you for the opportunity to review your draft report.

With best wishes,

Sincerely,



John Spellman
Governor

**Report to Congress Concerning Negotiations
with the Yakima Indian Nation
as Required by
section 117(c)
of the
Nuclear Waste Policy Act of 1982**

U.S. Department of Energy

September 26, 1984

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with the States and affected Indian tribes if those Agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. Since a written Agreement with the Yakima Indian Nation (Nation) was not completed within the time (no later than January 7, 1984) required by section 112(f) of the Act, this report is being submitted.

By letters dated February 14 and March 8, 1983, the Nation petitioned the Secretary of the Interior to certify that the Nation qualified as an "affected Indian tribe" in accordance with section 2(2)(B) of the Act. By letter dated March 30, 1983, the Assistant Secretary, Indian Affairs, Department of the Interior certified that the Nation was an "affected Indian tribe". By letter dated May 20, 1983, DOE notified the Chairman of the Nation's Tribal Council that the Hanford Site, near Richland, Washington, contained a potentially acceptable site for a waste repository. By letter dated May 23, 1983, the Nation requested DOE to commence negotiation of a Consultation and Cooperation Agreement pursuant to the requirements of the Act. The Manager of DOE's Richland Operations Office was designated as the principal contact for these negotiations. Mr. James B. Hovis, Tribal Counsel, was designated as the principal contact for the Nation. Formal negotiations were initiated on July 15, 1983.

Four informal negotiating sessions followed the July 15, 1983, session. These sessions involved Mr. James B. Hovis and Mr. Richard L. Hames, then Chief Counsel, Richland Operations Office, a member of the Department's negotiating team. Substantial progress was made in drafting an Agreement which will be reviewed by the Nation's Tribal Council and the entire DOE negotiating team. At the request of Mr. Hovis, further negotiations have been postponed pending completion of an Agreement with the State of Washington. As stated in a parallel report concerning negotiations with the State, essential Agreement has been reached on all but two provisions, viz, liability and defense waste. The State has notified DOE that the legislature must review the Agreement before it can be executed and that the review could not be accomplished until after the legislature convened on January 9. DOE is ready to resume negotiations whenever requested by the Nation.

OPIS COCKRILL WEAVER AND BJUR
PO BOX 487
YAKIMA WA 98907 30AM

Western
Union Mailgram

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5095751500 MGMB TDMT YAKIMA WA 77 05-30 0526P EST

HONDRABLE DON PAUL HODEL
SECRETARY DEPT OF ENERGY
WASHINGTON DC 20585

REGARDING THE STATUS OF C AND C NEGOTIATIONS BETWEEN DOE AND YAKIMA
NATION PER SECTION 112F OF N W P A, PLEASE BE ADVISED THAT MELVIN
SAMPSON CHAIRMAN OF THE APPROPRIATE COMMITTEE HAS ASKED ME TO ADVISE
YOU THAT THE YAKIMA NATION HAS NO OBJECTION TO THE SUBMISSION OF YOUR
REPORT THAT THEY HAVE REVIEWED TO CONGRESS

JAMES B HOVIS
PO BOX-487
YAKIMA WA 98907

17:28 EST

MGHCDMP



Department of Energy
Washington, DC 20585

DEC 28 1986

Mr. Kendall Hall, Chairman
Board of Trustees
Confederated Tribes of the
Umatilla Indian Reservation
P.O. Box 638
Pendleton, Oregon 97801

Dear Mr. Hall:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that the sites have been approved for site characterization for a nuclear waste repository. The report must include the reason why such agreements have not been concluded. The Act also specifies that affected States and Indian Tribes have an opportunity to review and comment on this report, and their comments are to be included in the Department's submission to Congress.

On March 17, 1986, the Department of Energy transmitted a report to Congress describing the consultation and cooperation negotiations which had been initiated by the Confederated Tribes of the Umatilla Indian Reservation on June 10, 1985, along with the Tribes comments on the report.

The enclosed report to Congress provides an update on the status of consultation and cooperation negotiations between the Department and the Confederated Tribes of the Umatilla Indian Reservation since the last report was submitted. I will be transmitting this report, as well as reports for the other States and affected Indian Tribes, to Congress shortly. We would therefore appreciate receiving your comments as soon as possible.

We look forward to working with the Confederated Tribes of the Umatilla Indian Reservation in continuing our consultation and cooperation negotiations.

Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosure

**Report to Congress Concerning Negotiations
with the Confederated Tribes
of the Umatilla Indian Reservation
as Required by
Section 117(c) of the
Nuclear Waste Policy Act of 1982
U.S. Department of Energy
December 1986**

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that sites have been approved for site characterization by the President for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. In accordance with the Act, the Department must seek to enter into these agreements not later than 60 days after Presidential approval of a site for site characterization, or at the written request of the State or affected Indian Tribe within any State notified as having a potentially acceptable site under Section 116(a) of the Act, whichever occurs first.

On June 10, 1985, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) initiated consultation and cooperation negotiations with the Department. These negotiations, which were suspended by the CTUIR pending Tribal elections, were described to Congress in the enclosed report transmitted on March 17, 1986. This report provides an update on the status of consultation and cooperation negotiations since that report.

On May 28, 1986, President Reagan approved the Department's recommendation that sites in three States - Nevada, Texas, and Washington - be selected for site characterization. On July 9, 1986, the Department resumed negotiations with the Confederated Tribes of the Umatilla Indian Reservation, again at their request. Subsequent negotiating sessions were held on August 7, 1986, October 1, 1986, and November 13, 1986.

In an effort to meet with representatives of all States, within which recommended sites are located, and all three affected Indian Tribes, on July 25, 1986, Mr. Lee Olson, director of the Basalt Waste Isolation Division at DOE's Richland Operations Office, wrote to Mr. Kendall Hall, chairman, Confederated Tribes of the Umatilla Indian Reservation, to invite the CTUIR to discuss consultation and cooperation activities to date, review the scope and parameters of a Consultation and Cooperation Agreement, and talk about provisions that might be common to all such agreements. The States and Indian Tribes that did respond replied that direct negotiations between the Department and individual State and Tribal nuclear waste offices, such as those currently ongoing with the CTUIR, might prove more fruitful than a joint meeting. The Department has contacted the other States and Indian Tribes to pursue these direct negotiations.

Pursuant to the Act, enclosed are the comments of Mr. Hall on this report. In addition to the previous report to Congress, the Department is enclosing a copy of the July 25, 1986, letter to Mr. Hall.

Enclosures

**Report to Congress Concerning Negotiations
with the Confederated Tribes of the
Umatilla Indian Reservation
as Required by
Section 117(c)
of the
Nuclear Waste Policy Act of 1982
U.S. Department of Energy
January 1986**

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes. This report must also include the reasons why such Agreements have not been completed. Since a written Agreement with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) was not completed within the time (no later than January 10, 1986) required by Section 112(f) of the Act, this report is being submitted.

Site characterization work on Hanford basalt near Richland, Washington, has been ongoing since 1976 as part of the National Waste Terminal Storage Program. By letter dated March 29 and June 3, 1983, the Confederated Tribes of the Umatilla Indian Reservation petitioned the Secretary of the Interior to certify that the Confederated Tribes of the Umatilla Indian Reservation qualify as an "affected Indian Tribe" in accordance with Section 2(2)(B) of the Act. By letter dated July 13, 1983, the Assistant Secretary, Indian Affairs, Department of the Interior, certified that the Confederated Tribes of the Umatilla Indian Reservation was an "affected Indian Tribe." By letter dated September 23, 1983, DOE notified the Chairman of the Board of Trustees of the CTUIR that the Hanford Site, near Richland, Washington, contained a potentially acceptable site for a waste repository. The Confederated Tribes of the Umatilla Indian Reservation on December 1, 1984, established the Nuclear Waste Oversight Committee to provide Confederated Tribes of the Umatilla Indian Reservation Nuclear Waste program with oversight and policy direction.

Pursuant to requirements of the Act, the Confederated Tribes of the Umatilla Indian Reservation requested, by letter dated June 10, 1985, that negotiations commence for the purpose of entering into a Consultation and Cooperation Agreement. By letter dated July 26, 1985, the Assistant Manager for Commercial Nuclear Waste of DOE's Richland Operations Office designated the DOE negotiating team. By letter dated September 9, 1985, the Chairman of the Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation, designated the CTUIR negotiating team. Negotiations were initiated on August 14, 1985. There have been a total of three (3) negotiating sessions to date, the last being held September 19, 1985.

By letter dated October 21, 1985, the Confederated Tribes of the Umatilla Indian Reservation requested a recess in the negotiation proceedings of 30 to 45 days. Subsequently, by letter dated November 25, 1985, the Confederated Tribes of the Umatilla Indian Reservation requested additional time to assess the developments in the Consultation and Cooperation Agreements, and to delay the resumption of negotiations until further notice. DOE is prepared to resume negotiations whenever requested by the Confederated Tribes of the Umatilla Indian Reservation.



Department of Energy

Richland Operations Office
P.O. Box 550
Richland, Washington 99352

86-BWI-17

JUL 25 1986

Mr. Kendall Hall, Chairman
Board of Trustees
Confederated Tribes of the
Umatilla Indian Reservation
P. O. Box 638
Pendleton, OR 97801

Dear Mr. Hall:

CONSULTATION AND COOPERATION AGREEMENT

On May 28, 1986, the Department of Energy's recommendation of three sites in Nevada, Texas, and Washington was approved for detailed site characterization for a deep-mined geologic repository for high-level waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982, the Department wishes to continue the process that would eventually lead to a signed Consultation and Cooperation (C&C) Agreement.

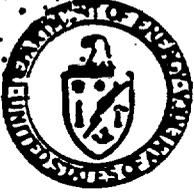
As a starting point, the Department would like to meet with representatives from the States and three affected Indian Tribes to discuss C&C activities to date, review the scope and parameters of C&C agreements, and talk about provisions that might be in common in all such agreements.

We will be contacting you in the near future to arrange for a time and place that would be acceptable to each of the States and Indian Tribes. Should you desire to discuss this matter with me, please do not hesitate to give me a call.

Sincerely,

O. L. Olson, Director
Basalt Waste Isolation Division

BWI:OLO



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures



GENERAL COUNCIL
and
BOARD of TRUSTEES

CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area Code (503) Phone 276-3165

December 27, 1985

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

On behalf of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), I submit the following comments to the Department of Energy (DOE) report concerning the status of our Cooperation and Consultation (C & C) Agreement negotiations. I have no objections to the DOE report, but the CTUIR feel some additions to the report are appropriate.

The CTUIR has taken the C & C Agreement negotiations very seriously. Prior to our first negotiation session, the CTUIR Board of Trustees Chairman, Elwood Patawa, delivered to DOE a 35 page C & C working paper which represented the Tribe's view of the essential contents of a C & C Agreement. The first 2 negotiating sessions were spent reviewing our working paper. The CTUIR has also endeavored to explain to the DOE negotiating team the basis for the Tribe's participation under the Nuclear Waste Policy Act. This has involved a presentation by an anthropologist, familiar with the culture of Pacific Northwest Indian Tribes, on the extent of the CTUIR's possessory and usage rights in and around the Hanford site as well as explanations of the nature of the legal status of treaties between the U.S. Government and Indian nations, of President Reagan's Federal Indian Policy and of the nature of the trust responsibility the Federal Government has over Indian lands. The CTUIR feels progress has been made in educating DOE and other cognizant Federal agencies of the unique position Indian tribes have under Federal law.

The CTUIR acted responsibly in postponing further C & C negotiation sessions last September. The potential siting of a repository for high-level radioactive wastes so close to the Umatilla Indian Reservation is viewed with tremendous concern by Tribal leadership and Tribal members. The C & C Agreement proposes to set the course of Tribal involvement with DOE through at least the site characterization phase and therefore requires considerable scrutiny by Tribal policy makers. During this necessary review, Tribal elections were held in which the Tribal leadership changed. The CTUIR plans an intensive seminar to provide the necessary background to the new leadership so that decisions affecting the possibility of future C & C negotiations can be made.

Honorable George Bush
President of the Senate
December 27, 1985
Page 2

Nonetheless, over the past 3 months, through the efforts of our contractor the Council of Energy Resource Tribes (CERT) and our Tribal Attorney, the CTUIR has worked diligently to insure that the Tribes' interests in the C & C negotiations will be ably presented and defended should C & C negotiations be reconvened.

Sincerely,

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION



Ken Hall, Chairman
Board of Trustees

cc: Nuclear Waste Program Director, CTUIR, Peter Ramatowski
Nuclear Waste Oversight Committee, CTUIR
Tribal Attorney, CTUIR, Daniel Hester
Council of Energy Resource Tribes, Bob Seik
File

REPORT TO CONGRESS CONCERNING THE
CONSULTATION AND COOPERATION AGREEMENT
NEGOTIATIONS BETWEEN THE
CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
AND THE UNITED STATES DEPARTMENT OF ENERGY AS
REQUIRED BY SECTION 117 OF THE
NUCLEAR WASTE POLICY ACT OF 1982

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
JANUARY 1987

000374

The Confederated Tribes of the Umatilla Indian Reservation (hereinafter CTUIR) initiated C and C negotiations in June 1985. Three negotiation sessions were held with DOE in August and September of that year. Generally the negotiation sessions involved a review of a C and C working paper prepared by the CTUIR. No agreements were reached on any substantive issues by the negotiators. After the three meetings, the CTUIR cancelled future negotiations because of impending tribal elections and because of dissatisfaction in the progress of negotiations.

Following tribal elections in November 1985, the CTUIR's Nuclear Waste Advisory Committee was reorganized. The Committee was comprised of elected tribal leaders and directors of cognizant tribal departments. The Committee was delegated the responsibility of negotiating a C and C agreement with DOE.

Early in 1986, the Nuclear Waste Advisory Committee met with the Director of the Umatilla Nuclear Waste Study Program and his staff and consultants to discuss the resumption of C and C negotiations. These meetings resulted in the development of the CTUIR's goals and objectives in engaging in C and C negotiations. The principle concern of the Tribe was to ensure that the agreement recognized the treaty rights of the CTUIR and that the Tribe had the authority to protect and preserve those rights throughout the repository program. In order to fully protect their treaty rights, the CTUIR recognized it was critical that it

take full advantage of the oversight role Congress legislated for affected Indian tribes in the NWPA. The CTUIR feels that Congress designed the C and C agreement to require DOE to recognize in writing the interests and concerns each affected party, their oversight authority and the procedures for responding to the concerns and impacts identified by affected parties.

The CTUIR decided to resume C and C negotiations in April 1986 primarily to insure that DOE interpreted the NWPA in a manner that provided the CTUIR full and effective rights of participation in their oversight of the repository program. The CTUIR was concerned that DOE would rely upon ambiguities in the NWPA to prevent affected Indian tribes from playing the role Congress intended them to play and, as a result, limit the ability of affected Indian tribes to protect their interests. DOE actions to date demonstrate the CTUIR's concern was and is well founded.

On May 6, 1986 the CTUIR Nuclear Waste Advisory Committee met with the DOE C and C negotiating team to discuss the terms and conditions under which negotiations could proceed. At that time, DOE was specifically informed of the Tribe's objectives in resuming negotiations. Tribal representatives stated they expected a negotiated agreement to be premised on a broad reading of the NWPA and one that recognized that the provisions of Section 117(c) did not limit the content of an

agreement. DOE representatives claimed to have no disagreement with the objectives of the CTUIR. Therefore, negotiations were begun anew.

The first formal C and C negotiations in 1986 were held in July. However, in August the CTUIR was orally informed that the DOE Richland Project Office had made a "preliminary determination" that the affected Indian tribes were not entitled to file an Impact Report or receive impact mitigation assistance under Section 118(b)(3) of the NHPA. DOE officials promised they would not render a final decision on the issue until the affected tribes were provided an opportunity to review and comment upon the draft position paper from the Richland office. After considerable delay in issuing the draft document, the CTUIR finally received its copy at the end of October. The document is attached as Document A.

The dispute over the impact assistance issue stemmed from ambiguity in Section 118(b)(3). That section appears contradictory on the eligibility of affected tribes who do not host a repository to receive impact assistance. Section 118(b)(3)(A) requires DOE to provide "financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository." DOE initially ignored this language and only cited subsection (B) which states that an affected tribe desiring impact assistance

shall prepare a report to DOE "on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation or such Indian tribe." (Emphasis added.) Because of the ambiguity, both sides agreed there was a need to research the legislative history of the NHPA to discern the intent of Congress. The draft DOE position paper on this issue shed little light on the legal basis for DOE's conclusion affected tribes were not entitled to impact assistance. On November 5, 1986 our attorney sent a letter to DOE's General Counsel in Richland requesting citations to the NHPA and its legislative history which supported DOE's position. This letter is attached as Document B. This information was requested on behalf of the CTUIR and the Nez Perce Tribe who were in the process of jointly preparing a response to DOE's position paper. The CTUIR never received from DOE any additional information on the legal basis of DOE's preliminary position paper.

A meeting was scheduled on December 18, 1986 to discuss the impact assistance issue with the top echelon of DOE Richland officials. As promised, the CTUIR sent to DOE a Memorandum of Law in response to the DOE position paper on November 24, 1986. This memorandum clearly demonstrated that Congress did not intend impact assistance to go only to "host" affected Indian tribes, but to all affected Indian tribes as defined by the NHPA. The memorandum includes close scrutiny of the legislative history of the Act which documents Congress' view that all affected Indian

tribes were authorized to participate in the repository program on an equal basis with states. The memorandum concludes that DOE must interpret the ambiguities concerning affected tribe entitlement to impact assistance consistent with the clear expression of Congressional intent found in the legislative history. The memorandum is attached as Document C.

The meeting to discuss the dispute over impact assistance was called so that the appropriate policy making officials from all interested parties could seek to resolve the issue. John Anttonen, the Assistant Manager for Commercial Nuclear Waste, was supposed to be DOE Richland's chief representative. The meeting date was changed to accommodate Mr. Anttonen's schedule once. Later, just prior to the meeting, the CTUIR learned Mr. Anttonen would not attend the meeting rescheduled for December 18, 1986. The CTUIR determined, as did the Nez Perce Tribe, that the meeting should be cancelled as the purpose of the meeting could not be achieved in Mr. Anttonen's absence. A copy of the CTUIR letter cancelling the meeting is attached as Document D.

Despite the ineffective consultation with the DOE Richland office, the CTUIR was promised a meeting with DOE Headquarters before the agency rendered its final decision. However, before the meeting was scheduled, DOE Richland unexpectedly reversed itself and announced the final DOE decision that all affected Indian tribes were determined to be eligible

for impact assistance. The announcement occurred on January 22, 1987. The DOE letter announcing DOE's decision is attached as Document E.

In the meantime, the CTUIR learned of what is potentially a DOE policy change with grave implications for C and C agreements with affected tribes. Section 117(c) lists the issues Congress felt a C and C agreement should address. However, while most provisions in that section expressly apply to states and tribes, several provisions omit reference to tribes. In our C and C negotiations, the CTUIR took the position that it made no sense to preclude tribal involvement in those subsections where tribes were omitted.

DOE initially agreed with the CTUIR position. At the Institutional/Socioeconomic Coordinating Group (ISCG) meeting between DOE and affected parties held in St. Louis in June 1986, Barry Gale from DOE Headquarters and Chairman of the ISCG, declared it was DOE policy that all subsections of Section 117(c) applied equally to states and tribes. At our C and C negotiations on July 9, 1986, Mr. Gale, who represents DOE Headquarters in the negotiations, repeated the DOE policy claiming that it was "obvious that Congress intended that section to apply equally to tribes as well as states."

Nonetheless, at the last ISCG meeting in December, 1986, there was sufficient uncertainty among DOE officials concerning

the application of Section 117(c) provisions to affected tribes that the issue was made an action item for DOE resolution. The CTUIR views DOE's recent uncertainty on the applicability of Section 117(c) as a failure by DOE to live up to prior express policy pronouncements and potentially a DOE interpretation of the NHPA further curtailing the role of affected Indian tribes. The CTUIR sent Mr. Gale a letter expressing these concerns which is attached as Document F. Later, the CTUIR sent a letter to Ben Rusche demanding that the Tribe be consulted prior to a DOE decision on this issue. This letter is also attached as Document G.

On January 5, 1987, the CTUIR notified DOE it was cancelling future C and C negotiations. The decision was based on the Tribe's displeasure with DOE's handling of the impact assistance issue, DOE's consistently narrow interpretation of the Tribe's rights under the NHPA and because of lingering issues related to our as yet unresolved 1987 budget. The CTUIR letter is attached as Document H.

