

POLICY ISSUE INFORMATION

December 11, 2009

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FOR: The Commissioners

FROM: Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION INTERACTION WITH
NATIVE AMERICAN TRIBES

PURPOSE:

This paper responds to a January 8, 2009, Staff Requirements Memorandum (SRM), for "Briefing on Uranium Recovery," M081211, (ML090080206), directing the staff to develop and implement an internal protocol for interactions with Native American Tribal Governments that allows for custom tailored approaches that will address both the U.S. Nuclear Regulatory Commission (NRC) and Tribal interests on a case-by-case basis.

This paper also responds to the Commission's direction to prepare an assessment of policies other Federal agencies have developed for interactions with Native American Tribal governments and report those findings, which could determine the efficacy of an NRC tribal policy statement. This paper does not address any new commitments.

SUMMARY:

In January 2009, the Commission directed the staff to: 1) develop and implement an internal protocol for interactions with Native American Tribal Governments that allows for custom tailored approaches that will address both NRC and Tribal interests on a case-by-case basis, and 2) report on other Federal agencies' policies regarding interactions with Native American Tribal Governments in order for the Commission to assess the efficacy of NRC developing a

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formal policy statement. The staff conducted research regarding the Federal government's relationship with Native American tribes and examined recent Executive Orders governing interaction between Federal agencies and tribal governments. The staff also examined current outreach and communication practices at the NRC and other Federal agencies and collected qualitative data from NRC staff, other Federal agencies and tribal organizations in developing an NRC tribal protocol manual.

NRC's current practices for government-to-government interaction with Native American tribes reflect the spirit of Presidential Executive Orders without establishing a formal agency policy. The staff concludes that NRC's case-by-case interactions with Native American tribes have proven effective and allow for custom-tailored approaches that meet the Commission's needs and those of the tribes. Development and implementation of an internal agency protocol, as reflected in this paper, will enhance the staff's awareness and responsiveness to Native American tribal communities. NRC's commitment to maintaining and improving staff outreach and communication can be upheld through the establishment of an internal Tribal protocol, without the need for adopting a formal tribal policy statement.

BACKGROUND:

Numerous Federally-recognized Native American tribes have an interest in nuclear-related regulatory issues that include uranium recovery licensing and long-term strategies for treating mill tailings, reactor licensing and inspection activities, reactor license renewal, and nuclear waste transportation and disposal. Although NRC has no formal Native American Tribal Policy, the staff routinely interacts with Native American tribes on a government-to-government basis regarding these issues.

In a December 11, 2008, briefing of the Commission on uranium recovery, the staff discussed the status of uranium recovery license applications, including the environmental reviews affiliated with those applications, and the status of both the Generic Environmental Impact Statement for, and rulemaking on ground water protection at in-situ recovery facilities. Some current and anticipated uranium recovery facilities are located, or likely will be located, in or near tribal lands. As a result, the briefing included a discussion of tribal outreach efforts including presentations from NRC staff and tribal representatives. The staff discussed current tribal outreach undertakings, including opportunities taken by staff to discuss NRC regulatory processes and opportunities for public involvement, and other communications with Native American tribes with interest in these activities.¹

Following the briefing, the Commission tasked the staff with developing and implementing an internal NRC Native American protocol for interaction with tribal governments and to assess Native American tribal policies at other Federal agencies. This paper reports on NRC's current approach to outreach and communication with Native American tribes (including Alaska Native tribes), tribal protocol tools developed for implementation by staff to enhance NRC's effectiveness in its interactions with tribal governments, and staff's assessment of other Federal agencies' Native American tribal policies.

¹ Additional information regarding Tribal outreach related to uranium recovery is available in "U.S. Nuclear Regulatory Commission Strategy for Outreach and Communication with Indian Tribes Potentially Affected by Uranium Recovery Sites." This document is available online at <http://www.nrc.gov/materials/uranium-recovery/public-meetings/ind-tribe-strat.pdf>.

DISCUSSION:

In general, the Federal government has a unique relationship with Native American Indian tribes that has evolved over hundreds of years. This relationship includes placement of specific legal duties and moral obligations on the Federal government that are reflected in the United States Constitution, Treaties, Federal Statutes, Executive Orders and numerous court decisions. As a result, Federally-recognized Indian tribes are considered as sovereign “nations within a nation,” or “domestic, dependent nations or governments.” The Federal government recognizes the right of Indian tribes to self-government and their ability to exercise inherent sovereign powers over their members and territory. Tribal officials expect to be treated in a similar manner as other sovereign nation representatives interacting with the federal government. Such interactions are referred to as government-to-government relations.

More recently, Executive Orders and Presidential Memoranda dating back to Richard Nixon’s “Special Message on Indian Affairs,” in 1970 have addressed legislative and policy-making implications in regard to the American Indian community.² By Executive Order, the White House has required the Executive Departments and Agencies to consult and coordinate with Federally-recognized tribes in the development of Federal policies that have tribal implications.

