



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

August 19, 1994

Mr. Benito J. Garcia, Bureau Chief  
Hazardous and Radioactive Materials Bureau  
State of New Mexico  
Environmental Department  
P.O. Box 26110  
Santa Fe, NM 87502

Dear Mr. Garcia:

I am responding to your August 3, 1994, letter to Chairman Selin in which you expressed concerns about the Mescalero Apache Tribe's initiative to operate an away-from-reactor independent spent fuel storage installation (ISFSI). Specifically, you asked questions regarding the Nuclear Regulatory Commission's statutory and regulatory authority to license an ISFSI at an away-from-reactor site, the appropriate licensing procedures, and the regulatory criteria applied to a facility.

Both the appropriate licensing procedures and the design criteria that would be applied to any application for an ISFSI are contained within Title 10 of the Code of Federal Regulations, Part 72 (10 CFR Part 72) and Part 2 (10 CFR Part 2). The requirements that a proposed facility must meet include the design criteria specified in 10 CFR Part 72. They also include other requirements such as siting considerations, quality assurance measures, and record keeping and reporting provisions. While it is true that most ISFSIs licensed to date by NRC are on nuclear reactor sites, NRC also has experience licensing an away-from-reactor ISFSI, specifically, General Electric's Morris facility, near Chicago, Illinois.

We are in the process of supplementing Part 72 procedures by rulemaking to add emergency planning requirements to 10 CFR 72.302 that would apply to an away-from-reactor ISFSI (58 FR 29795). However, we have no other changes to Part 72 under consideration relating to an off-site ISFSI. The existing rule is sufficiently comprehensive to regulate either: (1) pool or dry storage; (2) a monitored retrievable storage (MRS), should one be proposed by the U.S. Department of Energy (DOE), or ISFSI by another entity; or (3) storage facilities on or off reactor sites.

You are correct in your statement that DOE must be the licensee for an MRS. However, the Mescalero Apache Tribe is considering an away-from-reactor ISFSI, in the event DOE will not pursue an MRS on their reservation. Therefore, DOE is not required by law to be the licensee of the ISFSI.

Prior to its current activities relating to a potential ISFSI, the Mescalero Apache Tribe, among others, participated in discussions with the Nuclear Waste Negotiator's Office, as part of the Negotiator's activities to locate a willing and voluntary host for the MRS. The process involved an open and voluntary mechanism that provided funding to allow interested States and Indian tribes to study the issues of spent fuel storage without ever having to commit to being the host. This voluntary process would have become final only when an agreement had been reached between a willing host and DOE. However, the voluntary process was effectively terminated for the Mescalero Apache

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Enclosure

Mr. J. Theodore Meyer  
 Illinois Pollution Control Board  
 100 West Randolph Road, Suite 11-500  
 Chicago, IL 60601

Dear Mr. Meyer:

I am responding to your letter dated June 9, 1995, which requested information concerning the siting of a low-level radioactive waste disposal facility (LLRWDF) licensed by the U.S. Nuclear Regulatory Commission on Native American Tribal lands. In this letter, you referenced a license application submitted to NRC for a spent nuclear fuel rod disposal facility located on the Mescalero Apache Reservation in the State of New Mexico. Although NRC has not received such an application, our agency is aware that the Mescalero Apache Tribe is contemplating the submittal of an application for a license to store (not dispose of) spent nuclear fuel on its land. In this regard, we are providing you with a copy of an August 19, 1994, letter from Robert M. Bernero (then the Director of the Commission's Office of Nuclear Material Safety and Safeguards) to Benito J. Garcia, Chief of the Hazardous and Radioactive Materials Bureau, Environmental Department, State of New Mexico. In that letter, we addressed the possible siting of a spent fuel storage facility on Mescalero Apache land.

Regarding your questions concerning the siting of an LLRWDF, we can offer no specific opinion concerning the Commission's jurisdiction because we have not been presented specific information about any proposed NRC-regulated LLRWDF on Native American Tribal lands in the State of Illinois. If you have any questions concerning this response, please contact Mr. Robert Nelson of my staff at (301) 415-7298.

Sincerely,

Carl J. Paperiello, Director  
 Office of Nuclear Material Safety  
 and Safeguards

Enclosure: As stated  
 cc: Thomas Ortziger, Director, Illinois Department of Nuclear Safety

TICKET: E-0000462

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