



Department of Energy
Washington, DC 20585

PR 71 and 73
(75FR75641)

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February 22, 2011

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Via Email – Rulemaking.Comments@nrc.gov

Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, D.C. 20555-0001

**Subject: Comments on Proposed Amendments to 10 CFR Parts 71 and 73
on Advance Notification to Native American Tribes of Transportation of Certain
Types of Nuclear Waste, Docket ID NRC-1999-0005**

Dear Secretary Vietti-Cook:

Enclosed are comments of the Department of Energy in support of the proposed amendments to 10 CFR Parts 71 and 73.

Sincerely,

Ben McRae
Assistant General Counsel for
Civilian Nuclear Programs

Enclosure



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Department of Energy Comments on Proposed Amendments to 10 CFR Parts 71 and 73
on Advance Notification to Native American Tribes of Transportation of Certain Types of
Nuclear Waste

(Docket ID NRC-1999-0005)

The Department of Energy (DOE or Department) provides the following comments in support of the Nuclear Regulatory Commission's (NRC) proposed amendments to 10 CFR Parts 71 and 73, which would require licensees to provide advance notification to Federally recognized Tribal governments regarding shipments of irradiated reactor fuel and certain nuclear wastes for any shipment that passes within or across their reservations.

Most DOE shipments of radioactive material are conducted pursuant to the Department's authority under the Atomic Energy Act of 1954, as amended (AEA), and are not subject to a NRC license. In that regard, the NRC's proposed amendments are expected to have minimal impact on DOE shipments. However, DOE has an interest in this rulemaking because of its experience in conducting safe and secure shipments of radioactive material and, further, because of its policy to meet or exceed the regulatory standards of the NRC and the level of protection associated with comparable commercial shipments.

The NRC's proposed amendments are consistent with DOE's current practice regarding advance notification of DOE shipments. In accordance with the DOE Order, *American Indian Tribal Government Interactions and Policy*, the Department recognizes Tribal governments as sovereign entities with primary authority and responsibility for protection of the health, safety, and welfare of their citizens and commits to a government-to-government relationship with Tribes.¹ DOE implements this policy through appropriate protocols and procedures, including mechanisms for communication and outreach. In that regard, DOE provides notice to Tribal

¹ *Department of Energy American Indian Tribal Government Interactions and Policy*, DOE O 144.1, approved Jan. 16, 2009, admin. change Nov. 6, 2009.

points of contact, as well as State governors or their designees, for certain non-classified shipments that are not subject to a NRC license.² DOE supports the NRC's proposal to amend its regulations so that NRC licensees would be required to provide such notification to Tribes as well, which, as the NRC noted, would respect the sovereignty of Tribal governments in a manner consistent with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.

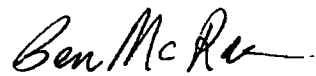
DOE has provided advance notice of DOE shipments to Tribal officials for a number of years and has not experienced any resulting security problems or concerns. Moreover, because advance notification helps ensure the preparedness of law enforcement and emergency response personnel along a shipping route, DOE believes that providing advance notification to States and Tribes enhances the safety of its shipments.

Conclusion

DOE supports the NRC's proposal to amend its regulations so that NRC licensees would be required to provide advance notification to Federally recognized Tribal governments regarding shipments of irradiated reactor fuel and certain nuclear wastes for any shipment that passes through their reservations. The proposed amendments respect Tribal sovereignty, do not pose an increased threat to security, and can enhance safety.

² *Department of Energy Radioactive Material Transportation Practices Manual*, DOE M 460.2-1A, approved June 4, 2008.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben McRae", with a horizontal line extending from the end of the signature.

Ben McRae
Assistant General Counsel for
Civilian Nuclear Programs

Ngbea, Evangeline

From: Kordyak, Angela [Angela.Kordyak@hq.doe.gov]
Sent: Tuesday, February 22, 2011 5:21 PM
To: Rulemaking Comments
Cc: McRae, Ben
Subject: NRC-1999-0005
Attachments: DOE Comments on NRC Proposed Amendments re Advance Notification to Tribes for Shipments - Feb 22, 2011.PDF

Please find attached the comments of the Department of Energy (DOE) in support of the Nuclear Regulatory Commission's proposed amendments to 10 CFR Parts 71 and 73 (Docket ID NRC-1999-0005), sent on behalf of Ben McRae, DOE's Assistant General Counsel for Civilian Nuclear Programs.

Thank you,
Angela Kordyak

Angela M. Kordyak
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From: "Kordyak, Angela" <Angela.Kordyak@hq.doe.gov>
To: "'Rulemaking.Comments@nrc.gov'" <Rulemaking.Comments@nrc.gov>
CC: "McRae, Ben" <Ben.McRae@hq.doe.gov>
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