



POLICY ISSUE
(Notation Vote)

August 28, 1996

SECY-96-187

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: POLICY ISSUES RAISED IN MEETING WITH
PRAIRIE ISLAND DAKOTA INDIAN REPRESENTATIVES

PURPOSE:

To obtain Commission direction on broad policy issues first identified in an April 4, 1995 meeting with representatives from the Prairie Island Dakota Indian Community concerning possible cooperative arrangements between the Community and the NRC regarding activities at the Prairie Island Nuclear Generating Plant in Welch, Minnesota.

SUMMARY:

This paper presents for Commission consideration staff analysis of issues raised by representatives of the Prairie Island Dakota Indian Community and recommendations for responding to those issues which have policy implications on the NRC's relations with Native American Tribal Governments. The staff is recommending alternatives for responding to possible cooperative arrangements suggested by the Community.

BACKGROUND:

The Prairie Island Dakota Indian Community is located in Welch, Minnesota adjacent to the Prairie Island Nuclear Generating Plant, within the 10-mile emergency planning zone. The Community has expressed concern about the health and environmental impact of its proximity to the plant and most recently with the licensee's storage of spent nuclear fuel in dry casks at the site. The NRC received a letter dated May 17, 1994 from Denise Homer, Acting Area

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Director, Bureau of Indian Affairs (BIA), U.S. Department of the Interior (DOI), which invited the NRC and a number of other Federal agencies to attend a meeting jointly sponsored by the BIA and the Community to discuss each agency's responsibilities and to identify each agency's resources and expertise to assist the Community with its concerns at Prairie Island. The letter also included a draft Memorandum of Understanding (MOU) proposed by the Community to be signed by the NRC and the several other Federal agencies.

Because of the short notice provided, the NRC did not attend the June 1, 1994 meeting. However, the NRC reviewed the draft MOU and provided comments and detailed responses to the questions in a letter dated June 17, 1994 (Attachment 1). The letter responded to the request that each agency prepare a written summary of (1) previous agency actions, (2) authorities and resources available, and (3) details of activities that should be in a plan of action. BIA requested the plan of action to "include collection of baseline environmental and health data, monitoring of key environmental and health parameters, and monitoring of procedural activities concerning clearances required for the dry cask storage or other activities at the power plant." The NRC response to Ms. Homer addressed, among other things, NRC's regulatory activities at the Prairie Island plant and offered to meet with the Prairie Island Dakota Community to discuss issues related to NRC's regulation of the Prairie Island plant.

The NRC received letters dated February 15 and 27, 1995 from Ada E. Deer, Assistant Secretary for Indian Affairs, DOI, requesting the NRC to join her and seven other Federal agencies² in signing a proposed MOU to establish "a framework for cooperation for the identification and resolution of environmental concerns surrounding the Prairie Island Nuclear power plant, and the inclusion of the Tribe in the resolution of such issues." The proposed MOU was very similar to the previous MOU proposed in 1994. The NRC responded to Ms. Deer on March 27, 1995. The response (Attachment 2) stated the various reasons why NRC did not believe it was necessary to sign the MOU and that the concerns of the Community were being addressed through NRC's existing regulatory program.

NRC staff met with representatives of the Prairie Island Dakota Indian Community on April 4, 1995. The purpose of the meeting was to discuss the Community's proposed MOU and the NRC's March 27, 1995 letter in which the staff declined to sign the proposed MOU. The Community representatives expressed disappointment with the NRC response. Region III representatives have had subsequent meetings with Community representatives, including members of the Tribal Council, on follow-up issues such as the status of dry cask

¹ Environmental Protection Agency, Federal Emergency Management Agency, National Park Service, as well as BIA and NRC.

² U.S. Fish and Wildlife Service, Indian Health Service (IHS) and U.S. Geological Survey (USGS) were later added.

storage activities.³ As a result, Region III believes a positive dialogue has been established between the Community and the NRC. Points of contact have been established between the Community and the NRC for information exchange. Region III has placed the Tribal Council on standard distribution for the Prairie Island docket and has been responsive to the Council's various requests for information.⁴

DISCUSSION:

In the course of discussions at the April 4, 1995 meeting, the Community representatives asked two questions which pose policy issues for Commission consideration. The first issue is whether, in view of its position of not signing the multi-agency MOU, NRC would consider entering into a two party general MOU with the Tribal government for the purpose of stating NRC's responsibilities relative to regulating nuclear power and the Prairie Island Dakota Indian Community's interest in the health and welfare of its people. In addition, the general MOU could describe how the two parties would communicate and share information. The second policy issue raised at the meeting was whether the NRC would be willing to extend the Commission's "Policy on Cooperation With States at Commercial Nuclear Power Plants and Other Utilization and Production Facilities" to the Prairie Island Dakota Community for the purpose of observing NRC inspections or performing inspections for NRC at the Prairie Island plant.

³ Siting of additional spent nuclear fuel storage capacity at Prairie Island has been controversial. In 1994, the State of Minnesota passed a law, which although it approved a limited number of spent fuel casks at the plant site, also required the licensee, Northern States Power Co., to locate an alternative storage site in the county in which the plant is located. Most recently, the Prairie Island Dakota Community and Northern States Power have been negotiating alternatives, which among other things, include financial compensation to the Community in exchange for eliminating the alternative siting requirement. Any agreement between the parties changing the offsite alternative site requirement would require State legislative approval.

⁴Subsequent to these meetings, the NRC received a letter from Ms. Homer dated September 27, 1995 inviting NRC and other Federal agencies to attend a November 3, 1995 meeting to review the status of activities and actions with regard to the multi-agency MOU. Region III staff attended the meeting and maintained the NRC position of not signing the multi-agency MOU, but continuing to deal with regulatory issues of interest to the Community through the communications channels that have been established. Most recently, a similar meeting was held on May 23, 1996 at which the Tribal Council continued to seek signatures from Federal agencies on a multi-agency MOU. The NRC participants discussed dry cask storage issues for the Prairie Island Nuclear Generating Plant, the offsite spent fuel storage facility licensing process, and NRC regulations and standards. A BIA summary of this meeting is attached (Attachment 3). The BIA letter also indicates that BIA will schedule meetings with the regional administrators of agencies who have not yet signed the MOU. According to BIA, the multi-agency MOU has been signed by USGS, IHS and BIA.

These two questions also raise a more fundamental issue regarding the desirability of a formal Commission policy on Native American Tribal Government relations. The NRC staff has interacted with national Native American Tribal organizations such as the National Congress of American Indians and the Council of Energy Resource Tribes and has dealt with Tribes on specific issues on a case-by-case basis. In addition, Commission regulations for the licensing of a high-level radioactive waste repository (Part 60), a low-level radioactive waste disposal facility (Part 61) and a monitored retrievable storage installation (Part 72) have provisions for Native American Tribal participation. While the NRC has had these interactions and provisions for Native American Tribal Governmental participation, the NRC has not issued formal policy or guidance for staff interactions with Native American Tribal Governments. The NRC staff notes that Federal agencies, such as the Department of Justice (DOJ), the Department of Energy (DOE) and the Environmental Protection Agency (EPA), have policy statements which define those agencies' relationships with Native American Tribal Governments. Attached are copies of DOJ's policy (Attachment 4), DOE's policy (Attachment 5) and EPA's policy (Attachment 6). Both the DOJ and DOE policies include President Clinton's Executive Memorandum, dated April 29, 1994, which outlines principles that define the Federal Government's responsibility to ensure that agencies operate within a government-to-government relationship with all Federally-recognized Tribal governments.

The NRC's responsibility with respect to Native American Tribal Governments under the "Indian trust doctrine," which has been interpreted by the Supreme Court over much of the 20th Century as directing federal agencies to act with scrupulous regard in dealings with the Native American Tribes, does not presuppose that the NRC or any other federal agency must develop a formal policy on Native American Tribal relations. However, this doctrine does create a strong basis for the general proposition that Federal agencies should accord the same opportunities for participating in an agency's regulatory process to the Indian Tribes that have been extended to the States generally. At the same time, legitimate reasons may exist for not entering into MOUs or other less formal arrangements with Tribes regarding NRC-licensed activities, for example, if the Tribe does not meet the criteria necessary for it to effectively perform inspections or if the NRC has decided not to enter into a similar agreement with a State.

General/Umbrella MOUs

While the NRC has no formal Native American Tribal policy, the Commission has developed policy and programs for intergovernmental relations with State governments. In the mid 1970s, because of increasing State interest in the licensing of nuclear power plants, there was a perceived need to broaden the basis for formal cooperative agreements with States beyond that of water quality MOUs and Section 274b. Agreements (the Agreement State program). As a result, general or umbrella MOUs were developed and signed with a number of States (both Agreement and non-Agreement States) including Washington, Oregon, Indiana, New York, Illinois and Pennsylvania. These MOUs were intended to provide for principles for cooperation and form a basis for subsequent detailed subagreements between the parties in areas of mutual

interest. For example, NRC and the State of Oregon signed a subagreement in 1980 which allowed the State to have a resident inspector at the Trojan nuclear power plant. Although the Commission recently approved an MOU between the NRC and the Pennsylvania Department of Environmental Resources on cooperation related to the remediation of radioactively contaminated sites in Pennsylvania, the Commission has also chosen not to pursue such general or umbrella MOUs. For example, the Commission in 1990 informed Ohio Governor Richard Celeste that "the Commission has decided not to pursue establishment of a generic MOU" in response to Ohio's request for such an MOU. Part of the Commission's rationale for this decision was that the fundamental elements of a general MOU were already being implemented with the State of Ohio as a result of the Commission's policy on cooperation with the States.

Policy Statement on Cooperation with States

The Commission's policy on cooperation with the States was adopted in 1989 (54 FR 7530) and amended in 1992 (57 FR 6462) to include adjacent States (neighboring States located within the 10-mile emergency planning zone of the plant). The policy sets out the general framework for cooperating with States concerning NRC-licensed production or utilization facilities by routinely providing information to the Governor-appointed State Liaison Officers and responding to requests from States in a timely manner. In addition, this policy establishes the ground rules for qualified State representatives to observe NRC inspections and lays out the general guidance for negotiating an MOU which would allow qualified host States to perform inspections for and on behalf of the NRC. A host State is defined in the policy statement as a State in which the NRC-licensed facility is located. Under the policy, adjacent States are only given the opportunity to observe NRC inspections. Whereas a number of States have signed protocols or have made other arrangements to observe routine and special NRC inspections at nuclear power plants, only the State of Illinois has signed MOUs with the Commission pursuant to the policy on cooperation with the States. The first MOU, approved on June 7, 1990, allows Illinois State inspectors to perform ASME code inspections at the nuclear power plants located in Illinois. The second MOU, adopted on December 18, 1990, permits the participation of Illinois resident engineers in NRC inspections at the nuclear power plants in Illinois.

Several States have a presence at nuclear power plants without entering in formal arrangements with the NRC. For example, the States of Maine and New Hampshire have resident inspectors at Maine Yankee and Seabrook, respectively. The States of Vermont and New Jersey and the Commonwealths of Massachusetts and Pennsylvania have had non-resident nuclear engineers assigned to follow activities of the nuclear power plants in those States.

Under the Commission's policy, a State must satisfy certain requirements to observe NRC inspections and/or inspection entrance and exit meetings. The State representative must be knowledgeable in radiological health and safety matters and, among other things, have made advance arrangements with the licensee for site access training and badging, and must satisfy escort and confidentiality requirements. A copy of a draft protocol for State

observation is attached (Attachment 7). An adjacent State observer must abide by the same protocol as a host State. The adjacent State must communicate its request for observation to the Regional Administrator for the region in which the facility is located and to the host State. In addition, if a host State and an adjacent State request observation of the same inspection, the Regional Administrator will make the final determination on the number of State observers who may attend the inspection.

With regard to entering into an MOU for the purpose of performing inspections for and on behalf of the NRC, a State is required to meet certain NRC requirements. Under the policy, a State that wishes to perform inspections for and on behalf of the NRC must propose a program that: (1) recognizes the NRC as having exclusive authority to regulate the radiological and national security aspects of the construction and operation of nuclear power plants, except for certain authority over air emissions granted to States by the Clean Air Act; (2) is in accordance with Federal standards and regulations; (3) specifies minimum education, experience, training, and qualifications requirements for State representatives which are patterned after those of NRC inspectors; (4) contains provisions for the findings of State representatives to be transmitted to NRC for disposition; (5) would not impose an undue burden on the NRC and its licensees and applicants; and (6) abides by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.

Application of the Policy to Native American Tribal Governments

As currently written, the Commission policy does not apply to Native American Indian Tribes. The language of the policy itself is limited to cooperation with States. There is no mention of other entities such as Native American Indian Tribes or local governments in the policy. In addition, the background discussion published with the policy statement indicates that the statutory basis for the policy stems, in part, from §274i of the Atomic Energy Act of 1954, as amended (AEA). Section 274 of the AEA contains provisions regarding NRC interactions with State governments such as the Agreement State program. Section 274 does not contain any reference to NRC's activities with Native American Tribes. Accordingly, the policy as written only applies to activities with States.

As noted above, the Indian trust doctrine supports the principle that the NRC, as a federal agency, should accord the same opportunities to Native American Tribes that have been extended to the States, for example, routinely providing information to a Tribe on activities which may affect it and responding to Tribal requests in a timely manner. In addition, Section 161f of the AEA provides the Commission the authority to utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable. This could include Native American Tribal Governments and could serve as the basis for cooperative agreements with qualified Tribes to observe or perform inspections. However, there is no requirement that the Commission enter into such agreements if a legitimate basis exists for declining to do so.