Executive Order 13175

Executive Order 13175 (November 2000), “*Consultation and Coordination with Indian Tribal Governments*,” which superseded a May 1998 Executive Order of the same title, established policymaking criteria and consultation provisions with which Federal departments and agencies are expected to comply to this day. By issuing this Executive Order 13175, President Clinton sought, “... to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.”³ Along with policymaking criteria, the Order sets forth three fundamental principles by which agencies “shall be guided” when forming and implementing policies with potential tribal implications:

- The U.S. has developed a “unique legal relationship with Indian Tribal governments,” that the Indian tribes are considered “domestic dependent nations under [Federal] protection,” and that Federal statutes and regulations “establish and define a trust relationship with Indian tribes;”
- The U.S. “has recognized the right of Indian tribes to self-government,” that [a]s domestic dependent nations the tribes exercise inherent sovereign power over their members and their territory.” The Federal government “works with Indian tribes on a government-to-government basis” to address the issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

² In 1970, President Nixon issued a “Special Message on Indian Affairs.” Subsequently, Presidents Ronald Reagan, George H.W. Bush, William J. Clinton and George W. Bush issued policy statements regarding the Federal government’s relationship with Native American Tribes.

³ Executive Order 13175 was issued on November 6, 2000, and was published in FR 65 218 on pages 67249-67252. It is available online at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=fr09no00-167.pdf.

- The U.S. also “recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.”

The Order seeks to ensure that Federal agencies uphold tribal treaties and meet responsibilities stemming from the unique legal relationship between the U.S. government and tribal governments. The Order aims to ensure that the Federal government gives due respect to tribal sovereignty and self-government by establishing a set of requirements and principles that accompany the process of developing and implementing Federal agencies’ regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes.

On November 5, 2009, President Obama issued a Presidential Memorandum for the heads of executive departments and agencies on the subject of tribal consultation. The President stated that his “Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications, including, as an initial step, through complete and consistent implementation of Executive Order 13175,” which President Clinton issued on November 5, 2000.

NRC as Independent Federal Agency and NRC Case-By-Case Approach to Tribal Outreach

Section 1 of Executive Order 13175 explicitly excludes from the requirements of the order, “independent regulatory agencies, as defined in 44 U.S.C. §3502(5).” However, according to Section 8, “Independent regulatory agencies are encouraged to comply with the provisions of this order.” Although the Commission is explicitly exempt from the Order, NRC remains committed to its spirit. The agency has demonstrated a commitment to achieving the Order’s objectives by implementing a case-by-case approach to interactions with Native American tribes.

NRC’s case-by-case approach allows both NRC and the tribes to initiate outreach and communication with one another. The staff identifies and initiates dialogue with Federally-recognized Native American tribal governments during NRC regulatory processes and activities. The staff focuses outreach efforts on Native American tribes that may be affected by, or have interest in, activities regulated by NRC. In an effort to encourage tribal input and participation, staff engages with tribes to provide information related to the Commission’s mission and regulatory authority, highlighting opportunities for tribal involvement and consultation during the regulatory process. NRC staff also maintains regular channels of communication with relevant tribes and tribal organizations and provides interested tribes with general information upon request. Native American tribal officials often initiate interactions with staff based on tribal interest in particular NRC-regulated activities. Tribal concerns often reflect issues associated with NRC licensing new or existing facilities located on or near reservation lands, or in the vicinity of places of historical or cultural tribal importance located off reservation lands. Tribes’ concerns also include NRC-regulated activities for which the tribe has developed a policy statement or position.

This two-way, case-by-case approach has established a foundation for government-to-government working relationships that respects the right to self-government and self-determination by Native American tribes. This approach has contributed to the successful

execution of productive, government-to-government interaction with tribes that has taken place on a limited, but significant, basis.

The staff has engaged in government-to-government interaction with tribes regarding the following issues: uranium recovery activities, reactor operations and license renewal, high-level and low-level radioactive waste storage and disposal concerns, and spent fuel transportation and disposal. In each of these activities, NRC staff made extensive efforts to meet the underlying goals and objectives of Executive Order 13175. Enclosure 1 contains examples of successful government-to-government interactions between the NRC and Native American tribes and tribal organizations.

NRC staff is committed to addressing the concerns of Native American tribes that either have interest in, or may be affected by, NRC regulatory activities. Additionally, staff is committed to conducting regular and dedicated tribal outreach and communication with those tribes. The Commission's current interaction with tribes encompasses a relatively small number of tribes with interest in a limited number of nuclear regulatory issues. Development and implementation of an internal NRC tribal protocol, as requested by the Commission, will help foster more effective interactions between NRC staff and Native American tribal governments in the future.

The development of an internal protocol will enhance the NRC's existing approach to tribal interaction, not supplant it or establish a formal policy. Accordingly, staff has developed an internal protocol that reflects a set of practices, communication skills, cultural sensitivities and historical awareness, intended to foster and promote effective interaction between NRC staff and Native American tribal governments.

Development of NRC Internal Tribal Protocol and Tools for Implementation

The NRC has experience working with tribes through a case-by-case approach. Until now, few guiding principles, tenets, or practices for successful interaction have been enumerated and made available to NRC staff. In order to develop and adopt a tribal protocol that addresses the needs of the agency and the tribes with which it interacts, staff examined current tribal outreach and communication practices at the NRC and researched external sources' best practices for establishing and maintaining government-to-government relationships.

