

U.S. NUCLEAR REGULATORY COMMISSION STRATEGY FOR OUTREACH AND COMMUNICATION WITH INDIAN TRIBES POTENTIALLY AFFECTED BY URANIUM RECOVERY SITES

Purpose

The purpose of this strategy is to articulate the U.S. Nuclear Regulatory Commission's (NRC's) approach to promote government-to-government relations between itself and Federally-recognized Indian tribes that have a known interest in, or may be potentially affected by, NRC's regulation of uranium recovery facilities.

Background

NRC's Trust Responsibilities

NRC's recognizes that the Federal government has a "trust responsibility" to Federally-recognized Indian tribes that arises from treaties, statutes, and executive orders. NRC's interaction with tribal governments is guided by the provisions contained in Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, issued by President Clinton on November 6, 2000. As an independent regulatory agency, NRC is not bound by the provisions of the Executive Order but has adopted practices that are consistent with the fundamental principles contained in the Executive Order. To meet these objectives, NRC routinely consults with tribal governments that have a known interest in, or may be potentially affected by, NRC's regulatory actions. A list of known Federally-recognized tribes located in areas with potential uranium recovery activities is provided in Appendix A.

Uranium Recovery Facilities

NRC's authority to license and regulate domestic uranium recovery facilities derives from the Atomic Energy Act of 1954, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA). These facilities employ various technologies to produce U308 (or yellowcake) that can be used to produce fuel for nuclear reactors. Conventional uranium milling involves the crushing, grinding, and leaching (usually using an acid) of mined ore, followed by chemical separation and concentration of the uranium to make yellowcake. This process results in large piles of waste or "tailings" from the milling process.

The in situ leach (ISL) uranium extraction method has been the dominant process for uranium recovery for several decades. The ISL process extracts uranium from underground aquifers using groundwater mixed with oxygen, hydrogen peroxide, carbon dioxide, or sodium bicarbonate to dissolve the uranium in the ore body. In comparison with the conventional milling process, ISL uranium recovery results in minimal disruption to the surface environment but requires restoration of the local groundwater upon the cessation of uranium recovery operations.

Enclosure

General Approach for Outreach to American Indian Tribes

NRC has actively interacted with American Indian tribes on existing uranium recovery facilities because some of the sites are located on, or near, reservation lands in the Western United States. This outreach strategy will focus on government-to-government consultation and coordination with Federally-recognized tribes that have a known or potential interest in existing licensed uranium recovery facilities or applications for new facilities. The government-to-government interactions will begin early in the process of NRC's review of a proposed licensing action. Following the receipt and acceptance of a license application for a specific action (e.g., new uranium recovery facility), the NRC will meet or communicate with all known Federally-recognized tribes in the area with a potential interest to establish protocol and procedures for government-to-government interaction on the matter. This will include determination of points of contact within the tribes, areas of tribal interest or concern about the proposed action, tribal interest in being a commenting or cooperating agency in the related environmental review required by the National Environmental Policy Act (NEPA), and information about the licensing hearing process.

NRC outreach efforts to interact with tribes will be in addition to notification and consultation procedures required by law, or related to publicly available information on NRC's Web-site or *Federal Register* notices. These outreach efforts may include phone calls, e-mails, directed correspondence with tribal officials, presentations at Indian Chapter Houses or meetings with tribal leaders. Through these means, the NRC will inform known Federally-recognized tribes in the area of pending licensing actions of potential interest and opportunities for participation in the licensing process.

The License Application Review Process and Strategy for Outreach to American Indian Tribes

Letter of Intent

The staff has been encouraging potential applicants of major license applications to send a formal Letter of Intent (LOI) for a planned action so that the NRC may better plan for the application review. LOIs are placed in the NRC's Agencywide Documents Access and Management System (ADAMS) to be available for public examination. After the LOI is placed in ADAMS, the LOI is noticed on NRC's Web site with a link to the submittal under "Letters of Intent to Apply for a Major License Application." The Web site location providing such notices is <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html>. In addition to the Web site notification, the NRC plans to phone or e-mail known Federally-recognized Indian tribes in the area of the proposed action to inform them of a matter of potential interest as part of NRC's tribal outreach.