OPTIONS:

ISSUES: The staff has identified three issues for Commission consideration as a result of questions raised by the Prairie Island Dakota Indian Community. The staff has also outlined various options and provided pros and cons in addressing these issues.

ISSUE 1

The first issue is whether the Commission should enter into a general MOU with the Prairie Island Dakota Indian Community.

Options: The staff has identified two options in response to Issue 1.

1) The Commission could decline to enter into a general MOU with the Community. Based on the contacts that have been established with the Community, and the information that has been provided such as inspection and effluent reports, meeting notices, general correspondence and enforcement notifications, it could be argued that a general MOU would serve no purpose and would only be documenting what has already been put in place. A letter documenting what has been put in place and committing to continue a cooperative relationship with the Community could be a substitute for a formal MOU.

- Pro:
- Would not require any significant additional resources than are already committed to this effort.
 - Would be consistent with Commission decision not to enter into a general MOU with Ohio to document what has been put in place.
 - A general MOU would not provide the Community with more than is already in place.
- Con:
- Would deny the Community's request for a formal agreement with the NRC that recognizes the Community's concerns regarding the health and safety of Community members and with its desire to be better informed of regulatory matters.
 - Could be perceived as not being sensitive to Native American Tribal relations.
 - May be seen as inconsistent with Federal policy and legal doctrines applying to Native American Tribal relations.

2) The Commission could agree to negotiate a general MOU with the Community. The MOU would be modeled after previous general MOUs that have been enacted with States.

- Pro:
- The MOU would be approved by the Commission and could provide the basic policy direction from the Commission on Native American Tribal relations.

- Would display a commitment to cooperate with the Indian Community.
 - Would be consistent with generic MOUs that have been previously signed with a number of States.
- Con:
- Would be inconsistent with the Commission decision not to enter into a generic MOU with the State of Ohio.
 - Would likely set a precedent with Government-wide implications for other Federal agencies and programs, since NRC is only one of several agencies with whom the Community wishes to enter into an MOU.
 - Would require additional resources to negotiate an MOU.
 - Would likely only document what has already been put in place.

ISSUE 2

The second issue is whether the same opportunities provided in the Commission's Policy Statement on Cooperation with States concerning observing or performing inspections should also be extended to the Prairie Island Dakota Indian Community.

Options: The staff has identified two options for the Commission's consideration of Issue 2.

1) The Commission could decline to offer these inspection opportunities provided in the current policy statement to the Prairie Island Dakota Indian Community.

- Pro:
- No additional expenditure of NRC resources.
 - No impact on licensee resulting from additional observations or inspections.
- Con:
- May be inconsistent with the proposition that under the Indian Trust Doctrine, unless there is a basis to do otherwise, a Federal agency should accord the same opportunities to Native American Tribes as those that have been extended to the States.
 - May be perceived as inconsistent with the NRC's openness principle of good regulation.

2) The Commission could agree to offer the same opportunities provided in its policy statement on Cooperation with States concerning observation of NRC inspections to the Prairie Island Dakota Indian Community on the basis of its status as a Federally-recognized Native American Indian Tribe whose reservation is located within the 10-mile emergency planning zone of the Prairie Island nuclear power plant (the plant is not located within the Tribal boundaries). This would mirror the provision of the policy statement on cooperation with the States as it applies to adjacent States. Under Federal

law, Indian Tribes are recognized as domestic dependent nations retaining sovereign powers, except as divested by the United States. Therefore, even though a Tribe is located within the boundaries of a State where a facility is located, it is appropriate to treat it as "adjacent" to the facility because of its sovereign status that does not derive from State law. The Prairie Island Dakota Indian Community representatives would be required to meet the same requirements that apply to States as spelled out in the policy.

- Pro:
- Would be consistent with the proposition that, under the Indian Trust Doctrine, unless there is a basis to do otherwise, NRC should accord the same opportunities to Native American Tribes that have been extended to the States.
 - Would display NRC commitment to cooperate with the Community.
 - Would provide the Community with information on plant operations and NRC's regulatory program at the plant.
 - Would be consistent with NRC's policy on cooperation with States as it applies to adjacent States.
- Con:
- May establish an incremental burden on the NRC and the licensee to handle additional observers.

ISSUE 3

The third issue is whether NRC should pursue a formal policy on relations with Native American Tribal Governments who may be affected by NRC regulatory activities.

Options: The staff has identified two options for Commission consideration under Issue 3.

1) The Commission may decide that it is not necessary to develop a formal policy and that NRC should continue to deal with issues that may be raised with Native American Tribes on an ad hoc basis.

- Pro:
- No initial investment of NRC resources.
 - Ad hoc approach has worked in the past.
 - Would not undertake new initiative in times of diminishing resources.
- Con:
- Continues a practice of dealing with Native American Tribal Governments on an ad hoc basis, which may be more resource intensive in the long term if the number of requests to establish formal arrangements increases.
 - Could be perceived as not being sensitive to Native American Tribal relations.

- Not consistent with other Federal agencies, such as DOE and EPA.

2) The Commission could adopt a policy similar to that adopted by other Federal agencies. In this case, the staff would prepare a draft policy for Commission consideration. If approved by the Commission, the draft policy would be issued for public comment.

- Pro:
- An NRC policy on Native American Tribal Governments would be consistent with what other Federal agencies have adopted.
 - A policy would provide a framework for dealing with Native American Tribal interest in NRC's regulatory programs and provide direction to NRC staff involving future contact with Tribal governments.
 - Would be consistent with the spirit of established Federal policy and legal doctrines (Indian trust) that apply to relations between Native American Tribal Governments and Federal Agencies.
 - In the long run, resources may be saved by minimizing the need for the ad hoc treatment of Native American issues.
 - Would formally display NRC commitment to cooperation with Native American Indian Governments.
- Con:
- Would require some initial expenditure of resources to develop policy.
 - Would undertake new initiative in times of diminishing resources.
 - NRC can still deal cooperatively with Native American Tribal Governments even in the absence of a formal policy.

Another issue identified during the staff review of this matter was whether the Commission should pursue legislation to amend the AEA to allow the Commission to enter into Section 274b. agreements with Native American Tribes. Section 274 of the AEA does not now provide NRC with the statutory authority to create a Tribal agreement program. Such agreements would allow the Tribal Governments to regulate certain uses of radioactive material on its lands similar to the Agreement State Program. Neither the Prairie Island Dakota Community, nor any other Native American Tribe, has requested such authority. The staff is not aware that problems have been identified with NRC regulation on Indian lands. In addition, the cost of developing a radiological safety regulatory capability may not be practicable given the very small amount of regulated activity occurring on Tribal lands. Having Agreement State-type authority would not provide the Indian Community with any additional insight into the operations at the Prairie Island Nuclear Plant or the storage of spent fuel, which appear to be of most concern to the Community. Drafting, proposing and supporting such legislation would be very resource intensive. Assuming Native American Tribal Governments were interested in pursuing such agreements, additional resources would be required to process such agreements and, once in place, to periodically assess the adequacy and compatibility of

the Tribal program. For all of the above considerations, the staff does not consider this approach as viable.

RESOURCES:

The recommendations in this paper can be implemented within existing resources.

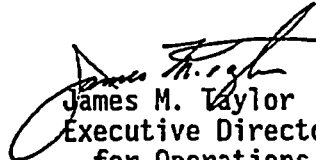
COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

RECOMMENDATIONS:

1. In response to the particular requests from the Prairie Island Dakota Indian Community, the staff recommends that the Commission direct the staff to inform the Community that the Commission does not wish to negotiate a two-party general MOU with the Community at this time because the elements of such an MOU have already been put in place by the NRC staff.
2. On the question of whether the inspection opportunities provided in the Commission's policy on cooperation with States at commercial nuclear power facilities and other production or utilization facilities should be offered to the Prairie Island Dakota Indian Community, the staff recommends that the Community, similar to an adjacent State, be allowed to observe NRC inspections at the Prairie Island Nuclear Power Plant if the Community meets the same NRC requirements which an adjacent State must meet.
3. The staff does not recommend that the Commission develop a formal policy on cooperation with Federally-recognized Native American Tribal Governments at this time. The staff does not believe that the expenditure of resources to develop such a policy is warranted and is concerned with undertaking a new initiative in times of diminishing resources. The staff will continue to address Native American issues on a case-by-case basis following the principles that define the NRC's responsibility to ensure that the NRC operates within a government-to-government relationship with all Federally-recognized Tribal governments with an interest in NRC-licensed activities. This practice would be based on the recognition of the sovereign status of Federally-recognized Tribes and would be consistent with the President's directive that agencies undertake their activities affecting Native American Tribal Governments in a knowledgeable and sensitive manner.
4. Note that the need for an Indian Policy statement is a "related issue" addressed in the Directional Setting Issue (DSI) paper #4. A "related issue" is one whose implementation details will be addressed after the Commission's decision on the overall DSI.

5. Note that the staff will inform the Bureau of Indian Affairs of the U.S. Department of the Interior of the Commission decision.


James M. Taylor
Executive Director
for Operations

Attachments:

1. Letter from J.M. Taylor to Ms. Denise Homer, dated 6/17/94
2. Letter from J.M. Taylor to Ms. Ada E. Deer, dated 3/27/95
3. Letter from Larry Morrin, BIA, to J. Taylor, dated 8/7/96
4. Federal Register Notice, Policy on Indian Sovereignty, DOJ, dated 6/10/96
5. Memorandum for All Departmental Elements from H.R. O'Leary, DOE, dated 5/18/94
6. Memorandum to All Employees from Carol M. Browner dated 3/14/94
7. Exhibit 1, Appendix A "Protocol Agreement for State Observation of NRC Inspections"

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Thursday, September 12, 1996.

Commission staff office comments, if any, should be submitted to the Commissioners NLT September 5, 1996, with an information copy to SECY. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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WASHINGTON, D.C. 20545-0001

June 17, 1994

Ms. Denise Homer, Acting Area Director
United States Department of the Interior
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, Minnesota 55401-2241

Dear Ms. Homer:

The Nuclear Regulatory Commission (NRC) received your May 17, 1994, letter discussing the proposed Memorandum of Understanding (MOU) between the Prairie Island Dakota Community and a number of Federal agencies, including the NRC. We previously responded to your letter regarding our attendance at a meeting that was held on June 1, 1994, at the Dakota Community Center. This letter addresses the concerns stated in your May 17, 1994, letter and some of the issues discussed in the MOU.

You stated in your letter that the Prairie Island Dakota Community is concerned about the health and environmental impact of being located adjacent to the Prairie Island Nuclear Generating Plant and that this concern is heightened because of the proposal to store spent nuclear fuel in dry casks at the site. In addition, the Prairie Island Dakota Council is asking for assistance to ensure that the proposed fuel storage and normal plant operation comply with Federal environmental regulations. You have asked that each agency prepare a concise written summary of (1) previous agency actions, (2) authorities and resources available, and (3) details of activities that should be in a plan of action. You suggest that this plan would include collecting baseline environmental and health data, monitoring key environmental and health parameters, and monitoring procedural activities concerning clearances required for the dry cask storage or other activities at the power plant.

With respect to previous agency actions regarding NRC regulations on environmental impact of the Prairie Island site, in May 1973, the United States Atomic Energy Commission (NRC's predecessor) issued a Final Environmental Statement related to the proposed issuance of an operating license for the Prairie Island plant. In the Final Environmental Statement, the staff concluded that it was appropriate to allow the continuation of construction permits and the issuance of operating licenses for the startup and operation of the Prairie Island plant.

On July 28, 1992, the NRC issued an environmental assessment (EA) and a Finding of No Significant Impact for the planned independent spent fuel storage installation (ISFSI) at the Prairie Island plant. In the EA, the staff concluded that the radiation dose from ISFSI operation would be very small, and it would not significantly increase what the residents are already exposed to from natural background radiation. A summary of the conclusions from the July 28, 1992, EA is enclosed.

ATTACHMENT 1

After thoroughly reviewing the licensee application, the NRC concluded that the dry cask storage activities could be conducted without endangering the health and safety of the public. On October 19, 1993, the NRC issued a Safety Evaluation Report and Material License No. SHM-2506 to Northern States Power Company (NSP) to store spent fuel from the Prairie Island plant in an ISFSI on site.

The Minnesota Agencies and the Prairie Island Mdewakanton Sioux Indian Community (The Community) filed petitions to intervene against NSP's plans to build an ISFSI. On March 8, 1991, the Minnesota Agencies and The Community agreed to withdraw their petitions to intervene. In return, NSP and the NRC agreed to give these organizations copies of all correspondence related to spent fuel storage at Prairie Island. The NRC also agreed to allow the Minnesota Agencies and The Community to present their views concerning the ISFSI.

Your letter addressed a plan of action that would entail the collection of key baseline environmental and health data. From NRC's perspective, such data would include radiological environmental monitoring results. There are numerous types of radiation measurements that are made in the vicinity of nuclear power facilities. For an ISFSI, the most appropriate type of monitoring would include the use of thermoluminescence dosimeters (TLDs). These devices measure ambient gamma radiation levels. Currently, NRC has 40 such devices stationed around the Prairie Island site. These are exchanged quarterly by the State of Minnesota under contract to the NRC and are sent to an NRC laboratory for processing.

Under the existing Cooperative Agreement with the State of Minnesota, an appropriate number of stations will be added to the NRC-owned TLD network at the Prairie Island site. The additional stations would be in the unrestricted area proximate to the ISFSI currently licensed under 10 CFR Part 72. The NRC Cooperative Agreement with the State of Minnesota is scheduled to be renewed during the latter part of calendar year 1994, to be effective January 1, 1995. The NRC plans to work with the State, during the latter part of 1994, regarding the addition of these new locations.

