PR-2, et al
(44 FR 70408)

(27)

Department of Energy
Washington, D.C. 20585

DOCKETED
USNRC
MAR 25 1980
Office of the Secretary
Docketing & Service
Branch

MAR 24 1980

MEMORANDUM FOR Honorable Samuel J. Chilk
Secretary of Nuclear Regulatory Commission
Washington, D.C. 20555

SUBJECT: Proposed NRC Rules - 10 CFT Parts, 2, 19, 20, 21, 30, 40, 51, 60, and 70 for the Disposal of High-Level Radioactive Wastes in Geological Repositories; Proposed Licensing Procedures

The Department of Energy (DOE) believes the proposed rules to be inadequate with regard to the participation of Indian Tribal governments. A failure to involve Tribes in the initial process will result in later practical and political difficulties which would be unnecessary. Further, to include Indian Tribal governments would be consistent with their unique governmental relationship with the U.S. Finally, to ignore Tribes would cause gaps in the effective implementation of HLW disposal because States have no jurisdiction over Tribes, absent express Federal legislation to the contrary.

Therefore, the DOE recommends the following language changes:

FR, Vol. 44, No. 236, Thursday, December 6, 1979
FR page 70413, Part 2
10 CFR 2.101
§ (f) (4) (ii) following "the county" insert "or Indian Tribe,"
(iii) following "State," insert "Indian Tribe,"
(5) following "State," insert "Indian Tribe,"
10 CFR 2.103 (a) following "State" insert, "Indian Tribe"
10 CFR 2.104 (e) following "county" insert "or Indian Tribe"

FR page 70416, Part 60
§ 60.2 (l) insert in lieu of the present (l) the following definition "Indian Tribe" means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."
Renumber the present (l) through (o) as (m) through (p)

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Subpart B
§ 60.11 (a)
New (6) "a description of conformity with P.L. 95-341" renumber old (6) and (7) as new (7) and (8). Old (6) (new (7)) following "public" insert ",Indian Tribal"
(b) following "State" insert ",Indian Tribes"
(c) insert at the end of the sentence, after "contiguous States" the following "and to the chief executive of any affected Indian Tribe"
(h) following "State" to insert "and Indian Tribes"

FR page 70417
§ 60.21 (b)
new (4) "A certification that the Department has exclusive jurisdiction over the lands designated in the application and that the Department holds such land in fee simple without encumbrances"

FR page 70420 and 70421
Subpart C
§ 60.61 (a) after "request of a State" insert "or an affected Indian Tribe," and after "representatives of State" insert ",Indian Tribes"
(c) after "States" insert "and Indian Tribes,"
§ 60.62 (a) after "scope of State" insert "or Indian tribal" ;and after "with the State" insert "or Indian Tribe"; and after "by the State" insert "or Indian Tribe."
(b) after "States" insert "and Indian Tribes"; and after "proposal for State" insert "or Indian Tribal"; and after "A State's" insert "or an Indian Tribe's."
(c) After "State" insert "or the chief executive of the Indian Tribe"
(1) After "State" insert "or Indian Tribe"
(2) After "State" insert "or Indian Tribe"
(3) After "State" insert "or Indian Tribe"
(5) After "State" insert "or Indian Tribe"
(d) After "If the State" insert "or Indian Tribe"
and after "exchange of State" insert "or Indian Tribal"
§60.83 (a) After "representatives of the State" insert "or Indian Tribes" and after "by the State" insert "or Indian Tribe."
(b) (1) After "State" insert "or Indian Tribe"
(2) (i) After "State" insert "or Indian Tribe"
(c) After "State" insert "or to the chief executive of the originating Indian Tribe."

I appreciate your consideration of these comments. Thank you for your time.

Richard J. Stone
Director
Intergovernmental Affairs