The CTUIR has engaged in C and C negotiations with diligence and in good faith. The Tribe perceives a C and C Agreement as a document that breathes life into the NHPA and defines the independent oversight role Congress envisioned for affected Indian tribes. The Tribe also views a C and C Agreement as establishing a procedure whereby the Tribe can protect the rights reserved for them in their Treaty of 1855 with the United States Government.

When the Congress passed the continuing resolution providing for DOE's FY'87 budget for NHPA activities, \$79 million was withheld pending DOE certification to Congress that it has made a good faith effort to comply with the consultation and cooperation requirements of Section 117(c) of the NHPA. The CTUIR requests that Congress closely monitor the resolution of C and C issues between the CTUIR and DOE to assist you in your deliberations concerning DOE's Section 117(c) efforts.

Clearly the DOE decision on impact assistance is an important first step. The CTUIR applauds the DOE decision on this issue, but is equally concerned about the process that yielded the result. As we pointed out to DOE on several occasions, the importance of the impact assistance issue went beyond the substance of the eventual decision. Also at stake was the development of a process in which conflicts between DOE and the CTUIR could be resolved. The consultation process did not develop much, if at all, in the resolution of the impact assistance issue. DOE's dedication to improving the consultation requirements of the NHPA, and continued Congressional pressure on the Department, will be necessary to effectively develop the relationships Congress envisioned for affected Indian tribes and DOE during the repository program.

The CTUIR has withdrawn from C and C negotiations for the time being because of DOE actions which we perceived as restrictive of the level of tribal participation in overseeing

DOE activity and which would limit our ability to protect our treaty rights. The CTUIR has repeatedly demonstrated its willingness to negotiate with DOE for a C and C Agreement that defines the relationship between the Tribe and DOE that Congress intended. The CTUIR has stated to DOE its refusal to continue negotiations if DOE negotiators are going to consistently read the NWPA to narrowly construe the authority of the Tribe so as to inhibit our ability to protect our interests. With the impact assistance decision rendered in the favor of the CTUIR, we must now await DOE's decision on the interpretation of Section 117(c) to determine whether we will return to the table for C and C negotiations.

By: *Elwood Patawa*
Elwood Patawa
Chairman, Board of Trustees 2-2-87

Attested by:

Louis H. Dick, Jr.
Louis Dick, Jr. 2-2-87
Vice Chairman, Board of Trustees
Chairman, Nuclear Waste Advisory
Committee

Bill Burke
Bill Burke 2-2-87
Director, Umatilla Nuclear Waste
Study Program

DOCUMENT A

23 October 1986

MEMORANDUM

TO: E. E. PRIDE, CHIEF COUNSEL
FROM: JOANNE G. COMINS RICK, ATTORNEY, OCC/RL
RE: DRAFT POSITION PAPER, RL/ENIP - IMPACT ASSISTANCE FUNDING ELIGIBILITY
REGARDING "AFFECTED INDIAN TRIBES" UNDER THE NWPA

ISSUE: Whether or not the Umatilla, Yakima and Nez Perce Indian tribes are entitled to receive impact assistance funding to mitigate impacts of the possible siting of a repository at Hanford, pursuant to the Nuclear Waste Policy Act of 1982.

RECOMMENDED POSITION: The Umatilla, Yakima and Nez Perce Indian tribes are not entitled to receive financial assistance for impacts under the Nuclear Waste Policy Act of 1982 (the Act). Section 118(b)(3)(A) and (B) of the Act particularly refers to impact assistance. Absent "host tribe" status, that is, absent the location of a repository within the boundaries of an Indian reservation, the tribe is not entitled to impact assistance funding under the Act. It follows, therefore, that if a tribe is not entitled to receive impact assistance funding, it is precluded from receiving grant funds to prepare a report to the Secretary to request such assistance, and likewise, from receiving grant funds to conduct activities whose purposes are to support a report to the Secretary to request impact assistance.

The Umatilla, Yakima and Nez Perce Indian tribes each have been designated as an "affected Indian tribe" pursuant to NWPA Section 2(2)(B). The Secretary of Interior made a finding that these tribes' off-reservation fishing rights may be both substantially and adversely affected by the siting of a repository at Hanford. However, none of these tribes are an "affected Indian tribe" for purposes of entitlement to receive financial

assistance for impacts, since the Hanford site is not located within the boundaries of any of their reservations.

ANALYSIS: The Umatilla, Yakima and Nez Perce Indian tribes were designated as "affected Indian tribes" by the Secretary of the Department of Interior pursuant to the Act, solely on the basis of the possible substantial and adverse affect to their off-reservation fishing rights by the potential siting of a repository at Hanford . Since the time of that designation, a site within the Hanford reservation has been designated as one of the three national sites to conduct site characterization activities. It is uncontested that the Hanford energy reservation is not within the boundaries of these tribes' reservations, as defined by the Act and their respective Treaties.

All of the aforementioned tribes have sought to obtain financial assistance for activities whose purposes relate to supporting a report to request impact assistance from the Secretary through the grant proposal/award process. Therefore, a determination must first be made as to their entitlement to grant funds for impact assistance.

At first glance, the use of the term "affected Indian tribes" within the various sections of the Act appears to be imprecise. However, a closer examination of this language and a review of the legislative history of the Act removes this uncertainty.

Sections 116, 117, and 118 of the Act address financial assistance to affected States and Indian tribes. These sections provide financial assistance to the affected parties in varying degrees. Thus, as "affected Indians," these tribes are entitled to receive grant funds to assist in their participation in activities as designated under the Act.

Not all Indian tribes which have been designated as "affected Indian tribes," however, are entitled to the same degree of participation and funding. The language of these sections, as supported by the legislative history of the Act, manifests Congress' intent to provide impact assistance only to States and Tribes WITHIN WHOSE BOUNDARIES the site repository lies.

Section 116 clearly identifies the State within whose boundaries the site lies, as entitled to impact assistance. Thus, for example, although Oregon may be "affected" by the site location at Hanford, only Washington qualifies to receive financial impact assistance. Similarly, activities whose purposes are to assist in the preparation of a report to request such assistance from the Secretary, are permissible under the grant process.

Section 117 authorizes consultation and cooperation (C&C) agreements between the USDOE and the States or the governing body of "any affected Indian tribe." This refers to both host and non-host Tribes, based upon the Congressional intent as set forth in the legislative history of the Act.

Section 118 discusses participation of Indian tribes in the repository siting decision and characterization activities. Specific reference is made in Section 118(a) to "a site for a repository LOCATED ON THE RESERVATION OF AN AFFECTED INDIAN TRIBE." (emphasis added). Subsection 118(b) specifically states that "any Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository site ON THE RESERVATION OF SUCH INDIAN TRIBE...." (emphasis added). Subsequent reference to Indian tribes within this section consistently refers to those tribes upon whose reservation the site lies.

The legislative history of the Act is voluminous and complex. Bills were introduced in both the House and the Senate; committees of both houses reviewed these bills and amendments were made. A chronological tracking of the issue at hand throughout the various proposals and amendments demonstrates how this history supports the position recommended of this paper.

A review of the House versions of the bill reveals that it was Congress' intent to afford both host States and Tribes the same extent of participation under the Act. The House discussions relating to participation focus upon the right of both host States and Tribes to share information, participate in planning and to make recommendations to all activities relating to the repository siting and locating process. There is much discussion about the right to consultation and cooperation between the Department and the States and Tribes. There is also much discussion regarding the extent of the vote for disapproval/veto by the host State; extending similar rights of vote for disapproval/veto to host Tribes.

The House specifically recognized the Indian tribes as "semi-sovereign entities," and intended to grant them a right to participate in the process with the Secretary on all decisions which affected the activities within tribal jurisdictional boundaries. The House intended clear rights and procedures for participation by host States and Tribes in all decisions affecting the sites, and for financial assistance to help them participate and to mitigate repository impacts. Thus, the concept of participation and funding was annexed to the concept of jurisdiction.

The House version of Section 118 specifically contained the language "on the reservation" to qualify the participation of Indian tribes. The definition sections of the House bills did not distinguish between "host"

and "use and possessory rights."

Thus, it is clear from the legislative history in the House, that it was Congress' intent to provide entitlement for impact assistance exclusively to host States and host Tribes.

The two-pronged definition of an "affected Indian tribe" came from the Senate versions of the bill. The Senate bills were concerned with Indian tribes WITHIN AN AFFECTED STATE. That is, the right of participation was intended to extend to tribes which were located within the borders of an affected State and had use or possessory rights within that state, but which did not have a repository sited within the boundaries of their reservation.

The Senate versions of the bill provided for participation by the affected states and tribes in consultation and cooperation agreements, and for sharing of information, planning, and making recommendations in the repository process. Funding to cover the costs of State and Tribal participation, as well as to mitigate impacts was to be available through consultation and cooperation agreements. Affected state and tribal participation and funding, therefore, were to be provided principally, if not entirely, through consultation and cooperation agreements.

The final version of the House bill contained language consistent with providing impact assistance only to host Tribes.

The Senate reviewed that version and superimposed an amendment to the House bill. Among other things, that amendment contained the two-pronged definition from prior Senate versions of the bill, as well as the removal of the qualifying term "on the reservation" in certain sections of the bill. The Senate had ample opportunity to remove all references to "on the reservation" relating to affected Indian tribes, but did not do so. The

reference to impact assistance in Section 118 (b) (3) (as enacted) in this version by the Senate still contained the qualifying terms "on the reservation." The amended Senate version was returned to the House which approved it without further amendment, and the Act passed. It is clear, therefore, that Congress intended to entitle only affected tribes upon whose reservation a repository site was located to receive impact assistance.

Fredericks & Pelcyger

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1952 - 1982

OF COUNSEL
ROBERT J GOLTEN

*ADMITTED ONLY IN VIRGINIA
**ADMITTED ONLY IN CALIFORNIA AND NEW YORK
***ADMITTED ONLY IN WISCONSIN

November 5, 1986

Mr. Gene Pride
General Counsel
United States Department
of Energy
Post Office Box 550
Richland, Washington 99352

Dear Gene:

As you know, last August we first learned from you that DOE-Richland (DOE-RL) had made a preliminary determination that the affected Indian tribes were not entitled to receive impact assistance under the Nuclear Waste Policy Act (NWPA). You informed me of this development orally at our Consultation and Cooperation Agreement Subcommittee negotiations on August 7, 1986 in Pendleton.

The next week we received DOE-RL comments to our FY'87 grant proposals. The first comment to both the Umatilla and Nez Perce proposals stated: "There has been a preliminary determination that the CTUIR are not entitled to receive impact assistance funds under the NWPA. Therefore, activities such as U-4 Environmental Monitoring and Studies and U-5 Socioeconomic and Cultural Assessment, and any of the other activities which relate to impact assistance are not eligible for funding." The Umatilla and Nez Perce Tribes were concerned about DOE's failure to provide any citation to the NWPA or any other authority to support its preliminary determination. Because of this concern, the Umatilla and Nez Perce Tribes held a meeting in Spokane on August 20, 1986 to discuss DOE-RL's preliminary determination. Max Powell represented DOE-RL at that meeting. Both tribes informed Mr. Powell of their interest in being consulted prior to a final DOE decision on the impact assistance issue. In order to respond to DOE's position, however, we told Mr. Powell we needed a legal memorandum from DOE that articulated the DOE position with the appropriate citation to the legal authority providing support for DOE arguments and conclusions. Mr. Powell promised the tribes such a memorandum would be forthcoming. The same

Mr. Gene Pride
November 5, 1986
Page Two

questions were raised by the Umatilla Tribe in formal Consultation and Cooperation negotiations on July 9, 1986 and October 1, 1986 and DOE negotiators promised the detailed memorandum we requested.

On October 24, 1986 the DOE-RL draft position paper on impact assistance was mailed out. I speak for both the Umatilla and Nez Perce Tribes in saying we are disappointed in the memorandum. Aside from the substance of the document, the memorandum fails to provide the legal basis for the DOE position. As you know, the legislative history of the NWPA will be critical in determining the intent of Congress with regard to impact assistance. The memorandum consistently refers to House and Senate versions of the Act as it moved through several sessions of Congress. But the specific bills referred to or relied upon by DOE are never identified. We requested the memorandum so we could respond to the DOE position. Any such response requires an understanding of the legal position we are challenging. We feel that a revised memorandum containing citation to the legal authority for DOE-RL's position is needed to comply with the request the tribes have made and with minimal professional standards.

In order to expedite the resolution of this important matter, we request this information as soon as possible.

Sincerely,



Daniel Hester

DH/caw

cc: Carl Sampson, CTUIR
Delco White, Nez Perce
Bill Burke, CTUIR
Ron Halfmoon, Nez Perce
Kevin Gover, Nez Perce
Russell Jim, Yakima
Jim Hovis, Yakima
John Anttonen, DOE
Joanne Comins-Rick, DOE
Bob Seik, CERT
John Hutchins, CERT

MEMORANDUM OF LAW

TO: Bill Burke, Director
Umatilla Nuclear Waste Study Program
Carl Sampson, Chairman
Umatilla Nuclear Waste Advisory Committee
Ron T. Halfmoon, Manager
Nez Perce Nuclear Waste Program
Del White, Chairman
NPTEC Nuclear Waste Subcommittee

FROM: Daniel Hester
Fredericks & Pelcyger
B. Kevin Gover
Gover, Stetson & Williams, P.C.

RE: Response to DOE-Richland Position Paper on Impact Assistance Eligibility of Affected Indian Tribes Under the Nuclear Waste Policy Act

DATE: November 12, 1986

Introduction

The Nuclear Waste Policy Act of 1982 (hereinafter "NWPA") was enacted by Congress to respond to the national need to locate and construct disposal sites for high-level radioactive wastes being generated by civilian and defense sources. In the NWPA, Congress established an elaborate schedule for the siting, construction, and operation of disposal facilities in deep geologic repositories. Congress mandated that the repositories were to ensure that the wastes would not adversely affect the public health and safety or the environment now or in the future. To develop public confidence in the repositories, Congress determined that public participation in the planning and development of the repositories was essential. The principal means of allowing for this public involvement is found in the role Congress provided for "host" states and affected Indian tribes.

In the NWPA, Congress determined that tribal and state governments whose citizens are affected by the program should receive compensation for repository-related impacts. This compensation would be paid from the Nuclear Waste Fund established by the Act and comprised of fees paid by the owners and generators of nuclear waste. The section of the Act dealing directly with impact assistance for affected Indian tribes is Section 118. DOE-Richland has preliminarily determined that Section 118 provides impact assistance only to an affected tribe which is also a "host" tribe, i.e., an affected tribe as defined in Section 2(2)(A) of the Act. DOE-Richland concludes, therefore, that since the proposed Hanford Site is not located on the reservation of any of the three affected Indian tribes surrounding Hanford, the tribes are not entitled to receive Nuclear Waste Fund monies for:

- (1) impact assistance funding;
- (2) the preparation of a report to DOE requesting impact assistance; and
- (3) conducting the activities intended to support a report to DOE requesting impact assistance.

This Memorandum analyzes and responds to DOE-Richland's preliminary determination. We note at the outset that the memorandum setting forth DOE's position is somewhat vague. The obscure references to "the legislative history," congressional "discussion," "the House bills," and "the Senate bills" are not helpful in determining the specific provisions in the legislative history upon which the author relies. Nonetheless, we have attempted to respond with specificity and depth to the analysis presented by DOE-Richland.

This Memorandum is divided into four sections. These sections present, seriatim, the following:

- (1) An analysis of the relevant provisions of the NWPA shedding light on both Section 118 and the overall statutory scheme;
- (2) An analysis of the legislative history of the NWPA showing the intent of Congress in providing for the participation of "affected Indian tribes" under Section 118;
- (3) A discussion of the interpretations of the NWPA by DOE in its Mission Plan that support our position on the issue presented; and,
- (4) A discussion of the relevant rules of statutory construction and their application to the issue presented.

Our opinion is that, if presented with the issue, an impartial forum would conclude that DOE is obliged under the NWPA to provide funds to the "non-host" affected tribes for the study of potential impacts of a repository at Hanford and to provide financial assistance designed to mitigate those impacts.

Analysis

I. The only reasonable interpretation of the relevant provisions of the NWPA is that "non-host" affected tribes may apply for and receive impact assistance.

A. The definition of "affected Indian tribe".

The NWPA confers special status upon affected states and Indian tribes in the repository program. The Act was designed to achieve the purpose of developing public confidence in the repository program by providing affected states and tribes an oversight function paid for by the Nuclear Waste Fund. Nevada ex rel. Loux v. Herrington, 777 F.2d 529, 536 (9th Cir. 1985). Congress determined that a state must be a "host" state in order to have standing under the Act. That is, "affected" status would be conferred only

upon states with potential repository sites within their boundaries. Section 116(a).

Congress was more expansive when defining an "affected Indian tribe." Affected status was granted, of course, to all tribes hosting a potential repository site. Section 2(2)(A). But Congress also defined an "affected" tribe as one "whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: Provided, that the Secretary of Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe...." Section 2(2)(B). All three affected tribes in the first repository program are these "type B" affected tribes (hereinafter, "non-host" tribes).

The inclusion of "non-host" affected Indian tribes came from the Senate version of the bill. As is discussed at length below, when this definition was established in a 1981 Senate committee amendment to S. 1662, the Senate committee described its intent as follows:

The revised definition recommended by the Committee for the term 'affected Indian tribe' is intended to take into account situations where certain tribes might have off-reservation rights that could be affected by the establishment of a storage or disposal facility, while at the same time treating Indian tribes in a manner consistent with that of States. Taking that into account, the Committee's intent is to recognize the proprietary and governmental rights of Indian tribes within the reservation's boundaries and to recognize...proprietary rights to areas outside the reservation... which arise...out of Congressionally ratified treaties and statutes.

S. Rep. No. 282, 97th Cong., 1st Sess., at 18 (1981).

The House bill, H.R. 3809, did not provide for participation by "non-host" tribes at all. Only "host" tribes were eligible for the rights of participation and financial compensation conferred in the Act. As will be shown below, when the House agreed to the definition of "affected Indian tribe" proposed by the Senate, the effect was to grant "non-host" affected tribes the same rights of participation and compensation that were available to "host" tribes under H.R. 3809.

B. The right to impact assistance under the NWPA.

The participation and compensation rights given to affected tribes are detailed primarily in Sections 112-118 of the NWPA. The specific right to financial assistance designed to mitigate adverse impacts resulting from the siting, development, or operation of a repository is governed by Section 118.

Section 118(b) mentions impact assistance and the tribal report requesting such assistance in two paragraphs. Section 118(b)(2)(A)(ii) states that DOE shall make grants to "each affected Indian tribe where a candidate site" has been approved to undergo site characterization "to develop a request for impact assistance under paragraph (2)." (The reference to paragraph (2) is a drafting error. Only paragraph (3) deals specifically with the impact report and impact assistance.)

Because of the importance of the wording, Section 118(b)(3) is quoted verbatim (emphasis added):

(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be

designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

On its face, at least, Section 118(b)(3) is ambiguous and, indeed, contradictory. While Paragraph (A) says any affected Indian tribe is entitled to impact assistance, Paragraph (B) seems to limit impact assistance only to "host" affected Indian tribes. As is discussed below in the Section concerning the legislative history, this contradiction may be explained by the failure of the drafters of the Conference Committee bill to execute the directive of the Conference. But, in fact, we need not rely on the legislative history, since other provisions of the Act referring to Section 118(b) make it clear that Congress intended that any affected Indian tribe be able to file an impact report and receive impact assistance.

As noted, Section 118(b) is internally inconsistent. From this, the DOE-Richland preliminary determination makes broad conclusions that are in direct contradiction of the clear authority granted affected Indian tribes in other sections of the NWPA. One of the recommended positions of the DOE memorandum is that affected Indian tribes are precluded "from receiving grant funds to conduct activities whose purposes are to support a report to the Secretary to request impact assistance". This appears to contradict quite directly Section 114(a)(1)(H), which directs the Secretary to include in his recommendation of a repository site "any impact report submitted under Section 116(b)(3)(B) by the affected Indian tribe where the repository is located...." As will be shown in detail below, many provisions of the final House bill were amended by the Conference Committee by changing references to tribes "on whose reservation" a site is located to tribes "where" a site is located. The Committee's plain intent was to expand the rights granted to "host" tribes under the House bill to "non-host" affected tribes.

Such a change was also made in Section 118(b)(2)(A)(i), which states that "each affected Indian tribe" is eligible for grants for purposes of enabling the tribe "to review activities taken under this subtitle with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents." The authority provided to affected Indian tribes to study repository impacts is clear, absolute and in no way conditioned on the location of the repository on the tribe's reservation.

Sections 114(a)(1)(H) and 118(b)(2)(A)(i), therefore, strengthen our position regarding eligibility for impact assistance under Section 118(b)(3).

