



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MINNEAPOLIS AREA OFFICE
331 SOUTH 2ND AVENUE
MINNEAPOLIS, MINNESOTA 55401-2241



IN REPLY REFER TO
Environmental Services

MAK 10 1995

James Taylor, Executive Director
For Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20046-0001

Dear Mr. Taylor:

Some time ago, the Prairie Island Dakota Community asked us to coordinate a draft memorandum of understanding (MOU) with you and others. At that time, the Community sought approval of the MOU by Washington level officials. The Community has changed its request. Now they ask that each federal agency sign the memorandum at the regional level first.

With that in mind, please provide comments to us on the enclosed draft MOU by April 14, 1995. The objective of the MOU is to summarize the mission areas of your agency that affect environmental and health issues of the Community. The MOU also points out areas of mutual interest and calls for cooperation in accomplishing missions affecting the Community.

In pursuit of the objectives of the MOU, we need your help in drafting an action plan. The action plan will describe the specific actions that each agency has or is willing to take in the areas of mutual interest. Please review the enclosed opening sections of the action plan and provide a draft description of action that can be taken by your agency. Please include any funding, training, equipment loan, technical assistance, community education, or other kinds of assistance that you are authorized to provide. We need your input by April 14, 1995.

If there are questions, the contact is Herb Nelson P.E., Environmental Services, at 612/373-1143.

Sincerely,

Acting Area Director

Enclosures

9505020120 950412
PDR ADOCK 05000282
Y PDR

EDO --- 000202

Distribution - Identical Letters to:

Valdas V. Adamkus
Regional Administrator
USEPA - Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Jean Kern
Federal Emergency Management Agency
175 West Jackson
4th Floor
Chicago, IL 60604

Linda Wright
Agency For Toxic Substances
and Disease Registry
1600 Clifton Road
Atlanta, GA 30333

Kathleen Annette
Indian Health Service
203 Federal Building
Bemidji, MN 56601-3060

George Garklavs
District Chief
U.S. Geological Survey
2280 Woodale Drive
Mounds View, MN 55112

James Taylor
Executive Director For Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20046-0001

Sam Marler
Regional Director
U.S. Fish and Wildlife Service
Bishop Henry Whipple Federal Building
1 Federal Drive, Room 686
Ft. Snelling, MN 55111-4007

Mark Lynott, Senior Archeologist
Midwest Archeological Center
National Park Service
Federal Building Room 474
100 Centennial Mall North
Lincoln, NE 68508-3873

Col. James Scott
U.S. Army Corps of Engineers
190 Fifth Street East
St. Paul, MN 55101-1638

Copy with Distribution List and Enclosure For:

Curtis Campbell, Sr., President
Prairie Island Dakota Community
1158 Island Blvd.
Welch, MN 55089-9540

Darelynn Lehto, Vice-President
Prairie Island Dakota Community
1158 Island Blvd.
Welch, MN 55089-9540

Byron White, Secretary
Prairie Island Dakota Community
1158 Island Blvd.
Welch, MN 55089-9540

Alan Childs, Sr., Treasurer
Prairie Island Dakota Community
1158 Island Blvd.
Welch, MN 55089-9540

Michael Childs, Sr., Ass't Sec/Treasurer
Prairie Island Dakota Community
1158 Island Blvd.
Welch, MN 55089-9540

Ada E. Deer
Assistant Secretary - Indian Affairs
U.S. Dept of the Interior
Office of the Secretary
Washington, D.C. 20240

George Farris
Bureau of Indian Affairs
Office of Trust Responsibilities
Environmental Services
Washington, D.C.

