

CONFEDERATED TRIBES AND BANDS

*Yakima Indian Nation*

GENERAL COUNCIL  
TRIBAL COUNCIL

POST OFFICE BOX 151  
TOPPENISH, WASHINGTON 98948

June 30, 1983

Mr. Samuel Chilk, Secretary  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Dermis Rathbun; Roger J. Mattson

Dear Mr. Chilk and Commissioners:

SUBJECT: Safety Goal Development Program: Proposed Evaluation  
Plan, 48 Fed. Reg. 10772 (March 14, 1983)

Proposed Commission Policy Statement on Severe Accidents  
and Related Views on Nuclear Reactor Regulation,  
48 Fed. Reg. 16014 (April 13, 1983)

Requirements for Licensee Actions Regarding the Dispo-  
sition of Spent Fuel Upon Expiration of Reactor Opera-  
ting Licenses (48 Fed. Reg. 22730)

The Yakima Indian Nation herewith comments on 3 proposed rules now under  
consideration by the Nuclear Regulatory Commission on the following subjects:

1. Safety Goals.
2. Policy on Severe Accidents.
3. Impact of on-site storage of spent fuel following  
the expiration of a reactor license.

On all 3 subjects the Yakima Indian Nation concurs with and supports the comments  
by the Union of Concerned Scientists. The Yakima Indian Nation wishes to add  
additional comments which reflect the particular concerns of the Yakima Indian  
Nation. These comments cover all 3 proposed rules, and are as follows:

1. There is no reference in the proposed rules for  
safeguarding the Federal Treaty Rights of Sovereign  
Affected Indian Nations. The Yakima Indian Nation has the  
Sacred Duty to protect the Treaty of 1855 on both  
Ceded and Reserved Lands, and to safeguard the Health, Safety  
and Culture of the Yakimas.

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add Roger J. Mattson, R-1102A

2. The proposed rules fail to require dealing with each licensing issue on a case by case basis. The Sovereign Rights of the Yakima Indian Nation cannot be properly protected by generalized rulemaking which may be sufficient protection for those who are not Native Americans.
3. Public or Private Corporations do not behave as though they are directly and specifically bound by the terms of the Yakima Indian Nation Treaty. Therefore, federal rules must be based upon recognition of the Treaty Rights of the Yakima Indian Nation.
4. The proposed rules, particularly in the PRA methodology and radioactive source term information for severe accidents, fail to take into consideration the fact that the Yakima Indian Nation cannot be evacuated from its Sacred Lands.

It is apparent from the present state of the proposed rules that the NRC is not informed on the Sovereign Rights of the Affected Yakima Indian Nation. The Yakima Indian Nation believes it will be both necessary and efficacious for the NRC to consult with the Yakima Indian Nation as it addresses the Yakima Indian Nation comments outlined above. The Yakima Indian Nation is ready to participate in such discussions. Please include this letter together with the attached correspondence into the record for the above proposed rules.

In the same spirit, the Yakima Indian Nation suggests that the NRC invite the Yakima Indian Nation to play a formal role in the proposed 2 Year Evaluation Period, so that discussions may continue during the time of testing by experience.

Sincerely,



Russell Jim, Councilman  
Yakima Indian Nation

ER:vw  
Enclosures

CONFEDERATED TRIBES AND BANDS

*Yakima Indian Nation*

GENERAL COUNCIL  
TRIBAL COUNCIL

POST OFFICE BOX 151  
TOPPENISH, WASHINGTON 98948

January 8, 1982

Nunzio J. Palladino, Chairman  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Subject: Proposed Rulemaking on Storage and Disposal of  
Nuclear Waste, PR - 50 and 51 (Waste Confidence  
Rulemaking.)

Dear Mr. Palladino:

The Tribal Council of the Yakimas regrets that it was not possible for the Yakima Indian Nation to be invited to be present at the oral hearing on January 11, 1982. In spite of this failure we have hope that a beginning has been made toward a new relationship between Indian People and the NRC, in which the case of the Yakimas is but a present example. This letter is designed to further this process of communication.