The tribes clearly are entitled to study potential impacts and report to the Secretary on those impacts. Moreover, Section 117(b) requires the Secretary to consult and cooperate with "any affected Indian tribe" to resolve tribal concerns regarding the public health and safety, environmental, and economic impacts of a repository. Section 117(c)(1) authorizes agreements between DOE and "any affected Indian tribe" to specify procedures by which, inter alia, the tribes may "study, determine, comment upon, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts" of a repository. Section 118(b)(1), in turn, requires the Secretary to make grants "to each affected Indian tribe" for purposes of engaging in Section 117 activities. DOE's position, therefore, is difficult to sustain. "Any" affected Indian tribe has broad rights to analyze the impacts of a repository. The Secretary must make grants to "each" affected tribe to carry out those analyses. The Secretary must consult and cooperate with "any" affected tribe concerning such impacts. Given all this congressional concern with the impacts of a repository on affected tribes, whether the repository is on or off the tribes' reservations, financial assistance to mitigate such impacts should be denied only if the statute is unmistakably clear in prohibiting such assistance. Given the facial ambiguity of Section 118(b)(3), no such clarity exists. DOE's reading of the Section, therefore, is pedantic and frustrates the meaning of the Act and the intent of Congress in passing it.

II. The legislative history of the NWPA shows that "non-host" affected tribes are to be afforded the same rights of participation, including financial assistance from DOE, as "host" tribes and states.

It is axiomatic among NHPA program participants that the legislative history of the Act is a confusing morass. The conflicting approaches of the House and Senate were resolved in hurried, closed-door negotiations during the waning hours of the lame-duck session of the 97th Congress. The intent of many compromise provisions is left uncertain by the lack of a final Conference Report. Some issues, therefore, cannot be resolved save by guesswork.

The DOE memorandum, however, misses the mark in its analysis of the legislative history. While it certainly is true that the Act is patterned after the final version of H.R. 3809, the actual intent of the Act with regard to "non-host" affected Indian tribes may be found only in the reports and debates in the Senate, where the definition of "affected Indian tribe" was created. In essence, the House bill strictly limited tribal participation under Section 118 to those tribes "on whose reservation" a repository was proposed to be located. The Senate bill, on the other hand, was less specific regarding tribal and state participation, but envisioned equal levels of participation between tribes and states. Moreover, the Senate bill drew no distinction between "host" tribes and tribes whose affected status arises from potential impacts on off-reservation possessory and usage rights.

When the two bills were reconciled in the closing hours of the 97th Congress, each house made key concessions that affect the issue before us. The Senate receded to the House on the provisions detailing the rights of participation of states and Indian tribes; Sections 112-118. For its part, the House receded to the Senate on the question of whether "non-host" tribes should be included in the Act. From the point in time that the House agreed for the first time to include "non-host" tribes in the Act, there is no

evidence in the legislative history suggesting that either house intended to treat "host" and "non-host" tribes differently. To the contrary, the legislative history shows the opposite--as is seen in the summary submitted to the Senate by Senator McClure of major changes to H.R. 3809 negotiated between the House and Senate:

The following summary sets forth those major changes to the House-passed bill....

....

Rights conferred upon an Indian tribe to participate in the development of a repository, enter into a written agreement, transmit objections to Congress, and receive financial assistance, are extended to "affected Indian tribes." The term "affected Indian tribe" includes those tribes which, although the repository is not located on the reservation, would suffer substantial and adverse effects to possessory or usage rights to lands outside of the reservation. (H.R. 3809 limits tribal participation to those situations where the repository is located on the Indian reservation.)

Cong. Rec. S. 15654 (Statement of Mr. McClure)(daily ed. Dec. 20, 1982).
(Parentheses in original; emphasis added).

As the following review will show, when the Conference Committee accepted the Senate definition of "affected Indian tribe", the effect was to extend to "non-host" affected tribes the same rights of participation and compensation as was available to "host" tribes under the House bill.

A. The House bills did not consider "non-host" tribes to be participants in the NWPA process.

The first House of Representatives committee report during the 97th Congress on the bill that ultimately became the Nuclear Waste Policy Act (H.R.

3809) was that of the House Committee on Interior and Insular Affairs. H. Rep. 97-491, 97th Cong., 2d Sess. Part I (1982)(hereinafter, "House Interior Report"). As reported by the House Interior Committee, the bill contained no definition of "affected Indian tribe." The term "Indian tribe" was defined at Section 2(7) as follows:

The term "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians....

House Interior Report at 2.

In other words, any federally-recognized tribe was an "Indian tribe" for purposes of the Act. Quite obviously, not all tribes could participate, since many or most would be unimpacted by the Act. No attempt, however, was made in the definitions section to identify which tribes would be entitled to participate in the Act. Instead, it was in the sections specifying the substantive rights of participation that the House bill distinguished between tribes that were eligible to participate and those that were not.

Specifically, Section 118(b)(1)(A) provided that:

The Secretary shall make grants to each Indian tribe on whose reservation a site for a repository is approved under Section 112(c). Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe...to review activities taken under this subtitle with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents.

House Interior Report at 13. (Emphasis added.)

Quite clearly, the bill as reported limited the right to grant assistance and the right to review DOE activities for their impacts on tribal interests to tribes on whose reservations a repository site was under consideration.

Paragraph (2) of Section 118(b) contained the same limitation:

(A) The Secretary shall provide financial and technical assistance to any Indian tribe requesting such assistance and on whose reservation there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository....

(B) Any Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe.

House Interior Report at 13. (Emphasis added.)

Again, the operative assumption in these provisions is that only the Indian tribe on whose reservation a repository site had been approved would be eligible for impact assistance.

Had the Act been approved by Congress in this form, none of the three affected tribes would be eligible for impact assistance. Indeed, had the Act passed in this form, DOE would not even be obliged to confer with the three tribes since no site on any of the three reservations is under consideration. The point here is that, because "non-host" tribes had no standing whatsoever under H.R. 3809 as reported by the Interior Committee, DOE's reliance on H.R. 3809 as indicating the intended role of non-host tribes is misplaced.

The Report also envisions no role for "non-host" tribes. In discussion, for example, of the bill's provisions regarding participation and assistance for states and Indian tribes, the Report states:

H.R. 3809 as amended by the Committee provides for states or tribes which are "hosts" to sites being studied for repositories, and sites being developed for repository operation, clear rights and procedures for participation in decisions effecting (sic) the sites and financial assistance to help them participate and to mitigate repository impacts.

House Interior Report at 45. (Emphasis added.)

Similarly, and with specific reference to Section 118, the Report states:

Section 118 provides for Indian tribes the same rights and assistance provided for states when a site being studied or developed for use as a repository is located within the boundaries of an Indian reservation.

House Interior Report at 56. (Emphasis added.)

Without question, then, the Interior Committee bill tells us nothing of the intended role of "non-host" tribes under Section 118 of the Act, as the Committee never considered such tribes to have any role under Section 118.

The next House Committee to consider the bill was the Committee on Armed Services. See H. Rep. No. 97-491, 97th Cong., 2d Sess. Part II (1982). The Armed Services Committee's review was quite limited and the Report does not have any discussion relevant to the issue of "non-host" tribes.

The final House Committee to issue a Report was the Committee on Energy and Commerce. H. Rep. 97-785, 97th Cong., 2d Sess. (1982)(hereinafter, "House Energy Report"). The Energy Committee's Report dealt with H.R. 6598, which was an alternative bill to H.R. 3809.

H.R. 6598 as reported was identical to H.R. 3809 as reported in every respect as regards the issue under consideration. The definition of "Indian tribe," the absence of a definition of "affected Indian tribe," and the provisions limiting tribal participation under Section 118 to tribes "on whose reservation" a repository was being considered or developed all appear in H.R. 6598. See House Energy Report at 3, 15-16. Moreover, the Energy Committee expressed the same understanding of Section 118 as the Interior Committee:

Section 118 provides Indian tribes on whose reservations a repository site is being studied or developed with the same rights and assistance as provided to states under Section 116....

Id. at 75. (Emphasis added.)

Because H.R. 3809 and H.R. 6598 differed substantially in other respects not relevant here, both with each other and with a bill (H.R. 5016) reported by the Science and Technology Committee, negotiations began among the Interior, Energy, Armed Services, and Science Committees. The bill resulting from these negotiations was brought to the House floor on September 30, 1982. See Cong. Rec. H8161 (daily ed. Sept. 30, 1982)(Remarks of Mr. Udall). The bill brought to the floor, H.R. 7187, was a substitute upon which the principals in the four Committees had agreed. Id. at H8162. The relevant provisions of H.R. 7187--the definition of "Indian tribe", the absence of a definition of "affected Indian tribe" and the limitation of tribal participation under Section 118 to tribes "on whose reservation" a repository was considered or approved--are identical to the provisions in H.R. 3809 and H.R. 6598. Id. at H8179, H8186. The bill was passed by the House in that form.

The upshot of this legislative history is that the House bill never provided for participation under Section 118 by "non-host" Indian tribes. As is discussed in the next subsection, the Senate bill did so provide. It follows, therefore, that we can learn little from the House bills of the intended role of "non-host" tribes. Instead, the answer must come from analysis of the history of the Act in the Senate.

B. The Senate bill at all times treated "host" and "non-host" affected tribes identically.

S. 1662 was introduced in the 97th Congress on September 24, 1981, by Senator McClure of Idaho. Cong. Rec. 21947 (daily ed. Sept. 24, 1981)(Remarks of Mr. McClure). The bill differed from the House bills in many respects. Our present purpose, however, is to show that, whatever the extent of tribal participation in the program, "host" states and "host" and "non-host" affected tribes had absolutely equal rights of participation.

This point is demonstrated clearly in the definition of "affected Indian tribe" contained in the bill as introduced:

"(A)ffected Indian tribe" means any tribe in an affected State whose rights reserved through statutes, treaties, Executive Orders, judicial decision, or other applicable law would reasonably be expected to be adversely affected by the development, construction or operation of a facility for the long-term storage or disposal of radioactive waste....

Id. at 21949.

The Senate definition makes no mention of any limitation to tribes "on whose reservation" a repository site was being considered or approved. Indeed, unlike the House bills, the Senate bill did not even define the term "reservation", since the term was irrelevant to tribal rights of participation.

The same point--that tribal rights of participation are unaffected by whether the site is on-reservation or off-reservation--can be established by a review of the substantive provisions of S. 1662 governing state and tribal rights of participation. Section 403(c), for example, required the President to review the Secretary's recommendation of sites for characterization and within sixty days transmit his decision to approve or disapprove the sites "to the Governor of the State in which the site is located, and to the Tribal Council of any affected Indian tribe." Id. at 21952. Under Section 404(b), the Secretary was required to submit prior to characterization an environmental assessment and site characterization plan both "to the Governor of the State in which the site is located, and to the Tribal Council of any affected Indian tribe" for their review and comment. Id. The same was true of the periodic reports on sites being characterized which were required by Section 404(b)(2). Id. Other rights of participation granted by the bill to states without exception also are granted to "affected Indian tribes". Section 701(a)(notification by Secretary as to potentially acceptable sites); 701(b), (c), (d), (e)(consultation and concurrence agreement); 701(f) (notification by Secretary of intent to submit application for construction and filing of state or tribal objections with Congress). Id. at 21953, 21954. Thus, S. 1662 as introduced created absolutely equal rights of participation for states and "affected Indian tribes", and no tribal rights of participation were in any way conditioned upon the location of a site on a tribe's reservation.

After consideration by the Senate Armed Services Committee, Energy and Natural Resources Committee and Environment and Public Works Committee, S.

1662 returned to the Senate floor on April 28, 1982. Each Committee had passed substitutes to S. 1662 and, after negotiations among the principals, the Committee substitutes were withdrawn and Amendment No. 1350 was proposed as a substitute for S. 1662. Cong. Rec. S4178 (daily ed. April 28, 1982)(Remarks of Mr. McClure). Amendment No. 1350 contained several changes from S. 1662 as introduced that are pertinent here. Most important is the definition of "affected Indian tribe" at Section 201(14):

"(A)ffected Indian tribe" means any tribe within whose reservation boundaries...a repository for high-level radioactive waste or spent fuel is proposed to be located, or whose federally defined possessory or usage rights to other lands outside the reservation's boundaries arising out of Congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility....

The reasons for this change are found in the Joint Report of the Energy Committee and the Environment Committee, S. Rep. 97-282, 97th Cong., 1st Sess. (1981)(hereinafter "Joint Report"). The Environment Committee changed the definition, noting that:

The Committee also revised the definition of the term "affected Indian tribe". The bill as introduced contained a definition for the term "affected Indian tribe" that was substantially broader than the definition for the term "affected State." In addition, the definition of "affected Indian tribe" lacked precise standards for identifying those interests of the tribe that would be adversely affected. The revised definition recommended by the Committee for the term "affected Indian tribe" is intended to take into account situations where certain tribes might have off-reservation rights that could be affected by the establishment of a storage or disposal facility, while at the same time treating Indian tribes in a manner

consistent with that of States. Taking that into account, the Committee's intent is to recognize the proprietary and governmental rights of Indian tribes within the reservation's boundaries and to recognize that asserted proprietary rights to areas outside the reservation, in order to be "affected", should arise only out of Congressionally ratified treaties and statutes.

Id. at 18.

This change, of course, narrowed the definition of "affected Indian tribe", excluding all tribes whose off-reservation rights were based upon anything but Congressionally-ratified treaties. But what the change did not do is require different treatment for "host" and "non-host" affected tribes.

To the contrary, Amendment No. 1350 maintained the equality of treatment between "the State in which a site is located" and "any affected Indian tribe." See Sections 403(c)(notice from President concerning approval of sites recommended for characterization); 404(b)(submission by Secretary of environmental assessment and site characterization plan and periodic reports on characterization activities); 701(a)(notification by Secretary as to potentially acceptable sites); 701(b), (c), (d), (e)(consultation and concurrence agreements); 701(f)(notification by Secretary of intent to submit application for construction and filing of state or tribal objections with Congress). Cong. Rec. S4182, S4185 (daily ed. April 28, 1982).

Moreover, and of particular importance here, Section 701(c) of S.1662 was amended by Amendment No. 1350 to provide that:

In case of a proposed repository, the cooperative agreement shall also provide for compensation to the State or Indian tribe for (1) the cost of State or Indian tribe participation in the development of the facility, including the acquisition of any

necessary independent technical and
licensing information, and (2) impacts
caused by the siting, development,
construction and operation of a repository.

Id. at S418. Thus, the compromise bill submitted by the Senate Committees
provided for impact assistance to affected tribes without regard to whether
the repository site was on an affected tribe's reservation.

Once again, these changes were made by the Environment Committee and
explained in the Joint Report, at 27-29.

The Committee adds new elements to be
included in the agreement governing
financial compensation to be provided to the
affected State or Indian tribe. Financial
compensation is required for the costs of
State or Indian tribe participation in the
development of the proposed facility and for
the impacts caused by the siting,
development, construction and operation of
the facility...

....

Two fundamental principles underlie these
changes to title VII in the Committee
amendment. The first of these is that an
affected State or Indian tribe should be
entitled to the broadest possible rights and
opportunities to participate in the
development of the facilities covered by
title VII, but that no such State or Indian
tribe should possess the right, through this
or any other Federal or State legislation,
to exercise an absolute veto right over any
aspect of the planning, siting, development,
construction or operation of a facility
covered by the title. The Committee expects
this fundamental principle to govern any
interpretation, including judicial
interpretations, of the continuing validity
of actions by an affected State or Indian
tribe or of the State statutes...

...

The second principle is that all affected States and Indian tribes should be treated equally, and that no single State or tribe should enjoy an advantage over another...

From this, the only conclusion available is that, under the Senate bill, any affected Indian tribe, without regard to whether a repository site is on the reservation or not, was eligible for "financial compensation ...for the impacts" of a repository, was entitled to "the broadest possible rights" of participation, and was to "be treated equally" with "all affected States and Indian tribes."

C. The Conference Committee Action.

The substitute for H.R. 3809 and S.1662 passed by the House and Senate (H.R. 7187 and Amendment No. 1350, respectively) were, therefore, in general agreement as to the rights of tribes and states to participate in the program and to receive impact assistance. The two bills were in complete conflict, however, as to whether "non-host" tribes were eligible for these rights of participation and impact assistance. This, then, was the key issue before the Conference Committee that impacts on the question under consideration here.

And it is on the question of the Conference Committee's intent that the DOE memorandum misses the point. The memorandum concludes:

The final version of the House bill contained language consistent with providing impact assistance only to host tribes. The Senate reviewed that version and superimposed an amendment to the House bill. Among other things, that amendment contained the two-pronged definition from prior Senate versions of the bill, as well as the removal of the qualifying term 'on the reservation' in certain sections of the bill. The Senate had ample opportunity to remove all

references to 'on the reservation' relating to affected Indian tribes, but did not do so. The reference to impact assistance in 118(b)(3)(as enacted) in this version by the Senate still contained the qualifying terms 'on the reservation'. The amended Senate version was returned to the House which approved it without further amendment. It is clear, therefore, that Congress intended to entitle only affected tribes upon whose reservation a repository site was located to receive impact assistance.

This passage is inaccurate in two respects. First, it relies upon half-truths which, when corrected, destroy its logic. Second, it misunderstands how Congress does its business.

The first half-truth is the description of the House bill's denial of impact assistance to "non-host" tribes. While that certainly is true, the memorandum neglects to point out that the House bill completely excluded "non-host" tribes from every aspect of Section 118, not merely the impact assistance provisions. Moreover, the Conference bill clearly amended key provisions in Section 118 from the House bill, and not even DOE denies "non-host" tribal rights under several provisions of Section 118.

The second half-truth is the notation that the reference to impact assistance in Section 118(b)(3) of the NWPA retains the qualifying term "on the reservation". But there were two such references in H.R. 7187; one in Section 118(b)(2)(A) (118(b)(3)(A) of the NWPA) and one in Section 118(b)(2)(B) (118(b)(3)(B) of the NWPA). And one of those references was changed to refer to the tribes "where there is a site...." Compare, Section 118(b)(2)(A), H.R.7187, Cong. Rec. H8186 (daily ed. Sept. 30, 1982) with NWPA Section 118(b)(3)(A). In light of these facts, DOE's above-quoted discussion is not persuasive legislative analysis.

The passage quoted above also shows a misunderstanding of the congressional process. It supposes that the Senate "superimposed" amendments on the House bill; that the Senate had "ample opportunity" to strike the phrase "on the reservation" everywhere it appears in H.R. 7187 and failed to do so; that the bill was returned to the House; and that the House made no further amendments and passed the bill. This description suggests a legislative tennis match in which House and Senate volley the bill back and forth until one finally misses and the bill is passed.

In fact, after H.R. 7187 and Senate Amendment No. 1350 were passed, representatives of the House and Senate conferred at length to reach a compromise. They chose to use H.R. 7187 as the vehicle for mark-up, and made many changes. When the Conference Committee reached agreement, the bill was sent back simultaneously to both houses for consideration and could not be amended on the floor of either house lest the Conference compromise fall apart. Thus, the key to resolving the ambiguities of Section 118 is in discovering what the Conference Committee intended, not in noting what the House or Senate individually did or failed to do.

That intent may be found by looking at the changes made by the Conference Committee; by comparing the pertinent provisions of H.R. 7187 as passed by the House with the Nuclear Waste Policy Act as passed by both houses. This comparison demonstrates that the Senate's position--that "non-host" affected tribes are entitled to the same rights under the Act as "host" tribes--carried the day.

Section 113(b)(3), for example, as passed by the House in H.R. 7187, Cong. Rec. H8182 (daily ed., Sept. 30, 1982), limited the right to receive

semi-annual reports on characterization activities to "the tribe on whose reservation" the candidate site is located. Section 113(b)(3) of the Act, however, gives that right to "the affected Indian tribe where such candidate site" is located. The same change was made in Section 113(c)(3) regarding notification by the Secretary of the termination of characterization activities. The only conceivable purpose of the changes is to recognize the role of "non-host" affected tribes.

Similar changes were made in Section 114. As passed by the House, H.R. 7187 limited the Secretary's duty to notify a tribe of his recommendation of a repository site to the tribe "on whose reservation" the site was located. Section 114(a)(1), Cong. Rec. H8182. The NWPA, however, requires notification of "the affected Indian tribe where such site is located." The same change was made in Section 114(a)(1)(H), as noted above.