The staff conducted interviews with personnel from Federal and State government who have experience working with tribes through government-to-government interactions. The Staff also interviewed representatives from tribal organizations and tribal governments. The Staff conducted interviews with personnel from several NRC Offices, including: Office of Federal and State Materials and Environmental Management Programs (FSME), Office of the General Counsel (OGC), Office of New Reactors (NRO), Office of Nuclear Material Safety and Safeguards (NMSS), Office of Nuclear Reactor Regulation (NRR), Office of Nuclear Security and Incident Response (NSIR), Office of Public Affairs (OPA), Office of Small Business and Civil Rights (SBCR) and NRC Regional Offices. Participants from each of these organizations were identified as having extensive experience with tribes on particular programmatic issues.

Outside NRC, the staff conducted interviews with management and staff affiliated with State agencies in Oklahoma, New Mexico, and Minnesota that address tribal needs. Additionally, staff met with spokespersons from the Prairie Island Indian Community in Minnesota, the Yukon

River Inter-Tribal Watershed Council in Alaska, and the National Congress of American Indians in Washington, D.C. Staff conducted research regarding policies in place at multiple Federal agencies and interviewed Federal agency personnel from eight of those, including: the U.S. Environmental Protection Agency (EPA), the U.S. Bureau of Indian Affairs, and independent agencies such as the U.S. Federal Communications Commission (FCC) and the U.S. Federal Energy Regulatory Commission (FERC). Staff engaged in more detailed analysis of agencies whose regulatory function, independent nature or interaction with tribes was similar to that of the NRC, including: the U.S. Department of Energy (DOE), EPA, FERC and FCC. For a complete listing of participating offices and organizations, consult Enclosure 2. Staff also considered information from print publications and web-based research. Additionally, staff included information gathered during staff's review and assessment of policies other Federal agencies have for interactions with Native American tribes as tasked in the SRM.

For the purpose of this paper, and for future communication with staff regarding tribal protocol at NRC, the staff has defined internal tribal protocol as: a set of practices, communication skills, cultural sensitivities and historical awareness, intended to foster and promote effective interaction between NRC staff and Native American tribal governments. NRC internal tribal protocol developed by the staff includes, but is not limited to:

- Historical perspective illustrating the evolution of U.S. and tribal relationships;
- A description of NRC's current case-by-case approach to tribal interactions;
- Explanation of government-to-government relationships with, and Federal trust responsibility to, Native American tribes;
- Recognition of tribes as sovereign governments, expectations of tribal leaders when communicating with Federal representatives, and the role of and meaning behind "consultation;" and,
- Planning and communication skills and tools that will assist staff in establishing initial communications with tribes, arranging meetings with tribal leaders and tribal technical staff, and communicating NRC processes and opportunities for tribal involvement.

After defining NRC Internal Tribal Protocol, the staff developed tools of implementation that will best promote its underlying goals and enhance current practices. Two of those tools, each considered a cornerstone of staff's implementation plan, are the NRC Tribal Protocol Manual and enhanced communication with NRC staff and tribal entities by FSME's Intergovernmental Liaison Branch (ILB) in support of NRC tribal outreach and communication. ILB coordinates and helps address, on a daily basis, NRC's tribal issues at the programmatic and staff level.

NRC Tribal Protocol Manual (TPM) - The NRC TPM is a reference tool intended to provide NRC management and staff with information that will allow them to develop and maintain government-to-government relationships with tribes in preparation for, and throughout, NRC's regulatory processes. It is organized around three major subject areas considered essential to gaining a better understanding of Native American tribes and issues of concern to them. Subject areas include: historical overview of U.S. and tribal relations, protocol for tribal interaction, and tribal reference tools. The TPM is the result of extensive research regarding the Federal government's relationship with Federally-recognized tribes. Information provided by NRC staff, other Federal and State agencies, and tribal representatives was taken into consideration during the development of the TPM along with a compilation of qualitative

interview data from internal and external sources. To view the TPM in its entirety, please consult ADAMS document ML092990559 (Non-public document).

Enhanced Communication through NRC Tribal Liaison – In 2006, the Commission created the position of Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs (SECY-06-0125, “Proposed Reorganization of the Offices of Nuclear Material Safety and Safeguards and State and Tribal Programs”). The position encompasses many different responsibilities including service as the NRC’s central point of contact for tribes. ILB staff in FSME currently fulfills much of the liaison role with regard to broad, agency-wide Native American tribal outreach and communication issues. ILB assists NRC staff to identify tribes that have potential interest in specific programmatic areas and licensing activities. In addition, tribes often contact ILB in an effort to learn about specific nuclear regulatory issues; ILB staff provides appropriate programmatic personnel with preliminary information about the request, and ensures communication between tribes and technical staff is initiated. In summary, ILB has the day-to-day experience and knowledge management necessary to perform this task. ILB staff will continue to work with NRC management at the branch, division and office levels, and will continue to work in close coordination with the Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs, to fully implement NRC’s Internal Tribal Protocol.

