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USNRC

CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

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March 30, 2000

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

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

Attention: Rulemakings and Adjudications Staff

Subject: Comment on proposed rule on notification of Tribes

To Whom It May Concern:

The Confederated Tribes of the Umatilla Indian Reservation (Confederated Tribes) is highly supportive of the Nuclear Regulatory Commission's (NRC's) proposal to amend its regulations to require NRC licensees to notify American Indian tribes of shipments of nuclear material that will approach or cross reservation boundaries.

The Confederated Tribes has considerable experience working with shippers of nuclear materials. Our reservation is crossed by federal interstate highway 84, as well as the main line of the Union Pacific Rail Road's Portland, Oregon to Omaha, Nebraska route. The U.S. Department of Energy ships nuclear material from the Hanford Nuclear Reservation across our reservation on Interstate 84. The U.S. Department of Defense, Department of the Navy, ships nuclear material across our reservation using the Union Pacific Rail Road. In both cases we have cooperative agreements in place that require these entities to notify the Confederated Tribes of pending shipments.

In addition, the Confederated Tribes also has considerable capacity to deal with emergencies that might arise during shipping across the reservation. The Tribes' Fire Department has received a large amount of training in dealing with nuclear and hazardous materials accidents.

We are happy to provide the following comments on the specific issues you raise on page 71333 of your Federal Register notice.

TEMPLATE = SECY-067 SECY-02

Questions under item A:

A.1.: The BIA list would not seem to be very useful, since it does not specify the geographic area of each tribe, nor does it list the phone numbers and addresses for Tribal emergency response staff. The Confederated Tribes' Fire Chief, Kenneth Gray, suggests that you contact the Department of Energy to find out how their list is established and maintained. Apparently they provide notifications to 27 different Tribal governments.

A.2.: An annual form letter inquiry requesting notification of contact address and phone changes seems a responsible approach.

A.3.: Any tribe that provides police, fire or other emergency services will have a 24 hour dispatch system. Simply notify the dispatcher.

Questions under item B:

B.1.: First of all, this should simply be part of the cost of doing business. The fact that such notifications have not been provided in the past should be a source of shame and embarrassment to the NRC and licensees. Moreover, for "doing the right thing," this particular requirement does not seem to be very burdensome. We are talking about sending a few more letters and phone calls each year.

B.2.: The NRC's current regulations under 10 C.F.R. § 71.87(c) do not require states to acknowledge receipt of a notice. Notice may be sent by ordinary mail so long as it is post marked at least 7 days before the shipment. Given this state of affairs, we are not sure what you mean by a shipper being "unable to make contact with a Tribe". The shipper should have the address of the Tribe and should mail the letter at least seven days before the shipment. That is not a very burdensome requirement. If a shipper fails to do this, then they are in violation of the regulations.

Questions under item C:

C.1.: With a map, perhaps? Most road atlases and state highway maps indicate the location of Indian reservations. The BIA also publishes a map showing locations of reservations. The locations of tribes are not secret. You just have to look.

C.2.: This would be fine, as long as you coordinate with BIA in an attempt to assure the accuracy of all three agency's data.

C.3.: You need a bright-line rule that will be easy to apply. The most obvious rule is "all lands within the exterior boundaries of an Indian reservation." Any rule that attempted to draw distinctions between types of on-reservation lands would be impossible for shippers to apply -- there are simply too many variations from reservation to reservation. Moreover, tribes often exercise jurisdiction for various purposes over all lands within their borders -- including non-Indian owned fee land (although the circumstances vary on a case-by-case basis). In any case, there is no harm in notifying a tribe about potential impact to land that *might* be theirs, but there

is great harm in failing to notify a tribe about potential impact to land that is theirs. The default ought to be notification.

Questions under item D:

D.1.: Yes.

D.2.: Yes. Moreover, in reviewing the current regulations, we note that under 10 C.F.R. § 73.21(c)(1)(v), any "local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies" is defined as having a "need to know." By this standard, the Confederated Tribes has had a "need to know" for the past several years.

D.3.: The list of persons having a "need to know" contained in § 73.21(c) is quite broad, apparently encompassing tens of thousands of people. The addition to this list of key emergency response staff from affected American Indian tribes is unlikely to significantly enlarge this number. Of course, any increase in dissemination carries some increase in risk. Nevertheless, there have been far more accidents involving nuclear shipments than there have been terrorist attacks on nuclear shipments. Compared to the principles at stake -- including the real need for tribal emergency response staff to be prepared to assist in the case of an emergency -- the increase in risk is miniscule.

D.4.: A point of contact should be identified for each tribe, by the tribe, typically drawn from the tribe's dispatch, police, fire, ambulance or other emergency response staff. See also the answers to question A.2 and 3, and B.1.

D.5.: The Confederated Tribes already receives such information and stores it properly. Since the only concrete requirement mentioned in the regulations is the need to have a combination-locking file cabinet with limited access (§ 73.21(d)(2)), this does not seem to be a significant burden. We doubt that any tribe will consider it too high a price to pay in return for notification, but each tribe must speak for itself.

D.6.: Minimal, perfunctory review would probably not be too invasive, and seems reasonable.

D.7.: No. Any tribal government will be familiar with the need to keep certain information confidential and will have measures in place to do so. Typical governmental functions exercised by tribes (such as police investigations, social service investigations, health clinic records and, of course employment records) already require confidentiality. Indeed all governments and most private entities have such measures. It seems excessive (even insulting) for the NRC to take measures to investigate security of Tribal institutions when it assumes that local police departments are secure.

D.8.: No. We cannot imagine why this would be necessary in the context of Tribal governments, when the regulations assume any local government along the corridor is secure. The NRC should examine the assumptions behind this question for possible ethnic bias.

D.9.: No. Such a move would render this entire exercise pointless.

This concludes the comments of the Confederated Tribes of the Umatilla Indian Reservation on your advance notice of proposed rulemaking. We hope you find these responses useful. We would be happy to respond to any follow-up questions you might have. Please direct such questions to Kenneth Gray, Fire Chief, Umatilla Tribal Fire Department, P.O. Box 638, Pendleton, OR 97801 (541) 276-2126.

Sincerely,

Armand Minthorn
Member, Board of Trustees

Cc: Antone Minthorn, Chris Burford, Ken Gray

OLC:CLB