The data collected from the TLD network surrounding the Prairie Island site are documented in NUREG-0837, "NRC TLD Direct Radiation Monitoring Network." The NRC can place the Dakota Community Council on the distribution list for this quarterly NRC report. If desired, the NRC can also place the Dakota Community Council on its distribution list for the effluent release (NUREG/CR-2907, "Radioactive Materials Released From Nuclear Power Plants, Annual Report [Year]") and population radiation dose reports (NUREG/CR-2850, "Dose Commitments Due to Radioactive Releases From Nuclear Power Plant Sites in [Year]"), which are prepared annually for the NRC and published by the NRC. These reports would provide the Dakota Community Council with some perspective regarding the environmental impact of effluent releases from the Prairie Island plant.

The MOU addresses the initiation of an epidemiological survey. The NRC does not see a need for an epidemiological study of the Prairie Island site area for the following reasons:

- A comprehensive study of cancer mortality, one of the principal health effects of concern with regard to radiation exposure, was recently completed by the National Cancer Institute. This study, "Cancer in Populations Living Near Nuclear Facilities," was published in 1990. With regard to Prairie Island, the report stated that
 - "The number of cancer deaths were not large and there were few statistically significantly elevated RRs [relative risks] comparing the study and control areas after startup [of the Prairie Island plant]."
- The population to be studied is relatively small, thus confounding the ability to draw meaningful conclusions from an epidemiologic study.
- The ISFSI is not expected to release effluents under normal operating conditions.

Should another Federal agency elect to undertake an epidemiological study, the NRC could provide supporting radiological data in the form of the reports referenced above.

With respect to emergency preparedness (EP), as part of its regulatory responsibility, the NRC determined that there is reasonable assurance that adequate measures can be taken to protect the public in the event of a radiological emergency at the Prairie Island site. The NRC bases this determination on its own assessment of onsite (licensee) EP plans and FEMA's assessment of offsite (State and local) EP plans. An MOU between NRC and FEMA explains each agency's roles and responsibilities in the area of EP.

The Prairie Island plant has an NRC-approved EP plan that has been demonstrated in numerous exercises. The State and local EP plans around the plant have been approved by FEMA and also demonstrated in numerous exercises. The Dakota Community is located inside the 10-mile plume phase Emergency Planning Zone (EPZ) surrounding the plant and is included in the offsite EP plans.

Cask storage of spent fuel onsite at the Prairie Island plant does not represent a significant new hazard to be addressed by the onsite or offsite EP plans. Minor changes in the onsite plan will probably be needed to address the storage casks; no change in offsite plans should be necessary. Any change the Dakota Community wants to make in its level of involvement in the offsite EP plans should be worked out with the licensee, the State, local governments, and FEMA. FEMA provides assistance to State and local authorities in developing and implementing offsite plans.

Ms. Denise Homer

- 4 -

I trust this information is responsive to The Community's concerns. As stated earlier, we would be pleased to meet with the Prairie Island Dakota Community to discuss issues relating to our regulation of the Prairie Island plant. The Commission, recognizing and being respectful of their sovereign rights, is committed to continue working with the Prairie Island Dakota Community on a government-to-government basis. Commission representatives have met with the Prairie Island Community Council in the past few years regarding the Council's concerns with NSP's plan to construct an ISFSI at its Prairie Island nuclear plant site. It is within the spirit of the principles of cooperation in President Clinton's Executive Order dated April 29, 1994, that we will continue to be open to discussions regarding The Community's concerns, and clarifying the NRC's regulatory responsibilities accordingly. We will continue to review the draft MOU in preparation for any future interactions. If you have any questions regarding this response, please contact John Zwolinski, our Assistant Director for Region III Reactors at (301) 504-1335 or Marsha Gamberoni, the Prairie Island Project Manager, at (301) 504-3024.

Sincerely,

Original signed by
James M. Taylor
James M. Taylor
Executive Director
for Operations

Enclosure: Summary of ISFSI Environmental Assessment

cc: Mr. Roger O. Anderson, Director
Licensing and Management Issues
Northern States Power Company
414 Nicollet Mall
Minneapolis, Minnesota 55401

SUMMARY OF ISFSI ENVIRONMENTAL ASSESSMENT (JULY 28, 1992)

No significant construction impacts are anticipated. The activities will affect only a very small fraction of the land area at the Prairie Island Nuclear Generating Plant. With good construction practices, the potentials for fugitive dust, erosion, and noise impacts, typical of the planned construction activities, can be kept to insignificant levels.

The primary exposure pathway associated with the ISFSI operation is direct radiation of site workers and nearby residents. The radiological impacts from liquid and gaseous effluent during normal operation of the ISFSI fall within the scope of impacts from licensed reactor operations.

The dose to the nearest resident from ISFSI operation is about 0.08 mrem/year, and when added to that of the operations of both reactor units, is much less than 25 mrem/year, as required by 10 CFR 72.104. The collective dose to residents within 1 to 2 miles of the ISFSI is 0.037 person-rem. This is compared to a collective dose due to natural background radiation of 140 person-rem for the same population. Occupational dose to site workers, both directly and indirectly involved in ISFSI activities, is a small fraction of the total occupational dose commitment.

The gamma dose to an individual at the controlled area boundary from a loss of confinement accident has been calculated to be 0.44 rem, which is well within the 5-rem criterion in 10 CFR 72.106(b) and less than the EPA Protective Action Guide of 1 rem.

No significant nonradiological impacts are expected during operation of the ISFSI. The heat given off by the casks has been determined to cause an insignificant amount of cask-induced fogging. No other effects are anticipated in the immediate vicinity of the ISFSI.

The proposed action has been reviewed relative to the requirements in 10 CFR Part 51, and based on this assessment, the NRC has determined that issuance of a materials license under 10 CFR Part 72 authorizing storage of spent fuel at the Prairie Island ISFSI will not significantly affect the quality of the environment. Therefore, an environmental impact statement is not warranted and, pursuant to 10 CFR 51.31, a Finding of No Significant Impact is appropriate.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 27, 1995

Ms. Ada E. Deer
Assistant Secretary-Indian Affairs
U.S. Dept. of the Interior
Washington, D.C. 20240

Dear Ms. Deer:

I am responding to your letters of February 15 and 27, 1995, to the Chairman in which you requested he sign the proposed Memorandum of Understanding regarding the Prairie Island Dakota Indian Community (the MOU).

The Community and the Bureau of Indian Affairs drafted the MOU for seven Federal agencies (including the NRC), summarizing what assistance the Dakota Indian Community sought from each. The draft MOU outlines the tasks and responsibilities of each respective agency and notes how each agency's resources and expertise could be used to further benefit the Community.

As you know, NRC representatives met with Dr. Catherine Vandemoer of your office on February 21, 1995 regarding the proposed MOU. In that meeting, we explained our views pertaining to the MOU. Specifically, during the meeting, we outlined our responsibilities and discussed the issues raised in the MOU, as we had previously done in our letter of June 17, 1994 to Ms. Denise Homer, Acting Area Director of the Bureau of Indian Affairs Minneapolis Area Office. I am enclosing that letter for your information.

We have reviewed the most recent version of the proposed MOU and, in addition to the comments already provided in our June 17, 1994 letter, have the following comments.

The Atomic Energy Act of 1954, as amended, establishes a framework for regulation of the nation's commercial nuclear power industry. The NRC regulates the Prairie Island nuclear power plant in such a manner as to adequately protect the health and safety of the public, including the Dakota Indian Community. Within this framework and being mindful of the sovereign rights of the Indian people, the NRC has been and remains fully committed to working with the Prairie Island Dakota Indian Community on a government-to-government basis. For example, our staff has met with the Prairie Island Community Council in the past few years to discuss the Council's concerns about building an independent spent fuel storage installation (ISFSI) at the Prairie Island nuclear plant site. In the spirit of cooperation encouraged in President Clinton's Executive Order dated April 11, 1994, and the President's Memorandum dated April 29, 1994, we will continue to be open to discussions with the Community regarding its concerns.

However, it is important to recognize that Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, as amended, requires the NRC to recover approximately 100 percent of its budget authority from fees assessed to applicants and licensees. The Prairie Island Dakota Indian Community is

ATTACHMENT 2

neither an applicant nor a licensee; thus, staff time expended on non-regulatory activities would not be recoverable under the existing fee recovery system. The NRC understands that a general trust relationship exists, and the government (including its various agencies) has a broad fiduciary obligation to act in the best interest of the Native Americans. The NRC intends to continue to satisfy this obligation by executing its public health and safety responsibilities under applicable statutes and procedures.

For your information, in carrying out its responsibilities to protect the health and safety of the public, including the Community, NRC undertook a rigorously careful review of the ISFSI design and has closely overseen the steps toward its safe operation. Also, NRC is providing environmental monitoring at the Prairie Island site, including the ISFSI. In addition to the licensee's environmental monitoring program, NRC conducts an independent, confirmatory environmental monitoring program through a cooperative agreement with the State of Minnesota. As part of that independent program, we currently have 42 thermoluminescent dosimeters (TLDs) stationed around the site to measure any levels of direct radiation. In December 1994, two of those TLDs were specifically located to monitor the portion of the site which includes the ISFSI, currently licensed under 10 CFR Part 72.

As part of our earlier review of the ISFSI, on July 28, 1992, the NRC issued an environmental assessment (EA) and a Finding of No Significant Impact for the ISFSI at the Prairie Island plant. In the EA, the staff concluded that the radiation dose from ISFSI operation would be very small, and it would not significantly increase what the residents are already exposed to from natural background radiation.

With respect to emergency preparedness (EP), as part of its regulatory responsibility, the NRC determined that there is reasonable assurance that adequate measures can be taken to protect the public in the event of a radiological emergency at the Prairie Island site. The NRC based this determination on its own assessment of onsite (licensee) EP plans and the Federal Emergency Management Agency's (FEMA) assessment of offsite (State and local) EP plans.

As stated in our June 17, 1994 letter, the dry cask storage of spent fuel at the Prairie Island plant does not present a significant new hazard to be addressed by the licensee's onsite or offsite emergency preparedness (EP) plans. Minor changes have been made to the onsite plans to address the storage casks, and no changes in the offsite plans are needed. Any change the Dakota Indian Community wants to make in its level of involvement in the offsite EP plans should be discussed with the licensee, the State, local governments, and FEMA. One of FEMA's roles is to help State and local authorities develop and implement offsite plans.

Ms. Ada E. Deer

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It is for the reasons stated above that we believe NRC's signature of the MOU is not necessary and that the concerns of the Dakota Indian Community are being addressed through our current regulatory program. We appreciate the opportunity to meet with your representatives and to provide the information summarized above. If you or your staff have any questions, please contact Ms. Maria Lopez-Ortin, at (301)-415-2598.

Sincerely,

[Faint, illegible signature]

James H. Taylor
Executive Director
for Operations

Enclosure:
As stated



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MINNEAPOLIS AREA OFFICE
331 SOUTH 2ND AVENUE
MINNEAPOLIS, MINNESOTA 55401-2241



Environmental Services

AUG 07 1996

James Taylor
Executive Director For Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20046-0001

Dear James Taylor:

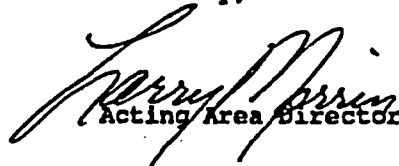
On May 23, 1996, the most recent meeting occurred of the parties involved with the Memorandum of Understanding (MOU) concerning the environmental health of the Prairie Island Dakota Community (Community). Minutes from the meeting are enclosed for your review and follow-up action.

The next MOU meeting that was originally scheduled for Thursday, August 22, 1996, has been postponed indefinitely. The Community Council has decided to seek as many of the signatures on the MOU as is possible before scheduling the next meeting. We will notify you in writing when the next meeting has been scheduled, probably within the next three months.

Also, be aware that for the involved agencies who have not yet signed the MOU, we are scheduling meetings with regional administrators to discuss their signature of the MOU.

If there are questions, the contact is Herb Nelson, Environmental Services, at telephone: 612-373-1143 and FAX: 612-373-1186 or Heather Westra from the Community Environmental Services, at 1-800-554-5473.

Sincerely,


Larry Perrin
Acting Area Director

Enclosures

ATTACHMENT 3

POSTPONED

AGENDA

Meeting For Memorandum of Understanding August 22, 1996 at the Prairie Island Community Center

- 9:00 AM Opening Prayer/Invocation - Curtis Campbell, Sr.
President, Tribal Council
- 9:15 AM Welcome and Introductions
- 9:30 AM Purpose of Meeting - Robert Grey Eagle
- 9:45 AM Signing Ceremony - Curtis Campbell, Sr.
- 10:00 AM ATSDR - Linda Wright
Health/Risk Assessments
- 11:00 AM Break
- 11:15 AM DOE - Compliance With Nuclear Waste Policy Act
- 12:00 AM Lunch
- 1:00 PM FEMA - Emergency Planning - Update on Tribal Interface
Larry Bailey
- 1:45 PM IHS - Wayne Potter
IHS Work Plan Status
- 2:30 PM Natural and Cultural Resources
Archaeological Survey
Richard Berg, BIA Area Archaeologist
- 3:00 PM Break
- 3:15 PM Summary and Wrap-Up
Follow-Up Actions
Next MOU Meeting
- Adjourn

**MOU MEETING
TRIBAL COUNCIL MINUTES
PRAIRIE ISLAND INDIAN COMMUNITY
COUNCIL CHAMBERS
MAY 23, 1996**

Council Members Present: Curtis Campbell, Sr., Darelynn Lehto, Byron White, Michael Childs, Sr., Alan Childs, Sr.

