



**LEGAL DEPARTMENT**

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January 31, 2010

Michael T. Lesar  
Chief, Rulemaking and Directives Branch  
Division of Administrative Services  
Office of Administration  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

**VIA FACSIMILE**  
**(301) 492-3446**

RE: Docket ID NRC-2009-0558

Dear Mr. Lesar:

The Prairie Island Indian Community offers the following comments regarding the Nuclear Regulatory Commission's (NRC) proposed rule to revise the security requirements for the storage of spent nuclear fuel at an Independent Spent Fuel Storage Installations (ISFSI), which was noticed in the Federal Register on December 16, 2009 (74 FR 66589).

Community Background

The Prairie Island Indian Community ("Community" or "Tribe") is a federally-recognized Indian tribe organized under the Indian Reorganization Act of 1934. The tribe is governed under the terms and conditions of the Prairie Island Indian Community's Constitution and By-Laws adopted by tribal members on May 23, 1936, and approved by the Secretary of the Interior on June 20, 1936.

The Community's homeland is located on Prairie Island, which is formed at the confluence of the Vermillion and Mississippi Rivers in southeastern Minnesota (approximately 35 miles southeast of the Twin Cities of Minneapolis and St. Paul, Minnesota). Immediately adjacent to our homeland is the Prairie Island Nuclear Generating Plant (PINGP), which is owned and operated by Northern States Power Company ("NSP"). The PINGP has been on-line since the early 1970s and will operate until at least 2034 if the NRC approves the pending License Renewal Application.

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ERFDS = ADM-03  
Call = P. Brochman (PEB)  
R. Rockhill (RJR3)

NSP is also licensed by the NRC to store spent fuel on-site at a site-specific Independent Spent Fuel Storage Installation (ISFSI). The ISFSI is approximately 600 yards from the nearest Community residence near the west bank of the Mississippi River and in its flood plain, in an area that is quite popular for recreational boating and heavily used by barges. If the PINGP is decommissioned in 2034, the spent fuel is estimated to require a total of 98 casks.

Although the PINGP and its ISFSI are located right next to our Community (and we are the *de facto* host community), we receive virtually no financial benefit from these facilities. The City of Red Wing and Goodhue County receive millions of dollars annually from the PINGP and ISFSI via taxes. The ISFSI and its 98 casks (and risk) are right next to our homes, our government center, our church, our recreational areas, and our business. If there is a security breach at the PINGP ISFSI, and the perpetrators are able to breach the shielding and/or confinement barrier and release radiation or radioactive materials, the impact on our Community could be devastating. Accordingly, the Community is very interested in the draft technical basis for a rulemaking to revise the security requirements for ISFSIs.

#### Trust Responsibility of the Federal Government

All federal agencies, including the NRC, have a Trust responsibility to federally recognized Indian tribes. Trust responsibility of the federal government, as trustee of the tribe's lands, includes the responsibility to protect and preserve the tribe's lands and cultural resources, and the health and wellbeing of its members.

At the historic White House Tribal Nations Conference on November 5, 2009, President Obama reaffirmed the Federal Government's commitment to meaningful consultation with Indian tribes and to develop a detailed plan of action to implement Executive Order 13175, "Consultation and Coordination with Tribal Governments." Executive Order 13175 recognizes that "the United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions." As well, the Executive Order requires agencies to consult with federally-recognized tribes early in the process prior to developing any rule or regulation that may impact tribal land, people, or resources.

Our Community has not yet been consulted on the draft technical basis for the proposed rulemaking. Particularly where, as here, the issues involved are highly technical and beyond the expertise of non-nuclear industry engineers and experts, meaningful consultation is needed to fully advise the Tribe of the issues so that it understand the proposed revisions to the ISFSI security requirements, why the changes are being made, whether the proposed revisions are sufficient to address all known security risks, and how the proposed revisions might affect the Community, its security, and the wellbeing of its

members. In short, the Community hereby requests a government-to-government consultation on the proposed revisions.

Significant technical questions were raised during the January 14, 2010 webinar, including questions about the adequacy of testing and data relied upon in the assessments of the safety and security of the dry casks used for spent fuel storage. To the best of our knowledge, no cask used to date has ever been unloaded and examined to ascertain the integrity of a cask and how its components and materials have withstood the effects of the heat and radiation of the spent nuclear fuel, as well as the long-term exposure to the elements (i.e. the freeze/thaw cycle). While we have no specific, technical objections to this proposed rule, we believe that the questions raised during the webinar, and which will likely be raised through written comments, may require further analysis and consultation prior to finalizing any revisions.