MEMORANDUM OF UNDERSTANDING
AMONG THE
BUREAU OF INDIAN AFFAIRS
ENVIRONMENTAL PROTECTION AGENCY
U.S. GEOLOGICAL SERVICE
FEDERAL EMERGENCY MANAGEMENT AGENCY
INDIAN HEALTH SERVICE
NATIONAL PARK SERVICE
NUCLEAR REGULATORY COMMISSION
U.S. FISH AND WILDLIFE SERVICE
AND THE
PRAIRIE ISLAND DAKOTA COMMUNITY

I. STATEMENT OF PURPOSE

The Bureau of Indian Affairs (BIA), the Environmental Protection Agency (EPA), the Federal Emergency Management Agency (FEMA), the Indian Health Service (IHS), the NPS Archaeological Assistance Division (NPS-AAD), the Nuclear Regulatory Commission (NRC), the U.S. Fish and Wildlife Service (USFWS), and other federal entities all have responsibilities and interests in protecting the environment, human health, cultural resources, and property interests Indian country under the doctrine of trust responsibility.

It is therefore the purpose of this Memorandum of Understanding (MOU) to identify areas of mutual interest and responsibility among the federal agencies, and coordinate the agencies respective activities to promote the most efficient and integrated use of resources in consultation and coordination with the Tribe to provide the stated need to ensure protection of the health and safety of the citizens of the Prairie Island Dakota Community, a federally recognized Indian tribe, their cultural and natural resources, and related property and property interests in relation to the operation (including spent nuclear fuel storage) of the Northern States Power (NSP) Nuclear Utility Plant, within immediate and adjacent proximity to the Prairie Island Dakota Community. The primary objective of this MOU centers on protecting the human health, environment and trust resources of the Prairie Island Dakota Community from risks imposed by forces outside the control or meaningful participation by the government and members of the community.

It is anticipated that the Area Director of the Bureau of Indian Affairs, Minneapolis Area Office, will take the lead and the initiative to work closely and coordinate with the local, regional and headquarters offices of the respective signatory agencies to develop a more detailed and specific approach pursuant to the general agreements established in this document.

II. FINDINGS

A. Scope of Respective Authorities

All of the seven federal agencies involved have an interest in the effects federally licensed or federal regulated projects have on human health, the environment, and safety responsibilities to federally recognized Indian Tribes. While the administrative oversight of trust lands has been assigned to the Secretary of the Interior, all federal agencies are bound individually by the federal fiduciary relationship. U.S. v Eberhardt 789 F.2d 1354, 1363 (9th circuit).

The Prairie Island Dakota Community Council, the governing body of the Prairie Island Dakota Community, has invoked the trust responsibility of the federal government to protect their health, safety, natural and cultural resources, and property and business interests from hazardous radiation and emissions caused by the operation of the NSP Nuclear Utility Plant, the location of the high power electrical lines adjacent to the residential area of the reservation, and the storage of spent nuclear fuel in both water cooled storage pools and in above-ground dry cask storage units. There is also concern about the health and environmental risks imposed by the railroad, federal navigation channel, flood damages, leaking underground storage tanks, and changing air and water quality.

As a result, each respective agencies area of responsibilities defined in this document in regards to the health, safety, economic, and environmental interests of the Prairie Island Dakota Community will be coordinated by the Area Director of the Minneapolis Area Office, Bureau of Indian Affairs, to ensure a complete and comprehensive coverage of the tasks and allocation of resources.

As a starting point to ensure complete and comprehensive coverage of the tasks and allocation of resources, the following tasks and responsibilities of each respective agency will be coordinated by the Area Director, Bureau of Indian Affairs.

- The initiation of baseline studies performed by independent researches, on the health effects to citizens of the Prairie Island Dakota Community from the operation, generation of the NSP nuclear utility, and storage of spent nuclear fuel, or provide the tribe with resources to hire independent contractors to perform the research.
- The initiation of an epidemiological survey of the Prairie Island Dakota Community and the surrounding area for potential cancer, immunological, and neurological illnesses which may be associated with the operation, generation of the NSP nuclear utility, and storage of

radioactive spent fuel and its byproducts in the water, air, and soil in the affected area.