Council Members Absent: None

Others Present: Larry L. Bailey, Russ Bywater, Reta Childs, Tim Cowdery, Sue Ann Curtis, Mark Dellagatti, Eric Glatstein, Robert Grey Eagle, Don Hansen, Wendy Helgemo, Audrey Kohnen, Roland Lickus, Curt Meeder, Herb Nelson, Eric Pehle, Wayne Potter, Steven Ray, Lenor Scheffler, Heather Westra, Scott Yess and Charter School Teacher Jeanine Gregoire and students

I. Meeting Call to Order

Meeting called to order at 9:15 a.m.

II. Opening Prayer

Prayer led by Curtis Campbell, Sr.

III. Introduction - Robert Grey Eagle

Robert Grey Eagle stated that the federal agencies' representatives have been meeting semi-annually with the Prairie Island Indian Community. The budget cutting has handicapped some of the progress. Tribal Council is actively pursuing signatures on the MOU.

In response to visits to Senator Paul Wellstone's office, Senator Wellstone will be sending letters to the respective federal agencies. Darelynn Lehto and Alan Childs visited Vice President Al Gore and he was very impressed with the MOU and felt that the MOU could serve as a model for national reform.

The MOU is a model to resolve issues. If all agree on a common solution, we can come up with a better idea of what those trust obligations are. The issues are:

1. *The community's health, safety and financial well being due to NSP's proximity to Prairie Island.* Several mandates were issued by the state legislature that NSP had to put resources into wind and biomass energy development. Due to the legislative mandate to move the dry cask storage off of Prairie Island and somewhere else in Goodhue County we have third party standing. We did approach NSP and the state legislature with a win-win situation. Spent fuel storage is becoming a national and global phenomenon. Robert felt that we are the only tribe in such close proximity to nuclear storage. The federal government has a definite trust responsibility toward Indian tribes.
2. *Prairie Island wanting to relocate always brings up the idea that we have an ulterior motive.* Our community has to face the reality that they have to live next to nuclear storage. No one understood this until they were faced with the possibility of living next to nuclear storage in their community, we have lived with it twenty odd years. We have to think of a common goal and a common good. This Tribal Council has taken a lot of time and expense to try to deal with this issue. The whole island would not pick up and move, moving is a matter of choice. Prairie Island will always be here. This is the traditional home land of the Mdewakanton people. People will be given the choice to move if they would like. As we all know, Indian people have always been a communal people, a tribal people. The Tribal Council therefore decided that we would like a community established. There are expenses involved in relocating a portion of the community, so the expenses of obtaining land and relocating is sensible. Then everyone should contribute: NSP, state and federal agencies.

The MOU process is designed to cut across those barriers. Robert thanked everyone for being present and taking an interest based on their professional as well as their personal interest. He thanked Herb Nelson for spearheading the meeting. The BIA has been given a lot of the trust responsibility. This is the first time we have opened these meetings to the public and to the press.

IV. Herb Nelson

On behalf of the BIA, Herb Nelson verified Robert's statement that this is a federal trust responsibility. He stated that they want to try to work together. Herb requested that the agencies not wait until they have the original MOU, but to take the copy back and review it and then we can sign it in very short order. If anyone has any issues that they would like changed, we may be able to adjust some things, but we are not going to change the original intent.

V. Heather Westra - Video

Video of *Ally and Friends* was shown.

VI. Roland Lickus - Nuclear Regulatory Commission

Roland Lickus explained that the NRC has been cooperating with the tribe for the past one and one-half years and is fully committed to work with Prairie Island. He stated that they have declined the signing of the original MOU. The community asked if we would be willing to sign a more simplified version. These two issues are being pursued currently with staff in Washington, D.C.

VII. Mark Delligatti - Process for Licensing Independent Spent Fuel Storage Facility

The Spent Fuel Project Office was set up last year. Mark Delligatti stated that he had held a meeting for those who will be requesting licensing along with vendors for cask transportation. Prairie Island Nuclear Plant is one of the plants that he is responsible for. It is his agency's goal to have as much openness as possible and welcomed calls to his Washington, D.C. office. It is his job to protect the health and safety of our people.

The licensing process is new. Mark showed slides of existing dry cask storage sites and potential new sites. (Attachment A). Transportation casks will be licensed under 10 CFR Part 72. Thousands of shipments have gone across the country under these requirements. Mark discussed licensing requirements and procedures. The applicant would have to prove that there would be no harm to the surrounding community and that repairs could be made without incident.

Alan Childs, Sr., stated that there should be some preplanning for flooding, emergencies, etc.

Heather Westra asked about the difference between a site specific and a general license. Site specific license would be on site or away from reactor.

Herb Nelson commented how federal agencies are to work with the tribes. Tribes are not a member of the public, but separate government entities. A tribe can call a federal agency and request a private consultation. Mark stated he was very unfamiliar with the process and will work to change this.

Discussion was held on NSP requesting a second license and the fact that no other facility in the country has asked for a second license.

Heather asked if FEMA will have a role in reviewing this application. Darelynn Lehto questioned if any consideration has been done about a train derailment. Mark stated that they did not have an application from NSP yet. The commission does not consider dry cask storage a less safe storage of spent fuel. It still has to meet the requirements.

Byron asked that after all is said and done and an accident does happen what recourse would this tribe have against NSP, NRC and whomever? The recourse is the insurance that NSP would take out which would include any kind of act. The NRC could obtain figures of what the most serious accident would cost.

Darelynn Lehto asked about the safety of the dry casks and if they are sealed, how do they leak acceptable amounts of radiation and who determines the amount? They are sealed as far as gases, but gamma radiation can penetrate through metal.

The NRC will deal with regulatory issues, but for health issues the University of Minnesota should be contacted. Roland Lickus stated that they look at national and international standards.

VIII. Relocation update outcome of 1996 legislative session

The legislative session started out with a proposal between NSP and Prairie Island. Throughout the session, no one objected to Prairie Island receiving compensation and acquiring land. The governor wanted assurance that we would not expand gaming. Compensation amounts were debated: Should NSP contribute more or less than the state? It wasn't an outright no to the tribe. Issues came up as to acquiring the land. A case came out of South Dakota about Lower Brule trying to acquire land by Interstate 90, as to what ramifications there would be to the surrounding community. Before these lands were put in trust South Dakota sued the US government. They are currently contemplating an appeal to the United States Supreme Court. A number of theories have come out, some of the tribes don't want an appeal, as then it would affect all tribes. We are urging to appeal, otherwise we are stuck with a negative opinion. Indian tribes are tax exempt, but individual Indians may be taxed and are taxed. We believe there are remedies available, but will be discussing this with the Minneapolis office soon.

What are we going to do for the 1997 legislation? The legislative mandate to license an alternative dry cask storage site may not be followed. Frontenac sued on this basis, to prevent fuel being moved from Prairie Island. It was a premature issue, so the case was dismissed. If the actual steps were taken to move casks off Prairie Island then it would be considered a good case.

We want nuclear fuel off from Prairie Island. That is the whole basis of 1994 and 1996 but being realistic we had to play it safe. Land and compensation became an issue as some members feel that the spent rods may never be moved from Prairie Island. Apparently the Mescalero deal has failed and it is unknown if Yucca Mountain will ever become a reality. That leaves all nuclear plants using on site storage. The Minnesota Legislature has mandated that the spent fuel is to be moved. There should be safer sites than by a main waterway. There is no scientific or legal reason why the fuel cannot be moved. If we are stuck with it for one reason or another, we would expect that the land and compensation would become a reality. The debate was not rejected because they opposed compensation, but because of the question of who is to compensate and how. We believe it should be a shared responsibility.

The MOU is a blueprint plan for the future of our tribe. With Prairie Island being a treaty based tribe, there is a moral and federal responsibility. There is no apparent correlation between the 8th Circuit decision (on putting land into trust) and the tribe receiving land in this legislation. In other parts of the country, there has been a high degree of racism. We have overcome some of these by hiring lobbyists and creating good public relations to foster good relations. Other tribes should do the same. The unfortunate part about litigation is that what happens in one tribe, affects us all.

Emergency Operating procedures are in place to keep the core cool if generator tubes rupture. There are safety systems designed into the plant to make up for loss of power. Tubes are inspected regularly. If any problems, they end up either shutting down the plant or replacing the steam generators. We have technical specifications as to how many tubes can be plugged. They can carry both contaminated and clean water. The heat transfers from inside the tube to clean water on the outside of the tubes and the concern is then you have a path for the reactor water to get into the clean water. Heather Westra stated on the internet the regulatory commission showed the Prairie Island facility and never mentioned the Prairie Island Indian Community and requested that we be noted.

Lunch Break - 12:00 noon - 1:30 p.m.

IX. Litigation Support/Treaty Research

Herb Nelson stated that the tribe was awarded BIA treaty litigation funding to conduct historical and archival research to ascertain unlitigated claims under Mdewakanton treaties.

X. Project Update- Wendy Helgemo

Wendy Helgemo is conducting research and analyzing any claims under the Mdewakanton treaties of which we are a part; this will lead to a better understanding of unresolved treaty issues and what our boundaries are. Treaties are the superior of the land and violations of treaties are the same as federal law. At one time the Mdewakanton treaties and the resumption of fulfilling obligations under these treaties and lands were put into trust and that is how they were able to recoup some lands. She is continuing to research the abdication and resumption of these treaties and how to pursue regaining what we lost.

XI. Risk Assessment/Health ATSDR Health Assessment - Linda Wright

Heather spoke in Linda's place. Because of budget cuts Linda plans on coming later this summer to do health assessments and study environmental and health outcome data and community concerns about waste released into the environment, exposure through air, water, food, the harm or the toxicity and the proximity to a contaminated substance. She will be using radiological data that has already been collected. There will be a comparison of health issues as compared to the outside community.

We hope to have the Environmental Workshop before the end of the fiscal year. The Department of Energy thought they might be able to come up with some funding. The workshop would probably be for two days, geared to the lay person. Out of that we are hoping to develop some type of handbook for people to take with them for future reference. Roland Lickus would appreciate a letter on what they want him to cover and he would be happy to attend. All community members and students of Jeanine Gregoire would be able to attend and we hope to open it up to the Red Wing area. We hope to give information in an objective way so that they can form their own opinions.

Herb reported on the IHS Work Plan Sanitation Survey for water and sewer and environmental health and safety surveys to provide information to keep these facilities up to code. This will be on the agenda for the next meeting. Herb will bring copies.

XII. Radiological Monitoring

A basic background water quality assessment of ground water resources here is being done, concentrating on tritium in the water. Tritium is ^3H Hydrogen with a half-life of 12.26 years. Water is composed of water and hydrogen (H_2O); water with tritium has one oxygen and one hydrogen and one tritium. Chemically, this can be taken into your body just like any other water. Radioactive means it is not a stable —tritium is a natural atom and in its natural form it is produced in the upper atmosphere when the cosmic rays hit a nitrogen atom; one part of the nitrogen atom becomes a natural atom. Half-life means that it naturally decays and half of what you have will be gone in 12.26 years. When tritium decays it turns into helium by gaining an electron and it gives off low-level radiation. If it is in the air, it can be stopped by clothing but it can get into the body through food or drinking water. We have been monitoring the tritium at 20 different ground water sites and seven surface water sites. Sample runs between the fall of 1994 and summer of 1995 range between 0 and 200 pic/L (picocuries per liter). If the tritium in the ground water is from water that fell in the 1960's, then you would have higher pic/L in the 1960's than now. There are ways to date water and it would be interesting to find out when this water fell as rain. No readings before 1994. The EPA drinking water standard for tritium is 20,000 picocuries/L. Levels here as much lower. We are trying to get a handle on how the ground water is flowing. If tritium is airborne, then it could also be in the food.

There have been no significant levels of tritium found in any of the fish that we have monitored. Fish were collected from Sturgeon Lake and around the plant. We will be doing this again in June and will do it for a number of years. The EPA gave an explanation: The 20,000 picocuries = 4 milligrams of tritium. You would get 4/250,000 of a dose if you drank 2 liters of water containing 20,000 picocuries. A radiation dose is a uniform way to describe biological responses to what people have in correspondence to their body. Any amount of radiation has a quantifying risk to it. The EPA sets a standard that they find is acceptable and 20,000 pic/L is considered an acceptable risk.

There are risks associated with everything. How can we measure if it is hurting us on the island? We find the aggregate total of all of these things: Tritium, alpha rays, beta rays, etc. These are normal standards and then you add living next to the plant to find the risk over a life time. If the total amount is over the set standard then we have a regulatory issue

If we had a catastrophic discharge then there would be an emergency response. Roland said that history has shown us that none of the plants have even come near the limit. If anyone would fudge the records they would be in trouble with the NRC. Water testing data from before the plant is available in the public document room at the Minneapolis Public Library. The last two years we have been doing the fish survey, mercury and PCB's are a bigger issue than tritium. Several of the popular fish species contain PCB's in tissue. It's safe to go fishing, but not to eat the fish. Heather will be sent hints on proper preparation when cooking to avoid as much of the contaminants as possible. Hydrologic events such as a flood could stir things up and could change the findings. Since the 1970's things have gotten better.

The human body does not accumulate tritium. If it is in water it gets rid of it in a matter of days, but if it is in food then the tritium could get into tissue. It was questioned if tritium levels are higher in other parts of the area. There could be a study done on turtles. There should be comparisons with other nuclear plants around the country.