Receipt of Major License Application

NRC places license applications in ADAMS for public examination. After the application becomes available in ADAMS, notice of receipt of the application is placed on NRC's Web site. The NRC's Web site "Receipt of Major License Application" provides a link to the document in ADAMS for public examination. The Web site location providing such

notices is <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html>. As part of its outreach strategy to tribal governments, the NRC will also phone or e-mail known Federally-recognized tribal officials in the area of the planned activity to inform them of the Web site notice and ensure they are aware of matters of potential interest.

License Application Acceptance Review

Following receipt of a license application, the staff will perform an acceptance review to determine whether the application is sufficiently complete to begin the detailed safety and environmental reviews. The staff will generally complete the acceptance review within 90 days of receipt of the application. During the conduct of the acceptance review, the staff anticipates that there may be one public meeting with the applicant at NRC headquarters where the applicant presents an overview of the application and gives a general presentation to staff who will be reviewing the application. These public meetings are noticed at least 10 days in advance of the meeting on the NRC Web site. In addition to the Web site notice, the NRC will also phone or e-mail known Federally-recognized tribes in the area that are potentially interested in these meetings. NRC will accommodate tribal officials who may want to participate via teleconference.

If the application is determined to be acceptable for the detailed safety and environmental review, the application is formally “docketed” and notice of such docketing is placed on NRC’s Web site in the table “Acceptance and Docketing of Major License Applications.” The Web site location providing such notices is <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html>. NRC will inform known potentially interested Federally-recognized tribes in the area by phone or e-mail of the Web site notice of docketed applications.

Distribution of Accepted License Application

Following NRC’s acceptance of the application, the applicant is required to serve a copy of the application, minus any information deemed sensitive and non-public, to the chief executive of the municipality or county in which the facility is located. In the interest of outreach to the local community, including area tribes, the NRC will encourage the applicant to contact the local library and make arrangements to distribute a copy of the application, minus any sensitive and non-public information, to the local library for public inspection. While local library distribution is not a regulatory requirement, library availability would facilitate public accessibility for those who do not have access to electronic files.

Notice of Opportunity for Hearing

Once a major license application has been formally accepted for review, an opportunity to request a hearing is normally noticed in the *Federal Register* and a copy of the notice is placed in ADAMS. A link to this notice is provided on NRC’s Web site under the table “Opportunities to Request a Hearing or Petition to Intervene.” The Web site location providing such notices is <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html>. Usually, the public has 60 days from the date of publication of the notice in the *Federal Register* to file a request for hearing or petition to intervene. The NRC plans to phone or e-mail known Federally-recognized tribal officials in the area of the proposed action of the issuance of any *Federal Register* notices of opportunity to

request a hearing that may be of potential interest, and the availability of the information on NRC's Web site.

License Application Review

The license application contains technical information on the facility and an environmental report. NRC analyzes the health and safety impacts as documented in a Safety Evaluation Report (SER). The NRC evaluates the potential environmental impacts of the proposed actions in a separate environmental review document. Meetings may be arranged with the applicant early in the review process to facilitate preparation of the draft SER or a "request for additional information" (RAI). The environmental review can require preparation of an Environmental Impact Statement (EIS) or Environmental Assessment (EA) which also provides opportunities for public input. All meetings for either safety or environmental review purposes require public notification on the NRC Web site at least 10 days prior to the meeting. The NRC will notify known Federally-recognized tribal officials in the area by phone or e-mail of any posting of notices of planned early meetings of potential interest on NRC's Web site.

Environmental Review

In general, the environmental review process is approximately 22 months for an EIS and 9 - 12 months for an EA. NRC's environmental review process is described in 10 CFR Part 51. In some instances, Part 51 requires NRC staff to publish a notice of intent to prepare an EIS in the *Federal Register*. The NRC will notify known Federally-recognized tribal officials in the area by phone or e-mail of any *Federal Register* notices that NRC intends to prepare an EIS that may be of potential interest.

Federally-recognized tribal governments can participate in the environmental review process by the same process as any other member of the public, by commenting during the scoping period or commenting on draft EISs or EAs. Federally-recognized tribal governments can also request to participate as a cooperating agency to assist in preparation of the draft EIS or EA.