- Tribal treaty search regarding research of historic and traditional areas, and documentation on development of contemporary boundaries and establishment of private, state, and federal facilities within the treaty boundaries.
- The initiation of comprehensive environmental baseline studies on Prairie Island by independent researches, or provide the tribe with resources to hire independent contractors. Assessments would include radiological contamination component. This baseline would include plant, wildlife, and fish assessment, and water and air quality on and near Prairie Island.
- Cultural resource assessment of the entire Prairie Island done by independent researches, or provide the tribe with resources to hire independent contractors. The assessment would be done in consultation with and guided by tribal cultural resource practitioners from the Prairie Island Dakota Community.
- The inclusion of the Prairie Island Dakota Community in the overall emergency preparedness planning and exercises, including development of emergency response planning for the Prairie Island Dakota Community as a response organization.
- Documentation on past participation and consultation of specially affected communities, including the Prairie Island Dakota Community, in the environmental assessment (EA) and Environmental Impact Statement (EIS) phases of all NSP activities.
- Ensuring meaningful participation of the community in future decision making for federal undertakings that affect risk imposed on the health, environment, and trust resources of the Prairie Island Dakota Community.
- Independent testing of high voltage transmission lines immediately adjacent to the Prairie Island residential area, which includes a tribal day care center, regarding their effect on human health, utilizing the National Academy of Science reports on this issue.
- The feasibility of relocating community members and their business enterprises commensurate with their existing lifestyle expectations and living conditions in the owning and operation of a profitable and growing gaming enterprise.

B. Description of Agency Mission

1. The Bureau of Indian Affairs (BIA) programs are associated with Indian trust responsibilities and include fiduciary responsibility toward the tribe and their health, safety, environmental and economic interests. The BIA has a trust responsibility toward the Tribe in the area of environmental quality. The National Environmental Policy Act of 1969, which establishes procedures that are binding on all federal agencies requires that an Environmental Impact Statement (EIS) be prepared for every major federal action significantly affecting the quality for the human environment. The BIA can provide resources to assess cultural, water and environmental resources.

The National Environmental Policy Act of 1969, which establishes procedures that are binding on all federal agencies requires that an Environmental Impact Statement (EIS) be prepared for every major federal action significantly affecting the quality for the human environment.

2. The Environmental Protection Agency (EPA) has regulatory and enforcement authority in Indian country, and authority to expend financial resources on Indian lands under various environmental statutes. Statutes authorizing EPA actions in Indian country include the Clean Air Act, Clean Water Act, the Emergency Planning and Community Right to Know Act, Safe Drinking Water Act, Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). EPA's Indian Policy, was adopted in 1984 to foster the government to government relationship with tribes and to help tribes develop and manage environmental programs. The EPA Indian Policy's purpose includes assuring that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect reservation environments; encouraging cooperation between tribal, state and local governments to resolve environmental problems of mutual concern; and, enlisting the support of other federal agencies to clearly identify and delineate the roles, responsibilities of the agencies. EPA also must ensure compliance with all laws related to cultural resource protection.

3. The mission of the Federal Emergency Management Agency (FEMA) is to provide the leadership and support to reduce the loss of life and property and protect our institutions through a comprehensive, risk-based, all-hazards emergency management program of mitigation, preparedness, response, and recovery. One of FEMA's stated goals is to create an emergency partnership with other federal agencies, state and local governments, volunteer organizations and the private sector. Through tribal governments are not mentioned specifically, FEMA is encumbered with a fiduciary duty to tribal governments as part of the federal government.

4. The Indian Health Service (IHS) has among its responsibilities, the health and well-being of individual citizens of Indian country. This responsibility is implemented through monitoring the

environmental quality of general and specific activity in Indian country, particularly those activities that affect the sanitation facilities of the Community.

5. The National Park Service Archaeological Assistance Division (NPS-AAD) provides investigation, assessment, monitoring and protection of potential and existing archaeological and historical properties on federal lands, and provides training and technical assistance in archaeological resources management.

6. The Nuclear Regulatory Commission (NRC) has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC has jurisdiction of shipments of radioactive materials, including approval of routing, packaging and transportation of spent fuel; interim spent nuclear fuel storage cask licensing approval; and, more importantly, licensing approval for operating the NSP nuclear utility facility located on Prairie Island, including oversight of FEMA approved radiological emergency preparedness plans and exercise activity.