ILB will continue to serve as a staff-level point of contact for inquiries from NRC staff and tribal representatives that pertain to issues of importance to tribal governments. ILB will seek to educate NRC staff about the Commission’s tribal protocol and continue to develop and implement additional educational tools, as necessary. The staff intends to incorporate additional tribal protocol tools, such as internal NRC web resources, to communicate NRC tribal-related activities and a staff-oriented tribal protocol video training module. The staff also intends to incorporate tribal protocols into NRC’s Management Directive system in support of NRC knowledge management objectives. Upon request, ILB will help the staff identify and contact appropriate tribal representatives and will assist in facilitating government-to-government communication, as necessary, in support of NRC programmatic activities. The staff will also act as a central repository for collecting news and information about NRC actions involving Native American tribes. Finally, ILB’s role as a liaison between the staff and tribes will be communicated to tribal communities, providing them with an agency liaison resource dedicated to providing access to appropriate NRC staff so that they may identify, and communicate at the programmatic level about, regulatory activities of importance to them.

Tribal protocol tools described in this paper, and other communications, are intended to provide internal guidance for the staff that interacts with tribal governments. This guidance does not supersede the agency’s case-by-case approach, but seeks to enhance interaction by providing staff with information regarding historical relations between the Federal government and tribes, tribal culture, and behavioral guidance for tribal interaction.

Assessment of Other Federal Agency Native American Tribal Policies

On November 11, 1984, the EPA became the first Federal agency to adopt a formal policy for interaction with tribal governments. Since that time, numerous other Federal agencies established their own policies governing interaction with Native American tribes. These policies reflect the goals of various White House administrations beginning with President Nixon’s “Special Message on Indian Affairs” in 1970, and ending with President Obama’s Executive

Memorandum on Tribal Consultation of November 5, 2009. President Clinton's 2000 Executive Order 13175 is the most recent Presidential directive to articulate detailed commitments aimed at establishing regular and meaningful consultation and collaboration with tribal officials and strengthening U.S. government-to-government relationships with Indian tribes.

While the purpose of each agency policy reflects the specific mandate and mission of that agency, underlying principles are as follows:

- Trust Relationship/Trust Responsibility – Agencies are to recognize and acknowledge that Federally-recognized tribes have a unique and direct trust relationship with the Federal government as established by specific treaties, court decisions, statutes, executive orders, regulations, and policies;
- Self Government – Agencies are to recognize and acknowledge tribal right of self-government which flows from the inherent sovereignty of tribes as domestic, dependent nations;
- Government-to-Government Relationship – Agencies are to recognize and commit to government-to-government relationships with Native American tribes; and,
- Tribal Self-Determination – Agencies are to recognize and support tribal sovereignty and self-determination.

Federal Agencies and Native American Tribal Policies

Each of the 15 Departments of the Executive Branch has tribal policies in place.⁴ The extent of resources and staff supporting tribal issues varies depending on the size of the agency as well as the legal authority and underlying mission of the Department.

For example, both the U.S. Department of the Interior (DOI) and the U.S. Department of Health and Human Services (HHS) have extensive tribal programs that stem from jurisdictional responsibilities and agency missions that provide services that directly support Native Americans. DOI's "Bureau of Indian Affairs Government-to-Government Consultation Policy" (established in December 2000), and HHS's "Department Consultation Policy" (established in August 1997), reflect agency policies that address tribal consultation needs across those agencies, and with a particular focus on addressing issues originating in DOI's Bureau of Indian Affairs and HHS's Indian Health Service.

Unlike DOI and HHS, many other department level agencies, such as DOE, do not have as a primary agency responsibility the support of services to Native American tribes. Instead, these agencies provide services to and share information with, initiate outreach, and enter into consultation with Native American tribes as a result of ancillary activities. Many other non-cabinet level Federal agencies, including the 65 independent agencies and government corporations created by Congress to address concerns that go beyond the scope of ordinary legislation, also have little to no mission direct responsibility for issues related specifically to

⁴ The following are considered Executive Departments: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of the Treasury, Department of Transportation, and Department of Veterans Affairs.

Native American tribes.⁵ Accordingly, as previously indicated, the staff assessed tribal policies at agencies that, like NRC, do not provide services to, or directly support, Native American communities as part of their primary mission. Staff assessed tribal policies and means of implementation at EPA and DOE, as well as at two independent agencies, FERC and the FCC. Like NRC, each of these two independent agencies has a regulatory function, but varying degrees of involvement with Indian tribes. Further discussion of tribal policies from these agencies can be found in Enclosure 3.

Summary of Policy Assessment Findings

Policies governing tribal interaction at other Federal agencies share common underlying goals and objectives that support effective outreach, communication, and consultation with the tribes on a government-to-government basis. Agencies that have issued policy statements echo the language and spirit of key Presidential documents and Executive Orders aimed at supporting Native American self-determination. At a minimum, such policy statements affirm that agencies are cognizant of Federal trust responsibilities and demonstrate this commitment to Native American tribes and others.