Tritium has been used to distinguish age of water in the past 10 to 15 years. Low concentration came before the 1960's and high concentrations during the 1960's. Water before 1954 was 6 to 75 picocuries per liter. The water since 1960 is still around. The other phenomena is that we are upstream from the plant. Other types of media that might be sampled are vegetation sampling from gardens and possibly mother's milk if anyone is willing to supply samples.

Nick Owen stated, "I am a member of this community and I don't know how you can sit here and talk about this as it is not such a big thing when we can't eat our fish." The response was that they are trying to figure out what is acceptable, and the PCB's are caused by companies making things that we all use everyday.

Update on the Archaeologist Survey - Richard Berg will be here for the next meeting and will have some graphics and handouts. The trust acquisition is being held up because of the 8th Circuit decision. The tribe was awarded a grant to answer the question of how much land was lost, how many acres were lost, what resources were lost and if the tribe was compensated for this loss.

XIII. Heather - Wetlands Delineation and Assessment

Awarded \$14,500 in funds from BIA and will be matched by the U.S. Corps of Engineers. The Corps of Engineers will be starting work this summer and we will use information gathered in the environmental codes and ordinances.

Break

XIV. Emergency Planning

Offsite Emergency Planning - FEMA is responsible for emergency planning/coordination outside of the power plant boundaries. Because of 3 Mile Island we got involved in off-site emergency planning. Emergency Management is a 50-50 match program with the states. Federal dollars are also given to counties and larger cities on a 50-50 match. FEMA is starting performance partnership agreements, setting five year long term goals on emergency management. This is an attempt to sit down with state government to get a commitment on emergency management.

The MOU points out preparedness through training, periodic exercising, and evaluation of those activities. We have a response mechanism and a response plan. The whole federal community would come out and coordinate a response to the disaster. The recovery aspects are the long term follow up after the disaster. An active part of our agency it is to reduce damages in the future. This has been used mostly for flood plain ordinances. Funds available are block grants, land and conservation funds, FEMA funds and flood insurance claims. It would allow participation in the national flood insurance program with the understanding that all future construction would be out of the flood plain. This area is in the City of Red Wing and the last map did not have tribal areas identified but the new map will have the flood plain shown. Tribal Council could pass a resolution if you choose to join the flood insurance program. The rail corridor was mentioned in relation to the derailment in Wisconsin earlier in the year. There is an obvious need to promote hazardous materials emergency planning.

Some of the findings from the emergency preparedness exercise held last week were reviewed. There are 33 objectives to evaluate the offsite capabilities that surround a nuclear facility. There are periodic meetings with NSP and the counties to look at evacuation issues. There could be 4,000 to 5,000 people here on a busy night at the casino. This is a very serious issue and this was glossed over during the exercise. We will be willing to do anything we can do to help coordinate a realistic evacuation. For Goodhue County this was a planning issue and for Pierce County the bus drivers needed some training on evacuation issues.

XV. FEMA

We have entered into separate MOU's for Canada and for Mexico. It is not known whether FEMA will sign the MOU. If you wanted an emergency planner we could possibly share the cost with you. There is a structure in place at the state level and they are more than willing to assist you in the development of an emergency preparedness plan. We will continue to do whatever we can, including providing any more information on chemical stockpiling, emergency preparedness, flood insurance, etc.

It was brought up that FEMA seems reluctant to sign the MOU. Response was that maybe we would do a two party agreement or a performance partnership agreement like the states. A letter will be sent by Robert Grey Eagle to their office of general counsel, to review the MOU and to issue an opinion on this document. We could embark on signing the MOU with these other agencies.

Lylis suggested giving a little history of Prairie Island and why we can no longer eat the turtles, etc. Some individuals are new to this. Heather asked if we would have a chance to review the agreement and supply comments. FEMA stated that we haven't in the past. Heather stated that the other governmental units are reviewing this and it seems that Prairie Island government should be able to review also. There are meetings held by the plant but have never seen the county planning and would like the opportunity to review that. Counties and states do not have that same responsibility to consult with the tribe. Heather would like a copy of the county's plan.

Contaminated animals, people getting sick from the power plant and possibility of a rail disaster were discussed. It was brought up that there is only one exit from Prairie Island, that we would need some help getting out of here, that we may be statistically part of Red Wing, but we need our own plan. Our own security is one contact. Alan said our roads have been an issue forever. We get fire protection from Miesville, police from Red Wing, ambulance from Hastings or Red Wing. We need to be treated as an individual government.

Counties are leaving the tribes out. If FEMA would see that tribes are included would be helpful. The emergency preparedness plan was not in effect for us in 1993 when flooding occurred.

Robert Grey Eagle and Darelynn Lehto said it would be acceptable if we could do everything without signing the MOU.

We could draw something up that would be good for your community, direction, control, evacuation, etc. Evacuation on a busy night here does not happen in a few minutes. Jurisdiction seems to be an issue. We do want to see the evaluation of the exercise. We will get you a letter.

XVI. Wrap Up

The next MOU Meeting was scheduled for August 22, 1996 from 9:00 a.m. to 4:00 p.m.

Robert Grey Eagle stated that agency directors will receive some information.

Herb Nelson felt we accomplished a lot, discussed what trust is, the government to government concept. He thanked the other federal agencies for coming and participating. He stated that the agenda is not fixed in concrete and if someone sees something that should be addressed they should speak up so that it can get on the agenda for next time.

Darelynn Lehto thanked everyone for coming. The agencies that are responsible to us, you are here today because we take these issues seriously.

XVII. Adjournment

Meeting adjourned at 4:00 p.m.

Minutes respectfully submitted by
Eleanore Bartell, Executive Secretary
for the Tribal Council

MOU Meeting

1/11/87

<u>Name</u>	<u>Organization</u>	<u>Phone</u>
Herb Nelson	IBIA - Minneapolis	612-373-1143
Larry L. Bailey	FEHA Region I	312-408-5582
Eve Ann Curtis	Argonne / Reg II support	708-252-6927
Scott Yess	US Fish and Wildlife Ser.	608-783-8432
Eric Glatstein	U.S. Environ Prot Agency	312/446-5046
Curt Meeder	U.S. Army Corps of Engineers, St. Paul Bemidji Area Office	(612) 290-5400
Wayne Pottor	Indian Health Service	(218) 759-3373
Don Hansen	U.S. Geological Survey	612-783-3250
TIM COWDERY	U.S. GEOLOGICAL SURVEY	612-783-3273
Curtis Campbell SR	Prairie Island Tribal Council	(612) 385-4100
DARELYNN LEHTO	VICE PRESIDENT - TRIBAL COUNCIL	(612) 385-4100
Nancy Helgemo	PIIC	612 385 4133
Russ Bywater	USNRC - Prairie Island Plant	612/388-8209
Steven Ray	USNRC - Prairie Island Plant	612/388-8209
ROLAND LICKUS	USNRC, Region III	708-829-9660
MARK DELLIGATTI	USNRC, SFPO	307 415-8518
Heather-Weston	PIIC.	612-385-4165

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Alanchilds

Lenor Scheffler

Audrey Kohner

Eric Pehle

Neta Childs

Jeanine + classroom

AGENDA

Meeting For Memorandum of Understanding
May 23, 1996
at the Prairie Island Community Center

- 9:00 AM Welcome and Introductions
- 9:15 AM Opening Prayer/Invocation - Curtis Campbell, Sr.
President, Tribal Council
- 9:30 AM Purpose of Meeting - Robert Grey Eagle
MOU Status - Who has signed or not
Remaining Agency Issues With MOU
- 10:00 AM Nuclear Regulatory Commission - Roland M. Lickus
Process to License Nuclear Waste Storage Facilities
Update on Two-Party MOU and Commission Paper
- 11:00 AM Relocation Update
Outcome of 1996 Legislative Session
8th Circuit Court of Appeals Update on Moratorium
- 11:15 AM Break
- 11:30 AM Litigation Support/Treaty Research
Funding Update - Herb Nelson
Project Update - Wendy Helgemo
- 12:00 PM Lunch - Buffet at Treasure Island Casino
- 1:00 PM Risk Assessment/Health
ATSDR Health Assessment - Linda Wright
Environmental Workshop
IHS Work Plan
- 1:30 PM Radiological Monitoring Update
Tritium - Natural v. Increased Levels
Don Hansen and Eric Glatstein
- 2:00 PM Natural and Cultural Resources
Archaeological Survey
Richard Berg, BIA Area Archaeologist
Wetlands Delineation & Assessment
Heather Westra
- 2:30 PM Emergency Planning
Offsite Emergency Planning - FEMA
Floodplain Regulations - FEMA
Nuclear Plant Exercise - NRC and FEMA
Tribal Projects - Heather Westra
- 3:00 PM Break
- 3:15 PM Summary and Wrap-Up
Follow-Up Actions
Next MOU Meeting
- Adjourn

management of argali in Kyrgyzstan, Mongolia, or Tajikistan has changed since the original classification of these populations in June 23, 1992 (57 FR 28014), the Service continues to consider these populations as threatened. Except for the recent report by Fedosenko on argali in the Pamirs region in Tajikistan, the Service has received little additional information on the status and management of argali in these countries since the 1993 report funded by the Service. Thus, the Service is requesting additional and updated information from the Governments of Kyrgyzstan, Tajikistan, and Mongolia and from individuals and organizations knowledgeable about the status and management of the argali in these three range countries.

Information Solicited

The Service can only issue a threatened species permit for the import of argali trophies when it finds that the activity will enhance the propagation or survival of the species. So the Service solicits information on the status of argali populations in Kyrgyzstan, Mongolia, and Tajikistan, including: (1) Whether the population in each country is sufficiently large, viable, and adequately protected to sustain sport hunting, (2) whether the regulating authorities in these range countries recognize these argali populations as a valuable resource and have the legal and practical means to manage these argali populations, including examples of any recent management initiatives, and (3) whether the regulating authorities can ensure that the exported trophy has in fact been legally taken from the specified population. In addition, the Service seeks information on how any funds derived from the involved sport hunt or any contributions made directly by the applicant and/or the outfitter have been applied to argali conservation, including specific examples.

Information received will be considered in developing the Service's findings for future permit applications for the import of sport-hunted argali trophies. In the meantime, the Service continues to process applications and make its decisions on existing information.

Dated: May 30, 1996.

John G. Rogers,
Acting Director.

[FR Doc. 96-14377 Filed 6-7-96; 8:45 am]
BILLING CODE 4310-65-P

Bureau of Land Management

Lower Snake River District Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management—Interior.

ACTION: Notice of meeting.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet at the district office to discuss options for applying terms and conditions for improving riparian areas to livestock grazing permits and leases.

DATES: Tuesday, June 18, 1996. The meeting will begin at 8:30 a.m. and a public comment period will begin at 9:00 a.m.

ADDRESSES: The Lower Snake River District Office is located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208-384-3393).

Dated: June 4, 1996.

Barry Rose,

Public Affairs Specialist.

[FR Doc. 96-14551 Filed 6-7-96; 8:45 am]

BILLING CODE 4310-CC-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-96-11]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 18, 1996 at 9:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-739 (Final) (Clad Steel Plate from Japan)—briefing and vote.
5. Inv. No. 731-TA-732-733 (Final) (Circular Welded Non-Alloy Steel Pipe from Romania and South Africa)—briefing and vote.
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: June 6, 1996

Donna R. Koehnke,

Secretary.

[FR Doc. 96-14749 Filed 6-6-96; 1:05 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office of the Deputy Attorney General

Office of Tribal Justice; Policy on Indian Sovereignty

AGENCY: Office of Tribal Justice, Department of Justice.

ACTION: Notice.

SUMMARY: This notice publishes the "Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations." The Policy reaffirms both the Department's recognition of the sovereign status of federally recognized Indian tribes and the Department's adherence to government-to-government relations with federally recognized Indian tribes. The Policy also contains a directive to all components of the Department of Justice to inform attorneys of the responsibilities enumerated in the policy and to make all reasonable efforts to ensure that component activities conform to its terms. The Policy also directs Department of Justice component heads to appoint a contact person to work with the Office of Tribal Justice to address Indian issues within each component.

FOR FURTHER INFORMATION CONTACT: Herbert A. Becker, Director, Office of Tribal Justice, Room 1509, Main Building, Department of Justice. Telephone: (202) 514-8812. FAX: (202) 514-9078.

SUPPLEMENTARY INFORMATION: Attached is a copy of the "Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes," which the Attorney General signed on June 1, 1995.

Dated: June 3, 1996.

Herbert A. Becker,

Director, Office of Tribal Justice.

Office of the Attorney General
Washington, DC 20530

DEPARTMENT OF JUSTICE POLICY ON INDIAN SOVEREIGNTY AND GOVERNMENT-TO-GOVERNMENT RELATIONS WITH INDIAN TRIBES

Purpose

To reaffirm the Department's recognition of the sovereign status of federally recognized Indian tribes as domestic dependent nations and to reaffirm adherence to the principles of government-to-government relations; to inform Department personnel, other federal agencies, federally recognized Indian tribes, and the public of the Department's working relationships with federally recognized Indian tribes; and to guide the Department in its work in the field of Indian affairs.

I. Introduction

From its earliest days, the United States has recognized the sovereign status of Indian

tribes as "domestic dependent nations." *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831). Our Constitution recognize Indian sovereignty by classing Indian treaties among the "supreme Law of the land," and establishes Indian affairs as a unique area of federal concern. In early Indian treaties, the United States pledged to "protect" Indian tribes, thereby establishing one of the bases for the federal trust responsibility in our government-to-government relations with Indian tribes. These principles continue to guide our national policy towards Indian tribes.

A. The Executive Memorandum on Government-to-Government Relations Between the United States and Indian Tribes

On April 29, 1994, at an historic meeting with the heads of tribal governments, President Clinton reaffirmed the United States' "unique legal relationship with Native American tribal governments" and issued a directive to all executive departments and agencies of the Federal Government that:

As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.