Please understand that this letter is addressed to each of the five Commissioners because the central issue involves fundamental policy: That the NRC on the problems of nuclear waste storage or disposal has not properly acquitted itself of its responsibility toward Indians on their Reservations near present or potential sites for nuclear storage or disposal.

First let it be understood that:

1. The Yakima Indian Nation is dedicated to the safety health, security, and protection of the Yakimas. The Treaty of 1855 between the Yakimas and the Federal Government of the United States is a vital instrument in carrying out this responsibility.

2. The Yakima Indian Nation is neither for nor against nuclear. In pursuit of #1 above, the Yakimas are for safety in nuclear contamination matters for the Yakimas, and therefore also for their non-Indian neighbors.

3. The Yakima Indian Nation has a particular and unusual stake in nuclear waste safety at Hanford because:

- a. The Yakima Indian Nation in the Treaty of 1855 ceded 9/10 of its Lands to the Federal Government, an area now 25% of the total area of the state of Washington, in return for Totally Reserved Lands and other Rights, and Retained Rights within the Ceded Lands.

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- b. The Reservation of the Yakimas which lies only 13 miles from Hanford, is by far the largest single land holding in the Hanford area, in fact, 1 1/2 times the area of the state of Rhode Island.
- c. Hanford lies within the area of Yakima Indian Nation Ceded Land.
- d. For the Yakima Indian Nation the concept of evacuation because of nuclear is meaningless. There can be no substitute for our Sacred Homeland.

4. The Yakima Treaty preceded the founding of Washington State by many years, and the creation of the state has no bearing on the terms of the Treaty between the Yakimas and the Federal Government other than the "Enabling Act" in the Washington State Constitution which disallows state jurisdiction over Indians. Washington State has never, and cannot now, represent the Yakima Indian Nation. The policies of the NRC have failed, to date, to take cognizance of this fact.

5. The Yakima Indian Nation believes that Agencies of the Federal Government, of which the NRC is one, have the obligation to uphold the laws of the United States. The Yakima Indian Nation Treaty Rights have been upheld in the Courts of the United States as part of the Law of the Land.

6. Concerning the issue of storing or disposing of nuclear wastes at the Hanford Reservation, the Yakima Indian Nation asks that the NRC find no confidence that Hanford can be safely used as a nuclear waste repository because:

- a. There is a lack of understanding of Yakima Indian Nation Rights.
- b. There is present conflicting and inconclusive scientific argument regarding the geologic media and technology for Hanford.
- c. There is strong managerial and scientific evidence that there is present contamination at Hanford which is not yet under control.
- d. There is a need to prevent further contamination to Yakima Indian Nation Lands and to the Columbia River over which we hold Treaty Rights.
- e. From the fact that Hanford is presently contaminated, it does not necessarily follow that a "land use policy" of adding to that contamination is sound.

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7. The Yakimas consider that the NRC practice of limiting announcements to entries in the Federal Register of NRC procedures on nuclear waste issues in an area involving the vital interests of the Yakima Indian Nation is not only inadequate but reveals a lack of understanding on the part of the NRC of the Guaranteed Rights of the Yakima Indian Nation. This is particularly true when the NRC not only had no evidence that the Yakimas were already alerted, but also had no policy or practice of addressing those Rights peculiar to Treaty Tribes. The Yakimas are accustomed to spending their limited resources and time on other areas, such as the ever-present need to protect their Fish or their Water Rights. The Yakimas believe that it is encumbant upon the NRC to assure that the Yakimas are not misjudged in the protection of their own Rights by errors of omission on the part of the NRC.

8. The Yakima Indian Nation has both the right and obligation to be an integral part of the discussions and planning concerning the use of the Hanford Reservation land when subjects such as nuclear waste disposal are at issue. It is part of the responsibility of the NRC to see to it that the Yakimas are invited and helped to take part in such discussions.

