



PRAIRIE ISLAND INDIAN COMMUNITY
LEGAL DEPARTMENT

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November 1, 2010

Cindy Bladey, Chief
Rules, Announcements and Directives Branch
Division of Administrative Services,
Office of Administration
Mail Stop: TWB-05-BO1M
US Nuclear Regulatory Commission
Washington, DC 20555

VIA FACSIMILE
(301) 492-3446

9/23/2010
75 FR 57987
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RE: Docket NRC-2010-0302

Dear Ms. Bladey:

The Prairie Island Indian Community would like to offer the following comments regarding the potential policy ~~changes~~ that may arise from the report issued by the Groundwater Task Force and the related workshop recently convened in Rockville by the Nuclear Regulatory Commission (NRC).

The Prairie Island Indian Community is a federally recognized Indian tribe, whose homeland is located on Prairie Island, which is formed at the confluence of the Vermillion and Mississippi Rivers in southeastern Minnesota (approximately 35 miles SE of the Twin Cities of Minneapolis and St. Paul, Minnesota). See Figure 1.

Immediately adjacent to the Prairie Island Indian Community is the Prairie Island Nuclear Generating Plant (PINGP), which is owned and operated by Northern States Power Company, a wholly owned subsidiary of Xcel Energy, Inc. (NSP). The PINGP has been on line since the early 1970s and will operate until at least 2034 if NSP's pending License Renewal Application is approved by the NRC. Xcel Energy 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 residences.

Because of the proximity of the plant to the reservation, anything related to the operation of the plant or the NRC is of high importance. We are a Cooperating Agency for purposes of drafting the Supplemental Environmental Impact Statement (SEIS) for the PINGP license renewal application. The Community also intervened in the adjudicatory process for the license renewal application.

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As part of the Community's ongoing effort to monitor any proposed or new rulemaking or regulation that may impact the Community and its members, we are pleased to offer our perspective on an issue that has impacted the Prairie Island Indian Community.

Any revised policy, guidance or office instruction must recognize Tribal sovereignty. Federally recognized Indian Tribes are sovereign governments with unique legal and political standing and rights. Tribal governments are not state governments and are not local governments. Indian Tribes enjoy a Government-to-Government relationship with all Federal Government agencies, which includes the NRC. All federal agencies also have a Trust Responsibility to all Federally Recognized Indian tribes. As trustee for the Community and the trust lands which comprise the Prairie Island Reservation, the Federal Government and its agencies have a legal obligation to protect tribal people, lands and resources, which includes groundwater.

While the Prairie Island Indian Community has enjoyed a very good working relationship with the NRC, both at the Headquarters and Regional level, for close to 20 years, there are some issues and concerns that the Community believes have not been adequately addressed by the agency. Tritium contamination from the PINGP is at the top of the list. The Community does not believe that the tritium releases from the PINGP Units 1 and 2 into the environment – and specifically the releases into groundwater – have been adequately evaluated. In the late 1980s/early 1990s tritium was found in off site wells. At that time members of the tribe had individual wells at their homes to meet their drinking water needs. Since that time, the tribe developed a central water supply system that draws water from a much deep aquifer.

Although we raised the issue of tritium in groundwater in our recent scoping comments for the license renewal SEIS and in our Cooperating Agency submissions (i.e., Environmental Justice area), we believe the draft SEIS does not adequately address groundwater contamination and the potential health hazards posed to tribal members.

In recent years, tritium levels within the plant site have been close to twenty times higher than background levels (control sites). Although the highest levels detected (close to 4,000 pCi/L in 2006) were well below the EPA standard, the fact that the on-site wells had tritium levels twenty times higher than background should have been a red-flag that something was happening at the plant that warranted a closer look.

More emphasis should be placed on understanding why this is happening and correcting the problem. This situation is also exacerbated by the fact that the hydrology in the vicinity of the plant is complex, and depending upon the elevation of the Mississippi or Vermillion rivers, groundwater flows may vary (i.e., towards our reservation or away from it).

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In draft license renewal SEIS, the NRC points out that detected levels of tritium are below the US Environmental Protection Agency's (EPA) safe drinking water standard. The fact that *these* levels are below the EPA's standard provides no comfort or assurance that the potential source or sources of the tritium leaks have been identified, that the aging underground pipes will not experience additional leakage, or that the tritium will not migrate into the Community's water supply (again). According to the Groundwater Task Force Report, it appears that the only way to get the NRC's attention on this matter is if there is heightened media or Congressional interest.

Simply stating that because tritium levels are below the EPA standards there is no health hazard ignores the root cause of the problem: leaks from plant operations have not been properly identified, evaluated or corrected by NSP. Again, in the draft SEIS, it is stated that "the elevated tritium levels in the three on-site monitoring wells (wells P-10, MW-7, and MW-8) may be due to prior leakage from the PINGP liquid radwaste discharge pipe that was replaced in 1992, **OR** as a result of turbine building sump water discharge into the landlocked area (emphasis added)." Again, these statements provide no assurance that the problem has been evaluated and corrected.