President Clinton's directive requires that in all activities relating to or affecting the government or treaty rights of Indian tribes, the executive branch shall:

(1) Operate within a government-to-government relationship with federally recognized Indian tribes;

(2) Consult, to the greatest extent practicable and permitted by law, with Indian tribal governments before taking actions that affect federally recognized Indian tribes;

(3) Assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken;

(4) Remove procedural impediments to working directly with tribal governments on activities that affect trust property or governmental rights of the tribes; and

(5) Work cooperatively with other agencies to accomplish these goals established by the President.

The Department of Justice is reviewing programs and procedures to ensure that we adhere to principles of respect for Indian tribal governments and honor our Nation's trust responsibility to Indian tribes. Within the Department, the Office of Tribal Justice has been formed to coordinate policy towards Indian tribes both within the Department and with other agencies of the Federal Government, and to assist Indian tribes as domestic dependent nations within the federal system.

B. Federal Indian Self-Determination Policy

President Clinton's executive memorandum builds on the firmly established federal policy of self-determination for Indian tribes. Working together with Congress, previous Presidents affirmed the fundamental policy of federal respect for tribal self-government. President Johnson recognized "the right of the first

Americans . . . to freedom of choice and self-determination." President Nixon strongly encouraged "self-determination" among the Indian people. President Reagan pledged "to pursue the policy of self-government" for Indian tribes and reaffirmed "the government-to-government basis" for dealing with Indian tribes. President Bush recognized that the Federal Government's "efforts to increase tribal self-governance have brought a renewed sense of pride and empowerment to this country's native peoples."

II. Principles of Indian Sovereignty and the Trust Responsibility

Though generalizations are difficult, a few basic principles provide important guidance in the field of Indian affairs: (1) the Constitution vests Congress with plenary power over Indian affairs; (2) Indian tribes retain important sovereign powers over "their members and their territory," subject to the plenary power of Congress; and (3) the United States has a trust responsibility to Indian tribes, which guides and limits the Federal Government in dealings with Indian tribes. Thus, federal and tribal law generally have primacy over Indian affairs in Indian country, except where Congress has provided otherwise.

III. Department of Justice Recognition of Indian Sovereignty and the Federal Trust Responsibility

The Department resolves that the following principles will guide its interactions with the Indian tribes.

A. The Sovereignty of Indian Tribes

The Department recognizes that Indian tribes as domestic dependent nations retain sovereign powers, except as divested by the United States, and further recognizes that the United States has the authority to restore federal recognition of Indian sovereignty in order to strengthen tribal self-governance.

The Department shall be guided by principles of respect for Indian tribes and their sovereign authority and the United States' trust responsibility in the many ways in which the Department takes action on matters affecting Indian tribes. For example, the Department reviews proposed legislation, administers funds that are available to tribes to build their capacity to address crime and crime-related problems in Indian country, and in conjunction with the Bureau of Indian Affairs and tribal police, provides essential law enforcement in Indian country. The Department represents the United States, in coordination with other federal agencies, in litigation brought for the benefit of Indian tribes and individuals, as well as in litigation by Indian tribes or individuals against the United States or its agencies. In litigation as in other matters, the Department may take actions and positions affecting Indian tribes with which one or more tribes may disagree. In all situations, the Department will carry out its responsibilities consistent with the law and this policy statement.

B. Government-to-Government Relationships with Indian Tribes

In accord with the status of Indian tribes as domestic dependent nations, the Department is committed to operating on the

basis of government-to-government relations with Indian tribes.

Consistent with federal law and other Departmental duties, the Department will consult with tribal leaders in its decisions that relate to or affect the sovereignty, rights, resources or lands of Indian tribes. Each component will conduct such consultation in light of its mission. In addition, the Department has initiated national and regional listening conferences and has created the Office of Tribal Justice to improve communications with Indian tribes. In the Offices of the United States Attorneys with substantial areas of Indian country within their purview, the Department encourages designation of Assistant U.S. Attorneys to serve as tribal liaisons.

In order to fulfill its mission, the Department of Justice endeavors to forge strong partnerships between the Indian tribal governments and the Department. These partnerships will enable the Department to better serve the needs of Indian tribes, Indian people, and the public at large.

C. Self-Determination and Self-Governance

The Department is committed to strengthening and assisting Indian tribal governments in their development and to promoting Indian self-governance. Consistent with federal law and Departmental responsibilities, the Department will consult with tribal governments concerning law enforcement priorities in Indian country, support duly recognized tribal governments, defend the lawful exercise of tribal governmental powers in coordination with the Department of the Interior and other federal agencies, investigate government corruption when necessary, and support and assist Indian tribes in the development of their law enforcement systems, tribal courts, and traditional justice systems.

D. Trust Responsibility

The Department acknowledges the federal trust responsibility arising from Indian treaties, statutes, executive orders, and the historical relations between the United States and Indian tribes. In a broad sense, the trust responsibility relates to the United States' unique legal and political relationship with Indian tribes. Congress, with plenary power over Indian affairs, plays a primary role in defining the trust responsibility, and Congress recently declared that the trust responsibility "includes the protection of the sovereignty of each tribal government." 25 U.S.C. 3601.

The term "trust responsibility" is also used in a narrower sense to define the precise legal duties of the United States in managing property and resources of Indian tribes and, at times, of individual Indians.

The trust responsibility, in both senses, will guide the Department in litigation, enforcement, policymaking and proposals for legislation affecting Indian country, when appropriate to the circumstances. As used in its narrower sense, the federal trust responsibility may be justifiable in some circumstances, while in its broader sense the definition and implementation of the trust responsibility is committed to Congress and the Executive Branch.

E. Protection of Civil Rights

Federal law prohibits discrimination based on race or national origin by the federal, state and local governments, or individuals against American Indians in such areas as voting, education, housing, credit, public accommodations and facilities, employment, and in certain federally funded programs and facilities. Various federal criminal civil rights statutes also preserve personal liberties and safety. The existence of the federal trust responsibility towards Indian tribes does not diminish the obligation of state and local governments to respect the civil rights of Indian people.

Through the Indian Civil Rights Act, Congress selectively has derived essential civil rights protections from the Bill of Rights and applied them to Indian tribes. 25 U.S.C. § 1301. The Indian Civil Rights Act is to be interpreted with respect for Indian sovereignty. The primary responsibility for enforcement of the Act is invested in the tribal courts and other tribal fora. In the criminal law context, federal courts have authority to decide habeas corpus petitions after tribal remedies are exhausted.

The Department of Justice is fully committed to safeguarding the constitutional and statutory rights of American Indians, as well as all other Americans.

F. Protection of Tribal Religion and Culture

The mandate to protect religious liberty is deeply rooted in this Nation's constitutional heritage. The Department seeks to ensure that American Indians are protected in the observance of their faiths. Decisions regarding the activities of the Department that have the potential to substantially interfere with the exercise of Indian religions will be guided by the First Amendment of the United States Constitution, as well as by statutes which protect the exercise of religion such as the Religious Freedom Restoration Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and the National Historic Preservation Act.

The Department also recognizes the significant federal interest in aiding tribes in the preservation of their tribal customs and traditions. In performing its duties in Indian country, the department will respect and seek to preserve tribal cultures.

IV. Directive to all Components of the Department of Justice

The principles set out here must be interpreted by each component of the Department of Justice in light of its respective mission. Therefore, each component head shall make all reasonable efforts to ensure that the component's activities are consistent with the above sovereignty and trust principles. The component heads shall circulate this policy to all attorneys in Department to inform them of their responsibilities. Where the activities and internal procedures of the components can be reformed to ensure greater consistency with this Policy, the component head shall undertake to do so. If tensions arise between these principles and other principles which guide the component in carrying out its mission, components will develop, as

necessary, a mechanism for resolving such tensions to ensure that tribal interests are given due consideration. Finally, component heads will appoint a contact person to work with the Office of Tribal Justice in addressing Indian issues within the component.

V. Disclaimer

This policy is intended only to improve the internal management of the Department and is not intended to create any right enforceable in any cause of action by any party against the United States, its agencies, officers, or any person.

Dated: June 1, 1995.

Janet Reno,

Attorney General.

[FR Doc. 96-14513 Filed 6-7-96; 8:45 am]

BILLING CODE 4110-01-M

Notice of Lodging of Consent Decrees in Action To Recover Past Costs Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that two Consent Decrees in *United States v. Cassidy, et al.*, Civil Action No. 94-CV-71787-DT, were lodged with the United States District Court for the Eastern District of Michigan on May 30, 1996.

The Consent Decrees resolve claims brought by the United States pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, against Detrex Corp., Ford Motor Co., General Motors Corp., PVS-Nolwood Chemicals, Inc., Tronex Chemical Co., Van Waters & Rogers, Inc., Ethone-OMI, Inc., Henkel Corp., Chrysler Corp., General Electric Co., and Carboly, Inc. The complaint alleges that the United States incurred response costs in connection with a release or threatened release of hazardous substances from sites operated by the ABC Barrel and Drum Company at 14290 Birwood St. and 102 W. Lantz St. in Detroit, Wayne County, Michigan. The complaint alleges that the defendants were liable for such costs as persons who arranged for the disposal of hazardous substances at the sites.

One of the Consent Decrees requires Detrex Corp., Ford Motor Co., General Motors Corp., PVS-Nolwood Chemicals, Inc., Van Waters & Rogers, Inc., Ethone-OMI, Inc., Henkel Corp., Chrysler Corp., General Electric Co., and Carboly, Inc. to pay \$2,550,000 to the EPA Hazardous Substances Superfund to settle the claims asserted against them. Under this Decree, the United States also covenants not to sue and provides contribution protection to three third party

defendants who settled with the defendants for a total of \$32,638: Martin Marietta Magnesia Specialties, Inc., McKesson Corp., and Union Carbide Corp. The Decree also restricts the contribution rights of the settling defendants and settling third parties.

The second Consent Decree that was lodged requires Tronex Chemical Company to pay \$20,000, plus interest, in four installments to the EPA Hazardous Substance Superfund to settle the claims asserted against it in the Complaint.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice written comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Cassidy, et al.*, DOJ Ref. No. 90-11-3-1060.

The Consent Decrees may be examined at the Office of the United States Attorney, Eastern District of Michigan, 211 W. Fort St., Suite 2300, Detroit, Michigan; at the Region V Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C., (202) 624-0892. A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check payable to the Consent Decree Library in the amount of \$10.75 (\$25 cents per page reproduction costs) for the Consent Decree requiring the \$2,550,000 payment, and/or, \$5.75 for the Consent Decree involving Tronex Chemical Company. Please specify precisely which Decree is being requested.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96-14472 Filed 6-7-96; 8:45 am]

BILLING CODE 4110-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, (42 U.S.C. 9601-9675)

Notice is hereby given that a proposed consent decree in *United States v. David B. Fisher, et al.*, Civil Action No. S92-00636M, was lodged on May 22, 1996 with the United States District Court for



The Secretary of Energy
Washington, DC 20585

May 18, 1994

MEMORANDUM FOR ALL DEPARTMENTAL ELEMENTS

FROM:

HAZEL R. O'LEARY

A handwritten signature in cursive script, appearing to read "Hazel R. O'Leary", written over the printed name.

SUBJECT:

GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE
AMERICAN TRIBAL GOVERNMENTS

The attached memorandum signed by the President on April 29, 1994, outlines principles that define our responsibility to ensure that the Department operates within a government-to-government relationship with all federally recognized tribal governments. Accordingly, you are hereby requested to ensure that all program components that fall within your purview are fully aware of the intent of this Presidential directive. Additionally, you are requested to ensure that the rights of sovereign tribal governments are fully respected and that departmental activities affecting Native American tribal rights or trust resources are implemented in a knowledgeable and sensitive manner respectful of this tribal sovereignty.

The attached Department of Energy American Indian Policy is consistent with the principles outlined in this Presidential memorandum. Its purpose is to provide you with further guidance as we work toward implementing departmental activities and actions affecting tribal governments.

Thank you for your cooperation and assistance.

Attachments

ATTACHMENT 5

THE WHITE HOUSE
WASHINGTON

April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with
Native American Tribal Governments

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

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(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William B. Clinton

U.S. DEPARTMENT OF ENERGY AMERICAN INDIAN POLICY

PURPOSE

This policy outlines the principles to be followed by the Department of Energy (DOE) in its interaction with federally-recognized American Indian Tribes. It is based on Federal policy, treaties, Federal law and the DOE's responsibilities as a Federal agency to ensure that tribal rights and interests are identified and considered in pertinent decision-making. The policy provides general guidance to DOE personnel for management actions affecting American Indians and emphasizes implementation of such activities in a knowledgeable and sensitive manner. This policy does not affect DOE interactions with State-recognized Tribes with respect to matters provided for by statute or regulation.

DEFINITION

INDIAN COUNTRY means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18USCS 1151)

BACKGROUND

American Indian Tribal Governments have a special and unique legal and political relationship with the Government of the United States, defined by history, treaties, statutes, court decisions, and the U.S. Constitution. The United States has entered into more than 600 treaties and agreements with American Indian Tribes. These treaties and agreements create a variety of legal responsibilities by the United States toward American Indian Tribes and provide the basis for a government-to-government relationship. Other responsibilities toward American Indians are created by Congress through statutory enactments. Although the Department of the Interior, through the Bureau of Indian Affairs, has the principal responsibility for upholding obligations of the Federal Government to American Indians, this responsibility extends to all Federal agencies.

POLICY

1. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH AMERICAN INDIAN TRIBAL GOVERNMENTS.