Moving next to Section 118, the same pattern of changes is evident with regard to grants, financial and technical assistance and impact studies. Subsection (b) was amended in several key respects. First, the subsection was changed to require the Secretary to make grants to "each affected tribe" notified of a potentially acceptable site within its area of interest. NWPA Section 118(b)(1), and see Cong. Rec. H8186. Paragraph (b)(1) became paragraph (b)(2). Id. In paragraph (b)(1) of H.R. 7187, the Secretary was directed to make grants for, inter alia, impact studies "to each Indian tribe on whose reservation" a candidate site has been approved for characterization. The corresponding provision of the NWPA, Section 118(b)(2), extends the Secretary's duty to "each affected Indian tribe where a candidate site" has been approved for characterization. Also compare Sections 112(b)(1)(C),

112(c)(1), H.R. 7187, Cong. Rec. H8181 with NWSA Sections 112(b)(1)(H), 112(c)(1) ("on whose reservation" changed to "where" in context of notifications regarding nomination and approval of sites for characterization).

Finally, and most importantly for present purposes, Section 118(b)(2)(A) of H.R. 7187 authorized impact assistance only to the tribe "on whose reservation there is a site" where repository construction has been authorized by the Nuclear Regulatory Commission. Section 118(b)(3)(A) of the NWSA, however, requires impact assistance to "any affected Indian tribe requesting such assistance and where there is a site" at which the Commission has authorized construction.

These changes demonstrate clearly that the Senate prevailed upon and persuaded the House to allow all "affected Indian tribes" as defined in the Senate bill to participate on an equal basis with "host" tribes and states. That this is the purpose of the changes is made clear by Senator McClure's summary of "major changes" in the House bill agreed upon by the Conference Committee:

Rights conferred upon an Indian tribe to participate in the development of a repository, enter into a written agreement, transmit objections to Congress, and receive financial assistance, are extended to 'affected Indian tribes.' The term 'affected Indian tribe' includes those tribes which, although the proposed repository is not located on the reservation, would suffer substantial and adverse effects to possessory or usage rights to lands outside of the reservation. (H.R. 3809 limits tribal participation to those situations where the repository is located on the Indian reservation.)

Cong. Rec. S15654 (daily ed. Dec. 20, 1982)(Remarks of Mr. McClure)
(parentheses in original).

This statement ratifies our position in every respect. It notes specifically that the House bill "limits tribal participation to those situations where the repository is located on the reservation" and it notes that the Conference Committee "extended to 'affected Indian tribes'" all rights of participation conferred upon "host" tribes in the House bill.

DOE has been quick to point out, of course, that not all references to tribes "on whose reservation" a site is located were revised in the Conference bill. Indeed, DOE incorrectly postulates that the Senate "superimposed" amendments to H.R. 7187, carefully and selectively changing the references to "host" tribes to include "non-host" tribes only in certain provisions. There are three flaws in this postulation.

First, it ignores the fact that the House and Senate Conference Committee issued a final compromise bill that was not subject to amendment in either house. It also indicates a belief that Congressmen and Senators actually sit and draft amendments in Conference. In point of fact, the conferees make agreements on policy on many issues and leave it to staff to redraft the bill accordingly.

Second, DOE's analysis ignores the fact that the pattern of changes in references to tribes "on whose reservation" a site is located lacks consistency and defies logic. Section 113 of H.R. 7187, for example, limited the right to receive site characterization plans and semi-annual reports on characterization activities to tribes "on whose reservation" a site is located. Section 113(b)(1), (b)(3). The corresponding provisions of the NWPA illogically retain that limitation in the case of the site characterization plan, but extend the requirement that the Secretary report semi-annually to

include affected tribes "where such candidate site is located". No good reason exists why a tribe should be entitled to receive one and not the other, and DOE quite properly has announced that the "non-host" affected tribes will in fact receive the site characterization plan.

The best example, however, is Section 118(b)(3) itself. In paragraph (A), the reference to "any Indian tribe...on whose reservation" a site is located was changed to "any affected Indian tribe...where there is a site...." Yet paragraph (B) retains the reference to a site "on the reservation". The Conference Committee simply could not have intended such inconsistency.

Third and finally, DOE's postulation of the course of events directly conflicts with explicit legislative history in the form of Senator McClure's summary of the changes to the House bill made by the Conference Committee. To accept DOE's position, one must deem Senator McClure to have misled his colleagues or to have incompetently failed to understand the bill in whose passage he was a principal player.

But there is a third scenario that begins with the proposition that Senator McClure accurately described what the Conference Committee intended. If that proposition is accepted, it becomes clear from the illogical pattern of the amendments that the staff who drafted the changes agreed upon by the Committee botched the chore. Indeed, given the last-minute nature of Conference amendments made in the closing hours of a lame-duck Congress, we should be surprised if there were not errors.

Sections I and II of this Memorandum, therefore, have shown that both the NWA on its face and the legislative history support our position that

"non-host" affected tribes may prepare and submit an impact report and request for impact assistance, and are entitled to receive such assistance. Section III will fortify this analysis by showing that DOE itself has construed the NWPA in similar fashion in its Mission Plan.

III. DOE's Mission Plan consistently interpreted the NWPA as authorizing impact assistance to all affected Indian tribes.

Under the NWPA, DOE was required to prepare a Mission Plan which was to be a comprehensive report providing an informational basis sufficient to permit informed decisions in carrying out the repository program. Section 301(a). DOE released the Mission Plan in June, 1985. The Mission Plan supports the affected Indian tribes' claim that they are entitled to impact assistance.

Congress, of course, was especially concerned that the Mission Plan address repository impacts on affected States and Indian tribes. Section 4.3 of the Mission Plan, entitled "Analysis of Mitigation of Socioeconomic Impacts", discusses DOE's goals and intentions in addressing repository impacts. The section states:

The Act provides for financial and technical assistance to mitigate the impacts of waste-disposal activities. Many of the activities that may be undertaken by the DOE as part of the waste-management program could lead to social and economic impacts on States, affected Indian tribes, and communities in the vicinity of facilities or along transportation corridors. It is of the utmost importance that the potential for such impacts be assessed in a thorough and timely manner, with adequate planning to avoid, minimize, or mitigate any negative impacts.

States, affected Indian tribes, and local communities will pursue parallel paths with the DOE in their assessment and planning efforts. For example, the DOE will conduct socioeconomic-impact assessments for the environmental assessments and the environmental impact statement. States and affected Indian tribes may conduct their own socioeconomic-impact assessments to develop and document their requests for mitigation grants in the repository program. The DOE will work closely with States, affected Indian tribes, and localities during this process to achieve a common understanding of the issues that need to be addressed, the impacts that will need to be mitigated, and the analytical tools that will need to be used. Some of these efforts will be specified in the C & C agreements described in Section 4.2.

(Emphasis added.) This provision quite clearly envisions impact assistance to both tribes and the state involved in a single site, whether on-reservation or off.

DOE then identifies three goals of its efforts to analyze socioeconomic impacts:

1. To attain a thorough understanding of the social and economic impacts of the program.
2. To avoid, minimize, or mitigate social and economic impacts to the greatest extent possible.
3. To ensure that the assessment of impacts and plans for their mitigation are developed with understanding of, and sensitivity to, the concerns of States, affected Indian tribes, and local communities--and with the cooperation of affected groups.

Mission Plan, pp. 137-138. (Emphasis added.) Again, these statements presuppose that a state and one or more affected Indian tribes both will be involved with a single site.

The Mission Plan goes on to describe when impact assistance will be provided and again includes all affected Indian tribes. Section 4.3.2 of the Mission Plan, entitled "Implementing Plans", requires DOE to "work with States, affected Indian tribes, and localities to develop impact mitigation plans in response to the siting of repository and storage facilities." Mission Plan, p. 139. The Mission Plan proceeds in a manner that tracks the language in Section 118(b)(3)(A) of the NWPA which provides for impact assistance to any affected Indian tribe requesting such assistance where the NRC has licensed construction of a repository. Id.

Clearly, the Mission Plan does not discriminate among affected Indian tribes in determining which tribes are entitled to impact assistance. The Mission Plan reflects the intent of Congress concerning impact assistance to affected Indian tribes in that it provides that all affected Indian tribes are entitled to impact assistance.

IV. The applicable rules of statutory construction compel the conclusion that Congress intended "non-host" affected tribes to be eligible for impact assistance.

To the extent that any further support for our analysis is necessary, such support may be found in the applicable rules of statutory construction.

The purposes Congress sought to achieve by enacting a statute provide the context in which the words of the statute are to be interpreted. Chapman v. Houston Welfare Rights Org., 441 U.S. 600 (1979). Congress was clear in listing the purposes for which the NWPA was enacted. A central purpose was to establish the Nuclear Waste Fund, which was to be composed of payments made by generators and owners of such waste and spent fuel, that would ensure that the costs of carrying out activities relating to the disposal of radioactive waste

would be borne by the persons responsible for generating the wastes. Section 111(b)(4). Congress further determined that the economic, social, public health and safety, and environmental impacts caused by a repository should be compensated from the Nuclear Waste Fund. Section 116(c), 118(b).

Congress also specifically stated that the NWPA should be interpreted broadly. The Joint Report from the Senate Committees which drafted the Senate version of the Act stated that an affected State or Indian tribe should be entitled to the "broadest possible rights and opportunities to participate in the development..." of a repository. S. Rep. No. 282, 97th Cong., 1st Sess. 28 (1981). The Report went on to state that the Committees "expected this fundamental principle to govern any interpretation, including judicial interpretation..." of the Act. Id. In the first case in which a federal court was required to interpret an ambiguity in the Act, the court relied upon the Committees' interpretive guideline in construing the Act. State of Nevada ex rel. Loux v. Herrington, 777 F.2d 529, 533 (9th Cir., 1985). DOE, therefore, must interpret ambiguities in the Act liberally to provide the broadest possible rights to affected Indian tribes as mandated by Congress and the courts.

Other special rules of construction apply due to the fact that Indian rights are affected. The Federal government holds Indian land, resources and rights in trust for Indian people. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831); Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832). Like all departments of the United States government, DOE is obligated to carry out these trust duties in all its activities occurring both on and off an Indian reservation. Northern Cheyenne v. Hodel, 12 Indian L. Rep. 3065 (D. Mont., 1985). Thus, President Reagan's Indian Policy Statement of January 23, 1983,

requires federal agencies to exercise their trust responsibilities to Indian tribes "with the highest degree of fiduciary standards."

A principal element of the federal trust responsibility--the special canons of construction of federal Indian law--applies to any DOE interpretation of NHPA provisions concerning the participation of affected Indian tribes. Thus, DOE's trust responsibility requires it to interpret the Act and its regulations so as to protect Indian rights. Menominee Tribe v. United States, 391 U.S. 404 (1968). Moreover, because the impact assistance provisions at issue here were passed to protect the rights of Indian tribes, the statute is to be construed liberally, with doubtful expressions resolved in favor of the Indians. E.g., Bryan v. Itasca County, 426 U.S. 373, 392 (1976); Northern Cheyenne Tribe v. Hollowbreast, 425 U.S. 649, 655 n.7 (1976); Antoine v. Washington, 420 U.S. 194, 199-200 (1975); Menominee Tribe v. United States, supra; Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918); Choate v. Trapp, 224 U.S. 665, 675 (1912).

These rules apply with special force here. Because DOE must interpret the Act liberally to ensure the broadest possible participation of affected States and tribes, it should choose the interpretation of Section 118(b)(3) that provides the broadest rights to tribes that the statute can reasonably be read to allow. And where, as here, ambiguities in the Act appear to be the result of imprecise drafting, such imprecision may not be used to frustrate the manifest purpose and intent of Congress as revealed by the legislative history. E.g., Premachandra v. Mitts, 727 F.2d 717 (8th Cir. 1984). Thus, the inconsistencies in Section 118(b)(3) must be read so as to encourage the broadest possible tribal participation.

So, too, must DOE construe the statute liberally in favor of the tribes and resolve the ambiguities of Section 118 in the tribes' favor. Such construction in this case leads inevitably to the result that Section 118 allows "non-host" affected tribes to request and receive impact assistance.

Conclusion

The foregoing analysis establishes beyond any credible doubt that Congress granted to "non-host" affected tribes the right to request and receive financial and technical assistance designed to mitigate any adverse impacts on tribal interests resulting from the siting, development, or operation of a repository under the NWPA. Careful analysis of the statute and its legislative history show that to be the intent of Congress. DOE itself has so interpreted the Act in a major program document. Finally, should any doubt remain, the applicable rules of statutory construction compel the result favoring the tribes. Thus, we believe that an impartial law-applying forum would so hold.

BKGMEMO
KEVIN/TRIBAL



CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area Code 503 Phone 276-3018

December 15, 1986

Mr. John Anttonen
Assistant Manager for Commercial Nuclear Waste
United States Department of Energy
P.O. Box 550
Richland, Washington 99352

RE: Meeting Regarding Impact Assistance

Dear Mr. Anttonen:

This letter follows up phone conversations you have had with Bill Burke concerning the meeting on impact assistance scheduled on December 18, 1986.

As you know, that meeting was originally scheduled for December 16th. Because of a conflict with your schedule, the meeting was moved to December 18th. Your presence at the meeting was important to the CTUIR. We felt the importance of the impact assistance issue demanded the attention of top policymaking officials from both DOE and the CTUIR.

The affected tribes requested the meeting with you and your staff because we feel the Richland draft preliminary determination on this issue is incorrect and fails to take into account the intent of Congress as reflected in the legislative history. In fact, in a letter dated November 5th we requested that your legal counsel provide us with the legal authority that your preliminary determination was based upon. That has not been received.

Without having the legal basis of DOE's position before us, the importance of the meeting on December 18th was to speak directly to the top echelon of policymakers in the DOE Richland office. We recognize that you will make the final Richland determination, and it was you we wanted to speak to. Obviously, your absence will make that impossible.

Equally troubling to the CTUIR is the fact DOE apparently had no intent of informing the affected tribes prior to the meeting that you were not going to be in attendance. Instead, we found out through second-hand sources.

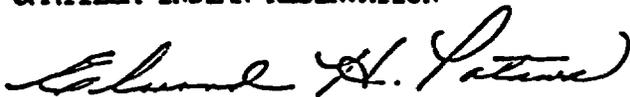
Mr. John Anttonen
December 15, 1986
Page Two

The importance of the impact assistance issue goes beyond the substance of the decision to be reached. Also at stake is the development of a process by which conflicts between DOE and the CTUIR can be resolved. The consultation process mandated by the NWPA has not taken any great leap forward since last August when Max Powell met with the affected tribes on the impact assistance issue and assured us DOE wished to reach a preliminary determination with full consultation with affected tribes. The failure of DOE to provide us with a draft position paper with the appropriate legal citations and your unavailability to meet with us make the December 18th meeting useless to the CTUIR.

Nonetheless, the CTUIR still wishes to comment on the final Richland preliminary determination prior to it being sent back to DOE headquarters for a final agency decision. We expect that our comments will be attached to the Richland preliminary determination. Furthermore, the CTUIR will insist that it have an opportunity to meet with DOE officials responsible for making the final agency decision.

Sincerely,

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION



Elwood H. Patawa, Chairman
Board of Trustees

cc: J. Herman Reuben, NPTEC
Ben C. Rusche, DOE

EHP:sm

RECEIVED JAN 30 1987

Department of Energy

Richland Operations Office
P.O. Box 550
Richland, Washington 99352

87-AMC-6



January 29, 1987

Mr. Elwood H. Patawa, Chairman
Board of Trustees
Confederated Tribes of the
Umatilla Indian Reservation
P. O. Box 638
Pendleton, OR 97801

Dear Mr. Patawa:

IMPACT ASSISTANCE

The Department of Energy (DOE) has determined that "affected Indian Tribes," as defined by the Nuclear Waste Policy Act of 1982 (the Act) Section 2(2) (B), are eligible to receive financial assistance to develop a report requesting impact assistance under Section 118(b) (2) (A) (ii) of the Act. Furthermore, if the Hanford Site is finally selected as a site for construction of a repository, then the Department of the Interior designated affected Indian Tribes for the Hanford Site would be eligible for financial and technical impact assistance (to address impacts of repository development) under Section 118(b) (3) (A) and (B) of the Act.

Affected Indian Tribes are eligible to receive financial assistance during site characterization for the purpose of preparing an impact assistance report; however, as with all affected parties, financial impact assistance payments would not commence until after the initiation of construction activities at such site, in accordance with the Act. The Department realizes that affected parties are also concerned about potential adverse impacts stemming from DOE's site characterization activities. During site characterization, DOE will be conducting its activities in a manner that minimizes, to the maximum extent practicable, any significant adverse environmental impacts in accordance with Section 113(a) of the Act. Although DOE does not anticipate any significant adverse impacts as a result of site characterization activities, should adverse impacts occur during site characterization, DOE would propose to address such impacts, in consultation with affected parties, via direct technical assistance.

As DOE carries out the Congressional mandate to develop a nuclear waste repository, the Department intends to ensure that the interests of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) are protected. I realize that you have expressed additional concerns about DOE and CTUIR relations. The Department will be responding to those concerns in a separate letter to you.

Mr. Elwood H. Patawa

-2-

JAN 29 1987

If you have questions about either this letter specifically or other issues, please call me or Mr. Max Powell of my staff at (509) 376-5267. I look forward to future discussions with you about our program.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.H. Anttonen', with a long horizontal flourish extending to the right.

John H. Anttonen, Assistant Manager
for Commercial Nuclear Waste



CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97601
Area Code 503 Phone 276-3018

December 16, 1986

Mr. Barry Gale
U.S. Department of Energy
Forrestal Building, RW - 223
Washington, D.C. 20585

RE: Discussion of Section 117(c)

Dear Mr. Gale:

I was troubled by the discussion at the last ISCG meeting in Las Vegas concerning the applicability of provisions in Section 117(c) to affected Indian tribes. I understand no substantive decisions were reached at the meeting, but the decision to make the issue an action item was at odds with stated DOE policy to date.

At the St. Louis ISCG meeting in June of this year, you stated that it was DOE policy to make all the provisions of Section 117(c) applicable to affected Indian tribes. At our C & C negotiations on July 9, 1986 you made the same point. The court reporter at the negotiations recorded your comments as follows:

"Mr. Chairman, I just wanted to point out, as per our discussions in St. Louis about the C & C Agreement, that if you look at the overall header for Section 117, it says "consultation with states and affected Indian tribes." And that's why we have interpreted all of those activities under 117 to fully involve states and affected Indian tribes.

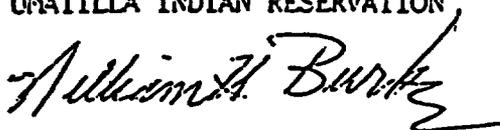
It's obvious that Congress intended that section to apply to tribes as well as to states."

Mr. Barry Gale
December 16, 1986
Page Two

The need to make this issue an action item suggests DOE has no policy on these important provisions. If that is the case, why have you told the CTUIR negotiating team DOE has determined that affected tribes are entitled to full involvement in all activities under Section 117(c)? I would appreciate an answer to this question prior to the next ISCG meeting.

Sincerely,

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION



William H. Burke, Director
Nuclear Waste Study Program

cc: John Anttonen, DOE
Ron Halfmoon, NP-NWPA
John Hutchins, CERT

WB:sm



CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area Code 503 Phone 276-3018

January 19, 1987

Mr. Ben Rusche, Director
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
1000 Independence Avenue, S.W.
GB-270
Washington, D.C. 20585

RE: Nuclear Waste Policy Act - Interpretation of Section 117(c)

Dear Mr. Rusche:

As you are aware, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) is presently involved in the dispute concerning the entitlement of affected Indian tribes to impact assistance under the Nuclear Waste Policy Act (NWPA). From the CTUIR's perspective, the immediate significance of the impact assistance issue goes to the larger question of whether DOE will interpret the NWPA so as to allow affected Indian tribes the right to participate on an equal basis with states in the repository program. Our research of the legislative history clearly indicates that was the intent of Congress.

The issue of the level of affected tribe participation arose again at the last Institutional/Socioeconomic Coordinating Group (ISCG) meeting held last December. The issue under discussion was the sources of funding to mitigate site characterization impacts. The attached DOE memorandum raised the potential of mitigation funding being available to assist "States and units of general local government in the vicinity of the repository site in resolving their offsite concerns." The memorandum cites Section 117(c) (5) as authorizing the funding.

A CTUIR representative questioned whether affected tribes could rely upon the same authority for assistance in addressing their offsite concerns. Of course, the question raises the issue of the applicability of the various provisions in Section 117(c) to C and C Agreements with affected Indian tribes. As you know, several subsections under 117(c), including 117(c) (5), omit reference to tribes.

Mr. Ben Rusche
January 19, 1987
Page Two

These omissions notwithstanding, DOE officials have consistently stated that it is DOE policy that affected tribes are entitled to all provisions under Section 117(c). Last June at the ISCG meeting in St. Louis, Barry Gale addressed this specific issue and presented DOE's policy. Later, when the same issue arose in C and C negotiations between the CTUIR and DOE, Mr. Gale, who represents DOE Headquarters in the negotiations, stated:

"Mr. Chairman, I just wanted to point out, as per our discussions in St. Louis about the C & C Agreement, that if you look at the overall header for Section 117, it says 'consultation with states and affected Indian tribes.' And that's why we have interpreted all of those activities under 117 to fully involve states and affected Indian tribes.