The plant does conduct monthly tritium sampling at several locations within the plant site and at control sites and annually at other off-site locations, including sites on the reservation. The on-reservation sites are one-half to a mile away from the PINGP. An additional monitoring well at the PIIC-PINGP boundary or other appropriate location(s) may provide a clearer picture of whether any tritium is migrating from the PINGP into the Tribe's groundwater. A statement in the draft Generic Environmental Impact Statement for license renewal states that "it is possible that a different well placement could detect higher or lower activity present." The Community believes that every effort should be made to ensure that monitoring wells are located in the best locations, and that the best available technology should be used to evaluate monitoring well placement. Best available technology should also be used for monitoring, with more frequent reporting as possible. Because the tritium data is presented retrospectively in the REMP reports, reporting of elevated tritium levels can be reported as much as one-year after the latest sample was collected.

Within the last year, the plant was ordered by the State of Minnesota to discontinue the practice of discharging turbine building sump water into the landlocked area. The company was also ordered to provide quarterly reports to the Tribe and the City of Red Wing that summarize groundwater monitoring data and provides information relative to NSP's implementation of the groundwater protection initiative. According to the last two reports, tritium levels seem to be declining in the wells that were previously twenty times higher than background. Whether this is related to the discontinuance of discharging turbine building sump water to the landlocked area is not known. We will continue to monitor this issue and would appreciate further updates when potential explanations are identified

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With respect to the questions posed by the NRC, we offer the following suggestions.

Theme 1: Reassess NRC's Regulatory Framework for Groundwater Protection

Should NRC's programs be modified to ensure harmonization of the approaches we have taken to groundwater protection that are applied to different licenses under NRC regulations?

Yes. It sometimes appears that NRC regulations are not harmonious because of different licenses and regulations. A relevant and recent example would be license renewal regulations and guidance. The Groundwater Task Force Report made no mention of the revised Generic Environmental Impact Statement (GEIS) for license renewal applications. The revised GEIS elevated radionuclides released to groundwater to a Category 2 or site specific issue. The revised GEIS recognizes that "there is a growing concern about radionuclides detected in groundwater at nuclear power plants" and that "tritium is the most mobile radionuclide in soil and water." In finalizing the justification for elevating this issue to Category 2, the revised GEIS states that "[o]n the basis of occurrence at several nuclear plants, the impact of radionuclide releases to groundwater quality could be small to moderate, depending on the occurrence and frequency of leaks and the ability to respond to leaks in a timely fashion." Indeed, the Federal Register notice for the revised GEIS states "this issue is relevant to license renewal because virtually all commercial nuclear power plants routinely release radioactive gaseous and liquid materials into the environment."

Moving forward, this is wonderful news for those communities whose groundwater is impacted by nuclear power plants whose licenses *are yet to be renewed*. But what does this say for power plants whose renewal applications are either pending or already approved? As a policy matter, the NRC should take a retrospective look at this issue to assure communities that this issue was not overlooked merely because of bad timing. The revised GEIS, and its requirements for site-specific analysis of radionuclides released to groundwater should be folded into the work of the Task Force.

How should the NRC's programs accommodate or encourage industry initiatives that go beyond NRC requirements?

While we applaud efforts to voluntarily go beyond the minimum NRC requirements, we believe that anytime human health is involved, the best course of action is to be as protective as possible. We should not leave human health protection up to the whims of industry or utility budgetary considerations. In Theme 4, the NRC asks what it can do, as an agency, to strengthen trust with its external stakeholders. The Community is aware that some *perceive* that the nuclear industry has a cozy relationship with its NRC regulators. Whether this perception is true or not is irrelevant. To mitigate the perception, we believe that the NEI Groundwater Initiative should be mandatory and enforceable, not voluntary.

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Theme 4: Strengthen Trust

How can the NRC increase confidence in its actions and communications related to groundwater protection?

As stated above, the NEI Groundwater Protection Initiative should be mandatory and enforceable, and not subject to industry whims or budgetary constraints.

Do not downplay community or individual concerns. Statements that elevated levels are below the EPA standard or present no health risk provide little assurance for those living in close proximity to nuclear power plants. Elevated tritium levels are a sign of problems that demand closer scrutiny. Inconspicuous and elevated levels must be thoroughly investigated to ensure that any problems are discovered and corrected before any leaks worsen.

Additional monitoring (sites and frequency) should be required if monitoring data show elevated tritium levels present in on-site monitoring wells (and not just levels those approaching the EPA standard).

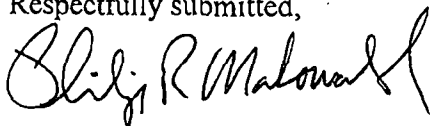
What role could third party verification or assessment play in responding to groundwater protection? (D.3.3)

Most of the federally recognized Indian tribes in the United States have a strong relationship with the US Environmental Protection Agency (EPA). Most of the tribes in the United States do not have any relationship with the NRC. If there is an issue concerning a tribe and possible groundwater contamination from a facility regulated by the NRC, the NRC's Office of Federal and State Materials and Environmental Management, Intergovernmental Division, as well as the EPA, should work with tribal governments to resolve any concerns.

The EPA could also provide an assessment of the utility monitoring data if tritium levels appear to be much greater than at control sites.

Thank you for this opportunity to provide comments and recommendations on this most important issue. Please feel free to contact me if you have any questions.

Respectfully submitted,



Philip R. Mahowald
General Counsel