7. The U.S. Fish and Wildlife Service (Service) responsibility to help protect trust resources on tribal lands has been established for fish and wildlife through reserved rights doctrines, Executive Orders, judicial mandates, and specific treaties. The Service can provide monitoring and sampling of fisheries, water quality, and invertebrates, along with technical assistance. In addition, the Service is responsible for providing comments on Federally-funded projects or permits/licenses. Comments are provided in accordance with Federal statutes and normally address project-related impacts to important habitats, Federal trust species, and those caused by contaminants.

8. The U.S. Geological Survey (USGS) has authority to conduct investigations of water resources and geological characterization of the environment and trust resources of the Community. The USGS has a cost share program to conduct these investigations in cooperation with the Community.

C. Areas of Mutual Interest

The Bureau of Indian Affairs, the Environmental Protection Agency, the Federal Emergency Management Agency, the Indian Health Service, the Nuclear Regulatory Commission, and the National Park Service Archaeological Assistance Division, and the U.S. Fish and Wildlife Service, have specific program areas of specific interest listed below. The general responsibilities are listed as follows.

1. Health Baseline Studies

- a. Indian Health Service, possibly in coordination with ATSDR

2. Epidemiological Survey

- a. Indian Health Service should request

- participation by the Center for Disease Control (CDC), ATSDR and NRC
3. Environmental Quality Baseline
 - a. Environmental Protection Agency
 - b. U.S. Fish & Wildlife Service participation
 - c. BIA Circle of Flight
 4. High Voltage Transmission Local Population Effects Study
 - a. Indian Health Service
 - b. Center for Disease Control - ATSDR
 - c. Environmental Protection Agency
 5. Radiological Emergency Preparedness Planning and Exercise
 - a. Federal Emergency Management Agency
 6. Tribal Treaty Search and Boundary Documentation
 - a. Bureau of Indian Affairs Land Management
 - b. U.S. Geological Survey
 - c. Department of Interior Solicitors Office
 7. Cultural Resource Assessment
 - a. National Park Service Archaeological Assistance Division
 - b. Bureau of Indian Affairs
 8. Population Relocation Socioeconomic Feasibility Study
 - a. Bureau of Indian Affairs
 9. Documentation of Previous EA and EIS Conclusions and Tribal Participation
 - a. EPA
 - b. NRC
 - c. BIA

III. INTERAGENCY ACTIONS

The following actions are agreed to:

1. The BIA, EPA, FEMA, IHS, NPS-AAD, USFWS, and the NRC, will work cooperatively together at the local, regional and headquarters levels, in consultation with the Prairie Island Dakota Community Council, to coordinate the environmental, health, safety, and business interests of all jurisdictional activities affecting the tribe. Where applicable, and within the constraints of available resources each agency will:
 - a. Participate in headquarters, regional and local level information exchanges to keep abreast of the other agencies' program activities and regulations and notify other agencies of its own program activities, regulations, proposed regulations, and future plans.
 - b. Cooperate in providing program services to tribal governments.
 - c. Provide training and technical assistance to each other and to Tribal representative in the area of each agency's special expertise.
 - d. Collaborate on overlapping responsibilities.
 - e. Coordinate to the greatest extent possible and integrate where feasible, the provision of funding assistance to

tribal governments, where the funding authorities of the seven agencies are combined or complementary.

2. BIA, EPA, IHS, NPS-AAD, USFWS, and the NRC will continue to identify and develop coordination in these areas of environmental protection. Supplemental agreements or actions specific to program coordination in each of the above areas may be prepared, as appropriate. Potential overlap areas may be addressed at the area/region or headquarters levels.
3. BIA, EPA, IHS, NPS-AAD, USFWS, and NRC will encourage and educate their staff, consultants and representatives in the existence, purpose and implementation of the terms of this MOU. Where applicable, tribal and or state agencies may be included as signatories to supplemental agreements.

