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TOHONO O'ODHAM NATION
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The Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff

Website: <http://ruleforum.llnl>

Attached are the Comments of the Tohono O'odham Nation, a federally recognized Indian Nation in Arizona, on the proposed "Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste," published in the Federal Register on December 21, 2000 to amend 10 CFR Parts 71 and 73.

Very truly yours,

Jonathan L. Jantzen
Assistant Attorney General

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COMMENTS

OF THE TOHONO O'ODHAM NATION
ON THE PROPOSED RULEMAKING ENTITLED

“ADVANCE NOTIFICATION TO NATIVE AMERICAN TRIBES
OF TRANSPORTATION OF CERTAIN TYPES OF NUCLEAR WASTES”
10 CFR Parts 71 and 73

March 22, 2000

I. Background

The Tohono O'odham Nation (“Nation”) is a federally recognized Indian Nation with 23,000 enrolled members. It's land base consists of approximately 3 million acres, or 4,500 square miles, in southern Arizona. The main highway through the reservation is State Route 86, which is an east-west highway between Tucson and Ajo, Arizona. This highway is a narrow paved highway with no shoulders. It carries a high volume of automobile traffic. Therefore it should not be used for nuclear waste transportation. No railroads traverse the Nation's lands.

The Nation is opposed to the shipment of nuclear waste through its lands. However, if nuclear waste shipments do occur or will be occurring, the Nation requests that the Chairman of the Nation or his designee be notified in advance of all shipments. The Nation encourages the Nuclear Regulatory Commission (“NRC”) to adopt a rule which requires NRC licensees to notify Native American Tribes and Nations of all shipments of nuclear waste prior to crossing tribal boundaries.

The following are the Nation's comments on the questions posed by the NRC in the Federal Register of December 21, 1999.

II. Comments

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, U.S. Department of the Interior. Is this an appropriate approach? Are there any other sources that the NRC should consider?

Yes, the BIA list of federally recognized Native American Tribes would be an appropriate source for the preparation of a tribal list.

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?

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The NRC should treat Tribes in the same way as States, and annually mail an update form to each Tribe to update its list of contact persons. In the case of the Tohono O'odham Nation, the update request letter should be sent to three addressees: (1) the Chairman, (2) the Director of the Department of Public Safety, and (3) the Environmental Office, all at P.O. Box 837, Sells, Arizona 85634.

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?

The Tohono O'odham Nation operates its own tribal police department. The police department operates a 911 number and a dispatch system. The contact information which the NRC provides to licensees should list the telephone and fax numbers of the police dispatch station. The police dispatcher would have the home telephone number and cellular number of the Director of the Department of Public Safety, and would notify the Director of schedule changes .

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

Licensees can contact the designated official of the Nation by mail, by fax, or by electronic mail. Use of fax or e-mail would reduce the administrative burden.

B.2. If a shipper is unable to make contact with a Tribe prior to or during a shipment, should the shipment proceed?

No, the shipment should not proceed through tribal lands until advance notice has been successfully completed. The Nation has a police dispatch telephone number open 24 hours a day. There is no reason that contact cannot be made at any hour of day or night.

C.1. How can licensees effectively and comprehensively identify the location of Native American Tribes along a particular vehicle, rail or vessel shipment route?

The NRC should obtain current maps from the Bureau of Indian Affairs showing the location of all Tribal lands. The NRC should then distribute these maps to all licensees who ship nuclear waste.

C.2. Should DOE and NRC licensees develop and maintain a central data base 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, it would be useful for the NRC to develop and maintain a central data base for its licensees showing the location of Tribal lands. This database should incorporate GIS data.

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However, GIS data should not be the only source of information. Tribes may want to designate highways immediately adjacent to Tribal lands as highways on which they also want to receive notice. These tribal requests should also be a source of information for the data base.

C.3. What types of Tribal lands should the rule apply to (e.g. trust lands, fee lands, lands owned by Native Americans but not held in trust by the Federal government)?

The notice rule should apply to all categories of lands within reservation boundaries.

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.

D.2. 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. Tribes have the same reasons for needing to know in advance about the routes of nuclear waste shipments as States have.

D.3. 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?

If the Nation's Department of Public Safety or Police Department are utilized as the point of contact, there will be no increase in risk. These departments and officials will be able to develop a system for keeping the information confidential.

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

The Tribe should be asked to certify that its contact personnel have been trained and made aware of their duty of confidentiality regarding shipment of spent nuclear fuel or waste.

D.5. 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?

It is very likely that all Tribes will want to receive Safeguards Information regarding transporters of spent nuclear fuel or other nuclear waste. Tribes realize the hazards from traffic accidents involving nuclear shipments, and will want to be prepared. However, if a Tribe could not provide the security for the information and didn't want to be notified, that tribe could simply

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inform the NRC and ask to be taken off of the list of entities to receive Safeguards Information.

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

Yes. The NRC should review Tribal commitment to security and its system of controlling information to the same extent as it reviews the States' actions.

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?

Tribal police departments should also be deemed to meet the information protection requirements. The NRC may want to audit or review them periodically, just as it should do with State and local police departments.

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, there could be an exemption to the notification requirement for Tribes that will not be able to protect the information from disclosure. The basis should be that the NRC has a reason that can be articulated in writing, based on information that can be demonstrated. The NRC should give a Tribe an opportunity to demonstrate its competence in protecting information before the NRC takes an action to exempt the 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?

No. Licensees should be required to release Safeguards Information to Tribal officials just as much as to State officials.

Thank you for the opportunity to submit comments.