The Yakimas are aware that early in the history of nuclear the extent of danger from radiation was seriously underestimated. We know of failures to properly protect citizens from nuclear radiation. In recent years with nuclear danger better understood and the staggering problem of nuclear waste disposal apparent, areas far from urban centers have been looked to as the place to store and dispose of nuclear wastes. These are among the areas where Indians hold Treaty Rights from the Federal Government. These are among the areas where beliefs other than the Judeo-Christian hold sway among the People, beliefs that the NRC must equally consider and protect.

The Yakima Indian Nation asks each Commissioner of the NRC to:

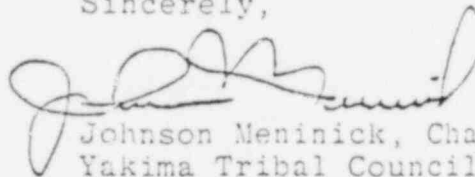
1. Examine the policies of the NRC which have ignored Yakima Indian Nation Rights and alter those policies by,
2. Inviting the Yakima Indian Nation to join with the NRC in proceedings covering the future of Hanford, and
3. Do so before making any binding decisions now concerning Hanford and nuclear waste storage or disposal.

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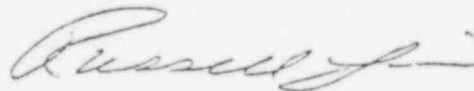
As was stated in our opening paragraph, the Tribal Council of the Yakimas has written this letter with the intent of developing productive communications with the NRC. As in all such efforts a constant ingredient must be goodwill. It is important for the Commission not to misread our efforts to maintain goodwill. The Commission should understand that unless the Commission takes immediate, aggressive steps in response to the reasonable approach of this document, the Yakima Indian Nation will seek other means to prevent any continuation of the past abuses of the Rights and respect owed to a Sovereign Nation.

Please include this letter as part of our statement submitted for the Nuclear Waste Confidence Procedure Records (Parts 50 and 51 Waste Confidence Rulemaking) dated January 6, 1982, and address your response to Mr. Russell Jim, Tribal Councilman at the above address (telephone (509) 865-5121).

Sincerely,



Johnson Meninick, Chairman  
Yakima Tribal Council



Russell Jim, Councilman  
Yakima Tribal Council

CONFEDERATED TRIBES AND BANDS

*Yakima Indian Nation*

GENERAL COUNCIL  
TRIBAL COUNCIL

POST OFFICE BOX 151  
TOPPENISH, WASHINGTON 98948

January 6, 1982

Mr. Samuel Chilk, Secretary  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Marshall Miller

Dear Mr. Chilk and Commissioners:

Subject: Proposed Rulemaking on Storage and Disposal of  
Nuclear Waste, 10 CFR Parts 50 and 51 (Waste  
Confidence Rulemaking).

The Yakima Indian Nation requests that the Commissioners accept and consider as part of the Nuclear Waste Confidence Procedure Records the following words and ideas from the hearts of our People.

Please be advised that this Tribe was not conquered by war. In the Treaty of 1855 we agreed to cede to the Federal Government but did not give up all our Rights to more than 1/4 of the present state of Washington. Our Totally Reserved Lands (1 1/2 times the size of the state of Rhode Island) lie just 13 miles from Hanford and Hanford itself is on our Ceded Lands. Our paramount concern is for the health and safety of the future generations of our People and those who live amongst us.

There is apparent debate among experts on the safety of the geologic site at Hanford. We believe that the Commissioners should appreciate that the value system of the Yakima Indian Nation expresses a unique relationship with Nature:

1. The Religion of the Yakima Indian People is inextricably bound up in our Food Rights and our Mineral Rights. The salmon and the waters of the rivers and streams are both vital parts of our constitutionally protected right to practice our religion.
2. United States Legal Precedent includes reference to Nuisance Law which declares that a neighbor does not have the right to pollute or violate the area beyond his own borders with noxious and poisonous elements which do violence to the use and enjoyment by neighbors of their own lands. This is particularly true where the polluter is the more recent land holder in the area.

