

January 4, 2012

Mr. Reid Nelson, Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
Old Post Office Building, Suite 803
1100 Pennsylvania Avenue, NW
Washington, DC 20004

SUBJECT: SECTION 106 CONSULTATION, NOTIFICATION OF THE ISSUANCE OF, AND REQUEST FOR COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED FLUORINE EXTRACTION PROCESS AND DEPLETED URANIUM DECONVERSION PLANT IN LEA COUNTY, NEW MEXICO

Dear Mr. Nelson:

The U.S. Nuclear Regulatory Commission (NRC) staff is reviewing an application submitted by International Isotopes Fluorine Products, Inc. (IIFP), for a license to construct, operate, and decommission a fluoride extraction and depleted uranium deconversion facility near Hobbs in Lea County, New Mexico. The proposed project, if licensed, would use a process to deconvert commercially generated depleted DUF_6 to DUO_2 for long-term stable disposal as low-level waste.

As part of the review of the application, the NRC has prepared a draft Environmental Impact Statement (EIS) (NUREG-2113). The draft EIS includes an analysis of relevant environmental issues, including potential impacts on historic and cultural resources, and documents the NRC staff's preliminary determination regarding the environmental impacts from the preconstruction (e.g., site preparation), construction, operation, and decommissioning of the proposed uranium deconversion facility. Many of the activities required to build a uranium deconversion facility do not fall within NRC's regulatory authority and, therefore, are not "construction" as defined by the NRC. Such activities are referred to as "preconstruction" activities in Title 10 of the *U.S. Code of Federal Regulations* (10 CFR) 51.45(c).

By letter dated July 2, 2010, the NRC staff notified the New Mexico State Historic Preservation Office (SHPO) that it will comply with its obligations under Section 106 of the *National Historic Preservation Act of 1966*, as amended (NHPA), using the process set forth in Title 36 of the *Code of Federal Regulations* (36 CFR) 800.8(c). Pursuant to 36 CFR 800.8(c), the NRC staff is using the preparation of the EIS required by the National Environmental Policy Act of 1969, as amended (NEPA), to comply with its obligations under Section 106 of the NHPA.

The NRC staff is using 36 CFR 800.8(c) in lieu of the procedures set forth in 36 CFR 800.3 through 36 CFR 800.6. The NRC staff has determined that the Area of Potential Effect (APE) for the NHPA Section 106 review of the proposed project site is the 16-hectare (40-acre) portion of the proposed facility site, approach road, and parking lot that would be directly affected by

preconstruction, construction, and operations activities. Archaeological surveys have been undertaken by an IIFP archaeological contractor for the proposed project site. The contractor directly examined the entire 249 hectares (640 acres) of the proposed IIFP property, within which the 16-hectare (40-acre) APE is included. The survey resulted in the identification of three isolated artifacts. No archaeological sites were identified. In accordance with Section 18-6-5 of the New Mexico Cultural Properties Act, the archaeological consultant completed a "negative survey report" to describe the survey and record the isolated artifact occurrences.

Also, there are no historic properties eligible for listing or listed on the National Register of Historic Places within the APE. In letters dated June 29, 2010, the NRC staff also contacted the Kiowa Tribe of Oklahoma, Apache Tribe of Oklahoma, Comanche Indian Tribe, Kiowa Tribe of Oklahoma, Mescalero Apache Tribe, Ysleta del Sur Pueblo, and the Shawnee Tribe, identified as having potential interest in the proposed undertaking. Consultation failed to yield any additional information on historically or culturally significant resources for the proposed facility. Three groups responded to NRC's consultation request. The tribal historic and preservation officer of the Ysleta del Sur Pueblo, Javier Loera, commented in a letter dated July 13, 2010, that the tribal council does not believe that the proposed project would adversely affect traditional, religious or culturally significant sites of their Pueblo, but requested consultation should any human remains or artifacts protected under the Native American Graves Protection and Repatriation Act regulations be unearthed during construction. Ms. Kim Jumper from the Shawnee tribe's historic preservation department commented in an e-mail dated July 13, 2011, that no known historic properties will be negatively impacted by the proposed project, but requested consultation in the event that archaeological materials are encountered during construction, use, or maintenance. The tribal historic preservation officer of the Comanche Indian Tribe, Mr. Jimmy Arterberry, concluded in an e-mail dated June 15, 2010, that there are no comments at the time and that he is anticipating receiving the draft EIS.