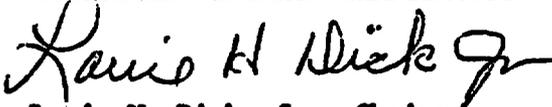
It's obvious that Congress intended that section to apply to tribes as well as to states."

Despite DOE's prior policy on the application of Section 117(c), the issue was sufficiently unclear to DOE in December to require making the interpretation of the section an action item requiring resolution by OCRWM. We have sent Mr. Gale a letter questioning the status of his prior commitments on this issue which is attached.

The CTUIR feels DOE should consult with the Tribe prior to rendering their decision on this important issue. The CTUIR has been involved in C and C negotiations for the past year and our future participation in these negotiations will certainly be impacted by DOE's decision. We think the consultation and cooperation requirements of the NHPA require, at a minimum, that DOE officials responsible for developing DOE policy on the interpretation of Section 117(c) hear our views. The similarity of this issue to the question of impact assistance demands that a similar level of consultation between DOE and the CTUIR take place. We are prepared to meet with you or your representatives at the earliest opportunity.

Sincerely,

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION



Louie H. Dick, Jr., Chairman
Nuclear Waste Advisory Committee

cc: John Herrington, DOE
Barry Gale, DOE
John Anttonen, DOE
Ron Halfmoon, Nez Perce NHPA
Kevin Gover, Nez Perce Attorney

Enclosure



CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area Code 503 Phone 276-3018

January 5, 1987

Mr. John Anttonen
Assistant Manager for Commercial
Nuclear Waste
United States Department of Energy
P.O. Box 550
Richland, Washington 99352

RE: Subcommittee and Committee Meetings

Dear Mr. Anttonen:

At our last C and C negotiation session, the CTUIR and DOE tentatively set dates for a subcommittee meeting on January 7th and for a negotiation session for the full committees on January 28th. The CTUIR conditioned their commitment to these dates on a satisfactory outcome of the scheduled meeting on December 18th concerning impact assistance. As you know, the December 18th meeting was cancelled because of your absence.

Therefore, the CTUIR will not participate in the C and C meetings scheduled in January. Nor is the Tribe interested in rescheduling any future C and C negotiations at this time.

Both DOE and the CTUIR have recognized that the resolution of the impact assistance issue was going to be a test case in the development of a consultation relationship between the parties. The issue was of sufficient importance to demand the policy, programmatic and legal attention of both DOE and the CTUIR and a process was established to resolve the issue. The CTUIR wishes to withdraw from our presently scheduled C and C meetings because DOE has failed to live up to its commitments the consultation process has broken down.

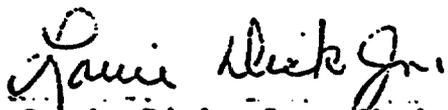
Mr. John Anttonen
January 5, 1987
Page Two

However, the CTUIR will consider resuming C and C negotiations under the following conditions:

- a resolution of the impact assistance issue that recognizes the entitlement of all affected tribes to file an impact report and to receive mitigation assistance under section 118(b)(3) of the Nuclear Waste Policy Act;
- a timely and mutually satisfactory resolution of the CTUIR's Fiscal Year 1987 grant proposal; and
- that the DOE recognize in writing that the Nuclear Waste Policy Act is to be construed broadly so as to maximize the participating rights of the CTUIR so that Tribal interests will be protected.

Sincerely,

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION



Louie Dick, Jr., Chairman
Nuclear Waste Study Program

cc: Secretary Herrington
B. Rusche, OCRWM Director

LD:sm



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable Jamie L. Whitten
Chairman, Committee on
Appropriations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

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Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Silvio O. Conte
Ranking Minority Member
Committee on Appropriations
House of Representatives
Washington, D.C. 20515



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable Mark O. Hatfield
Chairman, Committee on
Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

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Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable John C. Stennis
Ranking Minority Member
Committee on Appropriations
United States Senate
Washington, D.C. 20510



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable Edward J. Markey
Chairman, Subcommittee on Energy
Conservation and Power
Committee on Energy and
Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

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Sincerely,

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Carlos Moorhead
Ranking Minority Member
Subcommittee on Energy
Conservation and Power
Committee on Energy and
Commerce
House of Representatives
Washington, D.C. 20515



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

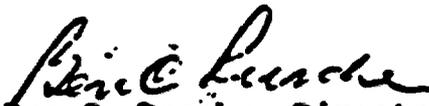
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Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable James T. Broyhill
Ranking Minority Member
Committee on Energy and
Commerce
House of Representatives
Washington, D.C. 20515



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Don Young
Ranking Minority Member
Committee on Interior and
Insular Affairs
House of Representatives
Washington, D.C. 20515



Department of Energy
Washington, DC 20585

MAR 17 1986

**Honorable Marilyn Lloyd
Chairman, Subcommittee on Energy
Research and Production
Committee on Science and Technology
House of Representatives
Washington, D.C. 20515**

Dear Madam Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche".

**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures

**cc: Honorable Sid Morrison
Ranking Minority Member
Subcommittee on Energy
Research and Production
Committee on Science and Technology
House of Representatives
Washington, D.C. 20515**



Department of Energy
Washington, DC 20585

MAR 17 1986

**Honorable Don Fuqua
Chairman, Committee on Science
and Technology
House of Representatives
Washington, D.C. 20515**

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

**cc: Honorable Manuel Lujan, Jr.
Ranking Minority Member
Committee on Science and
Technology
House of Representatives
Washington, D.C. 20515**



Department of Energy
Washington, DC 20585

MAR 17 1986

**Honorable Tom Beville
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
House of Representatives
Washington, D.C. 20515**

Dear Mr. Chairman:

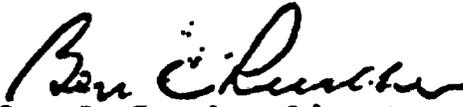
Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,


**Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management**

Enclosures

**cc: Honorable John T. Myers
Ranking Minority Member
Subcommittee on Energy and
Water Development
Committee on Appropriations
House of Representatives
Washington, D.C. 20515**



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable Alan K. Simpson
Chairman, Subcommittee on Nuclear
Regulation
Committee on Environment and
Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Gary Hart
Ranking Minority Member
Subcommittee on Nuclear
Regulation
Committee on Environment and
Public Work
United States Senate
Washington, D.C. 20510



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Lloyd Bentsen
Ranking Minority Member
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable Pete Domenici
Chairman, Subcommittee on Energy
Research and Development
Committee on Energy and Natural
Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable Wendell H. Ford
Ranking Minority Member
Subcommittee on Energy
Research and Development
Committee on Energy and Natural
Resources
United States Senate
Washington, D.C. 20510



Department of Energy
Washington, DC 20585

MAR 17 1986

Honorable Mark O. Hatfield
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable J. Bennett Johnston
Ranking Minority Member
Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510



Department of Energy
Washington, DC 20585

MAR 17 1985

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such agreements have not been completed. In accordance with the Act, I am submitting the report relating to the negotiations with the Confederated Tribes of the Umatilla Indian Reservation.

At the request of the Confederated Tribes of the Umatilla Indian Reservation, negotiations leading to Consultation and Cooperation Agreements were initiated on June 10, 1985.

Although negotiations have been ongoing, for the reasons stated in the enclosed report, negotiations were not concluded by January 10, 1986, as contemplated by Section 117(c) of the Act.

Pursuant to the terms of the Act, attached to the report are the comments of the Confederated Tribes of the Umatilla Indian Reservation.

Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosures

cc: Honorable J. Bennett Johnston
Ranking Minority Member
Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

**Report to Congress Concerning Negotiations
with the Confederated Tribes of the
Umatilla Indian Reservation
as Required by
Section 117(c)
of the
Nuclear Waste Policy Act of 1982**

**U.S. Department of Energy
January 1986**

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian Tribes. This report must also include the reasons why such Agreements have not been completed. Since a written Agreement with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) was not completed within the time (no later than January 10, 1986) required by Section 112(f) of the Act, this report is being submitted.

Site characterization work on Hanford basalt near Richland, Washington, has been ongoing since 1976 as part of the National Waste Terminal Storage Program. By letter dated March 29 and June 3, 1983, the Confederated Tribes of the Umatilla Indian Reservation petitioned the Secretary of the Interior to certify that the Confederated Tribes of the Umatilla Indian Reservation qualify as an "affected Indian Tribe" in accordance with Section 2(2)(B) of the Act. By letter dated July 13, 1983, the Assistant Secretary, Indian Affairs, Department of the Interior, certified that the Confederated Tribes of the Umatilla Indian Reservation was an "affected Indian Tribe." By letter dated September 23, 1983, DOE notified the Chairman of the Board of Trustees of the CTUIR that the Hanford Site, near Richland, Washington, contained a potentially acceptable site for a waste repository. The Confederated Tribes of the Umatilla Indian Reservation on December 1, 1984, established the Nuclear Waste Oversight Committee to provide Confederated Tribes of the Umatilla Indian Reservation Nuclear Waste program with oversight and policy direction.

Pursuant to requirements of the Act, the Confederated Tribes of the Umatilla Indian Reservation requested, by letter dated June 10, 1985, that negotiations commence for the purpose of entering into a Consultation and Cooperation Agreement. By letter dated July 26, 1985, the Assistant Manager for Commercial Nuclear Waste of DOE's Richland Operations Office designated the DOE negotiating team. By letter dated September 9, 1985, the Chairman of the Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation, designated the CTUIR negotiating team. Negotiations were initiated on August 14, 1985. There have been a total of three (3) negotiating sessions to date, the last being held September 19, 1985.

By letter dated October 21, 1985, the Confederated Tribes of the Umatilla Indian Reservation requested a recess in the negotiation proceedings of 30 to 45 days. Subsequently, by letter dated November 25, 1985, the Confederated Tribes of the Umatilla Indian Reservation requested additional time to assess the developments in the Consultation and Cooperation Agreements, and to delay the resumption of negotiations until further notice. DOE is prepared to resume negotiations whenever requested by the Confederated Tribes of the Umatilla Indian Reservation.

GENERAL COUNCIL
and
BOARD of TRUSTEES

CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area Code (503) Phone 276-3165



December 27, 1985

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

On behalf of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), I submit the following comments to the Department of Energy (DOE) report concerning the status of our Cooperation and Consultation (C & C) Agreement negotiations. I have no objections to the DOE report, but the CTUIR feel some additions to the report are appropriate.

The CTUIR has taken the C & C Agreement negotiations very seriously. Prior to our first negotiation session, the CTUIR Board of Trustees Chairman, Elwood Patawa, delivered to DOE a 35 page C & C working paper which represented the Tribe's view of the essential contents of a C & C Agreement. The first 2 negotiating sessions were spent reviewing our working paper. The CTUIR has also endeavored to explain to the DOE negotiating team the basis for the Tribe's participation under the Nuclear Waste Policy Act. This has involved a presentation by an anthropologist, familiar with the culture of Pacific Northwest Indian Tribes, on the extent of the CTUIR's possessory and usage rights in and around the Hanford site as well as explanations of the nature of the legal status of treaties between the U.S. Government and Indian nations, of President Reagan's Federal Indian Policy and of the nature of the trust responsibility the Federal Government has over Indian lands. The CTUIR feels progress has been made in educating DOE and other cognizant Federal agencies of the unique position Indian tribes have under Federal law.

The CTUIR acted responsibly in postponing further C & C negotiation sessions last September. The potential siting of a repository for high-level radioactive wastes so close to the Umatilla Indian Reservation is viewed with tremendous concern by Tribal leadership and Tribal members. The C & C Agreement proposes to set the course of Tribal involvement with DOE through at least the site characterization phase and therefore requires considerable scrutiny by Tribal policy makers. During this necessary review, Tribal elections were held in which the Tribal leadership changed. The CTUIR plans an intensive seminar to provide the necessary background to the new leadership so that decisions affecting the possibility of future C & C negotiations can be made.

Honorable George Bush
President of the Senate
December 27, 1985
Page 2

Nonetheless, over the past 3 months, through the efforts of our contractor the Council of Energy Resource Tribes (CERT) and our Tribal Attorney, the CTUIR has worked diligently to insure that the Tribes' interests in the C & C negotiations will be ably presented and defended should C & C negotiations be reconvened.

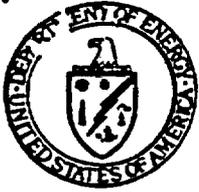
Sincerely,

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION



Ken Hall, Chairman
Board of Trustees

cc: Nuclear Waste Program Director, CTUIR, Peter Ramatowski
Nuclear Waste Oversight Committee, CTUIR
Tribal Attorney, CTUIR, Daniel Hester
Council of Energy Resource Tribes, Bob Seik
File



Department of Energy
Washington, DC 20585

DEC 23 1986

Mr. J. Herman Reuben, Chairman
Nez Perce Tribal
Executive Committee
P.O. Box 305
Lapwai, Idaho 83540

Dear Mr. Reuben:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that the sites have been approved for site characterization for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. The Act also specifies that affected States and Indian Tribes have an opportunity to review and comment on this report, and their comments are to be included in the Department's submission to Congress.

Enclosed is a copy of the report which I will be transmitting to Congress. In accordance with the Act, which requires that the Department should transmit this report to Congress no later than 30 days after the end of the six-month period following notification of a site, we will be submitting this report to Congress shortly. We would therefore appreciate receiving your comments as soon as possible.

We look forward to working with the Nez Perce Indian Tribe on consultation and cooperation negotiations.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosure

**Report to Congress Concerning Negotiations
with the Nez Perce Indian Tribe
as Required by
Section 117(c) of the
Nuclear Waste Policy Act of 1982
U.S. Department of Energy
December 1986**

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that sites have been approved for site characterization by the President for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. In accordance with the Act, the Department must seek to enter into these agreements not later than 60 days after Presidential approval of a site for site characterization.

On May 28, 1986, President Reagan approved the Department's recommendation that sites in three States - Nevada, Texas, and Washington - be selected for site characterization. On July 25, 1986, Mr. Lee Olson, director of the Basalt Waste Isolation Division at DOE's Richland Operations Office, wrote to Mr. J. Herman Reuben, chairman, Nez Perce Tribal Executive Committee, to invite the Nez Perce Indian Tribe to initiate the process of developing a Consultation and Cooperation Agreement with a meeting of representatives of all States, within which recommended sites are located, and all three affected Indian Tribes. Mr. Ron Halfmoon of the Nez Perce Indian Tribe indicated in a telephone conversation with DOE Headquarters staff on September 8, 1986, that the Nez Perce would prefer to meet with the Department in direct negotiations, rather than in a joint meeting, and that a letter requesting a meeting to discuss consultation and cooperation procedures was being prepared.

In response to this interest in individual negotiations, on November 19, 1986, a letter was sent to Mr. Reuben to renew the Department's offer to negotiate a Consultation and Cooperation Agreement, this time directly between DOE and the Nez Perce Indian Tribe. The Department hopes that formal negotiations can begin in the near future.

Pursuant to the Act, enclosed are the comments of Mr. Reuben on this report. Also enclosed are copies of the July 25, 1986, and November 19, 1986, letters sent to Mr. Reuben.

Enclosures

FROM 4963

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Department of Energy

Richland Operations Office
P.O. Box 650
Richland, Washington 99352

86-BWI-18

JUL 25 1986

Mr. J. Herman Reuben, Chairman
Nez Perce Tribal Executive Committee
P. O. Box 305
Lapwai, ID 83540

Dear Mr. Reuben:

CONSULTATION AND COOPERATION AGREEMENT

On May 28, 1986, the Department of Energy's recommendation of three sites in Nevada, Texas, and Washington was approved for detailed site characterization for a deep-mined geologic repository for high-level waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982, the Department desires to begin the process that would eventually lead to a signed Consultation and Cooperation (C&C) Agreement.

As a starting point, the Department would like to meet with representatives from the States and three affected Indian Tribes to discuss C&C activities to date, review the scope and parameters of C&C agreements, and talk about provisions that might be in common in all such agreements.

We will be contacting you in the near future to arrange for a time and place that would be acceptable to each of the States and Indian Tribes. Should you desire to discuss this matter with me, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in cursive script that reads "O. L. Olson".

O. L. Olson, Director
Basalt Waste Isolation Division

BWI:OLO



Department of Energy
Washington, DC 20585

NOV 19 1986

**Mr. J. Herman Reuben, Chairman
Nez Perce Tribal
Executive Committee
P.O. Box 305
Lapwai, Idaho 83540**

Dear Mr. Reuben:

On May 28, 1986, President Reagan approved the Department of Energy's (DOE) recommendation of three sites in Nevada, Texas, and Washington for detailed site characterization for a deep-mined geologic repository for high-level radioactive waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), not later than 60 days following such approval the Department was required to seek to enter into negotiations leading toward consummation of a written binding consultation and cooperation agreement. The provisions of such an agreement are defined by the Act.

On July 25, 1986, Mr. Lee Olson, director of the Basalt Waste Isolation Division at DOE's Richland Operations Office, wrote to you recommending that we initiate the process of developing consultation and cooperation agreements with a meeting of representatives of all States, within which recommended sites are located, and of all three affected Indian Tribes. Similar letters were sent by our project offices to the three affected States and to the other two affected Indian Tribes.

We learned from the States and Indian Tribes that negotiations between the Department and the individual State and Tribal nuclear waste offices might prove more fruitful than a general meeting. Therefore, I am renewing the offer to initiate negotiations for a consultation and cooperation agreement, this time between DOE and the Nez Perce Indian Tribe.

To facilitate the commencement of negotiations, the Office of Civilian Radioactive Waste Management has designated a team to negotiate with the Nez Perce Indian Tribe. This team will be led by Mr. John Anttonen, an assistant manager at the Richland Operations Office. Mr. Anttonen will be contacting your office shortly to discuss appropriate arrangements.

-2-

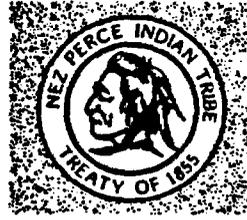
We look forward to the participation of the Nez Perce Indian Tribe in this important statutory process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben C. Rusche".

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Mangement

Nez Perce



TRIBAL EXECUTIVE COMMITTEE

(208) 843-2253

February 2, 1987

Mr. Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Mr. Rusche:

Enclosed are the comments of the Nez Perce Tribe on the Status of C & C negotiations. I trust that they will be included in your report to Congress on this matter.

I also want to express to you personally my appreciation for any role you may have played in the favorable resolution of the issue of the Tribe's eligibility for impact assistance. This outcome represents an important development in our relationship with DOE in that it provides sound basis for our belief that an acceptable C & C Agreement is an achievable goal. I hope that this is the first of many issues upon which we can agree.

Sincerely,

Herman Reuben
Herman Reuben, Chairman
NPTEC

JHR:ceg

Enclosure

cc: B. Kevin Gover
William Burke, CTUIR
Russell Jim, YIN
Terry Husseman, Washington
Robert Loux, Nevada
Steve Frishman, Texas
Del T. White, NW Subcommittee
Ronald T. Halfmoon, NP-NWPA
James A. McClure
Steve D. Symms

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**COMMENTS OF THE NEZ PERCE TRIBE
ON THE
REPORT OF THE DEPARTMENT OF ENERGY
CONCERNING CONSULTATION AND COOPERATION
NEGOTIATIONS
JANUARY 1987**

On May 28, 1986, the Secretary of Energy announced that the Hanford Site had been nominated, recommended and approved for characterization under Section 11. This announcement activated the requirement in Section 117 (c) that the Secretary seek to begin negotiations with the Tribe within sixty (60) days to produce a Consultation and Cooperation ("C & C") Agreement.

The Tribe commenced its formal preparation for negotiations by holding training sessions on June 6 & 7 and July 25 & 26, 1986 for members of the Nez Perce Tribal Executive Committee ("NPTEC"). At those sessions, the NPTEC discussed the entire range of issues concerning the negotiation of a C & C Agreement with the Department of Energy ("DOE"). Immediately after the July training session, the Chairman of the NPTEC received a letter dated July 25, 1986 from Mr. Lee Olson, Director of the Basalt Waste Isolation Division of the Richland DOE Operations Office. (See Attachment No. 1) This letter presumably was intended to satisfy the Secretary's obligation to seek to enter into negotiations within sixty days of the approval of a site for characterization.

