

AMENDED RULE PR-60
(50 FR 2579)

TESTIMONY OF SUZAN SHOWN HARJO, EXECUTIVE DIRECTOR
NATIONAL CONGRESS OF AMERICAN INDIANS
TO THE
U.S. NUCLEAR REGULATORY COMMISSION
CONCERNING PROPOSED AMENDMENTS TO 10 CFR 60

FEB 7 1986

January 24, 1986

Mr. Secretary, Members of the Commission, I am Suzan Shown Harjo, Executive Director of the National Congress of American Indians (NCAI). The NCAI, established in 1944 to promote Indian treaty, traditional, cultural and property rights, is the oldest and largest national organization serving American Indian and Alaska Native governments and individuals.

I would like to express my appreciation to the Commission for conducting this hearing and providing the NCAI with the opportunity to express our concerns about the Nuclear Regulatory Commission (NRC) proposed amendments to 10 CFR 60, dealing with site characterization and the participation of States and Indian Tribes (Federal Register, Vol. 50, No. 12, January 17, 1985).

Although the NCAI is concerned about other proposed changes, our foremost objection regards the proposal to change Subpart A, Section 60.2 Definitions, wherein the terms "Indian tribe" and "Tribal organization" would be replaced by the term "affected Indian tribe," as defined in the Nuclear Waste Policy Act of 1982 (NWPA).

Section 2(2) of the NWPA defines "affected Indian tribe" to include (A) any tribe on whose reservation a nuclear waste site is proposed, or (B) any tribe whose possessory or usage rights to lands outside the reservation, as defined by congressionally-ratified treaties, may be affected by such a site.

Indian country is defined in Section 1151(a) of 18 U.S.C. and the courts have interpreted it to mean inclusion of all reservation lands, with the term

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reservation being a term of art meaning all Indian lands which are subject to restrictions against alienation, notwithstanding the issuance of any patent. In 1871, in an appropriations act, Congress restricted its future treaty-making with Indian Nations and Tribes. Since that time, nearly 30 million acres have been federally defined as reservations or Indian country, through Congressional settlements, Executive Orders, administrative procedures and court decisions. In recent years, Congress has passed numerous acts recognizing the property and usage rights of the Tribes. Included among the many in this category are the National Environmental Policy Act, the American Indian Religious Freedom Act and the Archaeological Resources Protection Act, all of which recognize Tribes, their property and other rights, irrespective of their establishment method. The only differences are historical.

The legislative history of the NWPA indicates that the Committee on Environment and Public Works, which wrote the final definition of "affected Indian tribe", intended to include Tribes whose off reservation rights were defined by statute (S. Report, No. 232, 97th Congress, 1st Session 18, 1981). Either the addition of "statutes" in the report or its omission from the amendment must have been in error. We are concerned that the NRC, by adopting the poor draftsmanship of the NWPA, may further limit participation by the Tribes that have land and usage rights that are not the subject of Congressionally-ratified treaties.

The NWPA does not require the NRC to limit the participation of tribal organizations or Tribes which do not have Congressionally-ratified treaties. The Indian language in the NWPA was written to protect Tribal lands and involve the Tribal governments in the siting process, placing Tribes on an basis equal with the States.

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The NRC, along with all other instruments of the United States, has a trust responsibility toward the Indian Tribes. This responsibility is not limited to the Department of Interior. We urge NRC to leave the 10 CFR 60 Definitions as they are, thereby allowing all Tribes and Tribal organizations the opportunity to participate in NRC pre-application reviews and to assist the NRC staff in identifying potential licensing issues early. This participation will be especially important in light of the current proposal to issue the final Site Characterization Analysis (SCA) without allowing public comment on a draft of the SCA.

We hope the NRC will reconsider the NCAI request to write "Tribes(s)" with a capital "T," as "States(s)" is written with a capital "S." Although the request may seem inconsequential to the NRC, it provides the Tribes with treatment equal to the States.