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Subject: [External_Sender] NRC-2018-0300 Comments of the Hopi Tribe
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Attachments: [NRC Categorical Exclusion Comments Hopi Tribe.pdf](#)

Good Afternoon -

Attached please see the comments of the Hopi Tribe in response to NRC-2018-0300.

Thank you for your attention.

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**Comments of the Hopi Tribe on the
Nuclear Regulatory Commission (NRC) Categorical Exclusion Modification Proposal**

NRC-2018-0300

FR Vol. 86, No. 87 at 24514 et seq.

May 7, 2021

Per the NRC May 7, 2021 public notice, on September 24, 2003, the Council on Environmental Quality (CEQ) National Environmental Policy Act Task Force published a report, “Modernizing NEPA Implementation” (Task Force Report), that referenced Federal agency examination of categorical exclusion regulations to identify potential revisions that would eliminate unnecessary and costly EAs.

The May 7 notice refers to the Task Force report as directing agencies to:

- Use information from past actions to establish the basis for the finding of “no significant effects.”

- Use criteria for identifying new categorical exclusions, including:

(1) Repetitive actions that do not individually or cumulatively have significant effects on the human environment;

(2) Actions that generally require limited environmental review; and

(3) Actions that are noncontroversial.

In examining the NRC proposal and its reference to “aligning” NRC environmental review with these priorities, the Hopi Tribe comments follow below.

1. The Tribe generally considers the proposed changes as vague, overly broad and accordingly failing to meet both applicable rule-making standards and also the CEQ NEPA Task Force report priorities. The wording provided in the Federal Register Notice only includes limited examples, rather than specifically delineated modifications to fully display changes that will result from the rulemaking; in the third bullet following item IV(2), the example offered reads as an incomplete sentence. In the absence of specifics, the Tribe maintains an objection to any proposed modification through this NRC effort.
2. The Tribe more specifically comments on bulleted points following Segment IV(2) as follows:
 - a. The fourth bullet point provides for a categorical exclusion for license terminations as a final administrative step needing completion. The Tribe objects to this as an exclusion as prior administrative actions may be in dispute or still subject to challenge, making an exclusion of the license termination itself an accelerated conclusion that ignores prior steps being contested or that disregards opportunities to challenge those prior actions.
 - b. The Tribe also objects to the NRC proposal in the fifth bullet point, providing for an exclusion for the NRC concurrence with a termination action by an Agreement State. As a tribe that sits within the boundaries of an Agreement State, Hopi considers it imperative that the federal government require and maintain full scrutiny over state actions taken in its place. To Hopi this includes a full NEPA review of any Agreement State termination proposal.

- c. The Tribe again rejects the proposal set out in the sixth bullet point, on the same basis as noted in (b) above. As a tribe located down-gradient from uranium processing activities that were only historically egregiously mismanaged, Hopi insists that no categorical exclusion be afforded consideration of any exemption for low-level waste storage by an Agreement State.
- d. The Tribe lacks the opportunity to fully research the proposal in bullet point seven but will object to its scope as being insufficiently specified since, again, only generalized wording is provided (e.g., “. . . some license amendments . . .”).
- e. The Tribe again objects to the proposal in bullet point eight as being overly broad and lacking sufficient detail for specific understanding and comment.
- f. Hopi considers the intent of the proposal in bullet point nine as overly expansive. Excluding the entirety of “relief and alternative requests” could be tantamount to excluding initial facility design review. In the absence of specific qualifiers for the proposal, Hopi objects to this change.
- g. Hopi considers the proposal set out in bullet point 11 as creating unnecessary risk. As even coal mine closures are now involving bankruptcies and insufficient bonding for necessary remediation work, the Tribe does not support reduced evaluation of decommissioning funding plans by the NRC.
- h. Regarding bullet point 12, Hopi supports a continuation of full NEPA application to long-term surveillance planning for decommissioned uranium mills without exception as to surveillance focus. The Tribe considers that role to be an innate responsibility of the federal government both generally and more specifically with respect to its trust obligations.
- i. The Tribe objects to the proposal in bullet point 13, in that its general scope presents the risk of reduced safety assurances without qualification.
- j. As above, the Tribe is concerned that the general wording of bullet point 14 regarding approvals of “alternative waste disposal procedures” being categorically exempt is overly broad and that, without greater detail, it only risks important safety assurances currently being observed.
- k. The Tribe does not interpret the wording of bullet point 15 as accomplishing what is stated; instead, the Tribe understands the proposal as sufficiently broad that an unqualified exception for “administrative, organization or procedural requirements” could result in facility safety compromises that would, in fact, trigger environmental impacts.

Additional Questions

1. Hopi considers any expansion of the set of actions for which categorical exclusions are being considered to require supplemental public notice and additional opportunity for public comment.
2. Hopi has not had sufficient opportunity to draft specific comments on categorical exclusions the Tribe would recommend being modified or clarified. In the absence of that capacity, the Tribe seeks additional notice and time to comment on anything identified for such action from this process.

3. As above, the Tribe cannot currently comment on extinction of categorical exclusion treatment generally and accordingly requests an additional opportunity to comment on anything identified for that action.
4. In the absence of specific proposals, the Tribe does not support any expansion of categorical exclusion treatment by the NRC at this time.
5. Hopi urges the NRC to establish a dedicated tribal interest focus to better address and manage its responsibilities across Indian Country. While Hopi participates in the Legacy Management (LM) effort launched through DOE, a broader commitment by NRC to the full scope of interests in NRC activities in and impacting Indian Country is warranted and long overdue. *See*, for example, the Office of Indian Energy within DOE and American Indian Environmental Office within the Environmental Protection Agency.