An examination of other Federal agencies illustrates that the establishment of tribal policies is the rule rather than the exception in Executive Departments. Some independent regulatory agencies, including FERC and FCC, have implemented tribal policies for interaction with Native Americans. However, not all independent agencies have issued policy statements. Policy statements in most, if not all, cases do not stand alone, and are implemented through staff protocols and tribal programs. In many instances, the tools of implementation are equally, if not more, important than the policies themselves. The efficacy of tribal programs appears to hinge on the means of implementation rather than the policies themselves. Agencies have developed tribal-related websites, publications, directories and training while designating tribal contacts in program offices and establishing a tribal office. These tools vary greatly depending on the agency mission and budgetary limitations and serve as vehicles for communication with staff and tribes, promoting more effective government-to-government interaction.

The NRC's current practices for government-to-government interaction with Native American tribes reflect the spirit of Presidential Executive Orders without establishing a formal policy. The case-by-case interaction with Native American tribes has proven effective and allowed a custom-tailored approach that meets the Commission's needs as well as those of the tribes. NRC's commitment to maintaining and improving staff awareness and responsiveness to Native American tribal communities can be upheld through the establishment of an internal protocol, and does not necessitate a formal tribal policy statement.

Staff believes enhancements to its current approach through implementation of the NRC Internal Tribal Protocol Manual will improve staff's outreach and communication skills with Native American tribes. It will also result in greater recognition by tribes of NRC's commitment to the goals of recent Presidential directives.

⁵ This number is derived from the list provided on USA.gov at <http://www.usa.gov/Agencies/Federal/Independent.shtml>.

CONCLUSIONS:

At this time, the staff does not believe that a written, formal NRC policy statement addressing interactions with Native American tribes would further enhance staff's interactions with tribes. Through its case-by-case approach to tribal outreach and communication, NRC effectively engages Native American Tribes through government-to-government relationships on policy, programmatic, and technical issues that are of interest and concern to the tribes. The staff has developed and will implement an internal NRC Tribal Protocol that will further enhance the staff's engagement in those relationships. The key components are a Tribal Protocol Manual and enhanced outreach and communication with NRC staff regarding the mission of, and services provided by, FSME's ILB. The staff will distribute the TPM agency-wide and promote ILB's enhanced tribal liaison efforts during the second quarter of FY2010. In the future, the staff will develop additional outreach and communication tools with the goal of further enhancing staff's awareness of its responsibilities to Native American Tribes, and improving the staff's ability to effectively engage with the tribes on a case-by-case basis.

RESOURCES:

The staff estimates approximately .75 full-time equivalent for all tribal liaison functions for which its responsibility will expand in FY 2010 and beyond due to protocol implementation, and development of additional protocol as necessary, as presented in this paper. This estimate considers resources for implementation of protocol tools such as NRC internal protocol training of NRC staff, expanded communications within NRC to generate heightened awareness of agency protocol, and more frequent outreach to tribal representatives to generate greater visibility of NRC's commitment to Native American tribal interest in NRC regulated activities. The staff estimates that an additional \$55,000 in contract funds will also be necessary to support development and implementation of other protocol tools, such as pamphlets and brochures for agency staff that communicate NRC's internal tribal protocol, invitations to qualified speakers to address staff on tribal issues, and other protocol tools that the staff will develop and implement. Resources for current and future fiscal year activities, as reflected here, are provided for in current FSME budgets. The staff will reallocate resources through its Planning, Budgeting, and Performance Management process as necessary, to ensure specific activities are adequately funded.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and concurs. NRO, NMSS, NRR, NSIR, OPA, SBCR and NRC Regional Offices have reviewed the paper and have considered the need to coordinate some tribal-related liaison activities in the future as a result of protocol tool concepts presented in the paper.

/RA Cynthia Carpenter for/

Charles L. Miller, Director
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Enclosures:

1. NRC Relations with Native American Tribes
2. Interview Participants
3. Federal Agency Tribal Policies

NRC RELATIONS WITH NATIVE AMERICAN TRIBES

Under current practices, NRC interacts with tribal governments on a case-by-case basis. The following highlights six instances of successful government-to-government interaction between the Commission and tribal governments and organizations.

Power Reactor Inspections and License Renewal - Prairie Island Indian Community (PIIC)

Located within the 10-mile Emergency Planning Zone of the Prairie Island Nuclear Generating Plant (PINGP) in Welsh, Minnesota, the PIIC is the tribal community most closely located in the vicinity of an operating nuclear power reactor. In 1997, after the PIIC expressed interest in accompanying NRC inspectors during inspections, the Commission determined that tribal representatives could observe NRC inspections at the plant on the same basis as an Adjacent State if the tribe met the same requirements that an Adjacent State would have to meet in similar circumstances. The PIIC was authorized to observe NRC radiation protection inspections later that year.

In 2008, NRC and the PIIC signed a Memorandum of Understanding (MOU) (to become a cooperating agency for preparing the Environmental Impact Statement for the proposed license renewal of the PINGP) for working together to review potential environmental impacts of the proposed license renewal of the PINGP. This was the first MOU dealing with a reactor license renewal environmental review.