IV. Duration of Agreement

This MOU shall continue in effect until BIA, EPA, FEMA, IHS, NPS-AAD, USFWS, or NRC provide written notice of termination. Notice shall be given to the other parties at least thirty (30) days in advance of the termination date. This document may be updated and periodically amended with the concurrence of all parties. This document does not cancel any previous MOUs or Agreements.

V. Reports

Additional meetings may be called as necessary by any signatory agency, particularly among the staff of the regional offices. Minutes will be taken and distributed. Where appropriate, BIA may also call quarterly meetings at the Area/Regional where all parties in agreement that such meetings would be beneficial. Minutes of those meetings will also be taken. Reports will be provided by the individual agencies, such as the Water Resources Investigation report (WRI) by the USGS. A written action plan will be prepared and used to monitor progress.

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Minneapolis Area Director, Department of Interior, Date
Bureau of Indian Affairs

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Regional Administrator, USEPA Date

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Regional Director, FEMA Date

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Regional Director, National Park Service Date

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Nuclear Regulatory Commission Date

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Chairman, Prairie Island Dakota Community Council Date

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Regional Director, U.S. Fish and Wildlife Service Date

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Minnesota District Chief, USGS Date

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ACTION PLAN
To Protect Human Health & Natural Trust Resources
of the Prairie Island Dakota Community
September 1994

OBJECTIVE

The primary objective of this Action Plan centers on protecting the human health, environment, and natural trust resources of the Prairie Island Dakota Community from risks imposed by forces outside the control or meaningful participation of the government and members of the Prairie Island Dakota Community. Some of these risks include the adjacent nuclear power plant, railroad, federal navigation channel, flooding, leaking underground storage tanks (LUST), and changing air and water quality. This Action Plan is also an important opportunity for federal agencies and others to become familiar with the special relationship that exists between the Prairie Island and Federal Governments.

SUMMARY OF ACTION PLAN

The action plan calls for identifying the current and future levels of risks to human health, the environment, and trust lands at Prairie Island. The plan also calls for identification of alternative actions for the Tribal Government to use to reduce risks to levels acceptable to them. Some alternative actions may require federal assistance, if requested by the Prairie Island Government.

The Action Plan calls for measurement of background levels of specific health and environmental parameters. This will permit the Tribal and Federal Governments to recognize and act on any future risks proposed or imposed by outside interests. If the Community is to be exposed to additional risk, then the Tribal Government and members shall have meaningful opportunities to understand, accept or decline, and benefit from trade-offs of risks and benefits that involve the interests of the Prairie Island Community.

GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

By legal definition and by Congressional recognition, the Prairie Island Dakota Community is a domestic dependent sovereign government of the United States. As a sovereign government, Prairie Island is responsible to protect the health of its members and its environment. President Clinton recently confirmed that the United States Government will deal with each Indian Tribe as a sovereign Tribal Government. The agencies of the Federal Government are to deal with the Community Government on a Government-to-Government basis. There is ample legal and court case precedence that federal agencies not to trade-off the interests of the Tribal Government for the benefit of the other

Potential Issue: The ATSDR risk assessment uses regulatory levels of risks for the parameters that it assesses. The regulatory levels of risk may be less stringent or otherwise unacceptable to the Prairie Island Community.

FLOODING AFFECTS

Effects to groundwater -> high permeability river to groundwater to water supplies -> USGS inventory

Involvement of USTs in effects on groundwater

Effects to biota -> USFWS survey

WATER RESOURCES (Quality and Quantity)

USGS -> cooperative WRI with Community/BIA

USGS -> Upper Mississippi River NAWQA study information

AIR QUALITY

Community/USEPA monitoring station

SANITATION FACILITIES

RADIOLOGIC MONITORING

PLANTS AND ANIMALS

SCHEDULE AND PRODUCT

Meetings -> semi-annual Council/staff meetings

DATA STORAGE AND MANAGEMENT

GIS, quality assurance, availability of expert witness, storage and evaluation responsibilities

PROCEDURAL/INSTITUTIONAL ISSUES

Real Estate, Litigation Support, Tribal ordinances, staff and funding, mutual education of issues, "Take Pride in America"