DOE recognizes Tribal governments as sovereign entities with, in most cases, primary authority and responsibility for Indian country. In keeping with the principle of American Indian self-government, the Department will view Tribal governments as the appropriate non-Federal parties for making decisions affecting Indian country, its energy resources and environments, and the health and welfare of its populace. The Department will recognize the right of each Tribe to set its own priorities and goals in developing and managing its energy resources. The Department recognizes that some Tribes have treaty-protected interests in resources outside reservation boundaries.

2. DOE RECOGNIZES THAT A TRUST RELATIONSHIP DERIVES FROM THE HISTORICAL RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND AMERICAN INDIAN TRIBES AS EXPRESSED IN CERTAIN TREATIES AND FEDERAL INDIAN LAW.

In keeping with the trust responsibility, the DOE will consult with Tribal governments regarding the impact of DOE activities on the energy, environmental and natural resources of American Indian Tribes when carrying out its responsibilities.

3. THE DEPARTMENT WILL CONSULT WITH TRIBAL GOVERNMENTS TO ASSURE THAT TRIBAL RIGHTS AND CONCERNS ARE CONSIDERED PRIOR TO DOE TAKING ACTIONS, MAKING DECISIONS OR IMPLEMENTING PROGRAMS THAT MAY AFFECT TRIBES.

The DOE will take a proactive approach to solicit input from Tribal governments on departmental policies and issues. The Department will encourage Tribal Governments and their members to participate fully in the national and regional dialogues concerning departmental programs and issues.

4. CONSISTENT WITH FEDERAL CULTURAL RESOURCE LAWS AND THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT (P.L. 95-341), EACH FIELD OFFICE OR DOE INSTALLATION WITH AREAS OF CULTURAL OR RELIGIOUS CONCERN TO AMERICAN INDIANS WILL CONSULT WITH THEM ABOUT THE POTENTIAL IMPACTS OF PROPOSED DOE ACTIONS ON THOSE RESOURCES AND WILL AVOID UNNECESSARY INTERFERENCE WITH TRADITIONAL RELIGIOUS PRACTICES.

DOE will comply with all cultural resource legislation and implementing regulations in the management and operation of its programs and facilities.

Consultation with appropriate American Indian tribal governments is part of the compliance process involving Federal cultural resource laws and the American Indian Religious Freedom Act. Consultation may include, but is not limited to (1) the exchange of information concerning the location and management of cultural resources (2) repatriation or other disposition of objects and human remains (3) access to sacred areas and traditional resources located on DOE lands in accordance with safety, health and national security considerations, and (4) assessment of potential community impacts.

5. THE DEPARTMENT WILL IDENTIFY AND SEEK TO REMOVE IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON DOE PROGRAMS.

DOE recognizes that there may be regulatory, statutory and/or procedural impediments which limit or restrict our ability to work effectively and consistently with Tribes. In keeping with this policy, we will seek to remove any such impediments. Additionally, we will, to the maximum extent permitted by law, apply existing statutory, regulatory, and procedural requirements in a manner that furthers the goals of this policy.

6. THE DEPARTMENT WILL WORK WITH OTHER FEDERAL AND STATE AGENCIES THAT HAVE RELATED RESPONSIBILITIES TO CLARIFY THE ROLES, RESPONSIBILITIES AND RELATIONSHIPS OF OUR RESPECTIVE ORGANIZATIONS AS THEY RELATE TO TRIBAL MATTERS.

DOE will seek and promote cooperation with other agencies that have related responsibilities. In many areas of concern to DOE, cooperation and mutual consideration among neighboring governments (Federal, State, Tribal and local) is essential. Accordingly, DOE will encourage early communication and cooperation among all governmental parties. This recognizes that the principle of comity among equals and neighbors often serves the best interests of all parties.

7. THE DEPARTMENT WILL INCORPORATE THIS POLICY INTO ITS ONGOING AND LONG-TERM PLANNING AND MANAGEMENT PROCESSES.

It is key to this effort to ensure that the principles of this policy are effectively institutionalized by incorporating them into the Department's ongoing and long-term planning and management processes. Department managers will include specific programmatic actions designed to facilitate tribal participation in Departmental program planning and activities.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 14 1994

MEMORANDUM

SUBJECT: EPA Indian Policy

THE ADMINISTRATOR

TO: All Employees

In 1984, EPA became the first Federal agency to adopt a formal Indian Policy (copy attached). EPA is proud of that Policy, which has provided the framework for our developing partnership with Tribes. Since 1984 Agency programs have changed and several of our statutes have been amended to address Tribal needs. Nevertheless, the core principle of the Policy, a commitment to working with Federally recognized tribes on a government-to-government basis to enhance environmental protection, has been reaffirmed by President Clinton and remains the cornerstone of EPA's Indian program. Accordingly, therefore, I formally reaffirm the EPA Indian Policy.

The challenge for EPA today is to implement its Policy effectively. Previous administrations have addressed implementation, both in a 1984 Policy Implementation Guidance and a 1991 Concept Paper. We must now update and strengthen these documents and our implementation programs to reflect the goals and values of our long-term vision and strategic agenda. A key element for successfully implementing the Indian Policy must be a commitment to fully institutionalize the Policy into the Agency's planning and management activities.

On March 7, Martha Prothro, formerly Deputy Assistant Administrator for Water, joined my staff to assist in developing our Tribal Programs. I have asked Martha and Bill Yellowtail, Regional Administrator, EPA Region VIII, to form a team of Agency leaders to make recommendations on EPA/Tribal relations and the implementation of the Policy. The work of this group should help the Agency develop the best structure and adopt the best strategies for implementing the goals of the Policy. The team will work with Tribal representatives, including the Tribal Operations Committee and others, in drafting new implementation guidance. This guidance will provide a blueprint for transforming the Policy's vision into a reality for federally recognized Indian Tribes, including Alaskan Tribes.

This is an exciting opportunity for us to develop a stronger partnership with Tribal governments in protecting the environment. I ask all of you to help make this effort a great success.

A handwritten signature in black ink, appearing to read "Carol M. Browner".

Carol M. Browner

ATTACHMENT 6



11/8/84

EPA POLICY FOR THE ADMINISTRATION OF ENVIRONMENTAL PROGRAMS ON INDIAN RESERVATIONS

INTRODUCTION

The President published a Federal Indian Policy on January 24, 1983, supporting the primary role of Tribal Governments in matters affecting American Indian reservations. That policy stressed two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal Governments on a "government-to-government" basis.

The Environmental Protection Agency (EPA) has previously issued general statements of policy which recognize the importance of Tribal Governments in regulatory activities that impact reservation environments. It is the purpose of this statement to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-government" relations between Federal and Tribal Governments. This statement sets forth the principles that will guide the Agency in dealing with Tribal Governments and in responding to the problems of environmental management on American Indian reservations in order to protect human health and the environment. The Policy is intended to provide guidance for EPA program managers in the conduct of the Agency's congressionally mandated responsibilities. As such, it applies to EPA only and does not articulate policy for other Agencies in the conduct of their respective responsibilities.

It is important to emphasize that the implementation of regulatory programs which will realize these principles on Indian Reservations cannot be accomplished immediately. Effective implementation will take careful and conscientious work by EPA, the Tribes and many others. In many cases, it will require changes in applicable statutory authorities and regulations. It will be necessary to proceed in a carefully phased way, to learn from successes and failures, and to gain experience. Nonetheless, by beginning work on the priority problems that exist now and continuing in the direction established under these principles, over time we can significantly enhance environmental quality on reservation lands.

POLICY

In carrying out our responsibilities on Indian reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the Agency will pursue the following principles:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE "GOVERNMENT-TO-GOVERNMENT" RELATIONSHIP), RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENTS.

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.

2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.

The Agency will assist interested Tribal Governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Within the constraints of EPA's authority and resources, this aid will include providing grants and other assistance to Tribes similar to that we provide State Governments. The Agency will encourage Tribes to assume delegable responsibilities, (i.e. responsibilities which the Agency has traditionally delegated to State Governments for non-reservation lands) under terms similar to those governing delegations to States.

Until Tribal Governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations (unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State Government). Where EPA retains such responsibility, the Agency will encourage the Tribe to participate in policy-making and to assume appropriate lesser or partial roles in the management of reservation programs.

4. THE AGENCY WILL TAKE APPROPRIATE STEPS TO REMOVE EXISTING LEGAL AND PROCEDURAL IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON RESERVATION PROGRAMS.

A number of serious constraints and uncertainties in the language of our statutes and regulations have limited our ability to work directly and effectively with Tribal Governments on reservation problems. As impediments in our procedures, regulations or statutes are identified which limit our ability to work effectively with Tribes consistent with this Policy, we will seek to remove those impediments.

5. THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations.

6. THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.

Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of government. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local governments. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both.

7. THE AGENCY WILL WORK WITH OTHER FEDERAL AGENCIES WHICH HAVE RELATED RESPONSIBILITIES ON INDIAN RESERVATIONS TO ENLIST THEIR INTEREST AND SUPPORT IN COOPERATIVE EFFORTS TO HELP TRIBES ASSUME ENVIRONMENTAL PROGRAM RESPONSIBILITIES FOR RESERVATIONS.

EPA will seek and promote cooperation between Federal agencies to protect human health and the environment on reservations. We will work with other agencies to clearly identify and delineate the roles, responsibilities and relationships of our respective organizations and to assist Tribes in developing and managing environmental programs for reservation lands.

8. THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.

In those cases where facilities owned or managed by Tribal Governments are not in compliance with Federal environmental statutes, EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

In those cases where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as the Agency would to noncompliance by the private sector elsewhere in the country. Where the Tribe has a substantial proprietary interest in, or control over, the privately owned or managed facility, EPA will respond as described in the first paragraph above.

9. THE AGENCY WILL INCORPORATE THESE INDIAN POLICY GOALS INTO ITS PLANNING AND MANAGEMENT ACTIVITIES, INCLUDING ITS BUDGET, OPERATING GUIDANCE, LEGISLATIVE INITIATIVES, MANAGEMENT ACCOUNTABILITY SYSTEM AND ONGOING POLICY AND REGULATION DEVELOPMENT PROCESSES.

It is a central purpose of this effort to ensure that the principles of this Policy are effectively institutionalized by incorporating them into the Agency's ongoing and long-term planning and management processes. Agency managers will include specific programmatic actions designed to resolve problems on Indian reservations in the Agency's existing fiscal year and long-term planning and management processes.



William D. Ruckelshaus



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 8 1984

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Indian Policy Implementation Guidance

FROM: Alvin L. Alm *Alvin L. Alm*
Deputy Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel

INTRODUCTION

The Administrator has signed the attached EPA Indian Policy. This document sets forth the broad principles that will guide the Agency in its relations with American Indian Tribal Governments and in the administration of EPA programs on Indian reservation lands.

This Policy concerns more than one hundred federally-recognized Tribal Governments and the environment of a geographical area that is larger than the combined area of the States of Maryland, New Jersey, Connecticut, Massachusetts, Vermont, New Hampshire and Maine. It is an important sector of the country, and constitutes the remaining lands of America's first stewards of the environment, the American Indian Tribes.

The Policy places a strong emphasis on incorporating Tribal Governments into the operation and management of EPA's delegable programs. This concept is based on the President's Federal Indian Policy published on January 24, 1983 and the analysis, recommendations and Agency input to the EPA Indian Work Group's Discussion Paper, Administration of Environmental Programs on American Indian Reservations (July 1983).

TIMING AND SCOPE

Because of the importance of the reservation environments, we must begin immediately to incorporate the principles of EPA's Indian Policy into the conduct of our everyday business. Our established operating procedures (including long-range budgetary and operational planning activities) have not consistently focused on the proper role of Tribal Governments or the special legal and political problems of program management on Indian lands. As a result, it will require a phased and sustained effort over time to fully implement the principles of the Policy and to take the steps outlined in this Guidance.

Some Regions and Program Offices have already made individual starts along the lines of the Policy and Guidance. I believe that a clear Agency-wide policy will enable all programs to build on these efforts so that, within the limits of our legal and budgetary constraints, the Agency as a whole can make respectable progress in the next year.

As we begin the first year of operations under the Indian Policy, we cannot expect to solve all of the problems we will face in administering programs under the unique legal and political circumstances presented by Indian reservations. We can, however, concentrate on specific priority problems and issues and proceed to address these systematically and carefully in the first year. With this general emphasis, I believe that we can make respectable progress and establish good precedents for working effectively with Tribes. By working within a manageable scope and pace, we can develop a coordinated base which can be expanded, and, as appropriate, accelerated in the second and third years of operations under the Policy.

In addition to routine application of the Policy and this Guidance in the conduct of our everyday business, the first year's implementation effort will emphasize concentrated work on a discrete number of representative problems through cooperative programs or pilot projects. In the Regions, this effort should include the identification and initiation of work on priority Tribal projects. At Headquarters, it should involve the resolution of the legal, policy and procedural problems which hamper our ability to implement the kinds of projects identified by the Regions.

The Indian Work Group (IWG), which is chaired by the Director of the Office of Federal Activities and composed of representatives of key regional and headquarters offices, will facilitate and coordinate these efforts. The IWG will begin immediately to help identify the specific projects which may be ripe for implementation and the problems needing resolution in the first year.

Because we are starting in "mid-stream," the implementation effort will necessarily require some contribution of personnel time and funds. While no one program will be affected in a major fashion, almost all Agency programs are affected to some degree. I do not expect the investment in projects on Indian Lands to cause any serious restriction in the States' funding support or in their ability to function effectively. To preserve the flexibility of each Region and each program, we have not set a target for allocation of FY 85 funds. I am confident, however, that Regions and program offices can, through readjustment of existing resources, demonstrate significant and credible progress in the implementation of EPA's Policy in the next year.

