

Secretary Annette Vietti-Cook
Nuclear Regulatory Commission
Re: Docket ID NRC-1999-0005

DOCKETED
USNRC

February 23, 2011 (10:30 am)

February 21, 2011

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Dear Secretary Vietti-Cook,

Thank you for the opportunity to comment on proposed rule NRC-1999-0005, Advance Notice to Native American Tribes of Transportation of Certain Types of Nuclear Waste.

We are highly supportive of the NRC's efforts to better respect the sovereignty of Federally recognized Tribes. Tribal governments should be afforded the same level of deference and communication that state governments receive, and have an incontestable interest in being informed when nuclear waste is being transported across their sovereign lands. Thus, we strongly encourage the NRC to adopt this rule and to implement it as soon as is reasonably possible. We also, however, wish to note that certain Tribes have designated their lands as nuclear-free zones. To more fully achieve the NRC's stated goal of respecting Tribal sovereignty, we encourage the NRC and its licensees to establish alternative transportation routes that do not involve these territories. Our general comments are below.

(a) Training

Given the sensitivity of Safeguards Information (SGI), effective security training is as important as the decision to share the information itself. To that end, the NRC should use web-based mechanisms as well as more traditional methods of communication, such as packets and training courses. Most importantly, outreach should target each Tribal government at its capacity and level of engagement. Such individualized attention need not be administratively burdensome, and could instead build off of existing procedures. Per III.E of the Proposed Rule, an NRC staff member will contact each individual Tribe and notify them of the program. For each Tribe that opts in, an NRC staff member should similarly provide them the option to choose training of each Tribe's own preference—from among technologically advanced options, like the Webinar, to more traditional packets and training courses.

As evidenced by other public comments, Tribes vary in their resources and experience in navigating government-to-government relations of this nature. Consequently, the NRC needs to make a good-faith effort in these inaugural stages. Some Tribes are able to assist NRC with advanced tools, such as digital mapping of their areas, while others are struggling with funding for even older, more established projects (as mentioned by the Kaibab Paiute Band of Indians in their comment).

By the submissions alone, it is clear that Tribes are willing to make a good-faith effort to carry out their obligations regarding SGI possession. While training courses may require more resources, the nature of the responsibility involved justifies such attention to training. Further, because courses would not be offered to everyone, but available by request, NRC can expect that those Tribes more able to use Webinars and similar technology will opt for those more streamlined trainings. Ultimately, we encourage the

NRC to enable Tribes to know and fulfill these solemn obligations by providing a combination of the packet, Webinar, and training courses currently under consideration.

(b) Opting In & Out

Unlike state governments under §71.97 and §73.37, Tribes have the option to decide whether to receive advance notification of shipments through their reservations. Given the resource requirements of safeguarding confidential nuclear transportation information, we support this flexibility. However, it also presents implementation challenges. In order to ensure that licensees are aware that a Tribe has opted in or out of notification, Tribes should not only be required to notify a designated NRC Point of Contact of their decision, but the NRC should also consistently contact the Tribes at pre-established times, perhaps once a year, to confirm whether they would like to continue receiving notifications.

If a Tribe decides to opt out, licensees should be notified immediately and the change should be reflected in the annual Federal Register list per §71.97(c). This list should be published the same date as the state government contacts list (June 30) to ensure consistency. If a Tribe decides to opt in, the NRC should establish a clear procedure for notifying licensees and scheduling training. Given the time required to train Tribal contacts and set up security systems, licensees should be given clear instructions as to when they must begin sending notifications. Tribal boundaries should also be clearly defined and conveyed to both the licensee and the participating Tribe.

(c) Enforcement & Review

The NRC must also clearly outline procedures for route changes and enforcement. Per §73.37(f), a letter, post-marked seven days prior to the seven-day window of transport, is sufficient to constitute notice. However, Tribes are given notice of shorter-term schedule changes via telephone. It is unclear what constitutes sufficient notice if the designated Tribal point of contact cannot be reached. Given the sensitivity of the information and the likelihood that schedules could change, the proposed rule should be more clear on what constitutes notice in these cases and the options for recourse if notice is not provided. The rule also needs to be explicit on email notification, which was often discussed in comments, but is not addressed in the proposed rule.

