December 4, 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 providing an updated response to your letter of July 16, 2008. Your letter requested clarification of the NRC's trustee responsibilities to the Yakama Nation and other Indian tribes and expressed your concerns regarding the U.S. Ecology low-level radioactive waste disposal site (U.S. Ecology site) near Richland, Washington. Acting Chairman Lyons' letter dated October 1, 2008, responded to the issue of NRC's trustee responsibilities to Indian tribes; this letter responds to the issue of disposal of transuranic (TRU) wastes at the U.S. Ecology site.

First, it is important to clarify that although the U.S. Ecology site is located on Federal land, this land has been leased to the State of Washington; therefore, Washington State, not NRC, regulates the U.S. Ecology site under the NRC's Agreement State Program. Under Section 274 of the Atomic Energy Act of 1954, as amended, the NRC, by agreement with a State, relinquishes its regulatory authority over specified radioactive materials and activities after finding the State program is adequate to protect public health and safety and is compatible with the NRC's regulatory program. Washington State became an Agreement State effective December 31, 1966. As part of this Agreement, Washington State assumed regulatory authority over low-level radioactive waste (LLW) disposal within the State.

Under Section 274(j) of the Atomic Energy Act, NRC must periodically review 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 actions are necessary to protect public health and safety or that the State has not complied with the provisions of Section 274. The NRC's Integrated Materials Performance Evaluation Program (IMPEP) implements this requirement by evaluating the Agreement State radiation control programs, to ensure that they are compatible with NRC's regulatory programs and adequately protect the public health and safety. One of the performance indicators used during the IMPEP review is an evaluation of the State's Low-level Radioactive Waste Disposal Program, which includes a yearly inspection of any LLW disposal facilities.

The NRC most recently reviewed the Washington Agreement State Program in May of this year and determined that the State Program was adequate to protect public health and safety and compatible with NRC's program. The IMPEP review found that the State of Washington performs a comprehensive inspection of the U.S. Ecology Site on an annual basis. This inspection includes multiple visits to the site. The IMPEP review team also observed the state inspectors in April 2008 performing an inspection of the U.S. Ecology Site and concluded that the inspectors were well prepared and thorough in their evaluation.

As a point of clarification, the U.S. Department of Energy (DOE) has authority for the disposition of TRU wastes that are the by-products of fuel assembly and weapons fabrication and reprocessing operations. These wastes contain isotopes with atomic numbers higher than uranium, which has an atomic number of 92, half lives greater than 20 years, and concentrations greater than 100 nanocuries per gram. NRC classifies these TRU wastes as a higher activity form of LLW (i.e., Greater-than-Class-C (GTCC) waste) subject to disposal in a high-level waste repository or some other disposal facility approved and licensed by the NRC. Title 10 of the Code of Federal Regulations (CFR), Part 61 defines GTCC waste as LLW with radionuclide concentrations in excess of those listed in 10 CFR § 61.55(a)(3)(iii) for those wastes containing long-lived radionuclides.

As to your specific questions concerning the feasibility of DOE accepting commercial TRU wastes at a DOE operated site:

1. Did DOE consider the NRC's request in 1980 [to explore the feasibility of accepting commercial TRU wastes at a DOE operated site], and if so, what did the DOE conclude?

   A meeting between NRC staff, DOE, and industry representatives was held on January 29, 1980, to discuss DOE's possible acceptance of commercial TRU wastes, but, according to the meeting summary, there were no agreements for DOE acceptance of such wastes made at that meeting. In May 2005, DOE issued an Advance Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Disposal of Greater-Than-Class-C Low-Level Waste generated by activities licensed by the NRC. These wastes would include certain TRU wastes. The current schedule for issuance of the Draft EIS is May 2009. In addition, since the late 1990's, DOE has accepted some radioactive sources that pose a security threat through its Offsite Source Recovery Program. Some of these sources will become GTCC waste because of their TRU concentrations.

2. Did the NRC or the State of Washington ever determine if TRU concentrations [of previously disposed waste] exceed NRC's limits for LLW disposal at the U.S. Ecology site?

   As noted above, NRC does not regulate the U.S. Ecology site. The risk assessment performed for the Washington State Department of Health Final Environmental Impact Statement (Final EIS) considered a source term that was calculated from disposal manifests beginning in 1965 through 1996 (see Appendix II to the Final EIS). Therefore, historic disposals were considered in the EIS analyses. You may contact the State of Washington regarding its determinations.

3. Given that post-1970 defense TRU wastes are to be disposed in a geological repository, what is NRC's disposal policy for wastes that exceed the 100 nCi/g limit that was generated commercially?

   In 1982, the NRC issued 10 CFR Part 61, which provides specific rules for licensing the land disposal of LLW containing source, special nuclear, or byproduct material. For wastes disposed of after the effective date of 10 CFR Part 61, NRC's waste classification regulations in 10 CFR 61.55(a)(3)(iii) provide that such waste must be disposed of in a geologic repository as defined in 10 CFR Part 60 or 10 CFR Part 63 or in some other disposal facility approved and licensed by the NRC. DOE is currently investigating alternatives for such disposal, which may include near-surface disposal. While 10 CFR Part 61 does not apply to persons who are licensed by an Agreement State, pursuant to authority relinquished to that State in accordance with Section 274 of the Atomic Energy Act, the State of Washington was required to adopt compatible regulations to those in 10 CFR Part 61. The State of Washington's compatible regulations are located in Chapter 246-250 of the Washington Administrative Code. In addition, Washington Administrative Code § 246-250-001 provides that the State will make a case-by-case determination regarding the applicability of Chapter 246-250 rules to facilities existing at the time the rules were first adopted, which was the case with the U.S. Ecology site. You may contact the State regarding its decision on the applicability of its LLW land disposal rules to that site.

4. Does the U.S. Ecology site contain TRU wastes that exceed the 100 nCi/g limit?

   As noted in the response to question 2 above, the Washington State Final EIS considered historic disposals at the U.S. Ecology site. You may contact the State for further information regarding this question.

Your letter also addresses the disposal of waste in unlined trenches and risk to tribal people. These issues were also addressed by the State of Washington as the Agreement State regulator for the U.S. Ecology site in its Final EIS for the renewal of the facility license, issued in 2004. We suggest that you contact the State for further information on the Final EIS and its conclusions.

I hope that I have clarified NRC's role at the U.S. Ecology site. If you need additional information, please do not hesitate to contact me.

Sincerely,

/RA/

Martin J. Virgilio
Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs
Office of the Executive Director for Operations

cc: See next page

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

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