

January 18, 2012

MEMORANDUM TO: Chairman Jaczko
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Apostolakis

FROM: Commissioner Magwood /RA/

SUBJECT: Tribal Consultation Policy Statement and Protocol

In January 2009, following a December 11, 2008, "Briefing on Uranium Recovery," the Commission issued an SRM directing the staff to develop and implement an internal protocol for interactions with Native American Tribal governments that allows for customized approaches to address the interests of both NRC and Tribal governments on a case-by-case basis. In addition, the Commission directed the staff to assess the policies used by other Federal agencies for interactions with Tribal governments and report those findings, which could inform the potential efficacy of an NRC policy statement, to the Commission.

In SECY-09-0180, "U.S. Nuclear Regulatory Commission Interaction with Native American Tribes," staff observed that the "Commission's current interaction with tribes encompasses a relatively small number of tribes with interest in a limited number of nuclear regulatory issues." Therefore, the staff concludes that NRC's, "case-by-case interactions with Native American tribes have proven effective and allow for custom-tailored approaches that meet the Commission's needs and those of the tribes."

Since that time, heightened interest in uranium recovery development has resulted in a significant increase in the number and complexity of consultations among Office of Federal and State Material and Environmental Programs (FSME) staff and Native American Tribes to address the National Historic Preservation Act (NHPA) Section 106 obligations and requirements. Recent consultations have required intensive dialogue among NRC staff and numerous Tribes located in South Dakota, Wyoming, and Montana. In particular, the FSME staff continues to conduct outreach with 31 Native American Tribal governments regarding license applications for six new or existing *in situ* uranium recovery facilities.

Moreover, a recent Commission meeting regarding the Generic EIS for License Renewal highlighted the lack of clarity that sometimes exists with respect to NRC's consultations with Tribal governments. As we learned during that briefing, the agency has not communicated consistently with Tribal governments that are recognized by various States (which enacted treaties with Tribes before the formation of the United States) but not recognized by the Federal government. This oversight is unfortunate and should be corrected.

These issues have currency within the overall Federal government. In November 2009, the President issued a Presidential Memorandum that reaffirmed Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments", and emphasized the importance of maintaining government-to-government relationships with Native American tribes. Consultation is recognized as an important facet of these relationships and the policies of Federal agencies should be directed at improving Federal-Tribal interactions and communications. A variety of other laws and regulations also require consultations with Native American tribes and their members.

For the reasons discussed above, this is an appropriate time for the Commission to provide direction to the staff to develop an agency-wide policy statement and protocol on consultations with Native American Tribal governments. This action will:

- Be responsive to requests by various Tribes and the National Congress of American Indians that NRC develop a tribal policy and demonstrate to internal and external stakeholders NRC's desire to maintain and strengthen the United States government's unique relationship with Native American Tribes;
- Demonstrate NRC's recognition of EO 13175 and President Obama's November 2009 Presidential Memorandum that reaffirmed the prior EO;
- Contribute to increased effective use of staff resources for Tribal outreach and to allow more focused, consistent, and enhanced consultation activities with the Tribes;
- Reinforce to Native American Tribes and Tribal Organizations that the NRC is committed to consultation and coordination with Tribal governments and highlight the agency's respect for Tribal self-government and sovereignty;
- Clarify the specific statutory obligations for consultation, including the National Environmental Policy Act (NEPA), and NHPA; and
- Underscore to NRC staff that the agency is committed to fulfilling its statutory and regulatory consultation obligations with Tribal officials.

The staff should provide to the Commission for review and approval a proposed Native American Tribal policy statement and protocol. This Commission paper should include an implementation plan and the proposed resources needed to implement such a policy.

SECY, please track

cc: SECY
CFO
OGC
EDO