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National Congress of American Indians
Nuclear Waste Program
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To: Daniel A. Dreyfuss, Director - Office of Civilian Radioactive Waste Management
Fr: Robert Holden - NCAI Nuclear Waste Program
Re: Meeting with Chairman Brian Wallace on November 5, 1996
Dt: November 4, 1996

Although I am unable to attend your meeting with Chairman Wallace, I would like to thank you for holding this meeting to discuss the concerns of the tribes in the Nevada Indian Environmental Coalition. There is a great need for OCRWM to resolve the issue of appropriate financial assistance to the tribal governments with cultural ties and environmental concerns regarding the Yucca Mountain Site Characterization Project. At NCAI, we believe that such assistance is necessary to fulfill the obligations of the U.S. to tribal governments exemplified by provisions in the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act and the Presidential Order on Environmental Justice. I look forward to working with your office in order to address these concerns.

In addition, I would like to briefly mention two issues related to emergency preparedness and the draft 180(c) policy that OCRWM published this Spring. In general, NCAI's comments approved of the policy's even-handed treatment of tribal governments and state governments. However, there are aspects of the policy that interpret Section 180(c) in a way that could result in tribal governments being unprepared for transportation of spent nuclear fuel and high-level waste through Indian country.

First, we recommend that the 180(c) policy have some sort of needs assessment process in order to meet the federal treaty, trust and statutory obligations to Indian tribes and protect Indian citizens, lands and resources. In the context of the proposed 180(c) policy, the trust responsibility requires that the DOE address the problem of the lack of infrastructure and trained personnel on tribal lands. The NCAI Nuclear Waste Program has developed extensive experience with emergency response training for tribal governments in the last three years as it has conducted radiological emergency preparedness workshops for tribal responders. Interactions with the individuals responsible for tribal emergency response indicates that there is a critical lack of trained people and infrastructure on most Indian lands. In addition, the only compilation of tribal emergency response capabilities for radiological transportation incidents concludes that "most tribes surveyed have very little capability to protect their own citizens in the event of a disaster or emergency of any type, nor have they negotiated formal agreements through which they could obtain assistance from adjacent state or local jurisdictions."¹

¹ Office of Nuclear Material Safety, U.S. Nuclear Regulatory Commission, *Survey of State and Tribal Emergency Response Capabilities for Radiological Transportation Incidents*. 4-3 (1990 NUREG/ CR-5399).

NCAI and the NINWPC recognize that the DOE does not have the primary responsibility for developing basic tribal emergency response and safe transportation infrastructure. Clearly, other agencies such as the Federal Emergency Management Agency, the Department of Transportation and the Department of Interior have significant responsibilities that have not been fulfilled. However, the DOE does have a specific responsibility defined in the *DOE Indian Policy* to coordinate with these agencies.² NCAI strongly encourages the DOE to take up this issue at the highest levels of the agency and begin to request coordination with other responsible federal agencies. Cooperation with other agencies that have related responsibilities would recognize the principle of comity, serve the best interests of all, and lead to the fulfillment of DOE's trust responsibility to Indian tribes with regard to Section 180(c).

DOE now has an opportunity to begin this cooperation, as the Department of Transportation is currently considering the reauthorization of the Hazardous Materials Transportation and Uniform Safety Act (49 U.S.C. 5101 *et seq.*), the statute that authorizes grant programs for emergency response. There is a particular need in Indian country for *new* funding for managers of hazardous materials programs and emergency management infrastructures. Because there is generally no permanent base to which to attach grant-based training and planning projects, many tribes cannot take advantage of existing grants.

Second, as you are well aware, the recent decision on waste acceptance in *Indiana Michigan Power Company v. Energy Department* will place great pressure on Congress and the DOE to find a solution to the problem of commercial nuclear waste storage and makes it very likely that some types of transportation under the NWPA will begin by 1998. Such scenarios include consolidation of spent fuel at commercial facilities with extra capacity or transportation to a small facility at an existing DOE site. As this court decision has occurred since the publication of the 180(c) policy, the DOE should reconsider the policy's provision to wait until four years before a planned shipment before beginning any 180(c) activities (61 FR 24773). The policy should implement a program of training and infrastructure development for tribal governments at the earliest opportunity, and should begin direct training and funding for those tribes that are most likely to be on an early transportation route.

Lastly, the NCAI Tribal Radiological Preparedness Workshops (TREP) have been well received by both tribal representatives and the emergency preparedness community, but are slated for elimination because of a two thirds budget cut in OCRWM's cooperative agreement with NCAI. The NCAI TREP workshops should be funded to conduct training for impacted tribes until 180(c) funding is fully implemented. This approach will assist the DOE in meeting its trust responsibility and assist tribes in attaining readiness for NWPA shipments.

Thank you in advance for your time in considering the issues above. Please call me at (202) 466-7767 if you have any questions or if I can assist you further.

² "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." U.S. Department of Energy American Indian Policy, November 29, 1991, p. 3.