
From: David Taylor [davetaylor@navajodoj@yahoo.com]
Sent: Monday, May 04, 2009 3:24 PM
To: Stephen Cohen
Cc: sbetsitty@usa.net; stephenbetsitty@navajo.org
Subject: Navajo Nation Comments on Proposed Generic Communication ;Pre-Licensing Construction Activities at Proposed Uranium Recovery Facilities
Attachments: 2009-05-04 Navajo Nation Comments on NRC Rule Interpretation.pdf

Dear Mr. Cohen:

In confirmation of our phone conversation a short time ago, attached, in PDF format, you will find comments of the Navajo Nation to the Proposed General Communication; Pre-Licensing Construction Activities at Proposed Uranium Recovery Facilities appearing in the March 27, 2009 Federal Register.

Per the request I made to you over the phone it is my understanding that you will see to it that these comments are filed.

Thank you very much for your assistance in this matter.

Dave Taylor

David A. Taylor
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
928-871-6347
928-871-6209 direct
928-871-6177 fax
davidataylor@navajo.org

Received: from mail1.nrc.gov (148.184.176.41) by TWMS01.nrc.gov
(148.184.200.145) with Microsoft SMTP Server id 8.1.358.0; Mon, 4 May 2009
15:24:09 -0400

X-Ironport-ID: mail1

X-SBRS: 5.3

X-MID: 1835479

X-IronPort-Anti-Spam-Filtered: true

X-IronPort-Anti-Spam-Result:

AtQFM6/d/knRv0THmWdsb2JhbACCIzCOC4U7VQEBAQEBCAsKBxGnZYEJMwmOQAEEAgG
CSIEyBQ

X-IronPort-AV: E=Sophos;i="4.40,292,1238990400";
d="pdf?scan'208";a="1835479"

Received: from web35005.mail.mud.yahoo.com ([209.191.68.199]) by
mail1.nrc.gov with SMTP; 04 May 2009 15:24:09 -0400

Received: (qmail 60196 invoked by uid 60001); 4 May 2009 19:24:09 -0000

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=yahoo.com; s=s1024;

t=1241465049; bh=pEkBFfrVc7AQ7sDqDVJRuOiBrCMMj4FUcQX9YZExOQ=; h=Message-

ID:X-YMail-OSG:Received:X-Mailer:Date:From:Subject:To:Cc:MIME-Version:Content-Type;

b=kWP14zNGZ+e3Fg+bAbQ9KUI30q6DHFZxLQx/rdyfVx47gUvKpqf1IkCEfhjHUQyP9dV7KIIL
Xdpfwm6pNGO842FEana4Musch1BnTtFnNRAw1ZSWu5Vdaq8cKKAjWvnb6il1KDUxooyWx00
DZy4dlpk/6KFZcliGqzIQFOAsmE=

DomainKey-Signature: a=rsa-sha1; q=dns; c=noews;
s=s1024; d=yahoo.com;

h=Message-ID:X-YMail-OSG:Received:X-Mailer:Date:From:Subject:To:Cc:MIME-
Version:Content-Type;

b=cHX8LWIKGDjOQ4HMyAKwL8L6E3iHFAvWA1lcQqi17n52O81HbpMSOOdD5rIHbwaMz33
rkrLIDT1mWIsKoryQL8waMwabU4f88iGmVdzs+NaxR/0DJY83SPb0DohJHTjgTcHWskN74V
4fASjm+dUaOmeMyJg7etrlSrkaPATEE=;

Message-ID: <38992.58967.qm@web35005.mail.mud.yahoo.com>

X-YMail-OSG:

8_RY2MIVM1m69eGW6KICXLq6OQH9YFpYQTH9C3q8u0x9_rnIOZZr251pKP89YDMzf7fsLw
u.4LJWAvA8aoBmdEXGX41NmPDCDP.1ksPSBL5pREYfw3rq60gU9XXLL1gxHpJscBeA83a3a
I7LdlhSWv2TvqrkgdQWq74S_o.d1d1p8BnM2YNy6Rt_2Gg05i7zle3sdLUROvxGHxMOqqOYNI
LZh6PwJTNrtsMMD.CZSiVJeOqquTlivOIomqEz.lhuUbWEP1G5wEeLE.EN0Md6ZoJkoYHUyA
Rqv6wftBki9_VIGSXA--

Received: from [70.57.241.142] by web35005.mail.mud.yahoo.com via HTTP; Mon,
04 May 2009 12:24:08 PDT