In the context of NEPA, under which the draft EIS has been prepared, the NRC staff's determination is that the impact on historical, and cultural resources from the preconstruction, construction, operation, and decommissioning of the proposed uranium deconversion facility at the IIFP site would be small. The impacts would be small because the archaeological survey of the entire 259-ha (640-ac) site failed to identify any archeological resources other than several isolated artifacts that were not considered to be eligible for the National Register of Historic Places. Consultation with Federally recognized Tribal Nations did not identify any additional information on historically or culturally significant resources within the area potentially affected by the proposed facility.

For the purposes of NHPA 106 consultation pursuant to 36 CFR 800.8, the NRC finds that no historic properties be affected within the APE.

In accordance with the July 2, 2010, letter to the New Mexico SHPO, the NRC staff is enclosing the draft EIS on a compact disc (CD) for your review and comment. Pursuant to 36 CFR 800.8(c), we are requesting your comments on the draft EIS and on our preliminary conclusions regarding historic and cultural resources. Please provide any information, comments, or concerns you may have on the draft EIS during the comment period, which ends February 27, 2012. The NRC staff will address your comments in the final EIS. Comments should be submitted in writing either by mail to Cindy Bladey, Chief, Rules and Directives Branch, Division

R. Nelson

3

of Administrative Services, Office of Administration, Mailstop TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to INIS_EIS.Resource@nrc.gov.

The NRC staff plans to hold a public meeting to discuss the contents of the draft EIS on Thursday, February 2, 2012 at the Lea County Event Center, 5101 Lovington Highway in Hobbs, New Mexico. The meeting will convene at 5:30 p.m. and will continue until 8:30 p.m. The meeting will be transcribed and will include the following agenda items: (1) a brief presentation of NRC's roles and responsibilities and the licensing process, (2) a presentation summarizing the contents of the draft EIS, and (3) an opportunity for interested government agencies, tribal governments, organizations, and individuals to provide comments on the draft EIS. Additionally, the NRC staff will host informal discussions in an open house forum 1 hour before the start of the meeting, during which members of the public may meet and talk with NRC staff members. You and your staff are invited to attend.

If you have any questions or require additional information, please contact Mr. Asimios Malliakos, Project Manager, by phone at 301-415-6458, or by e-mail at Asimios.Malliakos@nrc.gov.

Sincerely,

/RA/

Kevin Hsueh, Chief
Environmental Review Branch
Environmental Protection
and Performance Assessment Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No.: 40-9086

Enclosure: Draft EIS (CD Copy)

of Administrative Services, Office of Administration, Mailstop TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to INIS_EIS.Resource@nrc.gov.

The NRC staff plans to hold a public meeting to discuss the contents of the draft EIS on Thursday, February 2, 2012 at the Lea County Event Center, 5101 Lovington Highway in Hobbs, New Mexico. The meeting will convene at 5:30 p.m. and will continue until 8:30 p.m. The meeting will be transcribed and will include the following agenda items: (1) a brief presentation of NRC's roles and responsibilities and the licensing process, (2) a presentation summarizing the contents of the draft EIS, and (3) an opportunity for interested government agencies, tribal governments, organizations, and individuals to provide comments on the draft EIS. Additionally, the NRC staff will host informal discussions in an open house forum 1 hour before the start of the meeting, during which members of the public may meet and talk with NRC staff members. You and your staff are invited to attend.

If you have any questions or require additional information, please contact Mr. Asimios Malliakos, Project Manager, by phone at 301-415-6458, or by e-mail at Asimios.Malliakos@nrc.gov.

Sincerely,

Kevin Hsueh, Chief
Environmental Review Branch
Environmental Protection
and Performance Assessment Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No.: 40-9086

Enclosure: Draft EIS (CD Copy)

DISTRIBUTION: MBartlett/NMSS PSilva /NMSS LCamper/FSME
APersinko/FSME JLedford/RII DDorman/FCSS RidsNmssOd

ML112770476

OFFICE	DWMEP	DWMEP	DWMEP	OGC	DWMEP
NAME	AMalliakos	DMiller	DDiazToro	DLenehan Via e-mail	KHsueh
DATE	11/03/11	10/31/11	11/04/11	12/05/11	1/4/12

OFFICIAL RECORD COPY