(41)

The SHOSHONE-BANNOCK TRIBES

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DEPARTMENT OF PUBLIC SAFETY
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OFFICE OF SECRETARY
RULEMAKINGS AND ADJUDICATIONS STAFF

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

Attn: Rulemakings and Adjudications Staff

Dear Secretary:

Enclosed you will find my "Comments to NRC 10 CFR 71 and 73". I have forwarded a copy to the Shoshone-Bannock Tribes, Fort Hall Business Council.

If you have any questions, please feel free to contact me at the number listed above. Thank you.

Sincerely,

Reginald Thorpe, Director

RT/lw

cc: file

TEMPLATE = SECY-067

SECY-02

COMMENTS TO NRC 10 CFR 71 AND 73
ADVANCE NOTIFICATION TO NATIVE AMERICAN TRIBES OF TRANSPORTATION OF CERTAIN TYPES OF NUCLEAR WASTE
PREPARED BY: REGINALD THORPE, PUBLIC SAFETY DIRECTOR
DATE: 04/19/00

SPECIFIC CONSIDERATIONS

A. ***Developing a List of Native American Tribe Contacts***

A.1. In preparing the list of Tribal contacts, the NRC would most likely look to the list of Federally Recognized Native American Tribes maintained by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior. Is this an appropriate approach? Are there any other sources that the NRC should consider?

Include in all parts of 10 CFR 71 and 73 where states are mentioned, include "Tribes", so it will read..."States, Tribes and local governments..."

A.2. How can the NRC ensure that contact information is kept current particularly for smaller Tribes? In maintaining State contacts, the NRC provides each State with the opportunity to update its information annually. Should NRC follow the same approach for Tribal contacts?

Tribes Tribal Leaders are labeled with varying titles, depending on the tribe and where "State Governors" are identified by title pertaining to state leaders, identify Tribal leader as "Tribal Chair" pertaining to any Federally Recognized Tribal Leadership. Establishing business contacts with Tribes affected and good Public Affairs is a good start.

A.3. How can licensees 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?

Develop a list of Federally Recognized Tribes, recognizing that some Tribes populations have been geographically segregated populations that have an identified government agency location that would be responsible to particular population(s) affected by a licensees nuclear shipment. This would be a means of how a licensee would effectively and comprehensively identify the location of Native American Tribes, through identifying the Tribal Government Leadership to identify such a Tribes affected population. Otherwise, Tribes with non-segregated population geographics within one whole area. Contact points to Tribal government leadership or their assigned designee after established, that Tribe or designee should provide contact information updates as states. Tribes need to identify a 24-hour contact, for NRC licensee of notifications and schedule changes. Contact points or persons would be the Tribes most responsible consideration such as Tribal Chair, or designee or Law Enforcement or Emergency Management or Environmentalist, or Fire Department.

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

B.1. In what ways can licensees comply with this advance notification requirement, while keeping their administrative burden at a minimum?

Question = Answer; Licensee can phone in notification with a written notification verification in the mail, coinciding with States Notification.

If a shipper is unable to make contact with a Tribe prior to or during a shipment, should the shipment proceed?
If proper planning has been conducted with a Tribe and contact sources identified, pre-shipment notifications called in and sent by mail, and the Tribe doesn't make themselves available for any possible schedule changes then the shipment would proceed as usual.

C. ***Identifying the location of Tribes along Shipment Routes***

C.1. How can licensees effectively and comprehensively identify the location of Native American Tribes along particular vehicle, rail, or vessel shipment route?
This would be a means of how a licensee would effectively and comprehensively identify the location of Native American Tribes, through identifying the Tribal Government Leadership to identify such a Tribes affected population. Otherwise, Tribes with non-segregated population geographics within one whole area.

C.2. Should DOE and NRC licensees develop and maintain a central data base regarding the location or Tribal lands? Should NRC look to Geographic Information System (GIS) resources to provide licensees with information regarding the location of Tribal lands?
A central database would not need to be established when the BIA already should have one and be used as a resource. The NRC could use GIS Resources to provide Tribes with information regarding the location of tribal land boundaries so the Tribes could provide licensees information of tribal lands.

C.3. 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 for Indian Reservations (Tribal, Fee, Trust of all categories) that should apply to the rule are those within the Jurisdictional Exterior Boundaries, where Reservations apply. Tribal lands encompassing communities, villages, etc., should apply to the rule.

D. ***Safeguards Information***

D.1. 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, to any Native American Tribe affected by the transportation of SFS to or across Tribal boundaries.

D.3. 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, the NRC rule of "Need-to-know" should be broadened to include Native American Indian Tribal Government Chairs, their designee or Law Enforcement if they have Law Enforcement.

D.3. Does wider dissemination of shipment information increase the risk to safeguarding spent fuel shipment (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?

No. Risks to broaden notifications to Native American Indian Tribes are presently more at risk without Tribes being included in the rule.

D.4. How should the rule address the point of contact for Safeguards Information in the context of Tribal notification?

NRC should address point of contacts through proper pre-planning agreements by licensees with Tribes affected with any particular SFS. Licensees have that responsibility because their various parties are always making new routes that affect different Tribes at different times as well as states.

D.5. A recipient of Safeguards Information must expand resources to ensure the information is handled properly. Are there Tribes who may not wish to be recipients of Safeguards Information ?

They may be extended geographically segregated communities, villages, or townships of a Tribe that may not want or be allowed Safeguard Information. That information would be forwarded to the Tribal Agency holding the Tribal Chair. Where geographically located communities, villages, townships are encompassed within one boundary, safeguards information flows to the Tribal Chair, his designee and or Law Enforcement head on a need to know basis, (Fort Hall).

D.6. If a Tribal government receives Safeguards Information, should the NRC review the Tribe's actions to control and protect Safeguards Information?

NRC review of the Tribes Safeguards Information action would be appropriate for those Tribes, that are new to such action. It would help Tribes with that information to ensure themselves they have good safeguard procedures.

D.7. 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 § 73.21 (b) through (i). "Should the NRC determine the ability of Tribal governments to protect Safeguards information and, if so, how?

NRC should <u>work with</u> Tribes establishing a determination of ability by Tribes to safeguards information. Tribes are Nations with varying degrees of safeguard abilities. Like other Nations, (Canada & Mexico) determination of Tribal Nations would be a diplomatic process.

D.8. 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?

Yes, an exemption may apply to a Tribe that may not be able to protect safeguards information from disclosure. The basis for this would be a Tribes inability to protect it's

own jurisdiction of a SFS. The licensee needs to ensure a reasonable response for such a Tribe from nearby emergency resources with a Memorandum of Agreement. That process has been developed with one such Tribe, Pyramid Lake. Safeguards Information disclosure by a irresponsible Tribal government official would be grounds for NRC to investigate the extent of circumstances in determining to cancel safeguards information to a Tribe.

D.9. 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?

A licensee should be required to release Safeguards Information to responsible Tribal Officials for coordination and safety reasons. Otherwise, why is NRC even considering this Comment Agenda?