The July 25 letter, however, proposed a procedure unacceptable to the Tribe. Specifically, the letter proposed a joint meeting of DOE, the three Affected Tribes, and the three Affected States. Because the Tribe believes that one-to-one conversations between DOE and the Tribe are the only appropriate forum for the discussion of the terms of a C & C Agreement, that proposal was rejected.

As a result of the July training session, however, the Tribe invited DOE representatives to the Tribal offices for a discussion of certain issues preliminary to the commencement of C & C negotiations. Messrs. Powell and Olson of the Richland Operations Office represented DOE at the meeting, which was held on August 1, 1986. Although the Tribe was disappointed that DOE had not seen fit to delegate a headquarters representative to accompany the Richland officials, the meeting proved to be a positive development. DOE made several commitments which allayed lingering Tribal concerns, one of which involved DOE's interpretation of Section 117(c). This issue, however, would arise again and is discussed below.

After the August 1 meeting, the commencement of negotiations seemed imminent. Developing events, however, poisoned the atmosphere. Of greatest concern to the Tribe was information that DOE had determined preliminarily that the Tribe was not eligible for impact assistance under Section 118(b)(3) of the NWPA. This determination never was formalized but was enforced by DOE contract officers in negotiations concerning the Tribe's grant for Fiscal Year 1987.

Despite several meetings and numerous discussions over the next two months, DOE never committed a final decision to writing. The Tribe thus was forced to demand a process for final resolution of the issue that would guarantee consultation with the Tribe at key points in the decision-making process. The Tribal demand was communicated to DOE by letter dated October 17, 1986. (See Attachment No. 2.)

To its credit, DOE agreed to the Tribe's demand. The process went along haltingly and required much of the Tribe's attention. C & C negotiations were pushed to the bottom of the Tribe's list of priorities for some time. In December, however, the Tribe resumed its consideration of C & C negotiations, and the impact assistance issue soon merged with the matter of C & C negotiations.

The Tribe recently received a letter from Ben Rusche renewing the Department's invitation to negotiate, this time on the one-to-one basis the Tribe desired. (See Attachment No. 3.) Partially in response to this letter, the NPTEC Chairman, J. Herman Reuben, wrote to Mr. Rusche and clearly linked the outcome of the impact assistance issue to the Tribe's willingness to enter into C & C negotiations. (See Attachment No. 4.)

The NPTEC met again on C & C issues on December 12 & 13. The outcome of that session was a conditional offer to negotiate a C & C Agreement. This offer was made in a letter from Chairman Reuben to Secretary Herrington conveying two Resolutions of the NPTEC. (See Attachment No. 5.) The offer was conditioned strictly on a favorable resolution of the impact assistance issue. In addition, the Tribe asked the Secretary to acknowledge certain Tribal rights and interests.

While Tribal preparation for negotiations continued, DOE moved toward a resolution of the impact assistance issue. Finally, on January 22, 1987, Chairman Reuben was advised by John Anttonen of the Richland Operations Office that the issue had been resolved in the Tribe's favor. On January 30, 1987, the Tribe received written confirmation of the Department's decision. (See Attachment No. 6.)

The Tribe is most pleased with the disposition of the impact assistance issue. We do have lingering concerns regarding the decision-making process, but believe that the entire affair constitutes the showing of good faith on DOE's part that we deemed a prerequisite to C & C negotiations.

Our satisfaction, however, is tempered by the emergence of yet another issue concerning Tribal rights of participation under the Act. Specifically, DOE announced at a December meeting of

the Institutional Socioeconomic Coordinating Group that it was reviewing the question of whether C & C Agreements with Affected Tribes could include all of the eleven elements listed in Section 117(c). That the Department should now entertain doubts on this issue is made doubly unfortunate by the fact that DOE personnel from both Richland and headquarters had assured the Tribe that each of the eleven items was appropriate to be included in C & C Agreements with affected tribes.

Significantly, Tribal eligibility under each of the eleven areas is one of the principles Chairman Reuben asked Secretary Herrington to acknowledge in the Chairman's letter of December 15. By letter dated January 14, 1987, Chairman Reuben advised Mr. Rusche that this issue would have to be resolved in a manner satisfactory to the Tribe before C & C negotiations could begin. (See Attachment No. 7.)

The current situation, then, is as follows. Both DOE and the Tribe have appointed negotiating teams. Tribal negotiators are preparing for the commencement of negotiations. The Tribe is awaiting Secretary Herrington's acknowledgment of five principles before negotiations will begin; those principles are as follows:

1. The Tribe has a critical interest in maintaining the environmental integrity of the Columbia River and its tributaries, and Departmental activities at Hanford should be designed to avoid adverse impacts on the river.
2. The Tribe has a critical interest in protecting the natural resources in the Tribe's possessory and usage rights area, and Departmental activities at Hanford should be designed to avoid adverse impacts on those resources.
3. By virtue of its treaties with the United States, the Tribe has prior and paramount reserved rights to certain natural resources, and the Department is obliged to take all reasonable measures to avoid harm to those resources.
4. As acknowledged in the President's policy statement of January 1983, a government-to-government relationship exists between the United States and the Tribe, which obligates the United States to protect and enhance the the proprietary and governmental rights of the

Tribe.

5. The provisions of Section 117(c) do not constitute a limitation on the contents of a C & C Agreement; all issues arising from the NWPA program are open for discussion in C & C negotiations.

Items 1-4 we regard as truisms supported by undeniable facts and two centuries of American jurisprudence. We hope and expect that the Secretary will not find them to be problematic. Item 5, of course, involves the Section 117(c) issue noted above. If the Department resolves the matter quickly in the Tribe's favor, no impediments will remain to the commendement of C & C negotiations.

In closing, we note that significant progress towards the commencement of negotiations has been made over the past six months. It seems however, that for every hurdle cleared another arises. The Section 117(c) issue looms, and others may lay ahead. We can say, on the other hand, that we are encouraged by recent developments, particularly the favorable outcome of the impact assistance issue.

In view of our disagreement with the May 28 announcements, finalizing a C & C Agreement within six months was never a possibility. We continue to believe the announced decisions were illegal and underlain by other than scientific motives. Thus, many problems remain in the Tribe's relationship with DOE.

Nevertheless, the Tribe believes its interests are best served by attempting to negotiate a C & C Agreement. Our reasons are strictly our own, and other Affected Tribes and States would be justified in refusing to negotiate. Only time will tell whether the Tribe's commitment to the C & C process will be matched by DOE's.

Respectfully submitted,

THE NEZ PERCE TRIBE

By:


Herman Reuben, Chairman


Elliott L. Moffett, Secretary

February 3, 1987

FROM 4963

86.07.25 00159

**Department of Energy**

Richland Operations Office
P.O. Box 550
Richland, Washington 99352

86-BWI-18

JUL 25 1986

Mr. J. Herman Reuben, Chairman
Nez Perce Tribal Executive Committee
P. O. Box 305
Lapwai, ID 83540

Dear Mr. Reuben:

CONSULTATION AND COOPERATION AGREEMENT

On May 28, 1986, the Department of Energy's recommendation of three sites in Nevada, Texas, and Washington was approved for detailed site characterization for a deep-mined geologic repository for high-level waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982, the Department desires to begin the process that would eventually lead to a signed Consultation and Cooperation (C&C) Agreement.

As a starting point, the Department would like to meet with representatives from the States and three affected Indian Tribes to discuss C&C activities to date, review the scope and parameters of C&C agreements, and talk about provisions that might be in common in all such agreements.

We will be contacting you in the near future to arrange for a time and place that would be acceptable to each of the States and Indian Tribes. Should you desire to discuss this matter with me, please do not hesitate to give me a call.

Sincerely,

O. L. Olson, Director
Basalt Waste Isolation Division

BWI:OLO

Nez Perce

TRIBAL EXECUTIVE COMMITTEE



(208) 843-2253

October 17, 1986

Mr. John Antonnen, Assistant Manager
Richland Operation Office
P.O. Box 550
Richland, WA 99352

Dear Mr. Antonnen:

For the past several months, DOE has had under consideration certain questions concerning the right of the affected tribes to conduct impact studies, to prepare and submit an impact report and - should a tribe choose to do so - to prepare and submit a request for impact assistance under Section 118 of the NWPA. These matters initially were raised during discussion between representatives of DOE and the Umatilla program concerning a consultation and cooperation agreement. More recently, the issues have been discussed at length in the context of FY '87 grant applications filed by Nez Perce and Umatilla.

The Nez Perce Tribe has two basic concerns regarding the issues. Let me first emphasize, however, that these issues go to the very heart of tribal rights of participation in the NWPA process. We are deeply concerned with what we have come to regard as an affront by DOE to deny the tribes the ability to participate meaningfully in the BWIP project.

Our concerns fall into two categories. The first involves the substantive issues themselves. The indications

Mr. John Antonner
Page Two
October 17, 1986

we have gotten from BWIP personnel is that these issues of statutory interpretation have been resolved against us. After careful study of the substantive issues, we feel very strongly that DOE is incorrect as a matter of law and certainly as a matter of policy.

Our second concern is intimately related to the first and goes to the process through which this decision has been reached. While DOE personnel have advised us of their conclusions and imposed those conclusions on the Tribe in grant negotiations, we do not yet have any formal decision document explaining the Department's reasoning. In fact, we have not formally received the decision itself. Moreover, the Department did not solicit our views on the matter before making its determination. Thus, we are left in the position of responding to a Departmental decision made without our input, without any explanation and without any formal communication of the decision.

As stated above, these issues are of critical importance to the Tribe's role in the program. The current situation is unacceptable. We therefore make the following requests and insist on a response within five working days:

1. We request that the BWIP office advise us formally and in writing of its preliminary decision on these issues and the reasoning supporting the decision on or before October 21, 1986.
2. We request that, if the Tribe so desires, representatives of the Tribe and the BWIP personnel involved in the decision meet in formal session on or before November 7, 1986, to discuss our respective positions on the issues.
3. We request a final decision on the issues by BWIP, communicated formally and writing, and including specific responses to any comments the tribe presents to the Department, on or before November 21, 1986.
4. If the decision is adverse to the Tribe, we request that you refer the matter to

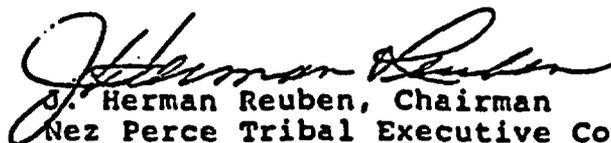
appropriate personnel at DOE Headquarters for a final Departmental decision. We will prepare and submit a statement of our position to be included in your transmittal to DOE Headquarters. The transmittal is to be made on or before December 5, 1986.

5. We request that you advise Headquarters that personnel who will be involved in the decision should meet with representatives of the Tribe before making a final decision. This meeting should be held on or before December 19, 1986, and a final decision made by Headquarters on or before December 31, 1986. The final decision, of course, should be communicated formally and in writing, and should include both a complete statement of the reasoning supporting the decision and specific Departmental responses to comments and arguments made by the Tribe.

We believe that these requests are consistent with BWIP's current intentions. We find it necessary to make these requests formally, however, due to BWIP's seeming reluctance to take a formal position, explain its position and do so in a timely manner. The gravity and urgency of these issues are too great for us to tolerate any longer delayed and informal responses to Tribal concerns.

I would be happy to discuss the details of these requests either in person or by telephone. I will insist, however, that any agreements we make be confirmed in writing. Your prompt consideration of this matter will be appreciated.

Sincerely,


J. Herman Reuben, Chairman
Nez Perce Tribal Executive Committee

cc: R.T. Halfmoon, Manager, NP-NWPA
D.T. White, NW Subcommittee
LB. Kevin Gover, Attorney
Max Powell, Richland Operations



Department of Energy
Washington, DC 20585

NOV 19 1986

Mr. J. Herman Reuben, Chairman
Nez Perce Tribal
Executive Committee
P.O. Box 305
Lapwai, Idaho 83540

Dear Mr. Reuben:

On May 28, 1986, President Reagan approved the Department of Energy's (DOE) recommendation of three sites in Nevada, Texas, and Washington for detailed site characterization for a deep-mined geologic repository for high-level radioactive waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), not later than 60 days following such approval the Department was required to seek to enter into negotiations leading toward consummation of a written binding consultation and cooperation agreement. The provisions of such an agreement are defined by the Act.

On July 25, 1986, Mr. Lee Olson, director of the Basalt Waste Isolation Division at DOE's Richland Operations Office, wrote to you recommending that we initiate the process of developing consultation and cooperation agreements with a meeting of representatives of all States, within which recommended sites are located, and of all three affected Indian Tribes. Similar letters were sent by our project offices to the three affected States and to the other two affected Indian Tribes.

We learned from the States and Indian Tribes that negotiations between the Department and the individual State and Tribal nuclear waste offices might prove more fruitful than a general meeting. Therefore, I am renewing the offer to initiate negotiations for a consultation and cooperation agreement, this time between DOE and the Nez Perce Indian Tribe.

To facilitate the commencement of negotiations, the Office of Civilian Radioactive Waste Management has designated a team to negotiate with the Nez Perce Indian Tribe. This team will be led by Mr. John Anttonen, an assistant manager at the Richland Operations Office. Mr. Anttonen will be contacting your office shortly to discuss appropriate arrangements.

-2-

We look forward to the participation of the Nez Perce Indian Tribe in this important statutory process.

Sincerely,

A handwritten signature in cursive script that reads "Ben C. Rusche". The signature is written in dark ink and is positioned above the typed name.

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Mangement

December 10, 1986

Mr. Ben C. Rusche
100 Independence Avenue, Southwest
Forrestal Building
RW-40
Washington, DC 20585

Dear Mr. Rusche:

I am writing to raise with you a matter of serious concern to the Nez Perce Tribe. Specifically, I would like to share with you my thoughts concerning the issue of the Tribe's eligibility for impact assistance under Section 118 (b) of the Nuclear Waste Policy Act and, more generally, the state of the relationship between the Tribe and the Department of Energy, with particular emphasis on the consultation and cooperation process anticipated by the NWPA.

The Tribe currently is in discussions with personnel from DOE-Richland concerning our claimed right under the NWPA to conduct impact studies, prepare and submit an impact report and assistance request, and receive impact assistance. I understand that our attorney has written to you directly concerning this matter, and that you are aware of the discussions we are having with Richland. According to our program staff, some uncertainty exists as to whether Richland's decision will be made without direction from headquarters. We had hoped initially to establish a step-by-step process of first eliciting an independent decision on the issue from Richland and then, if that decision is not satisfactory, appealing that decision to headquarters where a second, de novo, review would occur.

I now am advised by my staff that headquarters apparently will be involved in the decision we are to receive from Richland. Were we sure that the Richland

Mr. Ben C. Rusche
Page two
December 10, 1986

decision was going to be made independent of headquarters, I would defer this letter to a later date. Because it appears that headquarters will determine the Richland decision, and because of the imminence of the Richland decision, I am writing now. I want to make clear to you our concerns and the importance that we attach to this issue. I believe it is imperative that you and I, as policy-makers, communicate directly on this issue, without the contentiousness that inheres when we call upon our respective legal staffs.

In fact, my first observation concerning the issue is that it is unfortunate that the lawyers have become involved in what is first and foremost a policy issue. I have read our attorney's analysis of this issue, and find it to be persuasive. I am quite certain, however, that if so inclined, your attorneys could produce an analysis equally persuasive to you yielding the opposite conclusion. This leads me to believe that, as a matter of law, the issue of the Tribe's eligibility for impact assistance reasonably could be decided either way. If that is so, then the guiding considerations in the Department's decision should be policy considerations. And the key policy principle, my view, is that the participation of affected tribes should be the broadest possible.

We are disappointed and frustrated with the Department's conduct of the consultation and cooperation requirements of the Act in regard to tribal participation. In my view, every time a debatable issue concerning the breadth of tribal participation arises, it is resolved against the Tribe. An institutional bias against broad tribal participation is evident in many program documents, not the least of which is the draft internal guidelines for C & C Agreements. When Departmental policies pledge broad participatory rights, such pledges ring hollow in light of the actions of the Department. Your pledges of consultation and cooperation at some point must be backed by substantive actions evidencing real commitment to the concept.

As you know, the Nez Perce Tribe to date has eschewed litigation to resolve our grievances against the Department. We also have been reluctant to commence

Mr. Ben C. Rusche
page three
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a major legislative effort that would inhibit the Department's execution of the NWPA. I sincerely hope that our reluctance to pursue these avenues is not interpreted as satisfaction with the conduct of the program. In fact, we are deeply disappointed with a pattern of Departmental decisions obviously intended to limit tribal participation to the bare minimum. While our attorneys play an important role in our program, we are unwilling to have them play the dominant role so long as a real possibility exists that policy issues can be resolved by discussions between policy-makers.

It is for this reason that we are considering carefully the initiation of negotiations with the Department on the terms of a C & C Agreement. We have been preparing for such an initiative for well over a year, and are on the verge of a final decision as to whether to proceed. Quite frankly, the resolution of the impact assistance issue will weigh heavily in that decision. If the Department is unwilling to agree to the Tribe's position on a matter so central to our rights of meaningful participation, the prospects for negotiating an agreement guaranteeing a satisfactory level of tribal participation are quite remote. If the prospects for success in negotiations is remote, it will be very difficult to justify to our constituents a decision to proceed with such negotiations.

I believe that the Tribe's relationship with the Department is at a crossroads. Our program has matured and our expectations for Departmental efforts to consult and cooperate are very high. It is a fortuitous time for a key issue to arise, as the resolution of that issue will tell us much about how our relationship should proceed in the future. I urge you to seek a decision that will give us cause to believe that our existing policy of cooperation not confrontation is in the best interest of the Tribe. I urge you further to please respond to this issue by early January or within the next thirty days.

Sincerely yours,

J. Horman Reuben, Chairman
NPTEC

JHR:ceg

cc: Elliott Moffett, NPTEC Secretary
B. Kevin Gover, Tribal Attorney

Nez Perce



TRIBAL EXECUTIVE COMMITTEE



(208) 843-2253

December 15, 1986

The Honorable John Herrington
Secretary
Department of Energy
1000 Independence Avenue, S.W.
Room 74-257
Washington, D.C. 20585

Dear Mr. Herrington:

Pursuant to Section 117 of the Nuclear Waste Policy Act of 1982 and at the direction of the Nez Perce Tribal Executive Committee, I am writing to request the initiation of negotiations on the provisions of a Consultation and Cooperation "C&C" Agreement between the Tribe and the Department of Energy. A copy of Resolution NP 87-76, authorizing negotiations and appointing a negotiating team, is attached. Also attached is a copy of Resolution NP 87-75, which conditions negotiations on a favorable resolution of an issue currently under consideration.

As you may see from the Resolutions, our participation in negotiations is strictly conditioned upon a satisfactory resolution of the question of the Tribe's eligibility for impact assistance under Section 118 (b). That question currently is under consideration in the Department. A rapid and favorable resolution of the question obviously will expedite the commencement of negotiations.

In addition, we request from you an acknowledgement of the following principles to provide the context for the conduct of negotiations.

The Honorable John Herrington
Page Two
December 15, 1986

1. The Tribe has a critical interest in maintaining the environmental integrity of the Columbia River and its tributaries, and Departmental activities at Hanford should be designed to avoid adverse impacts on the River.
2. The Tribe has critical interest in protecting the natural resources in the Tribe's possessory and usage rights area, and Departmental activities at Hanford should be designed to avoid adverse impacts on those resources.
3. By virtue of its treaties with the United States, the Tribe has prior and paramount reserved rights to certain natural resources, and the Department is obliged to take all reasonable measures to avoid harm to those resources.
4. As acknowledged in the President's policy statement of January, 1983; a government-to-government relationship exists between the United States and the Tribe under which the United States is obliged to protect and enhance the proprietary and governmental rights of the Tribe.
5. The provisions of Section 117 (c) do not constitute a limitation on the contents of a C&C Agreement; all issues arising from the NWPA program are open for discussion in C&C negotiations.

Finally, we wish to advise you that before we will engage in discussions on the contents of an agreement, rules for the conduct of negotiations must be agreed upon. We will insist that transcripts of negotiations be made. Furthermore, we will insist upon procedures for the prompt ratification of agreements reached in discussions between Tribal and Department negotiations by the Nez Perce Tribal Executive Committee and DOE headquarters, respectively. We believe such procedures are necessary to facilitate the efficient disposition of issues during negotiations.

The Honorable John Herrington
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In taking this step, we are mindful that many problems exist in our relationship with the Department. There are, however, concerns common to us. We both, for example, seek to ensure the health and safety of the public during the Department's activities at the Hanford Reservation. We are hopeful that C&C negotiations will result in a mutually beneficial arrangement for the advancement of both of our interests.

