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CONSOLIDATED GROUP OF TRIBES AND ORGANIZATIONS

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February 25, 2000

The Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Attn: Rulemakings & Adjudication Staff

DOCKET NUMBER PROPOSED RULE PR 71 + 73
(64FR71331)

Dear Secretary:

I am writing in response to the Advance Notice of Proposed Rulemaking, (ANPR) pertaining to the Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste that was published on December 21, 1999.

The Consolidated Group of Tribes and Organizations, (CGTO) is comprised of 17 tribes and organizations from Nevada, California, Utah and Arizona. Each of these entities have worked closely with the U.S. Department of Energy's Yucca Mountain Site Characterization Project because of their demonstrated cultural and historic ties to the proposed repository site.

Since our original involvement in 1987, the CGTO has continuously pointed out the absence of equal consideration given to the tribes and the necessity of fulfilling the Department of Energy's trust responsibility. Clearly, this concern includes the necessity of being appropriately informed about important issues such as transportation of certain types of nuclear waste on or near tribal lands.

The CGTO sees the ANPR as a positive first step in addressing the issue of advance notification of future shipments of certain types of nuclear waste to or across the boundary of tribal lands. This proposal is considered to be quite appropriate and in direct response to tribal concerns pertaining to initiating government-to-government relations with those tribes that would be either directly or indirectly impacted. In direct response to some of the questions that must be considered before implementation, I would respectfully offer the following information for your review and consideration.

Question 1

Is the listing of Federally Recognized Tribes that is published by the Bureau of Indian Affairs an appropriate list to identify the tribes? Are there any other sources that may be appropriate?

Response:

The listing of Federally Recognized Tribes that is published annual in the Federal Register would be an appropriate means to identify which tribes are federally recognized. However, since this is only a listing and does not give geographic descriptions nor identify any other lands that may have tribal interests, it would be necessary to notify each tribe directly that is on or near the proposed shipping corridors to ensure appropriate notification.

Question 2

How can the NRC ensure that contact information is kept current, particularly for smaller tribes? With the States, an opportunity is provided to update its information annually. Should the NRC follow the same approach for Tribes?

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c/o Las Vegas Indian Center • 2300 W. Bonanza Road • Las Vegas, Nevada 89106

Response:

The NRC should make a concerted effort to initiate consultation directly with each tribe that is on or near proposed shipping corridors. Each tribe should be allowed the opportunity to provide updates on an annual basis similar to the provisions that are provided to the States.

Question 3

How can licensees effectively and efficiently provide notification to Indian Tribes of schedule change that would require updated notification by telephone at any time of the day?

Response:

Each tribal government is responsible for electing their leadership by way of a tribal council and chairperson. Since each tribe has the responsibility of implementing their own law and order codes, it would be appropriate to request a copy of the preferred notification protocol from each tribe due to potential variances. In the event of a schedule change for any future shipments on or near tribal lands, a tribe may elect to have their tribal chairman or other designee responsible for notification, while others may desire to have their tribal police departments or other tribal entities appointed for this task.

Question 4

In what ways can licensees comply with this advance notification requirement, while keeping their administrative burden at a minimum?

Response:

Similar notification procedures to the States that are found at 10 CFR, Part 71,could be easily replicated for each tribe that is potentially impacted by the shipments. While the intent of the question is to minimize the administrative burden of licensees, it is important to note that member tribes of the CGTO have not received any funding to prepare for oversight activities, infrastructure development including preparation of future shipments. As such, member tribes may not have the adequate modes of communications necessary to receive advance notifications. Initially, it appears that the administrative burden would not be increased and is required as part of the Department of Energy's trust responsibility. Equally important is the right of tribes to protect their citizens and have the "Need-to-Know."

Question 5

If a shipper is unable to make contact with a Tribe prior to or during a shipment, should the shipment proceed?

Response:

Similar consideration should be given to Tribes as they are for States, i.e., if the shipper was unable to make contact with the Governor or his designee as required, would a shipment be permitted to proceed? It is important that there is consistency in notification and shipping procedures with tribes as there are with other states or federal agencies.

Question 6

How can licensees effectively and comprehensively identify the location of Indian Tribes along particular vehicle, rail, or vessel shipment routes?

Response:

A systematic approach must be developed to properly identify all Indian tribes along particular routes slated for shipments of certain types of Nuclear Waste. The CGTO has maintained this position since the inception of the Yucca Mountain Site Characterization Program to ensure that advance notifications were properly received. For purposes of the culturally affiliated tribes and organizations represented by the CGTO, it would be appropriate for the Nuclear Regulatory Commission and the Department of Energy to use the existing Native American Interaction Programs to assist in the identification of tribal boundaries. These programs could serve as the conduit to ensure that accurate addresses are identified and correspondence is being forwarded to each tribal government. As for other tribes located outside of the CGTO's region of influence, it would be prudent to incorporate a similar mechanism to identify tribal boundaries that are along particular shipment routes.

Question 7

Should the DOE and NRC licensees develop and maintain a central database regarding the location of Tribal lands? Should the NRC use Geographic Information Systems (GIS) resources to provide licensees with information regarding the location of Tribal lands?

