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*Training, writing, consultation and dispute resolution  
in cultural resource management*

November 28, 2010

Secretary, Nuclear Regulatory Commission  
Washington DC 20555-0001

Attn: Rulemaking and Adjudications Staff

DOCKETED  
USNRC

November 29, 2010 (2:25pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

I write to comment on NRC's proposal to revise 10 CFR Parts 30, 36, 39, 40, 51, 70, and 150, governing licenses, certifications, and approvals for material licensees, published in the Federal Register on July 27, 2010 (75 FR 43865-76).

1. Let me begin by saying that your system for (ostensibly) eliciting public comment on this rule change is so complex, counterintuitive, and generally obfuscatory that it renders public comment almost infeasible. Doubtless this was its intent, but if you want even to pretend an interest in what the public has to say, you might try providing a direct link to the rule on which you're soliciting comments, rather than forcing the reader to search through multiple documents on general-purpose web pages.
2. Your proposed rule change, and the 2007 NRC findings upon which it is grounded, are based on a false premise – that the National Environmental Policy Act (NEPA) is “purely procedural.” This is manifestly not true. NEPA is the National Environmental Policy Act, and although it has become the fashion throughout government in recent years to treat only the law's procedural requirements without reference to its policy, the fact remains that Section 101 articulates general U.S. government policy regarding protection of the environment. Notably, Section 101(a) says it is the policy of the U.S. government, of which at last report NRC was a part, to use all practicable means to, among other things, create and maintain harmony between people and nature. Section 101(b) goes on to say that the government will use all practicable means to “improve and coordinate” federal plans and programs to achieve six broad environmental goals. Section 102 of NEPA directs that “to the fullest extent possible, ...the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies...” set forth in Section 101 (emphasis added)

It follows from this rather explicit legislative language that where an agency has the authority and ability to influence how the environment is managed and how the impacts of land use are controlled, it must use all the means practicably at its disposal, to the fullest extent possible, to ensure that management is sensitive to environmental concerns and that impacts are effectively considered and controlled.

Prior to 2007, albeit in a rather lackluster manner, NRC made efforts to be consistent with this congressional direction by regulating the entirety of an applicant's environmentally damaging work, and subjecting this work to review under NEPA Section 101(C). In 2007, as part of a national administration intent on undoing environmental controls regardless of legislative mandates and impacts on the public interest, NRC decided it ought not do that anymore with respect to some classes of applicant actions. Now you propose to extend this decision to ignore

NEPA policy to the full range of applicant actions. Please explain how you justify this proposal with reference to the policy articulated in NEPA Section 101. Is it no longer practicable to regulate the entirety of an applicant's environmentally damaging activities? No longer possible? If so, why?

3. This proposed rule change clearly has the potential for significant effects on the quality of the human environment. How have you analyzed this potential in accordance with the regulations of the Council on Environmental Quality (CEQ; 40 CFR 1500-1508)? Where can one find your assessment and findings? If you have not conducted such an analysis, what is your rationale for ignoring the seeming requirement for such an analysis found in the CEQ regulations?
4. Have you consulted with CEQ regarding this rule change, as required by 40 CFR 1507.3? What has CEQ had to say about it? Perhaps the 2007 CEQ said nothing about the 2007 NRC finding, but such silence, understood in the political context of the time, should not be taken as an indication of what the current CEQ would say.
5. Policies similar to NEPA's are set forth in the National Historic Preservation Act (NHPA) with reference to impacts on historic properties. Please explain how you have addressed these policies in proposing this rule change.
6. This rule change clearly has the potential to cause adverse effects to historic properties, by removing federal oversight from a wide range of potentially destructive applicant activities. Section 106 of NHPA requires that federal agencies consider the effects of their actions on historic properties, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such actions. Please explain how you have done this, with reference to the ACHP's regulations (36 CFR 800).
7. This rule change has the potential to have profound impacts on the interests of federally recognized Indian tribes in their cultural and natural heritage, including but not limited to ancestral burial places, living sites, and spiritual places as well as culturally important plants, animals, minerals, water, air, and landforms. Federal agencies are required by a range of laws, regulations, executive orders and case law grounded in treaties and in the U.S. constitution to consult with tribes on a government-to-government basis about agency actions potentially affecting tribal interests. Have you done this? Can you refer me to the record of such consultation?

Thank you for the opportunity to comment, and (prospectively) for answering my questions.



Thomas F. King

## Rulemaking Comments

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**From:** Gallagher, Carol  
**Sent:** Monday, November 29, 2010 11:12 AM  
**To:** Rulemaking Comments  
**Subject:** Comment on Proposed Rule - Licenses, Certifications and Approvals for Material Licenses  
**Attachments:** NRC-2010-0075-DRAFT-0017.pdf

Van,

Attached for docketing is a comment on the above noted proposed rule (3150-AI79) that I received via the regulations.gov website on 11/28/10.

Thanks,  
Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.76]) by OWMS01.nrc.gov  
([148.184.100.43]) with mapi; Mon, 29 Nov 2010 11:12:22 -0500  
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To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>  
Date: Mon, 29 Nov 2010 11:12:01 -0500  
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for Material Licenses  
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