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Mr. Allen Benson
U.S. Department of Energy
1000 Independence Ave. SW
Rm 7F070, RW-45
Washington, D.C. 20585

March 30, 1995

Mr. Benson:

Please find attached comments from the Yakama Indian Nation to notice in the Federal Register, Vol. 60, No. 1, dated January 3, 1995, concerning options for implementing Section 180(c) of the Nuclear Waste Policy Act of 1982.

If there are any questions or concerns regarding this correspondence, please contact Russell Jim, (509) 452-2502.

Thank you for your consideration.

Sincerely,

Augustine Howard

Augustine Howard, Chair
Radioactive/Hazardous Waste Committee
Yakama Nation
P.O. Box 151
Toppenish, WA. 98948

cc: Jerry Meninick, CH., Tribal Council
Carroll Palmer
Moses Dick Squeochs
Russell Jim



YAKAMA INDIAN NATION
COMMENTS ON U.S. DEPARTMENT OF ENERGY
IMPLEMENTATION OF SECTION 180(C) OF THE
NUCLEAR WASTE POLICY ACT OF 1982

The U.S. Department of Energy has published a notice in the Federal Register, Vol. 60, No. 1, dated January 3, 1995 concerning options for implementing Section 180(c) of the Nuclear Waste Policy Act of 1982. The options presented in the Federal Register involve procedural mechanisms to involve affected State, Tribal, and local governments in the transportation of civilian nuclear spent fuel and high-level radioactive waste.

The Yakama Indian Nation (YIN) Treaty of 1855 with the U.S. government provided a permanent homeland for the Yakama people, upon relinquishing exclusive control on approximately 10.5 million acres of aboriginal land, in what is now Washington State. The provisions of the Treaty are clear, insofar as such Reservation land (1.4 million acres, situated about 13 miles from the Hanford Nuclear Reservation) was set aside for the "exclusive use and benefit" of the Yakama Nation. Any activity of the Federal government, or any other entity, which might threaten the environmental integrity of the Yakama Reservation, or which might cause the involuntary relocation or evacuation of Yakama Tribal members would pose a grave threat to the Yakama Treaty rights.

The Treaty of 1855 also provides for perpetual rights to hunt, fish, gather roots and berries, and pasture livestock on all "open and unclaimed" land ceded to the Federal government. The extensive open and unclaimed land around the Yakama Reservation includes the ceded land of the Hanford Site. Any activity, including an accident involving the transport of radioactive waste, which threatened this land would be a violation of the Yakama Treaty.

For these reasons, the Yakama Nation believes it is the Federal Government's obligation, as part of its trust responsibility, and in fulfillment of the Department of Energy American Indian Policy, to fully involve the YIN in its pre-decisional process for transportation of radioactive and hazardous waste from the Hanford Nuclear Site, and from other Federal facilities, and from civilian nuclear power reactors, as such shipments may in any way affect Yakama reserved rights. This involvement cannot be accomplished without monetary and technical assistance necessary for technical participation. The Yakama Nation believes that such assistance must be provided on a government-to-government basis, and not as part of a regional or national cooperative agreement meant to address these issues.

The Yakama Indian Nation signed an Agreement-in-Principle with the U.S. Department of Energy on June 17, 1994. This agreement includes a Five-Year Cooperative Agreement, with a mutual scope of work for technical participation in Hanford Site activities. Included in the scope of work, as Task I, Subtask E., Transportation Management, is the following provision:

"DOE conducts most of its shipping operations through DOE Field Offices throughout the United States. DOE programs, including cleanup of facilities and waste management activities, depend on an ability to ship hazardous and non-hazardous materials in a safe, efficient, and publicly acceptable manner meeting regulatory requirements. Transportation operations are conducted under the packaging and transportation regulations of all applicable international, Federal, State, Tribal and local regulations.

1. Participate in DOE planning and implementation of transportation systems, including review of technology development, scheduling, and pre-notification.
2. Provide recommendations regarding DOE Transportation Management.
3. Participate in emergency response planning, development, training, and implementation, and coordinate with relevant Federal, State, and local agencies."

The Yakama Nation has met with DOE officials periodically, and has reviewed DOE transportation management plans during the course of its participation in Hanford Site activities.

The January 3, 1995 Federal Register notice makes it clear that DOE plans to increase the level of technical assistance, as required by the Nuclear Waste Policy Act of 1982, prior to the actual shipments of significant quantities of nuclear waste. The Yakama Nation will be significantly affected by such shipments.

Therefore, the Yakama Nation recommends that DOE pursue a two-phase approach in implementation of Section 180(c):

1. Consult with the Yakama Indian Nation government concerning its plans for technical assistance on a government-to-government basis, including proposals for direct technical assistance to the YIN to ensure protection of the health, safety, and welfare of YIN Tribal members during transportation activities.

2. Establish or re-negotiate a Cooperative Agreement with the National Congress of American Indians to increase monetary and technical assistance to ensure that the relevant jurisdictions of affected Tribal governments across the country can effectively coordinate on Nuclear Waste Policy Act transportation matters, in order to "front-end load" such concerns into the decision process, thereby saving resources and establishing an effective solution to important transportation issues.