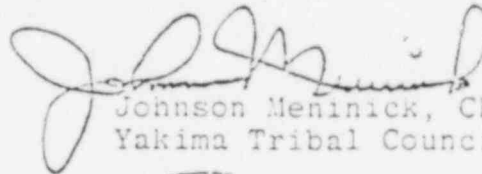
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Mr. Samuel Chilk, Secretary  
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January 6, 1982

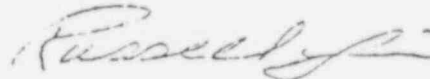
3. Environmental Impact Studies (which include Environmental Impact Statements, Safety Evaluation Reports, Socio-economic Impact Studies, and others) to date from both public and private organizations within the Columbia River Basin area have consistently failed to look beyond the Judeo-Christian socio-economic heritage when investigating potential nuisances to neighbors from a given undertaking. The result has been repeated Nuisance Trespass on the Sovereign Rights of the Yakima Indian Nation guaranteed by the Treaty of 1855.

Our Tribe possesses special knowledge and concerns that we believe are a valuable resource which the Commission should not overlook. We request therefore that the Commission grant us enough time to assure that your proposed rules are comprehensive enough to cover our concerns and values.

Sincerely,



Johnson Meninick, Chairman  
Yakima Tribal Council



Russell Jim, Councilman  
Yakima Indian Nation

CONFEDERATED TRIBES AND BANDS

*Yakima Indian Nation*

CENTRAL COUNCIL  
TRIBAL COUNCIL

POST OFFICE BOX 151  
TOPPENISH, WASHINGTON 98948

February 19, 1980

The Honorable Gary Hart  
Senate Sub-Committee on Nuclear  
Regulation  
Committee on Environmental and  
Public Works  
Washington, D.C. 20510

Dear Gary:

Keith Glaser has indicated that the mark-up of your Nuclear Waste Regulation Bill might be helped by some background information and documentation on the Federal/Indian Relationship and by some general observations for which there was no time in our letter of February 4, 1980 which summarized essentials. What follows includes some legal references for further study.

A. Pre-Constitutional History:

1. The Papal Bull of 1565 Sublimis Deas which dealt with sovereignty in the Western Hemisphere stated that Indigenous Indian People retained an Inherent Sovereignty over their Lands and that the European Powers were therefore obliged to negotiate with them over issues of sovereignty.
2. The Constitutional Convention by its first act confirmed that Indigenous People had Rights to persons and property.

B. The Constitutional Ground:

1. The Federal/State Dual Sovereignty with each supreme within the area of its sovereignty is generally well understood.
2. The Federal/State/Indian Nation Tri-Sovereignty established by our Founding Fathers where Indian Sovereignty fits into the scheme of Government is not so widely understood. For a good description of this Reserved Inherent Indian Sovereignty Chief Justice Marshall's decision in Worcester v. Georgia, 6 pet 515 (1832) is the recognized authority as

to the Indian Reserved Rights of control over their destiny and their Lands. Also see Federal Indian Law Department of Interior, (1938) Chapter II and VI, and M. Price, Law and the American Indian, Bobbs-Merrill, (1973) Chapter I. The Reference Section, Library of Congress is the key resource center.

C. Lands Ceded and Reserved by Indians:

1. The Treaties: Under the Tri-Sovereignty System of Government (A, 2 above) Indian Nations and Tribes established control over their own People and occupied Lands. By Treaty or other agreement with the Federal Government Indian Nations and Tribes ceded some of the lands they occupied to the United States and agreed to become dependent Nations under International Law.
2. Ceded and Reserved: Just as any grantor may reserve certain rights in the lands granted and reserve the total control over use of certain lands not conveyed, so did the Indians grant or cede certain lands to the United States reserving certain Rights in these Ceded areas and reserve total use and occupancy in the Lands not granted or Ceded. These Lands not ceded are commonly called Indian Reservations. The Reserved Rights of Use in areas Ceded are just as real. The Rights that Indian Tribes have in regards to both areas exist not by grant from the United States but by the fact that they were Reserved by this Sovereign Power. See United States v. Winans, 198-US 371 (1905).

