

POLICY ISSUE INFORMATION

April 16, 2001

SECY-01-0064

FOR: The Commissioners

FROM: William D. Travers
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SUBJECT: INTERACTION WITH TRIBAL GOVERNMENTS AND ENTITIES
NEAR YUCCA MOUNTAIN ON HIGH-LEVEL WASTE
REPOSITORY ISSUES

PURPOSE:

To inform the Commission of the staff's plans for interacting with interested Tribal governments and entities that may be affected by the siting of a geologic repository for the disposal of high-level radioactive waste (HLW) at Yucca Mountain. The staff intends to establish a systematic process for informing Tribal governments and entities of the U.S. Nuclear Regulatory Commission's (NRC's) health and safety responsibilities for a potential HLW repository and for identifying issues of Tribal concern about a possible NRC licensing decision at Yucca Mountain. The staff believes it needs such a process to facilitate ongoing communication between NRC and Tribal governments and entities on HLW repository issues.

BACKGROUND:

Tribal governments and entities in the Yucca Mountain region assert an interest in the possible siting of a repository for HLW at that location, as well as related activities such as transporting HLW. Potentially interested Tribes, and their governments, reside in Nevada, as well as in California, Utah, and Arizona. The asserted interests include health and safety issues

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associated with the disposal and transport of HLW, and potential environmental impacts related to cultural and property rights issues.¹

The Commission has engaged in activities over the past several years to inform and consult with Tribal governments on HLW and other issues. These include inviting Tribal governments and other Tribal organizations to participate in Commission meetings and NRC workshops and providing information to Tribal governments and other organizations on NRC activities through participation at Tribal meetings.

Building on these earlier efforts, the staff intends to pursue direct interactions with Tribal governments and entities that may be potentially affected by an HLW repository. Our goal is to ensure that potentially affected Tribes are aware of the Commission's licensing and regulatory responsibilities, and have the opportunity to discuss their concerns with NRC and participate in ongoing channels for communication with NRC on HLW issues. The staff believes that direct interactions with Tribal governments and entities are consistent with the objectives of the HLW communication plan, and could strengthen the NRC staff's public outreach efforts. Over the past 2 years, these efforts have been increasingly successful in reaching State and local governments and members of the public, but have been less successful at fostering communication between NRC and the Tribes.

Interacting directly with Tribal governments is responsive to the President's Memorandum of April 29, 1994, which stresses the value of Federal government agencies developing government-to-government relationships with the Tribes and building effective working relationships with sovereign Tribal governments. In a November 13, 1996, Staff Requirements Memorandum, the Commission directed the staff to continue to carry out the spirit and letter of the President's guidance. In addition, in response to Executive Order 13175 of November 6, 2000, NRC has committed to adopt Agency practices that ensure consultation with Indian Tribal governments. Interacting with Tribal governments is also consistent with the performance goal and strategies for increasing public confidence in the Commission's Strategic Plan.

¹The Commission's regulations in 10 CFR Part 60, Subpart C (and the corresponding provisions in proposed 10 CFR Part 63) include specific consultation responsibilities with "affected Indian tribes." The Commission's definition of "affected Indian tribe" is almost identical to the definition of "affected Indian tribe" in Section 2 of the Nuclear Waste Policy Act (NWPA) that governs specific U.S. Department of Energy consultation and funding provisions for tribal nations under the Act. This definition is different than the broader use of the term "affected" for purposes of identifying those Tribes that might experience impacts from the siting of a repository. For example, under the NWPA, if a repository is not located on a Tribal reservation, the Secretary of Interior must find that the effects of repository siting on a Tribe's federally defined possessory or usage rights are substantial and adverse, before a Tribe meets the "affected" definition. To date, no tribe has been designated as "affected" under this definition. Furthermore, some Tribes have indicated an interest in the NRC role in repository licensing. Therefore, the staff consultation efforts are aimed at a broader group of Tribes than might ultimately be included under the Act's definition of "affected."

