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# Council Of Energy Resource Tribes

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March 3, 1980

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Secretary of the Nuclear  
Regulatory Commission  
Attn: Docketing and Services Branch  
Washington, D.C. 20555

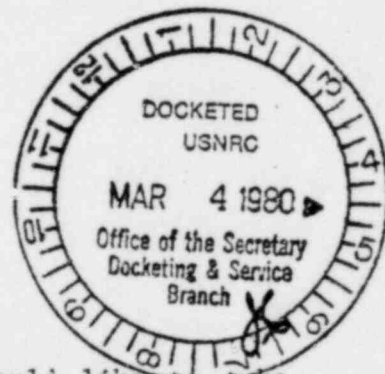
Dear Sir:

The Council of Energy Resource Tribes (CERT) would like to take this opportunity to comment on the NRC's proposed rules on the "Disposal of High-Level Radioactive Wastes in Geologic Repositories, Proposed Licensing Procedures." The proposed procedural rules represent a first step in finding a long-term solution to the problems associated with disposing high-level radioactive wastes. It is our understanding that the NRC will propose technical standards in future rulemaking. The following comments address the procedural mechanisms being proposed in this rulemaking.

As presently drafted, the licensing procedures fail to account for the unique status of Indian tribes and Indian lands. This oversight can be corrected by amending these regulations in at least two ways.

First, Indian tribal governments should be provided an adequate opportunity to participate in the licensing process. Separate consideration for Indian tribes is necessitated by the absence of state jurisdiction over land-use and resource matters on Indian lands as well as by the special relationships between the federal government and Indian tribes.

Second, the legal and institutional aspects of site acquisition and regulatory controls should be addressed more thoroughly. In their current form, the regulations implicitly assume that the applicant has title to, and jurisdiction over, the site. The extremely complex nature of land-ownership patterns in the western states could pose problems which are as formidable as the technical questions. The unique status of tribal lands illustrate this situation. The commission could benefit from expanding its review of such matters throughout the licensing process.



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- Jemez Pueblo
- Santa Ana Pueblo
- Spokane
- Uinrah-Ouay
- Ute Mountain
- Wind River
- Yakima
- Zia

**Executive Director:**

Ed Gabriel

Acknowledged by card. *3/7 J*

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The following materials discuss these concerns in greater detail.

Tribal Participation In Waste Management

CERT is an association of 25 Indian tribes in the West which own substantial blocs of coal, uranium, oil and gas and other resources. Exhibit I lists the member tribes and indicates their location relative to states and counties. Exhibit 2 is a map indicating the general location of the reservations.<sup>\*/</sup>

Several CERT tribes are either directly or indirectly affected by existing radioactive waste storage facilities. For example, the Yakima Nation and Fort Hall Tribes are located near the operations at Hanford and Idaho Falls, respectively. The Navajo Nation, Pueblo of Laguna, and Spokane Tribes produce uranium and have experienced the adverse impacts of mill tailings from the mills located on or adjacent to their reservations. Similarly, several Indian Pueblos are near the transuranic wastes stored at Los Alamos, New Mexico. Their experiences with these existing, temporary waste sites have heightened their concerns about the long-term effects on the surface water and groundwater quality, on air quality, on soil productivity and on land use.

If the Energy Department anticipates using basalt (Washington State), granite (Nevada) and/or salt domes as possible geologic media for the permanent disposal of highly radioactive wastes, these and other American Indians may once again be affected. Any Indian tribe affected by the siting process should be made an integral part of the NRC's review and licensing proceedings.

Regulations should explicitly provide for the participation of Indian tribes for both legal and practical reasons. Quite often, regulation writers presume that Indian tribes are within the purview of the states, and that by providing for state participation Indian interests are covered. This, however, is not the case. Indian tribes have a unique position in the governmental regulatory scheme because of their status as <sup>\*\*/</sup>sovereign entities having inherent powers of self-government subject only to congressional enactments and the oversight of their federal trustee, the Secretary of the Interior. Together,

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<sup>\*/</sup> This discussion is limited to the CERT-member tribes. CERT suggests that the Commission and DOE consult with the Department of the Interior and other Indian specialists for detailed information on the non-CERT member tribes.