Sincerely,


J. Herman Reuben, Chairman
NPTEC

JHR:ceg

cc: Ben Rusche
Stephen Kale
John Antonnen
B. Kevin Gover
Dan Hester


Elliott L. Moffett, Secretary
NPTEC

RESOLUTION

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

WHEREAS, the Nuclear Waste Policy Act of 1982 ("NWPA") established a procedure by which two sites for the permanent geologic disposal of high-level civilian and defense radioactive waste would be identified, investigated, developed, constructed and operated; and

WHEREAS, the Department of Energy (DOE) was assigned primary responsibility for carrying out the provisions of the NWPA; and

WHEREAS, the NWPA requires broad public participation in the process of developing a repository, including formal participation by Indian tribal governments whose interests might substantially and adversely be affected by the investigation, development, construction or operation of a repository at any given site; and

WHEREAS, the Hanford Reservation in Washington is one of three sites being characterized to determine its suitability as a repository for the permanent disposal of high-level radioactive waste; and

WHEREAS, the characterization, development, construction and operation of a repository at the Hanford Reservation substantially and adversely may affect rights guaranteed by treaty to the Nez Perce Tribe, the health and safety of tribal constituents, the social and economic well-being of the Tribe and its constituents, and the quality of the environment in tribal interest areas; and

WHEREAS, the Nez Perce Tribe therefore has been designated an affected tribe under the NWPA; and

WHEREAS, the tribe currently is engaged in discussions with the Department of Energy to resolve the issue of whether the Tribe may conduct impact studies, prepare and submit to Congress an impact report and request for impact assistance, and to receive assistance designed

to mitigate the impacts on tribal interests of the development of the Hanford Site as a repository; and

WHEREAS, the impact assistance is at the core of tribal rights of participation in the NHPA process and the rights asserted by the Tribe relative to this issue are indispensable to meaningful and effective protection of tribal interests; and

WHEREAS, the NHPA provides a legally sound basis for DOE to conclude affirmatively that the Tribe is eligible to participate in the process by conducting impact studies and preparing impact reports and to request and receive impact assistance; and

WHEREAS, the Tribe currently is considering whether to enter into negotiations with DOE for the purpose of developing a Consultation and Cooperation agreement as authorized by Section 117 (c); and

WHEREAS, a pattern of decisions has emerged by which DOE has limited tribal, state, and public participation to the extent possible, and this pattern has led the Tribe to doubt that an acceptable agreement can be negotiated; and

WHEREAS, the issue of impact assistance is of such importance to the Tribe that the Tribe is willing to forego negotiations should the resolution of the issue be unsatisfactory to the Tribe; and

WHEREAS, the time is ripe for a tangible, substantive showing of DOE's commitment to the concept of consultation and cooperation to match its rhetoric and good words; and

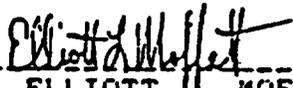
NOW, THEREFORE, BE IT RESOLVED, that the Nez Perce Tribe shall not enter into negotiations with DOE on a consultation and cooperation agreement until such time as DOE has resolved in a manner satisfactory to the Tribe the issue of the Tribe's rights to conduct impact studies, prepare and submit an impact report and request for impact assistance, and to receive assistance designed to mitigate any adverse impacts on tribal interests that result from the development, construction and operation of a repository on the Hanford Reservation; and

BE IT FURTHER RESOLVED, that the Chairman of the Nez Perce Tribal Executive Committee shall transmit this Resolution to appropriate officials in the Department of Energy.

including, without limitation, the Secretary of Energy, the Director of the Office of Civilian Radioactive Waste Management, the Director of the Office of Geologic Repositories and the Director of the Basalt Waste Isolation Project.

C E R T I F I C A T I O N

The foregoing resolution was duly adopted by the NPTEC Meeting in Special Session, December 15, 1986, in the Richard A. Halfmoon Council Chambers, Lapwai, Idaho, a quorum of its Members being present and voting.

BY: -----
ELLIOTT H. HOFFETT, SECRETARY

ATTEST:


HERMAN REUBEN, CHAIRMAN

RESOLUTION

- WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and
- WHEREAS, the Nuclear Waste Policy Act of 1982 (NWPAA) established a procedure by which two sites for the permanent geologic disposal of high level civilian and defense radioactive waste would be identified, investigated, developed, constructed and operated; and
- WHEREAS, the Department of Energy (DOE) was assigned primary responsibility for carrying out the provisions of the NWPAA; and
- WHEREAS, the NWPAA requires broad public participation in the process of developing a repository, including formal participation by Indian tribal governments whose interests might substantially and adversely be affected by the investigation, development, construction or operation of a repository at any given site; and
- WHEREAS, the Hanford Reservation in Washington is one of three sites being characterized to determine its suitability as a repository for the permanent disposal of high-level radioactive waste; and
- WHEREAS, the characterization, development, construction and operation of a repository at the Hanford Reservation substantially and adversely may affect rights guaranteed by treaty to the Nez Perce Tribe, the health and safety of tribal constituents, the social and economic well-being of the Tribe and its constituents, and the quality of the environment in tribal interest areas; and
- WHEREAS, the Nez Perce Tribe therefore has been designated an affected tribe under the NWPAA; and
- WHEREAS, the NWPAA authorizes the negotiation and execution of binding and enforceable agreements between affected tribes and DOE, such agreements being intended to govern the process of consultation and cooperation (C & C) between the tribes and DOE; and

WHEREAS, in the absence of a (C & C) agreement, DOE has established a pattern of restrictive policies and interpretations of the NWPA that seem designed to limit to the extent possible tribal, state, and public participation in the NWPA process; and

WHEREAS, broad and effective tribal participation in the NWPA process is the only means by which tribal interests may receive meaningful protection during the process of investigating, developing, constructing and operating a repository at the Hanford Site; and

WHEREAS, litigation is a costly, time-consuming and uncertain means of vindicating tribal rights of participation; and

WHEREAS, negotiation of a C & C agreement provides an alternative to litigation by which the Tribe may assure itself of broad, timely and effective participation in the NWPA process; and

WHEREAS, such participation is the best means of protecting tribal treaty hunting, fishing and gathering rights, the health and welfare of tribal constituents, the social and economic welfare of the Tribe and its constituents, and the quality of the environment in tribal interest areas; and

WHEREAS, the Nez Perce Tribal Executive Committee has considered the matter carefully, and finds that subject to Resolution NP 87-75, a reasonable possibility exists that tribal concerns may be resolved through a negotiated agreement with DOE; and

NOW, THEREFORE, BE IT RESOLVED, that the Nez Perce Tribal Executive Committee hereby authorizes the commencement of negotiations with the Department of Energy with the goal of executing a binding and enforceable agreement detailing tribal rights and options of participation in the NWPA process; and

BE IT FURTHER RESOLVED, that this authorization is conditioned upon each of the following:

(1) A satisfactory resolution by DOE of the question of the Tribe's right to impact assistance, pursuant to Resolution NP 87-75; and

(2) The submission to and approval by the Nez Perce Tribal Executive Committee of C & C Agreement Guidelines which will govern tribal negotiators in the

conduct of negotiations, provided that a draft of those Guidelines shall be made available to members of the Tribe for a period of 30 days for their review and comment; and

(3) The submission to and approval by the Nez Perce Tribal Executive Committee of the plans of the negotiating team for preparing for commencing negotiations; and

BE IT FURTHER RESOLVED, that the following persons hereby are appointed to negotiate on behalf of the Nez Perce Tribe:

Del T. White
Allen V. Pinkham
Ronald T. Halfmoon
B. Kevin Gover
John Hutchins

BE IT FURTHER RESOLVED, that the following principles shall govern any agreement between the Tribe and DOE:

(1) That the environmental integrity of the Columbia River and its tributaries must be maintained at all costs; and

(2) That the development of a repository at Hanford must not be allowed to denigrate or harm the treaty resources of the Nez Perce Tribe, whether on-reservation or off-reservation; and

(3) That the treaty rights of the Nez Perce Tribe are prior and paramount to any rights acquired by the Department of Energy pursuant to the NWPA; and

(4) That pursuant to the Presidential Policy issued in January, 1983, the Tribe stands in a government-to-government relationship with the United States by which the United States is obliged to protect and enhance the proprietary and governmental rights of the Tribe; and

(5) That all matters arising from the statutory framework for the disposal of radioactive waste are open for negotiations, and the matters listed in Section 117 (c) of the NWPA constitute only the starting point for discussions; and

BE IT FURTHER RESOLVED, that nothing in this resolution should be interpreted as indicating the Tribe's approval of or acquiescence in any action of DOE taken to date, including, without limitation: the evaluation,

nomination, recommendation or approval of the Hanford Site for characterization; the issuance of environmental assessments for the Hanford, Yucca Mountain and Deaf Smith County Sites; the preliminary determination of Hanford's suitability for development as a repository; and the decision to postpone indefinitely site-specific work on the siting of a second repository; and nothing in this resolution shall be interpreted to waive, abrogate, limit, diminish or modify any right claimed by the Tribe, including rights of action, rights of access to the courts and United States Government for the redress of grievances.

C E R T I F I C A T I O N

The foregoing resolution was duly adopted by the NPTEC Meeting in Special Session, December 15, 1986, in the Richard A. Halfmoon Council Chambers, Lapwai, Idaho, a quorum of its Members being present and voting.

BY: *Elliott L. Moffett*
ELLIOTT L. MOFFETT, SECRETARY

ATTEST:

J. Herman Reuben
J. HERMAN REUBEN, CHAIRMAN



Department of Energy

Richland Operations Office
 P.O. Box 550
 Richland, Washington 99352

87-AMC-7

January 29, 1987

Mr. J. Herman Reuben, Chairman
 Nez Perce Tribal Executive Committee
 P. O. Box 305
 Lapwai, ID 83540

Dear Mr. Reuben:

IMPACT ASSISTANCE

The Department of Energy (DOE) has determined that "affected Indian Tribes," as defined by the Nuclear Waste Policy Act of 1982 (the Act) Section 2(2) (B), are eligible to receive financial assistance to develop a report requesting impact assistance under Section 118(b) (2) (A) (ii) of the Act. Furthermore, if the Hanford Site is finally selected as a site for construction of a repository, then the Department of the Interior designated affected Indian Tribes for the Hanford Site would be eligible for financial and technical impact assistance (to address impacts of repository development) under Section 118(b) (3) (A) and (B) of the Act.

Affected Indian Tribes are eligible to receive financial assistance during site characterization for the purpose of preparing an impact assistance report; however, as with all affected parties, financial impact assistance payments would not commence until after the initiation of construction activities at such site, in accordance with the Act. The Department realizes that affected parties are also concerned about potential adverse impacts stemming from DOE's site characterization activities. During site characterization, DOE will be conducting its activities in a manner that minimizes, to the maximum extent practicable, any significant adverse environmental impacts in accordance with Section 113(a) of the Act. Although DOE does not anticipate any significant adverse impacts as a result of site characterization activities, should adverse impacts occur during site characterization, DOE would propose to address such impacts, in consultation with affected parties, via direct technical assistance.

As DOE carries out the Congressional mandate to develop a nuclear waste repository, the Department intends to ensure that the Nez Perce Tribal interests are protected. I realize that you have written letters to both Secretary Herrington and Mr. Ben Rusche, Director of the Office of Civilian Radioactive Waste Management, in which you expressed additional concerns about DOE and Nez Perce relations. Mr. Rusche will be responding to those concerns in a separate letter to you.

Mr. J. Herman Reuben

-2-

JAN 23 1987

If you have questions about either this letter specifically or other issues, please call me or Mr. Max Powell of my staff at (509) 376-5267. I look forward to future discussions with you about our program.

Sincerely,

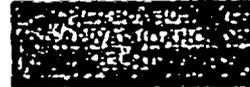
A handwritten signature in black ink, appearing to read 'J.H. Anttonen', with a long horizontal flourish extending to the right.

John H. Anttonen, Assistant Manager
for Commercial Nuclear Waste

Nez Perce



TRIBAL EXECUTIVE COMMITTEE



(208) 843-2253

January 14, 1987

Mr. Ben C. Rusche, Director
Office of Civilian Radioactive Waste Management
Department of Energy
The Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Rusche:

I am writing to raise with you a matter of great concern to the Nez Perce Tribe. Attached is a copy of a memorandum we received from Barry Gale listing a number of "action items" arising from the December meeting of the Institutional/Socioeconomic Coordination Group. The fifth item on the list relates that:

Ann McDonough will clarify whether Indian tribes are included in all the eleven elements listed in Section 117(c), especially 117(c)(5).

I am quite disturbed at this development on two grounds.

First, we had long believed this issue to be closed. I am told by my staff that Barry Gale publicly stated at the ISCG meeting in St. Louis last June that the Department had determined that treatment of all eleven items in Section 117(c) in a Consultation and Cooperation Agreement with an affected tribe is appropriate. The Umatilla Tribes received the same assurance in face-to-face negotiations with Department representatives. I, too, received such an assurance from Messrs. Powell and Olson this past August when they came to Lapwai to discuss the possibility of opening C & C negotiations between the Nez Perce Tribe and the Department.

Mr. Ben C. Rusche, Director
Page Two
January 14, 1987

My second basis for concern goes to the process by which the Department intends to resolve the issue. The Tribe has objected frequently to the Department's practice of making important decisions concerning Tribal rights of participation behind closed doors and without consulting the Tribe. We raised this concern most recently in the context of the Department's consideration of the question of whether the Tribe is eligible for impact assistance under Section 118(b). I am most disappointed to find myself again having to raise with the Department its obligation to consult so soon after the last reminder.

We must insist that this question be resolved in consultation with the Tribe. As you know, we recently advised Secretary Herrington of our willingness to begin C & C negotiations under certain conditions. One of those conditions is an acknowledgement by the Secretary that Section 117(c) is not an all-inclusive listing of the provisions that may be contained in a C & C Agreement. Now we learn that the Department has doubts that the Agreement can include even all the items listed.

I view this as a profoundly negative development. Each such occurrence lessens my faith in the Department's commitment to the principle of broad tribal participation embodied in the Act. An unfavorable resolution of the Section 117(c) issue makes it virtually impossible for the Nez Perce Tribal Executive Committee to justify to its constituents the commencement of C & C negotiations.

I suggest that representatives of the Tribe and the Department, perhaps including you and I, should meet to discuss this critical issue. I hope that you can respond quickly to this request. We are in the process of preparing our Section 117(c) report to Congress on the progress towards a C & C Agreement. I hope very much to be able to report

Mr. Ben C. Rusche, Director
Page Three
January 14, 1987

that the Tribe and the Department are making meaningful progress towards the commencement of negotiations. Your immediate response to this letter, therefore, would be most appreciated.

Sincerely,



for J. Herman Reuben, Chairman
NPTEC

JHR:ceg

cc: The Honorable John Herrington
Barry Gale
Max Powell, DOE-RL
Lee Olson, DOE-RL
John Anttonen, DOE-RL
William Burke, CTUIR
B. Kevin Gover
Dan Hester
Ronald T. Halfmoon

COPY

COMMENTS OF THE NEZ PERCE TRIBE
ON THE
REPORT OF THE DEPARTMENT OF ENERGY
CONCERNING CONSULTATION AND COOPERATION
NEGOTIATIONS
JANUARY 1987

On May 28, 1986, the Secretary of Energy announced that the Hanford Site had been nominated, recommended and approved for characterization under Section 11. This announcement activated the requirement in Section 117 (c) that the Secretary seek to begin negotiations with the Tribe within sixty (60) days to produce a Consultation and Cooperation ("C & C") Agreement.

The Tribe commenced its formal preparation for negotiations by holding training sessions on June 6 & 7 and July 25 & 26, 1986 for members of the Nez Perce Tribal Executive Committee ("NPTEC"). At those sessions, the NPTEC discussed the entire range of issues concerning the negotiation of a C & C Agreement with the Department of Energy ("DOE"). Immediately after the July training session, the Chairman of the NPTEC received a letter dated July 25, 1986 from Mr. Lee Olson, Director of the Basalt Waste Isolation Division of the Richland DOE Operations Office. (See Attachment No. 1) This letter presumably was intended to satisfy the Secretary's obligation to seek to enter into negotiations within sixty days of the approval of a site for characterization.

The July 25 letter, however, proposed a procedure unacceptable to the Tribe. Specifically, the letter proposed a joint meeting of DOE, the three Affected Tribes, and the three Affected States. Because the Tribe believes that one-to-one conversations between DOE and the Tribe are the only appropriate forum for the discussion of the terms of a C & C Agreement, that proposal was rejected.

As a result of the July training session, however, the Tribe invited DOE representatives to the Tribal offices for a discussion of certain issues preliminary to the commencement of C & C negotiations. Messrs. Powell and Olson of the Richland Operations Office represented DOE at the meeting, which was held on August 1, 1986. Although the Tribe was disappointed that DOE had not seen fit to delegate a headquarters representative to accompany the Richland officials, the meeting proved to be a positive development. DOE made several commitments which allayed lingering Tribal concerns, one of which involved DOE's interpretation of Section 117(c). This issue, however, would arise again and is discussed below.

After the August 1 meeting, the commencement of negotiations seemed imminent. Developing events, however, poisoned the atmosphere. Of greatest concern to the Tribe was information that DOE had determined preliminarily that the Tribe was not eligible for impact assistance under Section 118(b)(3) of the NWPA. This determination never was formalized but was enforced by DOE contract officers in negotiations concerning the Tribe's grant for Fiscal Year 1987.

Despite several meetings and numerous discussions over the next two months, DOE never committed a final decision to writing. The Tribe thus was forced to demand a process for final resolution of the issue that would guarantee consultation with the Tribe at key points in the decision-making process. The Tribal demand was communicated to DOE by letter dated October 17, 1986. (See Attachment No. 2.)

To its credit, DOE agreed to the Tribe's demand. The process went along haltingly and required much of the Tribe's attention. C & C negotiations were pushed to the bottom of the Tribe's list of priorities for some time. In December, however, the Tribe resumed its consideration of C & C negotiations, and the impact assistance issue soon merged with the matter of C & C negotiations.

The Tribe recently received a letter from Ben Rusche renewing the Department's invitation to negotiate, this time on the one-to-one basis the Tribe desired. (See Attachment No. 3.) Partially in response to this letter, the NPTEC Chairman, J. Herman Reuben, wrote to Mr. Rusche and clearly linked the outcome of the impact assistance issue to the Tribe's willingness to enter into C & C negotiations. (See Attachment No. 4.)

The NPTEC met again on C & C issues on December 12 & 13. The outcome of that session was a conditional offer to negotiate a C & C Agreement. This offer was made in a letter from Chairman Reuben to Secretary Herrington conveying two Resolutions of the NPTEC. (See Attachment No. 5.) The offer was conditioned strictly on a favorable resolution of the impact assistance issue. In addition, the Tribe asked the Secretary to acknowledge certain Tribal rights and interests.

While Tribal preparation for negotiations continued, DOE moved toward a resolution of the impact assistance issue. Finally, on January 22, 1987, Chairman Reuben was advised by John Anttonen of the Richland Operations Office that the issue had been resolved in the Tribe's favor. On January 30, 1987, the Tribe received written confirmation of the Department's decision. (See Attachment No. 6.)

The Tribe is most pleased with the disposition of the impact assistance issue. We do have lingering concerns regarding the decision-making process, but believe that the entire affair constitutes the showing of good faith on DOE's part that we deemed a prerequisite to C & C negotiations.

Our satisfaction, however, is tempered by the emergence of yet another issue concerning Tribal rights of participation under the Act. Specifically, DOE announced at a December meeting of

the Institutional Socioeconomic Coordinating Group that it was reviewing the question of whether C & C Agreements with Affected Tribes could include all of the eleven elements listed in Section 117(c). That the Department should now entertain doubts on this issue is made doubly unfortunate by the fact that DOE personnel from both Richland and headquarters had assured the Tribe that each of the eleven items was appropriate to be included in C & C Agreements with affected tribes.

Significantly, Tribal eligibility under each of the eleven areas is one of the principles Chairman Reuben asked Secretary Herrington to acknowledge in the Chairman's letter of December 15. By letter dated January 14, 1987, Chairman Reuben advised Mr. Rusche that this issue would have to be resolved in a manner satisfactory to the Tribe before C & C negotiations could begin. (See Attachment No. 7.)

The current situation, then, is as follows. Both DOE and the Tribe have appointed negotiating teams. Tribal negotiators are preparing for the commencement of negotiations. The Tribe is awaiting Secretary Herrington's acknowledgment of five principles before negotiations will begin; those principles are as follows:

1. The Tribe has a critical interest in maintaining the environmental integrity of the Columbia River and its tributaries, and Departmental activities at Hanford should be designed to avoid adverse impacts on the river.
2. The Tribe has a critical interest in protecting the natural resources in the Tribe's possessory and usage rights area, and Departmental activities at Hanford should be designed to avoid adverse impacts on those resources.
3. By virtue of its treaties with the United States, the Tribe has prior and paramount reserved rights to certain natural resources, and the Department is obliged to take all reasonable measures to avoid harm to those resources.
4. As acknowledged in the President's policy statement of January 1983, a government-to-government relationship exists between the United States and the Tribe, which obligates the United States to protect and enhance the the proprietary and governmental rights of the

Tribe.