Response:

Both the DOE and NRC should develop and maintain a central database to identify the location of tribal lands. The information that is provided should be forwarded to each tribe along the transportation corridor to ensure accuracy. The use of a Geographic Information System to identify the location of tribal lands should be provided to each tribe potentially impacted to ensure accuracy prior to distribution to licensees.

Question 8

What types of tribal lands should the rule apply to (e.g., Trust Lands, Fee Lands, (i.e., lands owned by Indians but not held in trust by the federal government) etc.)?

Response:

Advance notification should be applied to all shipments that run on or near reservation boundaries. This would include trust lands, fee lands or other areas that might contain Traditional Cultural Properties or other important sacred sites located outside of the reservation boundaries.

Question 9

Should advance notification of spent fuel shipments be provided to any federal recognized tribe when spent fuel shipments are transported to or across tribal boundaries?

Response:

Advance notification should be provided to all federally recognized tribes where shipments of spent nuclear fuel is transported on or near their respective boundaries. This is particularly important since each tribal government is responsible for protecting their citizens and implementing laws in their best interest.

Question 10

Should the NRC expand the "Need-to-Know" requirement for advance notification of spent fuel shipments to include federally recognized tribes?

Response:

Currently, the "Need-to-Know" requirements do not include advance notification for spent nuclear fuel shipments transversing boundaries of federally recognized tribes. Therefore, the existing requirement should be expanded to include notification of federally recognized tribes.

Question 11

Does a wider dissemination of shipment information increase the risk to safeguarding spent fuel shipments i.e., protecting public health and safety?

Response:

Each tribal government has a similar responsibility to protect the health and safety of their citizenry equal to federal, state and local governments. Clearly, proper training must be provided to the tribes in order to safeguard spent fuel shipments. Notwithstanding, there does not appear to be any increase risk to future shipments with the inclusion of tribal governments but moreover increases the provisions of protecting the health and safety of tribal citizens.

Question 12

How should the NRC address any increase in risk compared with the benefits to be gained from tribal notification?

Response:

Public health and safety is of primary concern to tribal governments. Every tribe who participates in this process should be thoroughly advised of their responsibility relating to Safeguards Information and advance notification of spent fuel shipments. Similar provisions relating to potential risks in notifying State governments should be equally applied to Tribal governments.

Question 13

How should the rule address the point of contact for Safeguards Information in the context for tribal notification?

Response:

Each Tribal Chairperson or his designee should be identified as a point of contact for Safeguards Information. Similar language should be adapted to include notification provisions for Indian tribes.

Question 14

A recipient of Safeguards Information must expend resources to ensure the information is handled properly. Are there tribes who may not wish to be recipients of Safeguards Information?

Response:

To date, tribes have not been afforded the opportunity as States to receive funding to develop their infrastructures. Nonetheless, tribes maintain duly elected tribal governments that are recognized by the United States and are consequently responsible for the public health and safety of their tribal members. Potentially, there may be tribes who may not wish to be recipients of Safeguards Information due to the absence of the resources necessary, i.e.,

appropriate funding. Those tribes that have been identified along transportation corridors should be granted funding to obtain the resources necessary to ensure that information is handled properly. Irrespective of funding, a decision not to participate should be left up to each individual tribe and not determined by anyone else.

Question 15

If a tribal government receives Safeguards Information, should the NRC review the Tribe's actions to control and protect Safeguards Information?

Response:

Due to the importance of Safeguards Information, the NRC should impose similar requirements with tribes and with any federal or state government who receives Safeguards Information.

Question 16

10 CFR 73.21(a) states that "information protection procedures employed by State and local police forces are deemed to meet the information protection requirements of Section 73.21(b) through (1)" Should the NRC determine the ability of tribal governments to protect Safeguards Information and, if so, how?

Response:

Equal consideration should be granted to Tribal Governments as they are to State and local police forces. Similar standards should be applied to tribal governments to protect Safeguards Information. Clearly, State Governments and local police forces have the funding mechanisms and infrastructure in place to support the development of information protection procedures. Although, most tribes have the capacity to protect Safeguards Information, provisions should be implemented to provide direct funding to each impacted tribe.

Question 17

Should the proposed rule include an exemption to the notification requirements if there is reason to believe that a Tribe will not be able to protect the Safeguards Information form disclosure? What basis would the NRC need for granting such an exemption?

Response:

A provision for exemption should be included in the proposed rule in the event a Tribe is unable to protect the Safeguards Information form disclosure. Serious consideration must be given to the responsibility of each tribal government to their member. In the event of an accident, the tribal government could potentially be called upon to be the person designated to coordinate activities on tribal lands. Conversely, with the adequate resources and training, those tribes wishing to participate in this process should be able to maintain the Safeguards Information as required.

Question 18

Should 10 CFR 73.37(f) be changed to allow the licensee to provide rather than required to release Safeguards Information.

Response

10 CFR 73.37(f) should be changed to require licensees to release Safeguards Information to each participating Tribal Chairperson or his designee. To merely "*provide*" rather that "*require*" appears to diminish the equity that is necessary and should be granted to each tribal government.

In closing, I would urge you to seriously consider the merits of this letter and other comments that are being submitted by individual tribes. I implore you to examine the possibility of providing the necessary funding and technical support to Tribal Governments so that they can better respond to the intent of the Advance Notice of Proposed Rulemaking.

Sincerely,

Richard W. Arnold
CGTO Spokesperson

cc: CGTO
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