Proposed Waste Repository – Timbisha Shoshone Nation

From 2001-2008, the NRC conducted ongoing tribal outreach related to the proposed Yucca Mountain high-level waste disposal site in Nevada. In 2001 and 2003, the Commission hosted workshops for Native American Tribes with ties to Yucca Mountain. During that time, NRC staff learned of the Timbisha Shoshone Nation's pursuit of "affected status," under the Nuclear Waste Policy Act (NWPA), from the Department of the Interior (DOI) with regard to proceedings associated with the proposed waste repository. Under NWPA, "affected tribes" are afforded special rights of notice, participation, consultation and financial assistance. NRC later met with DOI representatives, providing information on NRC regulations and hearing procedures and conveying the NRC's interest in a timely decision on the Tribe's request. In 2006, NRC staff visited the Timbisha Shoshone in Death Valley, California. In 2007, NRC staff met separately with DOI representatives at DOI headquarters in the District of Columbia regarding the Tribe's renewed efforts to petition to DOI for "affected status." The Tribe had applied for "affected status" in 2001, and absent any official reply from DOI, applied again in 2006. In 2008, after DOI granted their petition, NRC staff again visited the Timbisha Shoshone to provide them with detailed information on the NRC's licensing and hearing process, and how the tribe could participate. In 2009, the Timbisha Shoshone tribe was admitted as a party to the Yucca Mountain hearings, with eight admitted contentions.

Uranium Recovery and Legacy Waste Associated with Uranium Mining and Milling - Various Tribes located in Indian Country in the vicinity of Southwestern U.S. and in South Dakota

In 2007 and 2008, NRC met with several Native American Tribal governments in New Mexico and Arizona, specifically the Navajo Nation, the Hopi Tribe, the Pueblo of Acoma, and the Pueblo of Laguna, on regulatory issues related to uranium milling operations and environmental restoration.

In February and April of 2009, FSME staff coordinated individual government-to-government meetings with representatives of the Navajo Nation, Pueblo of Zuni, All Indian Pueblo Council, Pueblo of Laguna, and Pueblo of Acoma, to share information related to the licensing of uranium recovery facilities. The meetings were structured to explain the licensing process, to address Native American concerns related to the licensing process, and to identify opportunities for Native American Tribal Governments to participate in the licensing process.

Beginning in late 2007, staff participated with the U.S. Environmental Protection Agency, the U.S. Department of Energy, the U.S. Bureau of Indian Affairs, and the Indian Health Service in multiple briefings and roundtable discussions with the Navajo Nation in the development of a five year plan to address legacy uranium mine and mill waste in Navajo Country. The agencies drafted a plan to address uranium contamination on Navajo lands and proposed solutions, issues raised by U.S. House Representative Henry A. Waxman at an October 23, 2007, hearing on Capitol Hill. In addition to numerous meetings with Senior Navajo Government officials as part of this effort, NRC staff briefed the Navajo Nation Resources Committee in Window Rock, AZ, on the NRC portion of the plan in April 2008. Also present were representatives of the Navajo Nation EPA and the Navajo Nation Department of Justice.

Potential Reactor Proposed for Galena, Alaska – Various Alaskan Tribes as represented by the Yukon River Inter-Tribal Watershed Council (YRITWC)

In February 2005, staff met with representatives of the YRITWC, an organization that currently represents 53 federally recognized tribes in Alaska and 17 First Nations (Native Tribes in Canada) located in the Yukon River Watershed. Staff met to discuss and answer questions on opportunities for communication with Tribal Governments with concerns about the potential siting of a nuclear reactor in Galena, Alaska, as initiated by the City of Galena in talks with Toshiba Corporation in 2003. Since its first meeting, NRC established a Tribal Consultative Team to address issues arising from YRITWC concerns about the possible siting of a reactor at Galena, and has maintained regular communications with the YRITWC. In August 2009, the YRITWC held its 2009 Bi-Annual Summit at which NRC staff participated by speaking with the Executive Directors of the YRITWC and with Tribal leaders about the development of NRC tribal protocols and the current status of the potential nuclear power reactor proposal.

West Valley Demonstration Project - Seneca Nation of Indians

In May 2002, the Seneca Nation of Indians provided NRC senior management and staff cultural sensitivity training following a NRC visit of the U.S. Department of Energy's West Valley Demonstration Project. The Seneca Nation is located approximately 20 miles downstream of the Project. Training focused on the Nation's cultural values and relationship to the environment, a tour of the Seneca Nation's Cattaraugus Territory, the history of the Seneca Nation and the Seneca and Iroquois Government, Tribal sovereignty, and Federal trust responsibilities.

Sequoyah Fuels site in Gore, Oklahoma – Cherokee Nation

In 1996, the Cherokee Nation and the NRC entered into a cooperating agency relationship regarding the reclamation of the Sequoyah Fuels Corporation (SFC) site. As a result, the Cherokee Nation, concerned with protecting possible archeological findings at the site as well as Arkansas River water quality issues, contributed to NRC's review of SFC's plans to reclaim the site.