ACTION

Subject to these constraints, Regions and program managers should now initiate actions to implement the principles of the Indian Policy. The eight categories set forth below will direct our initial implementation activities. Further guidance will be provided by the Assistant Administrator for External Affairs as experience indicates a need for such guidance.

1. THE ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS WILL SERVE AS LEAD AGENCY CLEARINGHOUSE AND COORDINATOR FOR INDIAN POLICY MATTERS.

This responsibility will include coordinating the development of appropriate Agency guidelines pertaining to Indian issues, the implementation of the Indian Policy and this Guidance. In this effort the Assistant Administrator for External Affairs will rely upon the assistance and support of the EPA Indian Work Group.

2. THE INDIAN WORK GROUP (IWG) WILL ASSIST AND SUPPORT THE ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS IN DEVELOPING AND RECOMMENDING DETAILED GUIDANCE AS NEEDED ON INDIAN POLICY AND IMPLEMENTATION MATTERS. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD DESIGNATE APPROPRIATE REPRESENTATIVES TO THE INDIAN WORK GROUP AND PROVIDE THEM WITH ADEQUATE TIME AND RESOURCES NEEDED TO CARRY OUT THE IWG'S RESPONSIBILITIES UNDER THE DIRECTION OF THE ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS.

The Indian Work Group, (IWG) chaired by the Director of the Office of Federal Activities, will be an important entity for consolidating the experience and advice of the key Assistant and Regional Administrators on Indian Policy matters. It will perform the following functions: identify specific legal, policy, and procedural impediments to working directly with Tribes on reservation problems; help develop appropriate guidance for overcoming such impediments; recommend opportunities for implementation of appropriate programs or pilot projects; and perform other services in support of Agency managers in implementing the Indian Policy.

The initial task of the IWG will be to develop recommendations and suggest priorities for specific opportunities for program implementation in the first year of operations under the Indian Policy and this Guidance.

To accomplish this, the General Counsel and each Regional and Assistant Administrator must be actively represented on the IWG by a staff member authorized to speak for his or her office. Further, the designated representative(s) should be afforded the time and resources, including travel, needed to provide significant staff support to the work of the IWG.

3. ASSISTANT AND REGIONAL ADMINISTRATORS SHOULD UNDERTAKE ACTIVE OUTREACH AND LIAISON WITH TRIBES, PROVIDING ADEQUATE INFORMATION TO ALLOW THEM TO WORK WITH US IN AN INFORMED WAY.

In the first thirteen years of the Agency's existence, we have worked hard to establish working relationships with State Governments, providing background information and sufficient interpretation and explanations to enable them to work effectively with us in the development of cooperative State programs under our various statutes. In a similar manner, EPA managers should try to establish direct, face-to-face contact (preferably on the reservation) with Tribal Government officials. This liaison is essential to understanding Tribal needs, perspectives and priorities. It will also foster Tribal understanding of EPA's programs and procedures needed to deal effectively with us.

4. ASSISTANT AND REGIONAL ADMINISTRATORS SHOULD ALLOCATE RESOURCES TO MEET TRIBAL NEEDS, WITHIN THE CONSTRAINTS IMPOSED BY COMPETING PRIORITIES AND BY OUR LEGAL AUTHORITY.

As Tribes move to assume responsibilities similar to those borne by EPA or State Governments, an appropriate block of funds must be set aside to support reservation abatement, control and compliance activities.

Because we want to begin to implement the Indian Policy now, we cannot wait until FY 87 to formally budget for programs on Indian lands. Accordingly, for many programs, funds for initial Indian projects in FY 85 and FY 86 will need to come from resources currently planned for support to EPA-and State-managed programs meeting similar objectives. As I stated earlier, we do not expect to resolve all problems and address all environmental needs on reservations immediately. However, we can make a significant beginning without unduly restricting our ability to fund ongoing programs.

I am asking each Assistant Administrator and Regional Administrator to take measures within his or her discretion and authority to provide sufficient staff time and grant funds to allow the Agency to initiate projects on Indian lands in FY 85 and FY 86 that will constitute a respectable step towards implementation of the Indian Policy.

5. ASSISTANT AND REGIONAL ADMINISTRATORS, WITH LEGAL SUPPORT PROVIDED BY THE GENERAL COUNSEL, SHOULD ASSIST TRIBAL GOVERNMENTS IN PROGRAM DEVELOPMENT AS THEY HAVE DONE FOR THE STATES.

The Agency has provided extensive staff work and assistance to State Governments over the years in the development of environmental programs and program management capabilities. This assistance has become a routine aspect of Federal/State relations, enabling and expediting the States' assumption of delegable programs under the various EPA statutes. This "front end" investment has promoted cooperation and increased State involvement in the regulatory process.

As the Agency begins to deal with Tribal Governments as partners in reservation environmental programming, we will find a similar need for EPA assistance. Many Regional and program personnel have extensive experience in working with States on program design and development; their expertise should be used to assist Tribal Governments where needed.

6. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD TAKE ACTIVE STEPS TO ALLOW TRIBES TO PROVIDE INFORMED INPUT INTO EPA'S DECISION-MAKING AND PROGRAM MANAGEMENT ACTIVITIES WHICH AFFECT RESERVATION ENVIRONMENTS.

Where EPA manages Federal programs and/or makes decisions relating directly or indirectly to reservation environments, full consideration and weight should be given to the public policies, priorities and concerns of the affected Indian Tribes as expressed through their Tribal Governments. Agency managers should make a special effort to inform Tribes of EPA decisions and activities which can affect their reservations and solicit their input as we have done with State Governments. Where necessary, this should include providing the necessary information, explanation and/or briefings needed to foster the informed participation of Tribal Governments in the Agency's standard-setting and policy-making activities.

7. ASSISTANT AND REGIONAL ADMINISTRATORS SHOULD, TO THE MAXIMUM FEASIBLE EXTENT, INCORPORATE TRIBAL CONCERNS, NEEDS AND PREFERENCES INTO EPA'S POLICY DECISIONS AND PROGRAM MANAGEMENT ACTIVITIES AFFECTING RESERVATIONS.

It has been EPA's practice to seek out and accord special consideration to local interests and concerns, within the limits allowed by our statutory mandate and nationally established criteria and standards. Consistent with the Federal and Agency policy to recognize Tribal Governments as the primary voice for expressing public policy on reservations, EPA managers should, within the limits of their flexibility, seek and utilize Tribal input and preferences in those situations where we have traditionally utilized State or local input.

We recognize that conflicts in policy, priority or preference may arise between States and Tribes as it does between neighboring States. As in the case of conflicts between neighboring States, EPA will encourage early communication and cooperation between Tribal and State Governments to avoid and resolve such issues. This is not intended to lend Federal support to any one party in its dealings with the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals often serves the interests of both.

Several of the environmental statutes include a conflict resolution mechanism which enables EPA to use its good offices to balance and resolve the conflict. These procedures can be applied to conflicts between Tribal and State Governments that cannot otherwise be resolved. EPA can play a moderating role by following the conflict resolution principles set by the statute, the Federal trust responsibility and the EPA Indian Policy.

8. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD WORK COOPERATIVELY WITH TRIBAL GOVERNMENTS TO ACHIEVE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS, CONSISTENT WITH THE PRINCIPLE OF INDIAN SELF-GOVERNMENT.

The EPA Indian Policy recognizes Tribal Governments as the key governments having responsibility for matters affecting the health and welfare of the Tribe. Accordingly, where tribally owned or managed facilities do not meet Federally established standards, the Agency will endeavor to work with the Tribal leadership to enable the Tribe to achieve compliance. Where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as we do to noncompliance by the private sector off-reservation.

Actions to enable and ensure compliance by Tribal facilities with Federal statutes and regulations include providing consultation and technical support to Tribal leaders and managers concerning the impacts of noncompliance on Tribal health and the reservation environment and steps needed to achieve such compliance. As appropriate, EPA may also develop compliance agreements with Tribal Governments and work cooperatively with other Federal agencies to assist Tribes in meeting Federal standards.

Because of the unique legal and political status of Indian Tribes in the Federal System, direct EPA actions against Tribal facilities through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion. Regional Administrators proposing to initiate such action should first obtain concurrence from the Assistant Administrator for Enforcement and Compliance Monitoring, who will act in consultation with the Assistant Administrator for External Affairs and the General Counsel. In emergency situations, the Regional Administrator may issue emergency Temporary Restraining Orders, provided that the appropriate procedures set forth in Agency delegations for such actions are followed.

9. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD BEGIN TO FACTOR INDIAN POLICY GOALS INTO THEIR LONG-RANGE PLANNING AND PROGRAM MANAGEMENT ACTIVITIES, INCLUDING BUDGET, OPERATING GUIDANCE, MANAGEMENT ACCOUNTABILITY SYSTEMS AND PERFORMANCE STANDARDS.

In order to carry out the principles of the EPA Indian Policy and work effectively with Tribal Governments on a long-range basis, it will be necessary to institutionalize the Agency's policy goals in the management systems that regulate Agency behavior. Where we have systematically incorporated State needs, concerns and cooperative roles into our budget, Operating Guidance, management accountability systems and performance standards, we must now begin to factor the Agency's Indian Policy goals into these same procedures and activities.

Agency managers should begin to consider Indian reservations and Tribes when conducting routine planning and management activities or carrying out special policy analysis activities. In addition, the IWG, operating under the direction of the Assistant Administrator for External Affairs and with assistance from the Assistant Administrator for Policy, Planning and Evaluation, will identify and recommend specific steps to be taken to ensure that Indian Policy goals are effectively incorporated and institutionalized in the Agency's procedures and operations.

Attachment

Exhibit 1 (continued)

Appendix A Protocol Agreement for State Observation of NRC Inspections

NRC Protocol:

- The Regional State Liaison Officer (RSLO) will normally be the lead individual responsible for tracking requests for State observation, assuring consistency regarding these requests, and for advising the Regional Administrator on the disposition of these requests. The appropriate technical representative or Division Director will communicate with the State on specific issues concerning the inspection(s).
- Requests for observations of Headquarters-based inspections will also be coordinated through the RSLO. Headquarters-based inspections should be referred through the RSLO to a technical representative designated by the Region.
- NRC will process written requests to the Regional Administrator through the State Liaison Officer (SLO). Requests should identify the type of inspection activity and facility the State wishes to observe.
- Limits on scope and duration of the observation period may be imposed if, in the view of the Regional Administrator, they compromise the efficiency or effectiveness of the inspection. Regions should use their discretion as to which, if any, inspections will be excluded from observations.
- States will be informed they must not release information concerning the time and purpose of unannounced inspections.
- The Region will make it clear to the licensee that the State views are not necessarily endorsed by NRC. The Region will also make it clear that only NRC has regulatory authority for inspection findings and enforcement actions regarding radiological health and safety.

State Protocol:

- A State will make advance arrangements with the licensee for site access training and badging (subject to fitness for duty requirements), prior to the actual inspection.
- Normally, no more than one individual will be allowed to observe an NRC inspection.
- The State will be responsible for determining the technical and professional competence of its representatives who accompany NRC inspectors.
- An observer's communication with the licensee will be through the appropriate NRC team member, usually the senior resident inspector or the team leader.

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Exhibit 1 (continued)

State Protocol: (continued)

- When informed of an unannounced inspection, a State must not release information concerning its time and purpose.
- An observer will remain in the company of NRC personnel throughout the course of the inspection.
- State observation may be terminated by the NRC if the observer's conduct interferes with a fair and orderly inspection.
- An observer will not be provided with proprietary or safeguards information. Observers will not remove any material from the site without NRC or licensee approval.
- The State observer, in accompanying the NRC inspectors, does so at his or her own risk. NRC will not be responsible for injuries or exposures to harmful substances which may occur to the accompanying individual during the inspection and will assume no liability for any incidents associated with the accompaniment.
- The State observer will be expected to adhere to the same conduct as NRC inspectors during an inspection accompaniment.
- If the State observer notices any apparent non-conformance with safety or regulatory requirements during the inspection, he/she will make those observations promptly known to the NRC team leader or lead inspector. Likewise, when overall conclusions or views of the State observer are substantially different from those of the NRC inspectors, the State will advise the team leader or lead inspector and forward those views, in writing, to the NRC Region. This will allow NRC to take any necessary regulatory actions.
- Under no circumstances should State communications regarding these inspections be released to the public or the licensee before they are reviewed by the NRC and the inspection report is issued. State communications may be made publicly available, similar to NRC inspection reports, after they have been transmitted to and reviewed by NRC.

Adjacent State Protocol:

- An adjacent State is a State within the plume exposure pathway emergency planning zone (EPZ) (within approximately a 10-mile radius) of an NRC-licensed facility located in another State. A host State is a State in which an NRC-licensed facility is located. An adjacent State may request permission to observe NRC inspections at an NRC-licensed facility in a host State.
- The adjacent State SLO must communicate his/her request for observation to the Regional Administrator for the region in which the facility is located.
- The adjacent State SLO must also communicate his/her request to the host State SLO so that each State is aware of the other's intentions.

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Handbook 5.2 Exhibits**

Exhibit 1 (continued)

Adjacent State Protocol: (continued)

- If a host State and an adjacent State request observation of the same inspection, the Regional Administrator will make the final determination on the number of State observers who may attend the inspection. If there is a need to limit the number of observers, the Regional Administrator will routinely give preference to the host State observers.
- Adjacent State observers will abide by the same protocol in all aspects of the inspection as host States under this agreement.

Signature of State Observer

Date