5. The provisions of Section 117(c) do not constitute a limitation on the contents of a C & C Agreement; all issues arising from the NWPA program are open for discussion in C & C negotiations.

Items 1-4 we regard as truisms supported by undeniable facts and two centuries of American jurisprudence. We hope and expect that the Secretary will not find them to be problematic. Item 5, of course, involves the Section 117(c) issue noted above. If the Department resolves the matter quickly in the Tribe's favor, no impediments will remain to the commencement of C & C negotiations.

In closing, we note that significant progress towards the commencement of negotiations has been made over the past six months. It seems however, that for every hurdle cleared another arises. The Section 117(c) issue looms, and others may lay ahead. We can say, on the other hand, that we are encouraged by recent developments, particularly the favorable outcome of the impact assistance issue.

In view of our disagreement with the May 28 announcements, finalizing a C & C Agreement within six months was never a possibility. We continue to believe the announced decisions were illegal and underlain by other than scientific motives. Thus, many problems remain in the Tribe's relationship with DOE.

Nevertheless, the Tribe believes its interests are best served by attempting to negotiate a C & C Agreement. Our reasons are strictly our own, and other Affected Tribes and States would be justified in refusing to negotiate. Only time will tell whether the Tribe's commitment to the C & C process will be matched by DOE's.

Respectfully submitted,

THE NEZ PERCE TRIBE

By:

J. Herman Reuben, Chairman

Elliott L. Moffett, Secretary



Department of Energy
Washington, DC 20585

DEC 28 1986

**Mr. Melvin R. Sampson, Chairman
Yakima Tribal Council
Yakima Indian Nation
P.O. Box 151
Toppenish, Washington 98948**

Dear Mr. Sampson:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that the sites have been approved for site characterization for a nuclear waste repository. The report must include the reasons why such agreements have not been concluded. The Act also specifies that affected States and Indian Tribes have an opportunity to review and comment on this report, and their comments are to be included in the Department's submission to Congress.

On September 26, 1984, the Department of Energy transmitted a report to Congress describing the consultation and cooperation negotiations which had been initiated by the Yakima Indian Nation on July 15, 1983, along with the Tribe's comments on the report.

The enclosed report to Congress provides an update on the status of consultation and cooperation negotiations between the Department and the Yakima Indian Nation since the last report was submitted. I will be transmitting this report, as well as reports for the other States and affected Indian Tribes, to Congress shortly. We would therefore appreciate receiving your comments as soon as possible.

Sincerely,

Ben C. Rusche
Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosure

**Report to Congress Concerning Negotiations
with the Yakima Indian Nation
as Required by
Section 117(c) of the
Nuclear Waste Policy Act of 1982
U.S. Department of Energy
December 1986**

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act) directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations leading to Consultation and Cooperation Agreements, if such agreements are not completed within six months after notification that sites have been approved for site characterization by the President for a nuclear waste repository. The report must also include the reasons why such agreements have not been concluded. In accordance with the Act, the Department must seek to enter into these agreements not later than 60 days after Presidential approval of a site for site characterization, or at the written request of the State or affected Indian Tribe within any State notified as having a potentially acceptable site under Section 116(a) of the Act, whichever occurs first.

On July 15, 1983, the Yakima Indian Nation initiated consultation and cooperation negotiations with the Department. These negotiations, which were suspended by the Yakima Indian Nation pending conclusion of an agreement with the State of Washington, were described in the enclosed report transmitted to Congress September 26, 1984. This report provides an update on the status of consultation and cooperation negotiations since that report.

On May 28, 1986, President Reagan approved the Department's recommendation that sites in three States - Nevada, Texas, and Washington - be selected for site characterization. On July 25, 1986, Mr. Lee Olson, director of the Basalt Waste Isolation Division at DOE's Richland Operations Office, wrote to Mr. Melvin R. Sampson, chairman of the Yakima Tribal Council, to renew the process of developing a Consultation and Cooperation Agreement with a meeting of representatives of all States, within which recommended sites are located, and all three affected Indian Tribes. The States and Indian Tribes that did respond indicated that direct negotiations between the Department and individual State and Tribal nuclear waste offices might prove more fruitful than a joint meeting.

In response to this interest in individual negotiations, on November 19, 1986, a letter was sent to Mr. Sampson to renew the Department's offer to resume negotiations on a Consultation and Cooperation Agreement, this time directly between DOE and the Yakima Indian Nation. Although a response from Mr. Sampson has not yet been received, the Department is looking forward to working with the Yakima Indian Nation to pursue negotiations once again on a Consultation and Cooperation Agreement.

Pursuant to the Act, enclosed are the comments of Mr. Sampson on this report. In addition to the previous report to Congress, the Department is enclosing copies of the July 25, 1986, and November 19, 1986, letters sent to Mr. Sampson.

Enclosures



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

September 26, 1984

Honorable George Bush
President of the Senate
Washington, D. C. 20510

Dear Mr. President:

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with States and affected Indian tribes, if those agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. In accordance with the Act, I am submitting the reports relating to the negotiations with the State of Washington and the Yakima Indian Nation.

Pursuant to the requests of the Yakima Indian Nation and the State of Washington, negotiations leading to Consultation and Cooperation Agreements were initiated with the Yakima Indian Nation on July 15, 1983, and with the State of Washington on July 27, 1983.

Although essential agreement has been reached with the State of Washington negotiating team on most of the provisions pertaining to such an Agreement, for the reasons stated in the enclosed report, negotiations were not concluded by January 7, 1984, as contemplated by section 112(f) of the Act. Negotiations have also not been concluded with the Yakima Indian Nation. They have requested that negotiations with them proceed only after negotiations have been concluded with the State of Washington.

Pursuant to the terms of the Act, attached to the report are the comments of the Governor of the State of Washington, the Chairman of the State of Washington Senate Energy and Utilities Committee, and James B. Hovis, Tribal Counsel to the Yakima Indian Nation.

Sincerely,

DONALD PAUL HODEL

Enclosures

**Report to Congress Concerning Negotiations
with the Yakima Indian Nation
as Required by
section 117(c)
of the
Nuclear Waste Policy Act of 1982**

U.S. Department of Energy

September 26, 1984

Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), directs the Department of Energy (DOE) to submit to Congress a report on the status of negotiations of Consultation and Cooperation Agreements with the States and affected Indian tribes if those Agreements are not completed within the time specified by the Act. This report must also include the reasons why such Agreements have not been completed. Since a written Agreement with the Yakima Indian Nation (Nation) was not completed within the time (no later than January 7, 1984) required by section 112(f) of the Act, this report is being submitted.

By letters dated February 14 and March 8, 1983, the Nation petitioned the Secretary of the Interior to certify that the Nation qualified as an "affected Indian tribe" in accordance with section 2(2)(B) of the Act. By letter dated March 30, 1983, the Assistant Secretary, Indian Affairs, Department of the Interior certified that the Nation was an "affected Indian tribe". By letter dated May 20, 1983, DOE notified the Chairman of the Nation's Tribal Council that the Hanford Site, near Richland, Washington, contained a potentially acceptable site for a waste repository. By letter dated May 23, 1983, the Nation requested DOE to commence negotiation of a Consultation and Cooperation Agreement pursuant to the requirements of the Act. The Manager of DOE's Richland Operations Office was designated as the principal contact for these negotiations. Mr. James B. Hovis, Tribal Counsel, was designated as the principal contact for the Nation. Formal negotiations were initiated on July 15, 1983.

Four informal negotiating sessions followed the July 15, 1983, session. These sessions involved Mr. James B. Hovis and Mr. Richard L. Hames, then Chief Counsel, Richland Operations Office, a member of the Department's negotiating team. Substantial progress was made in drafting an Agreement which will be reviewed by the Nation's Tribal Council and the entire DOE negotiating team. At the request of Mr. Hovis, further negotiations have been postponed pending completion of an Agreement with the State of Washington. As stated in a parallel report concerning negotiations with the State, essential Agreement has been reached on all but two provisions, viz. liability and defense waste. The State has notified DOE that the legislature must review the Agreement before it can be executed and that the review could not be accomplished until after the legislature convened on January 9. DOE is ready to resume negotiations whenever requested by the Nation.

JOIS COCKRILL WEAVER AND BJUR
PO BOX 487
YAKIMA WA 98907 30AM



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HONORABLE DON PAUL HOEDEL
SECRETARY DEPT OF ENERGY
WASHINGTON DC 20585

REGARDING THE STATUS OF C AND E NEGOTIATIONS BETWEEN DOE AND YAKIMA
NATION PER SECTION 112F OF N W P A, PLEASE BE ADVISED THAT MELVIN
SAMPSON CHAIRMAN OF THE APPROPRIATE COMMITTEE HAS ASKED ME TO ADVISE
YOU THAT THE YAKIMA NATION HAS NO OBJECTION TO THE SUBMISSION OF YOUR
REPORT THAT THEY HAVE REVIEWED TO CONGRESS

JAMES B HOVIS
PO BOX 487
YAKIMA WA 98907

17:28 EST

MGHCOMP

**Department of Energy**

Richland Operations Office

P.O. Box 850

Richland, Washington 99352

86-BWI-20

JUL 25 1988

Mr. Melvin R. Sampson, Chairman
Yakima Tribal Council
Yakima Indian Nation
P. O. Box 151
Toppenish, WA 98948

Dear Mr. Sampson:

CONSULTATION AND COOPERATION AGREEMENT

On May 28, 1986, the Department of Energy's recommendation of three sites in Nevada, Texas, and Washington was approved for detailed site characterization for a deep-mined geologic repository for high-level waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982, the Department wishes to continue the process that would eventually lead to a signed Consultation and Cooperation (C&C) Agreement.

As a starting point, the Department would like to meet with representatives from the States and three affected Indian Tribes to discuss C&C activities to date, review the scope and parameters of C&C agreements, and talk about provisions that might be in common in all such agreements.

We will be contacting you in the near future to arrange for a time and place that would be acceptable to each of the States and Indian Tribes. Should you desire to discuss this matter with me, please do not hesitate to give me a call.

Sincerely,

D. L. Olson, Director
Basalt Waste Isolation Division

BWI:OLO



Department of Energy
Washington, DC 20585

NOV 18 1986

**Mr. Melvin R. Sampson, Chairman
Yakima Tribal Council
Yakima Indian Nation
P.O. Box 151
Toppenish, Washington 98948**

Dear Mr. Sampson:

On May 28, 1986, President Reagan approved the Department of Energy's (DOE) recommendation of three sites in Nevada, Texas, and Washington for detailed site characterization for a deep-mined geologic repository for high-level radioactive waste and spent nuclear fuel.

In accordance with Section 117(c) of the Nuclear Waste Policy Act of 1982 (the Act), not later than 60 days following such approval the Department was required to seek to enter into negotiations leading toward consummation of a written binding consultation and cooperation agreement. The provisions of such an agreement are defined by the Act.

On July 25, 1986, Mr. Lee Olson, director of the Basalt Waste Isolation Division at DOE's Richland Operations Office, wrote to you recommending that in the case of the Yakima Indian Nation we renew the process of developing consultation and cooperation agreements with a meeting of representatives of all States, within which recommended sites are located, and of all three affected Indian Tribes. Similar letters were sent by our project offices to the three affected States and to the other two affected Indian Tribes.

We learned from the States and Indian Tribes that negotiations between the Department and the individual State and Tribal nuclear waste offices might prove more fruitful than a general meeting. Therefore, I am renewing the offer to begin negotiations once again for a consultation and cooperation agreement, this time between DOE and the Yakima Indian Nation.

To facilitate the commencement of negotiations, the Office of Civilian Radioactive Waste Management has designated a team to negotiate with the Yakima Indian Nation. This team will be led by Mr. John Anttonen, an assistant manager at the Richland Operations Office. Mr. Anttonen will be contacting your office shortly to discuss appropriate arrangements.

-2-

We look forward to the participation of the Yakima Indian Nation in this important statutory process.

Sincerely,


Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS

Yakima Indian Nation

GENERAL COUNCIL
TRIBAL COUNCIL

POST OFFICE BOX 151
TOPPENISH, WASHINGTON 98948

March 31, 1987

Mr. Ben C. Rusche, Director
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Rusche:

The Yakima Indian Nation has received the draft comments that are proposed to be submitted to Congress under the provisions of Section 117(c) of the Nuclear Waste Policy Act of 1982.

We appreciate the opportunity to comment on the proposed report and to outline some observations on the Consultation and Cooperation process authorized by the NWPA. The provision calling for a report to Congress on the progress of C&C negotiations, we feel, to be a wise one as it indicates a continuing interest on the part of Congress to monitor the relationships between the Department of Energy and the Yakima Indian Nation, as an affected tribe under the Act.

Before we proceed to record our comments, we would like to make it clear that the Yakima Indian Nation has every intention to proceed with negotiation proceedings. As you will recall, the Yakima Indian Nation was either the first or second affected party under the Act, to institute negotiations. We at that time worked directly with negotiators from the Basalt Waste Isolation Project.

It soon became evident that with our limited means it was not practical for us to be taking the lead over all other states and tribes in this process. It was then mutually decided that the best method was to recess these negotiations until the completion of the then ongoing negotiations with the State of Washington. The negotiations with the State of Washington were then proceeding.

It later became apparent to us that there would be a delay in completion of the negotiations with the State of Washington and we have again sought to reinstitute negotiations. The delay has been very worthwhile as we are much better prepared to complete negotiations. The delay has also given us a larger view of the problems involved in completing negotiations, and it has also shown us the necessity of completing a satisfactory consultation and cooperation agreement.

Although no formal negotiations have been conducted under Section 117 since the aforementioned recess of earlier talks, the statute does require a report following the six-month period

Mr. Ben Rusche
March 31, 1987
Page 2

after the notification of the YIN that the Hanford site was being selected as a location for formal site characterization.

The YIN received the letter from Mr. O.L. Olson, at that time Director of the Basalt Waste Isolation Division of the Richland Operations Office, indicating the Department's desire to carry out the NWPA statutory directive for notification and expressing the interest of the Department in continuing the C&C process.

The YIN examined the notification letter in some detail, particularly the request for a meeting with representatives from the affected tribes and first round states "to discuss C&C activities to date, review the scope and parameters of C&C agreements, and talk about provisions that might be in common in all such agreements."

Although we have continued to feel that the Consultation and Cooperation Process authorized by the NWPA is an important component in establishing proper relationships between the DOE and the Nation in regard to reinforcing the ability of the YIN to examine and review federal siting efforts, we have maintained that the process of negotiating a satisfactory C&C agreement will require individual negotiations between the DOE and the affected tribe or state. Therefore, the suggestion that negotiations be commenced by a meeting of several state and Indian representatives, did not appear meritorious, at least at the time that it was suggested.

As outlined in the Olson letter, the Department wished to discuss "the scope and parameters of C&C agreements." We feel that the NWPA calls for the negotiation of a comprehensive document which will provide procedures and written commitments by the DOE that will protect and enhance the ability of the YIN to secure and maintain appropriate staff and develop policy and technical capabilities to carry out an effective program of evaluating the national siting program as it relates to the proposed BWIP site at Hanford. We feel that the development of a satisfactory scope and bounds of an agreement are best forged by direct talks between the two parties. However, out of such discussions, there may emerge some issues of commonality that could be considered in a broader context. The strong preference of the YIN is that any negotiations that are reinstated, in a formal negotiating setting, be between the two parties of interest.

Mr. Ben C. Rusche reaffirmed the interest of the Department of Energy in pursuing the development of a Consultation and Cooperation Agreement in a letter sent to the YIN the latter part of 1986. He recognized that those tribes and states that

Mr. Ben Rusche
March 31, 1987
Page 3

responded to the Department's earlier letter had a similar reaction to joint negotiations to that of the Nation. The YIN acknowledges the willingness of DOE to enter into negotiations and wishes to reiterate its interest in the C&C process. The development of written, binding commitments from DOE can assist in the YIN's comprehensive examinations of federal siting activities.

However, it should be noted that since the holding of negotiations with the YIN during 1983, a number of activities and decisions have taken place. The resumption of formal negotiations requires a careful reassessment by the YIN in the light of the status of the national program, decisions that have been made by DOE during the interim period, the concerns of the Congress and its present review of the DOE efforts and funding, and the operating relationships that have been established between DOE and the YIN.

It is imperative, from the YIN's standpoint, that a developed and executed C&C procedural agreement be one that can be successfully implemented in both the letter and spirit of its negotiated development. We have had some concerns that the DOE could feel that the requirements of the agreement, if found to be inhibiting to its perceived interests, could be either ignored or voided, at its discretion. While we recognize and support the necessity for any agreement of this type to be legally binding, we would not wish to participate in the efforts required to come to common agreements on procedures relating to YIN reviews and analysis activities, only to find that the agreement has been broached and that legal remedial action is necessary. The success of this truly innovative concept, as envisioned by Congress, will depend upon both assurances and performance by DOE of its interest, capacity, and intent to fully conform to all provisions that are included. The YIN intends to reflect cautiously on this important issue in order to assure itself that the conduct of formal negotiations, when entered into, will result in a document that corresponds with the Congressional concept and expectations and will meet the needs of the Nation. We have continually communicated our desires to negotiate a satisfactory C&C Agreement.

As evidence of that desire, the YIN participated in a meeting with affected first round tribes and states with DOE on November 20, 1986 to determine whether there could be a consensus developed on an acceptable definition of the consultation and cooperation concept. While it was encouraging to the YIN that high officials in OCRWM were continuing to be concerned about the lack of progress in regard to the development of C&C agreements, it was discouraging that the meeting discussed possible language changes to the forthcoming Mission Plan amendments, an activity

Mr. Ben Rusche
March 31, 1987
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in which the YIN was not invited to participate until so late in the stage of development that a full review process was not possible.

DOE has committed itself to further discussions on the definitional aspects of C&C and the YIN will continue to participate in any reasonable endeavor to reach an understanding with DOE on the basic concept. It may be necessary for this action to be taken prior to any deliberations on other issues between the YIN and DOE. Certainly if there can be no common understanding as to what consultation and cooperation is, it does not assure success in an agreement covering this subject. It has been most clear that there has been up to this point a dramatic difference between DOE's understanding and the understanding of others. The Yakima Indian Nation feels that an acceptable C&C definition will undergird the C&C negotiation process and will, hopefully, enable DOE to implement policies and practices which will enable a continuing, meaningful, interactive C&C process. Whether the development and operation of an acceptable definition is a condition precedent to formal negotiations will depend upon the confidence of the Yakima Tribal Council that the C&C negotiation process will be enhanced.

The Department of Energy has taken two positive steps in recent weeks relating to the C&C process which should assist in the YIN assessment of the utility of a new start on the C&C agreement negotiations. These are: (1) the recognition of DOE that affected Indian tribes were eligible for impact assistance under Section 118(b)(3) of the NWPA; and (2) the conclusion that the itemized list of procedures in Section 117(c) did not circumscribe any issue that the parties felt should be included in negotiations for a C&C agreement. The DOE position on these items appears to indicate that the actions of the Department may be supportive of the policy statements that have appeared in the Mission Plan and other documents. This beginning evidence of sensitivity to and support of the concept of comprehensive involvement by the YIN and other affected tribes and states may make the achievement of negotiated agreements possible.

Summary

It is the contention of the Yakima Indian Nation that the C&C process, as outlined in the NWPA, is an important and integral part of the national program to find, license, develop, and operate two repositories for the disposal of high-level nuclear wastes and spent fuel. A written C&C agreement can provide needed procedural detail for the YIN on the timely securing of information and data; on recognizing the need for adequate financial resources for the deploying of staff and technical experts for the YIN review program; to provide an acceptable

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means for dealing with conflicts and unresolved issues; for the development of independent information and analysis regarding the federal site search; for determining the potential impacts on health, safety, and the environment; and other important issues.

Therefore, the YIN wishes both DOE and the Congress to be aware of its support for the concept of C&C and looks forward to the development of a policy environment which will heighten the possibility of achieving an acceptable written set of procedures. We are committed to the utilization of all authorities provided the Nation in the NWPA and consider the Section 117(c) provisions and their successful employment as essential ingredients in the national program.

Sincerely,

YAKIMA INDIAN NATION

William Don Tahkeal

William Don Tahkeal, Secretary
Radioactive/Hazardous Waste Committee
Yakima Tribal Council

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