October 1, 2008

Mr. Russell Jim, Manager
Yakama Environmental Restoration/
Waste Management Program
Confederated Tribes and Bands
of the Yakama Nation
Post Office Box 151, Fort Road
Toppenish, Washington 98948

Dear Mr. Jim:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated July 16, 2008. In your letter, you seek clarification of the NRC's trustee responsibilities to Federally recognized tribes, including the Confederated Tribes and Bands of the Yakama Nation, and in particular those residing in NRC Agreement States. You also raise concerns regarding disposal of radioactive waste at the U.S. Ecology low-level waste disposal site in Richland, Washington.

The NRC is committed to consultation and cooperation on a government-to-government basis with Native American Tribal Governments in a manner consistent with the spirit and intent of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," signed on November 6, 2000. As you indicated, the NRC does not have a separate, formal program addressing interactions with Native American Tribal Governments. Instead, in addition to established programs that give all interested parties access to information concerning NRC activities, NRC interactions with Native American Tribes are initiated by Tribal interest in particular NRC-regulated activities. NRC personnel also identify and initiate dialogue with Federally recognized Native American Tribal Governments through NRC regulatory processes and activities. NRC outreach to Native American Tribal Governments focuses on those Tribes that may be affected by, or have interest in, activities regulated by NRC both on, or near, official reservation lands. This approach has established a foundation of government-to-government working relationships that respects the right of self-government and self-determination by Native American Tribes. Enclosed are several examples of the many relationships involving the NRC and Native American Tribes and Tribal representative organizations.

The Federal courts have recognized that agencies such as NRC have general responsibilities to Indian Tribes, as well as to other citizens. Consistent with the Federal courts' views on the trust responsibilities of individual agencies, the NRC fulfills its responsibility in the context of its statutory authorities given through the Atomic Energy Act. The NRC's programs and regulations under these authorities are designed to ensure adequate protection of public

health and safety, promote the common defense and security, and protect the environment for all members of the public. As described below, the NRC's Agreement State program is one method by which the agency carries out its legal responsibilities.

Unlike other Federal agencies that authorize States to implement regulatory programs while maintaining Federal regulatory authority, the NRC, in accordance with the provisions of the Act, discontinues its regulatory authority when it enters into an agreement with a State. Therefore, the NRC relinquishes, rather than delegates, its authority to a State. The NRC enters into Agreements with States after ensuring that the State regulatory programs are adequate to protect public health and safety and compatible with NRC's regulatory requirements. Under Section 274 of the Atomic Energy Act, 35 States have entered into such agreements with the NRC.

Washington became an Agreement State on December 31, 1966. The State assumed regulatory authority over low-level waste disposal sites in its agreement with the NRC. Through this authority, Washington State regulates the U.S. Ecology site.

The NRC periodically reviews existing Agreement State programs to ensure continued adequacy and compatibility. The NRC may terminate or suspend all or part of its agreement with a State if the NRC finds that these steps are necessary to protect public health and safety or that the State has not complied with Section 274. The NRC most recently reviewed Washington's Agreement State program earlier this year and released its final report on August 21, 2008. The review concluded that Washington's program was adequate to protect public health and safety and compatible with the NRC's regulations.

The NRC encourages Native American Tribes and State governments to establish cooperative relationships to address issues involving an Agreement State's radiological program. The NRC is able to offer assistance in developing relationships between Agreement States and Tribal Governments.

Regarding your more specific concerns about the U.S. Ecology low-level radioactive waste disposal site as noted above, the State of Washington, not the NRC, regulates the U.S. Ecology facility. To the extent possible, the NRC will attempt to respond to your concerns about the Hanford site. However, the NRC will need to obtain additional information related to your inquiry from both the Washington Department of Health (the Agreement State regulator), as well as the U.S. Department of Energy. Therefore, the response will be delayed until this information is received and has been reviewed.

In summary, the Commission is fully committed to establishing and maintaining open lines of communication with Native American Tribal Governments. The NRC also recognizes the rights of Tribes to self-government and sovereignty, and affirms and commits to work with Native American Tribal Governments on government-to-government bases.

If you need additional information on this matter, please contact Mr. Martin Virgilio, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs at (301) 415-1705.

Sincerely,

/RA/

Peter B. Lyons
Acting Chairman

Enclosure: As stated

cc: Robert Holden, Director, Nuclear Waste Program
National Congress of American Indians
Mary Selecky, Secretary of Health, State of Washington
Jay Manning, Director, Department of Ecology, State of Washington
The Honorable Patty Murray, U.S. Senate
The Honorable Maria Cantwell, U.S. Senate
The Honorable Doc Hastings, U.S. House of Representatives
Yakama Nation Radioactive/Hazardous Waste Management Committee
Philip Rigdon, Deputy Director, Yakama Nation Department of Natural Resources

NRC Relationships with Native American Tribes and Tribal Representative Organizations

Uranium recovery, in-situ leach operations, and legacy wastes - The U.S. Nuclear Regulatory Commission (NRC) has consulted with several Native American Tribal governments in Indian Country located in New Mexico and Arizona, particularly the Navajo Nation, the Hopi Tribe, the Acoma Pueblo, and the Laguna Pueblo, on regulatory issues related to uranium milling operations and environmental restoration.

High-level waste disposal - In 2001, and later in 2003, NRC hosted workshops for Native American Tribes with ties to Yucca Mountain in Nevada. During those workshops, NRC personnel learned from the Timbisha Shoshone Nation of their pursuit of "affected status" from the Department of the Interior (DOI) with regard to proceedings associated with the proposed high-level waste repository. Subsequently, NRC staff met with DOI staff, provided information on NRC's regulations and hearing processes, and conveyed NRC's interest in a timely decision on the Tribe's request. Again, in 2006, when meeting with Tribal elders at the Timbisha homestead in Death Valley, NRC staff learned of the Tribe's renewal of its petition to DOI for affected status. In March 2007, NRC legal and technical staff met a second time with DOI staff, this time at DOI headquarters, to offer NRC assistance in evaluating the merits of the Timbisha petition and encourage DOI action. After DOI granted affected status to the Timbisha Shoshone, NRC staff travelled to Death Valley in May 2008, at the Tribe's request, to provide detailed information on NRC's licensing and hearing process.

Power reactor license renewal - The Prairie Island Indian Community entered into a Memorandum of Understanding (MOU) with NRC on June 17, 2008, to become a cooperating agency for preparing the Environmental Impact Statement for the Prairie Island Nuclear Generation Plant license renewal. The MOU is the first between NRC and a Native American Tribal Government dealing with power reactor license renewal.

Sequoyah Fuels site in Gore, Oklahoma - In 1996, the Cherokee Nation and the NRC entered into a cooperating agency relationship regarding the reclamation of the Sequoyah Fuels Corporation (SFC) site. As a result, the Cherokee Nation, concerned with protecting possible archeological findings at the site as well as Arkansas River water quality issues, contributed to NRC's review of SFC's plans to reclaim the site.

Enclosure