

**POKAGON BAND OF POTAWATOMI INDIANS**

TRIBAL COUNCIL

P.O. Box 180, 53237 Townhall Rd., Dowagiac, MI 49047

Telephone 616-782-6323 / FAX 616-782-9625

(1) PHZ  
~~(2) FCC~~  
~~(3) SZO~~

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**COMMENTS ON THE  
NUCLEAR REGULATORY COMMISSION (NRC)  
ADVANCED NOTICE OF PROPOSED RULEMAKING  
(ANPR)  
NRC LICENSES TO NOTIFY INDIAN TRIBES OF  
NUCLEAR  
WASTE TRANSPORTATION THROUGH TRIBAL LANDS**

**RESPECTFULLY SUBMITTED BY:  
POKAGON BAND OF POTAWATOMI INDIANS  
REPATRIATION & TRADITION COMMITTEE  
MARCH 22, 2000**

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OSP

TEMPLATE = SECY-067

SECY-02

MAR 23 2000

**A1. Developing a list of Native American Tribe Contacts.**

All Federally Recognized Tribes set forth by the BIA, U.S. Department of Interior and possibly certain State Recognized Tribes with major Highways through their Tribal Lands

**A2. How can the NRC ensure that contact information is kept current, particularly smaller Tribes? In maintaining State contacts, the NRC provides each State with the opportunity to update its information annually. Should the NRC follow the same approach for Tribal contacts?**

Yes, this would help maintain Government to Government relations. This would also ensure that information is correct.

**A3. How can licenses effectively and efficiently provide notification to Native American Tribes, particularly smaller Tribes, of a schedule change that would require updated notification by telephone at any time of day?**

Each Tribe will have a designee with contact information, including a home number.

**B. Minimizing the Licensees' Administrative Burden**

**B1. In what ways can licensees comply with this advanced notification requirement, while keeping their administrative burden at a minimum?**

This is a two way street. This will also affect Tribes since most Tribal Offices have staff shortages. But, in today's age of computers and Data Base programs this would seem like the avenue to take. The Tribes would be willing to assist the licensees.

**B2. If a shipper is unable to make contact with a Tribe prior to or during a shipment, should the shipment proceed?**

Checks and balances should be created so that not only one phone call is made.

**C. Identifying the Location of Tribes Along Shipment Routes.**

**C1. How can licensees effectively and comprehensively identify the location of Native American Tribes along a particular vehicle, rail, or vessel shipment route?**

This is somewhat difficult. Treaties and other agreements with the United States outline "Present Day Boundaries", but do not always identify "Aboriginal Homelands". Tribes should provide to the NRC this information. The NRC should establish reasonable deadlines for Tribes to gather maps and other relevant information to outline the concerned area in which the NRC might use to transport through. Due to the shortage of resources, mainly funding and personnel, 60-90 days should be adequate. But, if the Tribes provide this information to the NRC, the NRC should honor this without question or debate.

**C2. Should DOE and NRC licensees develop and maintain a central database regarding the location of Tribal lands? Should NRC look to Geographic Information System (GIS) resources to provide licensees with information regarding the location of Tribal lands?**

Yes, databases should be utilized. The GIS would be a good place to start, but as stated above the NRC should also gather information from the Tribes and that information should be honored.

**C3. What types of Tribal lands should the rule apply to (e.g., Trust Lands, Fee Lands (i.e., lands owned by Native Americans but not held in trust by the Federal government), etc.)?**

The types of lands should consist of any and all Federally Recognized Tribal Lands, both Trust and Fee. But also should include Aboriginal Lands as well as any others identified by the respective Tribe. One major issue will create a problem. Native American Lands identified as Sacred Sites as stated in Executive Order 13007 "Indian Sacred Sites" (May 24, 1996) as well as Traditional Cultural Properties. The problem is that not all Tribes wish to disclose this information due to Grave Robbing and Treasure seekers. The following Legislation should be cross-referenced to assure the protection of these properties:

- 25 U.S.C. 3001 Native American Graves Protection and Repatriation Act
- 16 U.S.C. 470 National Historic Preservation Act
- 16 U.S.C. 470aa Archeological Resource Protection Act
- 42 U.S.C. 4321, 4331, 4332 National Environmental Policy Act

#### **D. Safeguards Information**

**D1. Should advance notification of spent fuel shipments be provided to any Federally recognized Native American Tribe when spent fuel shipments are transported to or across tribal boundaries?**

Yes, any and all Federally Recognized Tribes should be notified. Along with certain State Recognized Tribes that have major highways through Tribal Lands.