Public participation is encouraged during the scoping process for an EIS. The scoping process may include a public meeting near the location of the applicant's facility. The public can also submit comments for the scoping report electronically or by mail. Following publication of the draft EIS, a public meeting may also be arranged near the site of the proposed facility to explain the contents of the draft EIS and receive public comments. NRC regulations require a public comment period for all draft EISs. The NRC also intends to make draft EAs for new ISL facilities available for public comment. NRC's goal is to use existing contact information to notify individuals or organizations that expressed an interest in commenting on the draft environmental documents when they are available for public review. Other Federal laws, such as the National Historic Preservation Act, may also provide other opportunities for tribal input.

The Final Environmental Review and SER

The EIS or EA is finalized after addressing all comments on the draft document and will be publicly distributed with a notice of availability in the *Federal Register*. The SER is completed after the applicant adequately responds to any RAIs. A draft SER is completed within 12 months following acceptance of the application and the final SER

will be completed concurrently with the final EIS or EA. The final SER will include discussion of all proposed license conditions.

Completion of the Licensing Action

Following the completion of the environmental review and the SER, NRC staff makes its decision on the licensing action and sends a letter to the applicant which documents the results of the staff's safety and environmental reviews (final SER and EIS or EA) and provides the basis for the issuance of a license or an amendment to an existing license. For actions where an EA was developed, the licensing action will be completed after the Finding of No Significant Impact is published in the *Federal Register*. For actions requiring an EIS, the licensing action will be completed upon the issuance of a license or denial of a license request following publication of the final EIS.

Any Federally-recognized tribe meeting the requirements in 10 CFR §2.309(d)(2) has the ability to request and participate as a party in a hearing for a licensing action. Federally-recognized tribes that meet the requirements of 10 CFR §2.315(c) may have the opportunity to participate as an interested government entity when a hearing is held on a particular site even when they do not meet the §2.309(d)(2) requirements.

NRC intends to keep known Federally-recognized tribes fully informed of the Agency's final action on a proposed major licensing action potentially impacting their interests by providing them a copy of the letter to the applicant documenting completion of the NRC's review.

Summary of Outreach Efforts to American Indian Tribes:

The NRC is implementing or improving a number government-to-government initiatives to provide outreach to, and communication with, American Indian tribes on major licensing actions that the tribes may have an interest in, or may be affected by. This outreach will begin with an applicant's first indication of an interest in submitting a future major proposed licensing action to the NRC for review and processing and continue through the processing and review of a licensing submittal all the way through to the completion of that review. It is the NRC's goal to provide outreach and communication during the various steps of the process by a variety of means including, phone calls and e-mails to tribal officials, meetings with tribal leaders and other public meetings, presentations to tribes on subjects of interest, consultation letters for selected aspects of licensing reviews, and copies of correspondence on matters of interest. Please note that failure of the NRC to make the contacts as described in this statement does not give rise to a hearing right nor could in any way provide the basis for a contention or standing in any adjudication under 10 CFR Part 2 of our regulations. These efforts will provide American Indian tribes with ample opportunity to participate in the licensing process and with information that is timely and complete on matters of interest related to NRC's authority and oversight of sites associated with uranium recovery facilities.

Appendix A

List of Known Federally-Recognized Tribes Located in Areas with Potential Uranium Recovery Activities

- Navajo Nation
- Hopi
- Acoma Pueblo
- Laguna
- Cherokee Nation
- Ute Mountain Ute
- Arapahoe
- Northern Shoshoni
- Oglala Sioux
- Cheyenne River Sioux
- Standing Rock Sioux
- Ponca Tribe of Nebraska
- Flandreau Santee Sioux
- Lower Brule Sioux
- Sisseton-Whapeton Sioux
- Yankton Sioux
- Crow Tribe of Montana
- Lakota Sioux
- Ramah Navajo
- Zuni Pueblo
- Isleta Pueblo
- Mescalero Apache Tribe
- Sandia Pueblo
- White Mountain Apache Tribe
- Jemez Pueblo
- Tohajiilee
- Canocito
- Yavapai Apache Tribe of Camp Verde
- Yavapai Prescott Indian Tribe
- Hualapai Tribe