X-Mailer: YahooMailClassic/5.2.20 YahooMailWebService/0.7.289.1

Date: Mon, 4 May 2009 12:24:08 -0700

From: David Taylor <davetaylornavajodoj@yahoo.com>

Subject: Navajo Nation Comments on Proposed Generic Communication ;Pre-Licensing
Construction Activities at Proposed Uranium Recovery Facilities

To: stephen.cohen@nrc.gov

CC: sbetsitty@usa.net, stephenbetsitty@navajo.org

MIME-Version: 1.0

Content-Type: multipart/mixed; boundary="0-2010335024-1241465048=:58967"

Return-Path: davetaylornavajodoj@yahoo.com



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

LOUIS DENETSOSIE
ATTORNEY GENERAL

HARRISON TSOSIE
DEPUTY ATTORNEY GENERAL

May 4, 2009

Chief, Uranium Recovery Licensing Branch
Division of Waste Management and Environmental Protection
Office of Federal and State Materials and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Mail Stop T-8F5
Washington, D.C. 20555-0001

Re: Federal Register Notice, Vol. 74, No. 58, p. 13483,
March 27, 2009, Proposed Generic Communication;
Pre-Licensing Construction Activities at Proposed
Uranium Recovery Facilities

The following comments regarding this Notice are submitted on behalf of the Navajo Nation through the Navajo Nation Department of Justice Office of the Attorney General.

Comment: The Navajo Nation is in agreement with the U.S. Nuclear Regulatory Commission staff interpretation of the current NRC regulations governing commencement of construction and policy regarding pre-license construction activities at proposed uranium recovery facilities. Specifically the Navajo Nation agrees with and supports the NRC's disagreement with industry's interpretation of 10 CFR 40.32(e).

From the Federal Register Notice: "Industry's position is that 10 CFR 40.32(e) is not applicable to In Situ Recovery (ISR) facilities, based on the rulemaking history of this regulation as reflected in the 1980 Federal Register notice publishing the final rule."

Comment: The Navajo Nation would like to express its concern about the exemption request process for and case-by-case review of pre-licensing construction activities apart from those permitted under 10 CFR 40.32(e). The NRC should consult on a government-to-government basis with the Navajo Nation, and any potentially affected Indian Tribal government, regarding an exemption request or a case-by-case review of an exemption request by a proposed ISR facility that could impact tribal trust resources and lands. Tribal trust resources and lands may be within the scope of impacted areas proposed by pre-licensing construction activities requested by a proposed ISR facility.

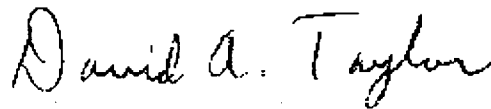
From the Federal Register Notice: "The NRC's regulations in 10 CFR Part 50 (Domestic Licensing of Production and Utilization Facilities) include a Limited Work Authorization (LWA) process that allows the NRC to approve the conduct of certain construction activities in advance of the issuance of a construction permit or combined license. However, there are no similar provisions in 10 CFR Part 40 for the use of LWAs in the licensing of uranium recovery facilities. Therefore, if an applicant wishes to perform pre-licensing construction activities apart from those permitted under 10 CFR 40.32(e), an exemption request must be submitted for the staff's review. The exemption request must specify the particular activity, the purpose and need for the activity, the duration of the activity, and the potential impacts to human health and the environment. The request should include drawings that provide construction details and the location of the proposed activity. Depending on the specific activities included in the exemption request, the staff's review may include an environmental assessment pursuant to the requirements of 10 CFR Part 51 (Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions), consistent with the guidance in NUREG-1748 (Environmental Review Guidance for Licensing Actions Associated with NMSS Programs). Exemption requests will be reviewed on a case-by-case basis and the granting of any exemptions does not ensure subsequent approval of a license. As such, any construction activities performed by the applicant under an exemption and prior to the issuance of a license are performed at the applicant's risk."

Comment: At the end of the previous sentence NRC should add the phrase "and may be in violation of applicable federal, state, local and tribal laws or regulations."

Comment: NRC should improve its "generic communications" regarding notices and opportunities to comment on Uranium Recovery issues that could directly affect the trust resources and lands of the Navajo Nation.

Respectfully submitted,

NAVAJO NATION DEPARTMENT OF JUSTICE
LOUIS DENETSOSIE, ATTORNEY GENERAL

A handwritten signature in black ink that reads "David A. Taylor". The signature is written in a cursive, flowing style.

David A. Taylor, Principal Attorney
NATURAL RESOURCES UNIT

DAT/dt