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Kaibab Band of Paiute Indians

March 17, 2000

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

Re: Rulemaking and Adjudication Staff

DOCKET NUMBER
PROPOSED RULE PR 71 & 73
(64FR 71331)

Dear Mr. Secretary:

The Kaibab Paiute Band of Indians is responding to the Advance Notice of Proposed Rulemaking (ANPR) with regard to the Advance Notification to Native American Tribes of the Transportation of Certain Types of Nuclear Waste (published in the Federal Register on December 21, 1999).

Kaibab is a group member of the Consolidated Group of Tribes and Organizations, (CGTO), who have continued to work closely with the U.S. Department of Energy and its Yucca Mountain Site Characterization Project.

Throughout our participation, we have voiced our concerns about being informed about issues such as transportation of certain types of nuclear waste on or near our tribal lands.

We see the Advance Notice of Proposed Rulemaking (ANPR) as a good way to address the issue of advance notification of future shipments of certain types of nuclear waste to or across the boundary of our tribal lands. The proposal within the ANPR is appropriate and in direct response to our concerns especially as it relates to the government-to-government relationship with tribes who would be directly or indirectly impacted. Our response to some of the questions asked, before implementation, is as follows:

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 annually in the Federal Register would be an appropriate means to identify tribes who are federally recognized. Since this is only a listing and doesn't give geographic descriptions nor identify any other lands that may have tribal interests, it would be necessary to notify each tribe directly which is on or near a proposed shipping corridor to ensure appropriate notification.

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How can the Nuclear Regulatory Commission 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?

Response: Consultation is a must. The NRC must make every effort to consult with each tribe who are on or near proposed shipping corridors. Updates from the tribes should be provided annually, similar to the provisions to that of the States.

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: The NRC must 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.

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

Response: 10 CFR, Part 71, could be easily replicated for each tribe that is potentially impacted by the shipments. If notification procedures can be made to the States, then notification to tribes is also in order. Whether or not it is known, there still lacks funding for the tribes who have continued to work on the Yucca Mountain Project. We have no funding to prepare for oversight activities, infrastructure development including preparation for future shipments, and probably couldn't receive advance notifications for lack of adequate communication modes. We see the administrative burden as a required part of the Department of Energy's trust responsibility. The tribes have a right to protect their citizens and have the "Need-to-Know."

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

Response: Tribes expect no less than that of States or federal agencies. If the Governor of a State hasn't received a contact from the shipper, you know that the shipment isn't going to go out.

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 shipment of certain types of Nuclear Waste. Since the beginning of our participation with the Yucca Mountain Site Characterization Program, we have maintained the position that advance notifications must be made to tribes. The NRC and DOE must 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. It would be prudent to incorporate similar mechanisms to identify other tribal boundaries located outside of the CGTO's region of influence, especially those that are along particular shipment routes.

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 licensee 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.

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.

Should advance notification of spent fuel shipments be provided to any federally 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 shipment of spent nuclear fuel is going to be 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.

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

Response: There lacks the "Need-to-Know" requirements or advance notification for spent nuclear fuel shipments transversing boundaries of federally recognized tribes, therefore, the existing requirement should be expanded to include the notification to federally recognized tribes.

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 that of federal, state and local governments. Therefore, proper training must be provided to the tribes in order to safeguard spent fuel shipments. Notwithstanding, there does not appear to be any increased risk to future shipments with the inclusion of tribal governments but moreover increases the provisions of protecting the health and safety of tribal citizens.

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 all 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 the tribal governments.

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

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.

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

Response: Similar requirements should be imposed on tribes and with any federal or state governments who receive Safeguards Information.

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 (l)." 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.

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 considerations must be given to the responsibility of each tribal government to their members. 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.

Should 10 CFR 73.37(f) be changed to allow the licensee to provide rather than be 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 or her designee. To merely "provide" rather than "require" appears to diminish the equity that is necessary and should be granted to each tribal government.

The intent of the Advance Notice of Proposed Rulemaking is so very important, and the responses from tribal governments must be given serious consideration. In fact, tribal governments need funding for technical support to better enable them to make well-informed decisions and comments to the Advance Notice of Proposed Rulemaking.

Sincerely,

CARMEN M. BRADLEY
Chairperson

CMB:vcj

Cc: Environmental Program
KPT Administrator
Tribal Council