Finally, there is no provision in the rule concerning feedback or review. Given the voluntary nature of the program, significant levels of Tribal diversity, and the sensitivity of the information, feedback on training, notification processes and general implementation issues would be very valuable to successful execution of the proposed rule. Feedback would also help facilitate dialogue with the Tribal governments over other issues in nuclear transportation. To this end, the proposed rule may benefit from an institutionalized review procedure, particularly in the initial years.

(d) Coordination With Other Agencies

For the purposes of consistency and efficiency, we strongly encourage the NRC to coordinate with other government agencies that regularly work with sovereign Tribal governments, and particularly with the Department of Energy (DOE). The DOE's American Indian Policy contains seven guiding principles, which include a commitment to a government-to-government relationship. It is already DOE policy, pursuant to the 2004 Amended Nuclear Waste Policy Act, to require equal notification standards for state

governments and Indian Tribal governments in regard to nuclear waste repositories. We encourage NRC to make use of the methods and contacts that the DOE currently employs in its regular communication with Tribal governments. Such coordination would likely reduce the labor required to maintain an accurate list of Tribal government contacts.

Moreover, out of respect for the sovereignty of Tribes and Tribal governments, coordination with other government agencies and consistent communication procedures would also reduce the administrative burden on the Tribes themselves.

Regarding program implementation, the NRC should also work with DOE and other agencies to develop a central database of Tribal information that can be easily accessed by licensees. Accurate information about the recognized geographical boundaries of Tribes is of utmost importance to successful implementation of the proposed rule. Given the work of DOE and BIA with Tribal governments, NRC should work with these agencies to create and regularly update a map of Tribal jurisdictions. The map could be made available to licensees on the NRC website. NRC should also coordinate with other agencies to acquire information on cultural holidays or events that could result in a particular Tribal government being closed and not receiving its necessary notification.

(e) Oversight & Compliance

We urge the NRC to implement effective oversight mechanisms to ensure compliance by licensees. This should include specific remedies for failure to provide adequate notification. We also believe the proposed rule could go a step further and establish a consultation process that provides for timely input from Tribal governments on route planning and disaster preparedness to ensure greater communication and strategic cooperation. It is vital that the NRC make every effort to respect the sovereign jurisdiction of Tribal nations and coordinate with them on matters that affect that health and safety of their citizenry.

(f) Security Concerns

Despite substantial support from Tribes, government agencies, and industry, a primary concern about this rule is that the additional dissemination of nuclear waste transportation information threatens information security. By making advance notification voluntary, ensuring security in a manner commensurate to state procedures, and providing clear equipment and training requirements, we feel the proposed rule has adequately safeguarded against these concerns. It must be stressed that Tribal governments are just as invested in preventing harmful uses of nuclear waste as state governments. The proposed rule not only recognizes Tribal sovereignty, but also their stake in this decision-making process. Many Tribes are only minority users of nuclear power, but have nuclear materials regularly transported within their borders. The rule acknowledges their sovereign right to be notified of these risks in order to protect the health and safety of their citizens.

Thank you for your consideration of these comments.

Sincerely,

Elizabeth Hira

Alina Hoffman
Eliza Simon
Kelly Walters
Cassandra Waters

PUBLIC SUBMISSION

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Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste

Comment On: NRC-1999-0005-0048

Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste

Document: NRC-1999-0005-DRAFT-0007

Comment on FR Doc # 2010-30478

Submitter Information

Name: Cassandra Waters

General Comment

See attached file(s)

Attachments

NRC-1999-0005-DRAFT-0007.1: Comment on FR Doc # 2010-30478

Ngbea, Evangeline

From: Gallagher, Carol
Sent: Wednesday, February 23, 2011 8:32 AM
To: Rulemaking Comments
Subject: Comment on Proposed Rule - Advance Notice to Native American Tribes of Transporation of Certain Types of Nuclear Waste
Attachments: NRC-1999-0005-DRAFT-0007.pdf

Van,

Attached for docketing is a comment from Elizabeth Hira, et al. on the above noted proposed rule (75 FR 75641, 3150-AG41) that I received via the regulations.gov website on 2/21/11.

Thanks,
Carol