DISCUSSION:

The first step in the staff initiative to establish a systematic process for interaction and communication with Indian Tribes, on HLW issues, is a one day workshop in Nevada with the leaders of Tribal governments and the NRC staff. Francis X. Cameron, the Special Counsel for Public Liaison and Waste Disposal, in the Office of the General Counsel, will convene and facilitate the workshop. Staff of the Division of Waste Management (DWM), including members of the HLW public outreach team, and staff of the Office of State and Tribal Programs, will represent NRC.

The purpose of the workshop will be to:

- ! Share information, between the Tribal governments and the NRC staff, on NRC responsibilities for HLW repository licensing and regulation, and on Tribal concerns about repository licensing; and
- ! Form a foundation for continuing future communication between the NRC staff and those individual Tribes potentially affected by the siting of an HLW repository.

Many individual Tribal governments and entities, as well as regional and national Tribal organizations, are interested in HLW issues. In addition to the individual Tribal governments, statewide organizations such as the Nevada Intertribal Council and the Nevada Indian Environmental Coalition, also are interested in HLW repository licensing. There is also the Western Shoshone National Council, which is not officially recognized as a tribal government by the Federal government but whose members may belong to federally recognized tribes. Other coordinating organizations within Nevada, such as the Las Vegas Indian Center, similarly have such interests. The National Congress of American Indians is a well-established national organization whose Nuclear Waste Policy Committee evaluates the national policy and program implications of HLW issues. DOE has established a consolidated group of Tribal governments and entities that participates in the DOE Yucca Mountain Project Native American Interaction Program (NAIP). These Tribal governments and entities were selected on the basis of their traditional ties to the Yucca Mountain area, and include tribes from Nevada, Utah, Arizona, and California. NAIP's main focus has been on protecting cultural resources in the Yucca Mountain area. However, DOE also informs this group on the progress of site characterization activities, and calls on the group to provide Tribal representation to other DOE activities, such as the DOE Transportation External Working Group. Planning efforts for this initial workshop will focus on the Tribal organizations in the consolidated group because it reflects those Tribal governments who have the potential to be the most affected by the siting of the repository. However, the group also includes Tribes within and outside Nevada that may be affected by the transport of HLW to the repository.

The staff anticipates inviting the Tribal chairperson and the environmental manager, if applicable, from about 20 Tribal organizations to the one day workshop. To ensure that as many Tribes participate as possible, and given the limited travel resources of some of these Tribal governments, the staff intends to offer travel expenses to those who need it. The staff estimates that travel and meeting facility rental will cost approximately \$20,000.

The facilitator is working with DWM staff and the chairperson of the consolidated group of Tribal governments and entities to prepare an agenda for the meeting, as well as the date and location for the meeting. One of the key items on the agenda will be how best to implement a systematic process for a continuing interaction between NRC and Tribal governments and entities. This could include holding periodic meetings, designating points of contact, and providing information or other assistance to Tribal governments and entities.

One of the information issues that will be discussed at the meeting is how NRC's interactions with Tribal governments and entities will change when HLW hearings begin and some Tribal governments and entities become intervenors or parties. In particular, NRC will explain the statutory prohibition on the NRC providing funding to intervenors in regulatory proceedings (Fiscal Year 1993 Energy and Water Development Appropriations Act which has been codified at 5 U.S.C. 504) such as the HLW adjudicatory hearing. The statutory prohibition does not apply to travel assistance provided for tribal governments to attend this meeting; however, it will be important for tribal governments to understand the limits on future NRC assistance.

The staff will inform the Commission when the date, logistics, and agenda for the meeting have been finalized. The staff anticipates that the meeting will be held in the summer or fall of 2001.

RESOURCES

Resources needed to complete this action were provided prior to FY 2001 mid-year review.

COORDINATION

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer finds no resource-related issues and concurs in the paper.

/RA/

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