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Department of Energy
Washington, DC 20585

March 21, 2000

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The Honorable Richard A. Meserve
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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

Dear Mr. Chairman:

The Nuclear Regulatory Commission (NRC), on Tuesday, December 21, 1999, published in the *Federal Register* an Advance Notice of Proposed Rulemaking–Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste. The NRC's Notice stated that it is considering an amendment to its regulations at 10 CFR Parts 71 & 73 that would require NRC licensees to notify Native American Tribes of shipments of certain types of high-level radioactive waste, including spent nuclear fuel, prior to transport to or across the boundary of Tribal lands. The NRC has requested comments from affected parties and the public on this issue.

The U.S. Department of Energy strongly supports the advanced notification of Native American Tribes of certain types of high-level waste and spent nuclear fuel shipments. We should afford the Native American Tribes the same privileges and responsibilities as all others currently enumerated in the regulations. Tribal notification is consistent with our departmental policies that both respect and honor the sovereignty of Tribal governments.

We thank you for the opportunity to comment on this issue. The enclosure includes comments on the *Specific Considerations* section of the Notice. We encourage the NRC to actively pursue this proposed rulemaking.

Sincerely,

Carolyn L. Huntoon

Carolyn L. Huntoon
Assistant Secretary
for Environmental Management

Ivan Itkin

Ivan Itkin, Director
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cc: w/enclosure

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DOE Response to "Specific Considerations"

A. Developing a List of Native American Tribe Contacts

A-1 The DOE agrees with NRC that the Bureau of Indian Affairs (BIA) is probably the federal agency with the best and most updated information on the Tribes. The BIA works with the United States Geological Survey (USGS) to keep their Geographic Information System data base updated and current.

A-2 The Point of Contract ((POC) update process for States and Tribes should be similar. The NRC might designate a POC for this activity. This person could maintain agency contact with each Tribe, update the files, and facilitate education and information dissemination, particularly for the Tribes on potential transportation corridors.

A-3 The NRC POC would be the best person to be in charge of making sure that the "licensees" will have emergency numbers to reach the proper Tribal authority in case of a schedule change.

B Minimizing the Licensees' Administrative Burden

B-1 DOE suggests that the NRC seek effective and efficient communication methods and that the methods and approach are consistent for States and Tribes.

B-2 DOE recommends that the NRC clarify the procedures for this event and others that may affect proposed shipments.

C. Identifying the Location of Tribes Along Shipment Routes

C-1 The BIA keeps maps to identify tribal lands and directories of tribal leaders.

C-2 DOE will gladly discuss technical details of our recent GIS and routing model efforts which incorporate Tribal Reservation land boundaries.

C-3 The rule should apply for all federally recognized Tribal and Reservation land.

D. Safeguards Information

D-1 Yes, all federally recognized Tribes directly involved with a specific shipment (i.e., spent fuel transported to or across Tribal boundaries) should receive notification of shipments.

D-2 See D-1

D-3 DOE strongly discourages "wider" dissemination of shipment information particularly shipping schedules, itineraries and security measures beyond that discussed in D-1 above.

D-4 The NRC should determine the point of contact through consultation with each Tribe.

D-5 The DOE believes the response is more appropriately made by the Tribes.

D-6 The NRC must ensure that a Tribe has some type of control for safeguarding the information and preventing unauthorized disclosure. The requirements should be similar to those for the States.

D-7 See D-6

D-8 This is a matter for the NRC's determination.

D-9 The format should remain as a requirement rather than a permissive format. The DOE believes the Tribes should be afforded the same privileges and responsibilities as other entities currently enumerated in the regulations..