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March 17, 2000

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

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AD

DOCKET NUMBER
PROPOSED RULE **PR 71 + 73**
(64FR71331)

Attention: Rulemakings and Adjudications Staff

Reference: Federal Register notice dated December 21, 1999: "Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste"

Dear Sirs:

I wish to comment on the referenced Advance Notice of Proposed Rulemaking. This rulemaking is important, since power reactors will ship spent fuel off site, as soon as a suitable repository is available.

I support the principle of tribal notification, which will assure that sovereign tribes that are potentially impacted by spent fuel shipments are provided with the appropriate information on these potential impacts. I also advocate rulemaking which will assure that this notification is accomplished in a way which does not place an undue burden on licensees and which assures that safeguards information is protected.

This can best be accomplished by having the NRC staff perform this notification, using the information provided by the licensee. This will minimize the burden on the licensee, since the licensee is already required to provide this notification to the NRC, assure that the appropriate parties are notified, and assure that safeguards information is protected. In addition, this government to government contact supports the concept of Tribal Sovereignty, which is the purpose of this rulemaking.

The ANPR includes several questions. My answers to these questions are outlined, here:

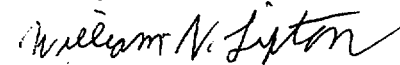
- A.1. "In preparing the list of Tribal contacts, the NRC would most likely look to the list of Federally recognized North American Tribes maintained by the Bureau of Indian Affairs ... Is this an appropriate approach? ..." This would be acceptable, although it may also be appropriate to use other sources of information.
- A.2. "How can the NRC ensure that contact information is kept current, particularly for smaller tribes?" I agree with the suggested approach of providing each Tribe the opportunity to update contact information.
- A.3. "How can licensees effectively and efficiently provide notification ... of a schedule change that would require updated notification by telephone at any time of day?" The NRC staff should make these notifications, using information supplied by the licensee. The rule should allow an extended notification deadline for those tribes who do not maintain the capability to receive messages at all times.
- B.1. "In what ways can licensees comply with this advance notification requirement, while keeping their administrative burden at a minimum?" The best means of minimizing the administrative burden on licensees is to have the NRC staff provide these notifications.
- B.2. "If a shipper is unable to make contact with a Tribe prior to or during a shipment, should the shipment proceed?" The notification requirement should be limited to a good faith effort to contact an impacted Tribe. Failure to make contact should not delay the shipment, since this does not impact its

safety. Each affected Tribe should be responsible for maintaining a responsible contact, and no Tribe should have the opportunity to block or delay a shipment by failing to acknowledge a notification.

- C.1. “How can licensees effectively and comprehensively identify the location of Native American Tribes along a particular vehicle, rail, or vessel shipment route?” Since the purpose of this rulemaking is to assure tribal sovereignty, the identification and maintenance of notification contacts should be a government to government responsibility, which is best performed by the NRC staff.
- C.2. “Should DOE and NRC licensees develop and maintain a central data base regarding the location of Tribal lands...” As with C.1, since this is a tribal sovereignty issue, this data base is best maintained by the NRC staff.
- C.3. “What types of Tribal lands should this rule apply to?...” The NRC should develop an approach to applicability which is consistent with the intent of this rulemaking.
- 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?” Advance notification should be provided to impacted tribes consistent with the response to C.3. and safeguards concerns.
- 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, this provision should apply to Tribes receiving advance notification of spent fuel shipments.
- D.3. “...How should the NRC address any increase in risk compared with the benefits to be gained from Tribal notification?” This potential increase in risk should be addressed in the same manner in which it is addressed for all recipients of Safeguards Information.
- D.4. “How should the rule address the point of contact for Safeguards Information in the context of Tribal notification?” The point of contact for Tribal notifications should be addressed in the same manner as that used for State notifications.
- D.5. “...Are there Tribes who may not wish to be recipients of Safeguards Information.” I cannot speak for the Tribes involved.
- D.6. “If a Tribal government receives Safeguards Information, should the NRC review the Tribe’s actions to control and protect Safeguards Information?” Tribes that receive Safeguards Information should be subject to the same requirements as other recipients.
- D.7. “...Should the NRC determine the ability of Tribal governments to protect Safeguards Information, and, if so, how?” The NRC should make this determination in the same manner as used for other recipients of Safeguards Information.

- 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?" Tribes, which do not meet the requirements for receiving Safeguards Information should be exempt from the notification requirement, on the basis of the need to protect this information from disclosure.
- D.9. "... should the licensee be permitted rather than required to release Safeguards Information to responsible Tribal government officials?" As discussed in other responses, the requirement to release this information should be fulfilled by the NRC staff. Licensees should be permitted to release this information to qualified recipients.

Sincerely,


William V. Lipton