

NATIONAL CONGRESS OF AMERICAN INDIANS

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February 22, 2011

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USNRC

Secretary  
U.S. Nuclear Regulatory Commission  
Attention: Rulemakings and Adjudication Staff  
Washington D.C. 20555-0001

February 23, 2011 (10:30 am)

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RE: Docket ID: NRC-1999-0005  
Advance Notification to Native American Tribes of Transportation of Certain  
Types of Nuclear Waste, Proposed Rule

To Whom It May Concern:

The National Congress of American Indians (NCAI) respectfully submits comments on the above referenced proposed rule changes. The NCAI is the oldest and largest national tribal government advocacy organization in the country however individual tribal governments have standing to speak for themselves and NCAI's comments may not always reflect the views of all Indian nations.

BACKGROUND

NCAI commends the Nuclear Regulatory Commission for its understanding of the unique legal relationship between the federal government and tribal governments as the basis for amending the regulations, and for adhering to principles of consultation and cooperation under Executive Order 13175.

The NCAI, as well as several tribal governments have, for over 10 years urged the Nuclear Regulatory Commission (NRC) to amend regulations in response to the advent of transportation of spent nuclear fuel and radioactive waste shipments through tribal communities that would significantly escalate under the implementation of the *Nuclear Waste Policy Act of 1982, et seq.*

COMMENTS

1. The transportation of nuclear waste shipments has always been of concern to tribal government officials and community members. The potential long term effects of a transportation accident and possible contamination of tribal ecosystems poses a high risk level to cultural continuity. Native peoples rely on plants and animals for various ceremonial purposes and sometimes for subsistence purposes. The release of radioactive materials from a nuclear waste shipment involved in a transportation accident could contaminate culturally critical resources. It is possible that the contaminated site could occur at or near a cultural property or where plants and animals and their habitat are located placing them great risk. The demise of a cultural property or eradication of plants and animals cannot be replaced therefore a cultural void would be left. The value lost from destruction of cultural properties is incapable of assessment.

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2. Another significant concern is the safety and protection of tribal lands and people. Tribal governments exercise regulatory jurisdiction over a broad range of activities on their lands. Tribal government officials, just as state officials, are charged with protection of the public and have a need to know the type and amount of hazardous materials that traverse through their jurisdictions. Notification to tribal authorities will acknowledge the rights and sovereignty of tribal governments as well as the responsibility that tribes have for the welfare and safety of native and non-natives within their jurisdictional boundaries.
3. The cost and burden to the NRC or its licensees in implementation of a rule change should not be a consideration in amending the regulation. As a federal government agency, protection of tribal lands and peoples is an integral part of part fulfilling the agency's trust responsibility. Licensees must be cognizant of the risks of their activities to every segment of the population and they have an ongoing duty to ensure the safety and security of tribal communities. Because of the high-risk nature of their products and activities notification to appropriate tribal government officials should be part of the normal process of doing business.
4. Notification to tribal governments will allow tribal law enforcement and other officials to prepare for safety and security of shipments as well as develop emergency preparedness plans in the event of a transportation accident. The Department of Energy which is responsible for disposition of commercial nuclear waste has for more than 27 years recognized the need to include tribes as necessary parties for radioactive waste management and transportation activities including emergency management planning components.
5. The NCAI agrees that the option of receiving advance notification of nuclear waste shipments should be left with each individual tribal government. The perception of the NRC that tribal governments have varying procedures and capacity is accurate. Tribal accommodations should be made in implementing the rule change including personnel safeguard protocols.
6. It is not clear that the proposed rule change encompasses all current and potential federal spent nuclear fuel and high-level radioactive waste campaigns which concern the NCAI. The origin and destination of these materials is relevant regarding potential impacts as the fiduciary duty to tribes is borne by all federal entities responsible for these shipments, including the Department of Energy and the Department of Defense.  
The NCAI may be unable to ensure that all materials which place tribal lands and peoples at risk are captured within the scope of this rule change, but all similar spent nuclear fuel and high-level radioactive materials shipments and potential impacts need to be addressed by the NRC, and appropriate federal agencies.

There are many issues which may be unforeseen for purposes of this proposed rule action, and the NCAI remains positive that the dialogue with Nuclear Regulatory Commission and tribal governments will be ongoing. The National Congress of American Indians appreciates the opportunity to provide these comments. If there are any questions regarding this submission, please contact NCAI Deputy Director Robert Holden at the NCAI, (202)466-7767, e-mail [rholden@ncai.org](mailto:rholden@ncai.org).

## Rulemaking Comments

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**From:** Robert Holden [Robert\_Holden@NCAI.org]  
**Sent:** Tuesday, February 22, 2011 4:40 PM  
**To:** Rulemaking Comments  
**Subject:** Docket ID NRC-1999-0005  
**Attachments:** NCAI Comment Letter - NRC Rule Change Advance Notice to Tribes on HLW Shipments.pdf

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Thread-Topic: Docket ID NRC-1999-0005

Thread-Index: AcvS2QGBzi00Ush3QrKKvqukSkCqKA==

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