NRC TRIBAL PROTOCOL INTERVIEWEES

Externally Conducted Interviews

1. National Congress of American Indians
2. Department of Transportation
3. Department of Health & Human Services
4. Prairie Island Tribe
5. Yukon River Inter-Tribal Watershed Council
6. Environmental Protection Agency
7. Department of the Interior, Bureau of Indian Affairs
8. Federal Energy Regulatory Commission
9. Federal Communications Commission
10. Federal Emergency Management Agency
11. State of Oklahoma
12. State of New Mexico
13. State of Minnesota

Internally Conducted Interviews

1. Office of Federal and State Materials and Environmental Programs
2. Office of Small Business and Civil Rights
3. Office of the Executive Director for Operations
4. Office of Nuclear Material Safety and Safeguards
5. Office of Public Affairs
6. Office of the General Counsel
7. Office of Nuclear Reactor Regulation
8. Office of New Reactors
9. Region II
10. Region III
11. Region IV

Federal Agency Tribal Policies

The staff examined tribal policies in place at several Federal agencies. Although each policy reflects the specific mandate of each agency, all of the policies emphasized the trust responsibility of the Federal government, tribal rights to self-government and tribal sovereignty. Additionally, the policy and practices in place underscore the fact that interaction with tribes takes place on a government-to-government level.

The policy statements and tools of implementation at the following agencies were particularly useful for NRC purposes because of their regulatory function, mission or independent nature: Environmental Protection Agency (EPA), Department of Energy (DOE), Federal Energy Regulatory Commission (FERC) and Federal Communications Commission (FCC).

Discussion of EPA

Since establishing its Indian policy in 1984, the EPA has reaffirmed its commitment to tribes on a regular basis and has developed a comprehensive tribal program that is present in program offices throughout the agency and has designated staff in both headquarters operations and regional offices. EPA last reaffirmed its policy in July 2009. The agency's policy recognizes the Federal Trust responsibility and commits to protecting the environmental interests of Indian tribes.¹ The policy underscores the importance of working with tribes on a government-to-government basis and recognizes tribal governments as the primary party for setting standards, making policy and managing programs for reservations consistent with EPA standards. The policy also emphasizes the EPA's commitment to encouraging and assisting tribes in assuming such regulatory and program management responsibilities. The EPA established the American Indian Environmental Office (AIEO) to manage the EPA National Indian Program. The agency's tribal program has evolved greatly since its inception and offers resources to both EPA employees and tribal governments.

Headquarters Staff – The EPA's central point of contact for tribes is the AIEO. The office oversees grant funding for tribal environmental programs, provides policy guidance and provides training to employees regarding tribal-related issues. The EPA also established the National Tribal Operations Committee (NTOC) whereby the EPA administrator and senior-level management represent the EPA while 19 elected tribal leaders represent tribal interests. The committee helps shape policy and budget to meet the needs of Indian Country.

Regional Staff – Each of the 10 EPA regions has a designated Tribal Office, addressing tribal issues within the region. Additionally, many of the regions have published practices and protocols specific to the region that govern interaction with tribal governments. Regional Tribal Operations Committees also exist that serve as the regional equivalent of the NTOC.

Training and Resources – The EPA offers a wide array of resources related to tribal-issues. The agency developed the American Indian Tribal Portal, offering information to tribes regarding EPA contacts, environmental laws and regulations, tribal organizations, maps, grants and training opportunities.² Training opportunities are not only available to tribal members, but to EPA employees. The agency offers tribal-related classroom training for employees along with online training that is easily accessible.

¹ EPA Indian policies and reaffirmations can be viewed on the EPA website at <http://www.epa.gov/tribalportal/basicinfo/epa-policies.htm>.

² The EPA American Indian Tribal Portal is located at <http://www.epa.gov/tribal/>.

The EPA's FY 2010 budget request of \$10.5 billion in discretionary budget authority and 17,384 Full Time Employees included \$62.9 million to fund the Tribal General Assistance Program that helps 572 Federally-recognized tribes and intertribal consortia to develop, implement and assume environmental programs.³ The EPA tribal program is comprehensive and penetrates regional and program offices that go beyond the agency's central tribal office established at headquarters.

Discussion of DOE

The Department of Energy's (DOE) central mission is to advance the national, economic and energy security of the United States. Additionally, DOE promotes scientific and technical innovation in support of that mission and ensures the cleanup of the national nuclear weapons complex. The FY 2010 budget request asked Congress for \$26.4 billion in discretionary funding and 16,971 full time employees.⁴ DOE's interaction with tribes takes place in most of the Department's programs, including: fossil fuels, energy efficiency and renewables, energy deregulation, energy education and environmental management and cleanup. The Department maintains cooperative agreements with tribal nations that are directly affected by DOE operations.

In 1992, DOE issued its first American Indian Policy along with DOE Order 1230.2 that established the responsibilities and roles of DOE management in carrying out its policy. In 1998, at the request of Indian nations, the Policy was revised. In 2006, the American Indian Policy was replaced with and superseded by the DOE American Indian and Alaska Natives Tribal Government Policy. The 2006 policy is intended to ensure an effective implementation of a government-to-government relationship with American Indian and Alaska Native tribal governments. It recognizes the Federal trust relationship and responsibilities of the Federal government. The policy also demonstrates a commitment to the following: government-to-government relations with tribes, ensuring an integration of Indian nations into the decision-making process and compliance with Federal laws and Executive Orders that assist in the preservation and protection of historic and cultural sites and religious practices.⁵

Each DOE program office has a point of contact for Indian issues.⁶ Additionally, the Department offers a variety of resources for both tribes and staff, including web-based materials, publications, training and outreach. Nuclear waste is just one example of issues that fall within DOE's jurisdiction that requires government-to-government interaction with tribes. The Office of Environmental Management (EM) is involved in the cleanup of nuclear wastes at sites and facilities throughout the country. As a result, EM frequently interacts with tribal communities located near nuclear weapons production sites. The EM program includes tribes in pertinent cleanup decisions through cooperative agreements, agreements-in-principle and memorandum-of-understanding. EM engages in several cooperative agreements and special initiatives with tribes.⁷ In 1989, DOE established the State and Tribal Government Working Group (STGWG)

³ The EPA's FY 2010 Budget Request can be viewed online at <http://www.epa.gov/ocfo/budget/2010/2010bib.pdf>.

