



Confederated Tribes and Bands
of the Yakama Indian Nation

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Established by the
Treaty of June 9, 1855

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U.S. Department of Energy
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RE: Comments on Section 180(c) Policy and Procedures

The Office of Civilian Radioactive Waste Management (OCRWM) of the U.S. Department of Energy (DOE) has prepared a Notice of Proposed Policy and Procedures to implement Section 180(c) of the Nuclear Waste Policy Act of 1982 as Amended (NWPAA) for providing technical assistance and funds to States and Indian tribes in areas through which OCRWM plans to ship spent nuclear fuel and high-level waste. This is the opinion of the Yakama Nation and follows comments previously submitted regarding allocation of grant monies.

The Treaty of 1855 between the Yakama Nation and the United States created a 1.3 million reservation for the tribe and ceded over 10 million acres to the United States. Upon this Ceded Area the Yakama Nation reserved rights to hunt, fish, gather roots and berries and pasture livestock. It is within this Ceded Area which Hanford lies and is therefore subject to these reserved rights.

Given that the Hanford Reserve is within the Yakama Nation Ceded Area and only miles from the Yakama Indian Reservation the transportation of spent nuclear fuel and high-level waste to and from the Hanford site has the potential of damaging or destroying resources reserved by the Yakama Nation in the Treaty of 1855.

Additionally, a Federal trust responsibility to the Yakama Nation exists which requires the Federal government and its agencies take proper care to protect the rights and interests of the Yakama Nation. Actions by U.S. DOE which do not fully protect our interests are a breach of trust responsibility.

The Yakama Nation still feels that the allocation of funds under Section 180(c) based upon jurisdictional grounds fails to account for the reserved rights of the Yakama Nation and is therefore in derogation of the U.S. DOE trust responsibility to the Yakama Nation.

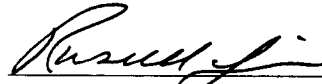
Practically speaking, it is possible that shipment routes through the Ceded Area will have a serious impact to the trust assets of the Yakama Nation. Under the proposed allocation scheme the Yakama Nation would not have any "jurisdictional" status and would receive no grant funding to



prepare for shipments. While the present scheme is well suited for most governmental entities, the situation of the Yakama Nation is unique and must be fully considered.

Given the inherent danger in shipment of these types of materials and the Federal trust responsibility to the Yakama Nation, provisions need to be created within the Section 180(c) funding formula to rectify these deficiencies and provide funds to help the Yakama Nation protect its resources.

Thank you for considering these comments and please contact us with any questions you may have.



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Environmental Restoration/
Waste Management
Yakama Nation

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.