**D2. The NRC's "need-to-know" requirement for advance notification of spent fuel shipment information is found in 10 CFR 73.21. Should this requirement be broadened to include other entities, such as Federally recognized Native American Tribes?**

Yes.

**D3. Does wider dissemination of shipment information increase the risk to safeguarding spent fuel shipments (i.e., protecting public health and safety)? How should the NRC address any increase in risk compared with the benefits to be gained from Tribal notification?**

Possibly. All Tribal Governments deal with confidentiality issues and either have procedures or by-laws to protect these types of sensitive issues. The NRC should honor this. All Tribes could sign a letter or a Consent Agreement stating that all and any information disseminated by the NRC concerning shipments must be kept in the utmost of confidentiality. Perhaps sanctions could be imposed if confidentiality agreements are breached. After all this is an issue of National Security as well as World Safety. The benefit that Tribes would gain would be the same as the States benefits; Safety for their entire community.

**D4. How should the rule address the point of contact for Safeguards Information in the context of Tribal notification?**

A Tribal Resolution from the Tribal Government should identify the point of contact. This resolution would identify the person(s) as the point of contact and only this person would receive the information. This would later help the NRC sanction any individual who leaks Safeguards Information.

**D5. 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?**

This is always a possibility. The NRC should then request a letter or a Tribal Resolution from that specific Tribe, stating that this Tribe does not wish to partake in being recipients of Safeguards Information.

**D6. If a Tribal government receives Safeguards Information, should the NRC review the Tribe's actions to control and protect Safeguards Information?**

If a Tribe does not have these controls set up; it would be in the best interest of the NRC to assist the Tribe(s) in creating these controls. Each Tribe could develop their own controls, then submit them for NRC approval or adopt present controls set forth by the NRC. Annual or Quarterly reviews could also be established.

**D7. 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 Sec. 73.21 (b) through (I) "Should the NRC determine the ability of Tribal governments to protect Safeguards Information and, if so, how?"**

If Tribes request to be part of this notification process, there should be an understanding between the NRC & the Tribes, indicating that this is a matter of "National Security" and the people of the World could be put in eminent danger of Nuclear Sabotage and Nuclear Destruction if sensitive information is leaked to the public or an individual. With this understanding each Tribe should be responsible for following both Tribal and NRC guidelines to provide maximum security. Each Tribe should submit a Tribal Resolution to this effect.

**D8. Should the contemplated rule include an exemption to the notification requirement if there is reason to believe that a Tribe will not be able to protect the Safeguards Information from disclosure? What basis would the NRC need for granting such an exemption?**

This is an important consideration to National and World Security and Tribes should be able to ensure confidentiality and adequate safeguards.

**D9. Should 10 CFR 73.37 (f) be changed to a permissive form? That is, should the licensee be permitted rather than required to release Safeguards Information to responsible Tribal government officials?**

Licensees should be required to provide Safeguards Information to responsible Tribes. To determine whether or a Tribe is responsible or not, some type of consultation should take place. There should also be requirements set forth by the NRC to Tribal Governments to follow so that security measures and Safeguards Information are at the highest confidential level as possible. This issue in itself is a time bomb waiting to go off. Nuclear material is a very dangerous and volatile substance. All the people of the world could be at risk at any given time. This is a great concern to Native Americans due to our unique relationship with Mother Earth.

In addition, the NRC should also take an interest in assisting Tribal Nations in creating and/or training Tribal HAZ-MAT response teams due to the potential of Nuclear or other hazardous material transported through Tribal Lands. This is due to the unfortunate relationship between certain Tribes and certain States. States have no administrative powers over Tribes and this has historically created problems with each respective Government. The possibility of a spill happening and the State not assisting Tribal Nations with clean up is a situation that must not happen. So to avoid these possible situations Tribal Nations should have their own HAZ-MAT Response Teams.

The Pokagon Band of Potawatomi Indians respectfully submits these concerns and hopes to further create a positive relationship with the NRC.

Respectfully,



**John Miller**  
**Pokagon Band of Potawatomi Indians**  
**Tribal Chairman**

JM/ks