⁴ This number includes 1,528 FTEs for the Federal Energy Regulatory Commission (FERC) who submit their budget through DOE.

⁵ The U.S. Department of Energy American Indian and Alaska Native Tribal Policy can be found online at: http://apps1.eere.energy.gov/tribalenergy/pdfs/dae_indian_policy2006.pdf.

⁶ See Appendix 2 of *A Guide for DOE Employees: Working with Indian Tribal Nations* (December 2000). This publication can be viewed online at: <http://www.em.doe.gov/pdfs/tribal.pdf>.

⁷ Additional information regarding the DOE's Office of Environmental Management's tribal programs can be found online at: <http://www.em.doe.gov/tribalpages/initiatives.aspx>.

to help ensure that DOE facilities comply with all applicable Federal and State laws and regulations and tribal rights. EM has also incorporated tribal governments in several different initiatives related to the transport of hazardous, particularly radioactive, materials.⁸

Discussion of FERC

The Federal Energy Regulatory Commission (FERC) is an independent regulatory agency that oversees the interstate transmission and sale of electricity, natural gas and oil. Additionally, the agency licenses and inspects private and state hydroelectric projects. FERC is similar to the NRC in both its regulatory responsibilities and independent nature. The FY 2010 Budget request asked for \$298,000,000 in funding and 1,528 full time employees.⁹ The agency issued its Policy Statement on Consultation with Indian Tribes in Commission Proceedings in 2003, in order to facilitate tribal involvement in areas that fall within FERC's regulatory jurisdiction. The Statement stemmed from tribal issues related to hydroelectric licensing, recognizing the sovereignty of tribal nations and reinforcing the agency's trust responsibility to Indian tribes. The policy also established a Tribal Liaison position along with certain required actions for the hydroelectric licensing program.

FERC has one Tribal Liaison position that is part of the Office of General Counsel and there is no designated Tribal Office. Consultation with tribal governments takes place during the hydroelectric licensing process when necessary and typically occurs during the early stages. FERC notifies tribes no later than 30 days after the receipt of the notice of intent and pre-application for hydroelectric projects. Currently, there are no tribal publications or designated web pages on the FERC website. The Tribal Liaison does not serve as an advocate of tribes, but acts as a bridge between the agency and the tribal community.

Discussion of FCC

The Federal Communications Commission (FCC) was established by the Communications Act of 1934 and regulates interstate and international communications by radio, television, wire, satellite and cable. The FY 2010 Budget request asked Congress for \$335,794,000 and 1924 full time employees.¹⁰ In June of 2000, The FCC adopted the Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes. The policy reaffirms the principles of tribal sovereignty and the Federal trust responsibility. Additionally, the FCC identified several goals and principles which would promote a regulatory process that involves the establishing working relationships with tribal governments, consultation with tribal governments along with coordination to which they were committed in the agency's interaction with tribal governments including, but not limited to: working on a government-to-government basis to ensure adequate access to communications services, consulting with tribal Governments prior to regulatory action or policy implementation affecting tribal land and resources, establishing a working relationship with tribal governments, coordinating with tribal governments and establishing procedures to educate agency staff about tribal governments and culture. The FCC has taken several steps to address the lack of telecommunications deployment throughout Indian Country.

⁸ Please consult *Transportation Resources for Tribes* (July 2003) for additional information. This booklet can be viewed online at: http://www.em.doe.gov/PDFs/transPDFs/tribal_booklet803.pdf.

⁹ The FERCs FY 2010 Budget Request can be viewed online at: <http://www.ferc.gov/about/strat-docs/FY10-budg.pdf>.

¹⁰ The FCC's FY 2010 Budget Request can be viewed at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290641A1.pdf.

The FCC has one Tribal Liaison position that is part of the Intergovernmental Affairs Office and there is no designated Tribal Office. The Liaison's budget requests are submitted to Intergovernmental Affairs. There is no mention of tribes in the agency's governing statutory authority. Each program office has a designated tribal contact, but these individuals have several additional responsibilities. The FCC does not have a tribal contact in any of its five Bureaus. The agency has a tribal page on the FCC website dedicated to tribal initiatives.¹¹ Tribal-related training for employees is available online utilizing a program developed by the EPA. The Tribal Liaison conducts outreach to the tribal community on an ongoing basis by visiting individual tribes and attending tribal conferences and events.

¹¹ The FCC's Tribal Homepage can be viewed at: <http://www.fcc.gov/indians/>.