D. Reserved Rights:

1. The Right to Control Their Internal Affairs was reserved by Indian Tribes. By acknowledging dependency on the United States, Indians submitted their power to make war, enter into International agreement and to control Inter-Tribal foreign commerce.
2. Indian Natural Resources: Indians agreed to place some of their natural resources in a trust relationship with the United States. The other Inherent Sovereign Powers were retained. See United States v. Wheeler, 435 US 313 (1978).

E. Areas of Justifiable Indian Concern:

1. The Issues of Use: Any use concerns us that may interfere with the exclusive Right or Use Right made in either our totally Reserved Lands or Lands in which we have Reserved Rights. These Rights are Separate and Apart from any rights of control or interest a State may have in the same area. Please see: United States v. Abtahum. Irrigation District 236 F2d 321, Cert. denied 342 US 988; 330 F2d 897, 338 F2d 307, Cert denied 381 US 924. United States v. Washington, 47 LW 4978 (1979).

2. The Issue of Both Quantity and Quality in Reserved Rights:

Certainly nuclear contamination is the greatest threat to quality in our Reserved Rights. These Rights concerning water and its products are set out in United States v. Adair No 75-914 (U.S.D.C. Oregon) opinion Cited September 27, 1979. United States v. Anderson No. 3643 (U.S.D.C. Eastern District, Washington) opinion dated July 23, 1979.

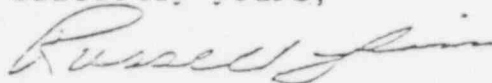
We trust that the above summary will help in your presentation to others of points made in our letter of February 4, 1980 concerning any Nuclear Waste Disposal Legislation. Let me close with these broad convictions which gave rise to those points.

1. Indian Sovereign Authority must be brought into Nuclear Waste Disposal Planning at the very beginning so that the various rights and prerogatives involved can be negotiated in the light of established Tri-Sovereignty Government.
2. Indian Right to Non-Concurrence must be separate and apart from any State.
3. Congress must be the sole mediator of dispute.
4. Congressional stipulations as to conditions which control the inclusion of Indian Sovereign Authorities must be sufficiently specific that administrators of the Law will exercise no undue influence.

The Honorable Gary Hart  
February 19, 1980  
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I want to thank you, Gary, for your stance in the long history of Indian Sovereign Rights. If further documentation is necessary over and above the source material identified above, or if further discussion is necessary after your staff has read the material, just let me know. The Yakima Indian Nation wants to be of every assistance in your fine efforts on behalf of all American citizens.

Sincerely yours,



Russell Jim, Councilman  
Yakima Indian Nation

RJ/mm

Enclosure: Letter of February 4, 1980

CONFEDERATED TRIBES AND BANDS

*Yakima Indian Nation*

GENERAL COUNCIL  
TRIBAL COUNCIL

POST OFFICE BOX 151  
TOPPENISH, WASHINGTON 98948

August 30, 1982

Mr. G. C. Sorenson  
Manager  
Licensing Program  
Washington Public Power  
Supply System  
P.O. Box 968  
3000 George Washington Way  
Richland, WA 99352

Dear Mr. Sorenson:

The Yakima Indian Nation wishes you to be aware of the following:

- 1.) As previous correspondence shows and details:
  - a. The Yakima Indian Nation was ignored in all of the licensing proceedings and rules under the NRC for WPPSS II nuclear power plant.
  - b. The Yakima Indian Nation letter of September 22, 1981, to Dr. Rajender Auluck of the NRC complied with NRC rules for participation in the draft EIS for WPPSS II.
  - c. Weeks after the final EIS went for publication, a fact of which we were not and could not be aware, you made yourself available for a meeting.
  - d. When the meeting was held between your staff and our staffpersons below Tribal Council level, we learned for the first time, that the final Environmental Statement was already published--so that the meeting became meaningless.
  - e. After the meeting NRC staff and WPPSS staff distorted the content of that meeting so as to strengthen the contention that NRC and WPPSS had in fact lived up to NRC rules--a contention the Yakima Indian Nation roundly denies.