As set forth above, the Community's situation is quite unique and the NRC needs to fully understand the ramifications of a terrorist or other security breach at the PINGP ISFSI and how it relates to the Prairie Island Indian Community. Prairie Island is our only home; our business (which can only be located on our reservation) is our primary means of providing benefits and services to our Community. If there was a terrorist event, the health and welfare of our members – indeed, the very survival of our Tribe – would be jeopardized and our homeland rendered uninhabitable. The Tribe's business enterprises would be threatened, impacting approximately 1,600 employees and several hundred vendors. The Tribe could lose its primary revenue source, many members would lose their primary income source (that does not include future members), and the Tribe could no longer provide benefits and services to our Community. Our largest business, the Treasure Island, is not easily re-located. Federal laws and regulations govern not only how a Tribal gaming facility operates, but also where a Tribal gaming facility can be located. *See* 25 U.S.C. § 2719 (provisions governing tribal gaming on lands acquired after 1988).

The Community further believes that any revision to the security requirements for ISFSIs must address all Homeland Security Concerns (HSC) and Terrorist Attack Risks (TAR). The HSC and TAR issues associated with the PINGP operations during the next 20 years (or more) directly affect the Community's treaty rights, lands and members, and, therefore, necessarily implicate the trust responsibility of NRC, BIA, DHS, FEMA & other federal/state agencies. These significant issues represent just some of the cumulative and integrated impacts of the PINGP's operation and ISFSI disproportionately born by the Tribe. The security threats against the PINGP are security threats against the Tribe because of the Tribe's unique cultural and sovereign existence guaranteed by the United States Constitution.

Accordingly, this issue is of paramount importance to our Community. We urge the NRC to consider our unique situation as the agency moves forward with this rulemaking.

A copy of Executive Order 13175 can be found at:

[http://frwebgate.access.gpo.gov/cgiin/getdoc.cgi?dbname=2000\\_register&docid=fr09no00-67.pdf](http://frwebgate.access.gpo.gov/cgiin/getdoc.cgi?dbname=2000_register&docid=fr09no00-67.pdf)

### Burden on Local Law Enforcement

According to the material presented in the January 14 webinar, it will be up to local law enforcement agencies to detect, assess, and respond to threats at ISFSIs. As many of these facilities are located in rural areas, we question whether rural law enforcement agencies will be adequately equipped to respond to heavily armed intruders. In addition, will these agencies be supplied with the necessary intelligence in order to prepare for an event? Do these agencies have the financial resources to develop contingency plans and purchase equipment?

In our own situation, the City of Red Wing, Minnesota has recently declared that it cannot adequately respond to an emergency at the PINGP ISFSI because of inadequate funds (from NSP). Understandably this makes our Community quite uneasy. Our tribal police force has not been trained to respond to terrorist or radiological events at the PINGP and is not prepared to do so.

The Community does not believe it is appropriate to discuss the specific details of our law enforcement and homeland security concerns in publicly-available comments. Instead, we believe it would be more appropriate to discuss these concerns during non-public government-to-government consultation.

The NRC should undertake a review of law enforcement agencies around the Nation's ISFSIs to determine whether the agencies are prepared to respond, have adequate resources and equipment, have included these events in their respective emergency operation plans, and have access to intelligence.

### Indefinite Storage of Spent Nuclear Fuel (and Indefinite Threat to Host Communities)

As we mentioned in our introductory comments, the PINGP has a site-specific ISFSI, which will eventually store 98 dry casks indefinitely. Based on recent events, we have no assurance that the spent fuel from the PINGP will ever move beyond the borders of the ISFSI. This is an unreasonable continued threat to our community or any community that is the host to an ISFSI.

In the last year we heard prominent politicians declare that Yucca Mountain was dead. The fact that funding for the Yucca Mountain project has all but ceased supports this position. Revisions to the Waste Confidence rule seem to be stalled due to the uncertainty of the National Repository at Yucca Mountain. In light of this scenario (no National Repository) we wonder whether the rule contemplates indefinite spent nuclear fuel storage and its

indefinite threat to host communities.

There are over 100 facilities across the Nation storing spent nuclear fuel. This is an issue that must be included in the final rule.

Conclusion

Due to the far-reaching impacts & implications of the rule-making revisions of security requirements for the ISFSI, the NRC must recognize the HSCs and TARs' potential environmental, health and safety impacts on the Community and its residents. The Community is prepared to participate in government-to-government consultation with the NRC to discuss these issues and concerns in greater detail.

We appreciate this opportunity to provide comments to the NRC on this important issue. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip R. Mahowald". The signature is written in a cursive, flowing style.

Philip R. Mahowald  
General Counsel