<sup>\*\*/</sup> Virtually all of the CERT member tribes operate under a system of government developed by their people and codified in Tribal Constitutions and By-Laws or in a Tribal Code. The majority of the CERT tribes are organized consistent with the provisions of the 1934 "Indian Reorganization Act (IRA)".

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tribal sovereignty and the federal trust relationship legally preempt any state role in, or jurisdiction over, the affairs of the CERT tribes. In practice these legal factors constrict the flow of funds and information between the states and the tribes.

Recent federal legislation and federal administrative actions have begun to accommodate the legal distinction between Indian tribal governments and their state and local counterparts. Examples include the Surface Mining Control and Reclamation Act and Part I of the Uranium Mill Tailings Control and Reclamation Act. In addition, the Bureau of Land Management provides for the direct participation of Indian tribes in its Coal Management Program on a par with affected states. Likewise, the Environmental Protection Agency has initiated direct funding to Indian tribes for their air and water quality management programs.


CERT urges the NRC to amend the proposed regulations to provide expressly for the participation of affected Indian tribes whenever a potential disposal site could have an impact on tribal land. Attached to this letter are some possible language changes which could achieve this purpose.

#### Site Aquisition

The regulations assume that the site(s) for waste storage will be owned or acquired by the federal government. However, the complex nature of land ownership in the western United States may present obstacles to the siting of storage facilities. The proposed regulations devote considerable attention to important technical matters, but fail to provide for review of these legal and institutional matters. CERT feels that the Commission would be advised to analyze these aspects of the site in tandem with the technical reviews. On Indian reservations the right to surface or subsurface use of the land is obtained only, by written contract with the tribe and the approval by the Secretary of the Interior. These agreements are for a limited time only, and can be extended only by the tribe's consent. It would be wasteful to proceed with a site characterization review on the assumption that Indian lands, could be acquired, only to find this assumption totally unfounded. Such problems could be prevented by requiring certification of ownership and jurisdiction as part of the general license information. Such information is a standard element in mining and other land-use licensing procedures. Regulatory language for this change also is included in the attachment.

Thank you for your consideration of these concerns. If we can be of further assistance, please notify us.

Sincerely,

  
Edward Gabriel  
Executive Director

Attachment

EXHIBIT I  
Location of CERT Tribes  
by  
County and State

CERT Tribe	County	State
Acoma Pueblo	Valencia	New Mexico
Blackfeet	Glacier Pondera	Montana
Colville	Okanogan Ferry	Washington
Cheyenne River Sioux	Ziebach Dewey Perkins	South Dakota
Jicarilla Apache	Sandoval Rio Arriba	New Mexico
Southern Ute	Montezuma La Plata Archuleta	Colorado
Pueblo of Laguna	Bernalillo Valencia Sandoval	New Mexico
Fort Peck	Phillips Blaine	Montana
Wind River	Fremont Hot Springs	Wyoming
Fort Berthold	McKenzie Dunn Mercer McLean Mountrail	North Dakota
Uintah-Ouray	Uintah Duchesne Grand	Utah
Crow	Big Horn Yellowstone Treasure	Montana
Navajo	Apache Navajo Coconino San Juan McKinley San Juan	Arizona  Utah New Mexico
Spokane	Stevens	Washington
Santa Ana Pueblo	Sandoval	New Mexico

Ute Mountain	Montezuma La Plata San Juan San Juan	Colorado New Mexico Utah
Fort Belknap	Blaine Phillips	Montana
Northern Cheyenne	Big Horn Rosebud	Montana
Jemez Pueblo	Sandoval	New Mexico
Nez Perce	Nez Perce Lewis Clearwater	Idaho
Hopi	Coconino Navajo	Arizona
Fort Hall	Bannock Bingham Caribou Power	Idaho
Zia Pueblo	Sandoval	New Mexico
Yakima	Yakima Klickitat	Washington
Chippewa-Cree	Choteau Hill	Montana

# CERT Member Tribes