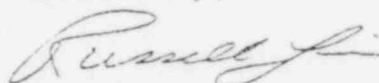
Mr. G. C. Sorenson  
Page Two  
August 30, 1982

- 2.) Your letter of July 13, 1982, to which this letter is a response, states that the Yakima Indian Nation "Commented" on the WPPSS II EIS. This misrepresentation of the truth is a continuation of the pattern of events to date summarized in number 1 above.

For the Yakima Indian Nation to address the significant adverse impacts of WPPSS I, the NRC and WPPSS must first go back and truthfully address the still unresolved issues regarding WPPSS II and the Yakima Indian Nation.

This letter or any part of it is not to be used by you as a "Comment" in your WPPSS I EIS.

Sincerely,



Russell Jim, Councilman  
Yakima Indian Nation

cc: Nuncio Palladino  
Richard Black

CONFEDERATED TRIBES AND BANDS

*Yakima Indian Nation*

GENERAL COUNCIL  
TRIBAL COUNCIL

POST OFFICE BOX 151  
TOPPENISH, WASHINGTON 98948

September 22, 1981

Dr. Rajender Auluck  
Director, Division of Licensing  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Dr. Auluck:

The Tribal Council of the Yakima Indian Nation asks that, before your office approves the WPPSS Environmental Impact Statement, WPPSS be required to consult concerning the content of that statement with the Yakima Indian Nation. We base this request upon the following facts:

1. The Yakima Tribal Reservation, one and one-half times the size of the State of Rhode Island, has a border only 13 miles from the Hanford Reservation, the site of the WPPSS plant.
2. The Yakimas are a Sovereign Nation with a Treaty with the Federal Government which guarantees to the Yakimas forever, particular securities, rights, and privileges in return for vast lands ceded to the Federal Government in 1855.
3. The Treaty also gives the Yakimas certain rights and privileges over Ceded Lands, part of which lie within the Hanford Reservation.
4. The religious and cultural beliefs and practices of the Yakimas, protected by the Treaty and Supreme Court decision, express a sacred, unique relationship with Nature and the Environment.
5. In spite of all the foregoing, none of the elected representatives of the Yakima People were ever consulted by the authors of the WPPSS Environmental Impact Statement.
6. A careful reading of the WPPSS Environmental Impact Statement reveals that:
  - a. The only reference to Indian people in the document is a vague reference to "Wanapums", unidentified and as a general term of only historic interest, and even then in an insensitive way.

PDR

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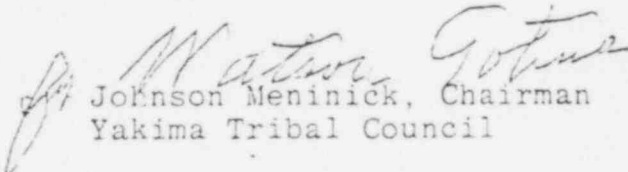
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Dr. Rajender Auluck  
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September 22, 1981


- b. The document ignores the existence of the Yakima Indian Nation, its vast adjacent Tribal Treaty Lands, and its particular concerns for the protection of its guaranteed rights and privileges.
- c. The document in its brief reference in the text to "Indians" is behind the times, and reveals no sensitivity to Indian Civil and Human Rights which today have become a matter of course in legislation and court decisions.

The Tribal Council asks, in addition, that your office consult with us before setting a time and place to begin discussions between the Yakima Indian Nation and the NRC licensing agent and the representatives of WPPSS. Please contact Mr. Russell Jim, Tribal Councilman, at (509) 863-5121. Thank you for your consideration

Sincerely,

  
Johnson Meninick, Chairman  
Yakima Tribal Council

Concur:

  
Leonard Tomaskin, Chairman  
Yakima General Council