

SELECTED ISSUES AFFECTING INDIAN TRIBES
IN THE IMPLEMENTATION OF THE NWPA

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ABSTRACT

Enactment of the NWPA requires that a candidate site will be selected for the first high-level waste (HLW) repository based on a formal comparative evaluation of the three sites under characterization as approved by the U.S. President. However, the nominated sites can only be compared with one another if there is such a common basis for scientific judgement. The development of such a scientific basis prior to the start-up of site characterization activities entails several important issues which potentially affect the rights of the Indian Tribes.

According to the NWPA, a site must be selected for characterization based first on its geologic suitability, and secondly, its geologic suitability must remain as an overriding factor in the presence of other possible disqualifying conditions when compared with other candidate sites. In the recent past, the Yakima Nation has seriously questioned the legality and the objectivity of the determination of the geologic suitability criterion by the Department of Energy (DOE) as evident in the site selection process.

As the NWPA implementation enters into a new phase, our concerns continue to grow and take on new meanings.

SITE SELECTION PROCESS

The DOE has adopted the Multiattribute Utility methodology as a tool for their evaluation of the candidate sites. To protect the objectivity and consistency of its application, the active participation of states and tribes must be recognized for their independent review and analysis role as an important part of the site selection process. The meaning of the site selection process rests with the consensus of all participating parties on the selection rules and criteria, and the procedure by which these rules are carried out. It is imperative that the site selection process can be open to all affected parties, and that their responsibilities be clearly defined a cooperation and consultation with the Indian tribes in terms of regulatory requirements.

DEFENSE WASTES

Since the issuance of the presidential executive order for waste commingling in April 1985, its implications on the design and development of waste form/package for disposal have not been comprehensively discussed by the DOE. The generation of defense wastes in the past forty years has created serious environmental problems, especially when the design lifetime of the process and storage facilities is being slowly exceeded, if it has not already been exceeded. In order to combine the disposal of defense wastes with their commercial counterpart, the affected parties should be allowed to evaluate the plans for their consolidation and packaging. The ongoing unregulated defense waste disposal activities must be stopped as soon as possible, and the subsequent clean-up action be taken into account as an integral part of the NWPA. Such an action, once initiated by the government, would strengthen the confidence of the affected parties in the search for an effective solution to the HLW problem, regardless of the sources.

ENVIRONMENTAL MONITORING (EM)

To ensure the minimum impact of the site characterization activities on the immediate environment,

the NWPA implementation needs a dependable and informative monitoring program. Such an EM program would help in the understanding of radionuclide/chemical transport pathways to the accessible environment and how they can affect the welfare of our ecosystem. Because the environment and the way of life and its quality are interrelated and inseparable from one another, the understanding and protection of one part of the ecosystem necessitates the same of the other. Therefore, the EM objectives will be meaningful only if they are designed to cover all aspects of human activities. In other words, we would expect the potential environmental impacts caused by site characterization activities to be assessed not only for the aspects involving the physical processes, but also for their socioeconomic and long-term health effects as well, and because our way of life is distinct and unique, any effective attempts to monitor it would require sincerity and unprejudiced efforts on the part of the government. Such efforts would certainly be reciprocated with cooperation and hospitality.

QUALITY ASSURANCE (QA)

There have been recent efforts to develop an adequate QA program for the site characterization activities. Such a program is supposed to ensure the quality of work by DOE and its participant contractors. As an affected party, the tribal perspective demands a legitimate independent oversight role in both the formulation of the QA procedures and their implementation. Recently our specific QA concerns have been expressed publicly in another document. However, we would like to re-emphasize here that within the context of the NWPA, verifiability and traceability of the DOE decision-making process are essential to any reliable QA program. Unresolved issues should be openly discussed or debated, and participation opportunities and access to technical information should be provided to the affected parties in a scientific and expeditious manner.

CONCLUSIONS

In the above statements, we have briefly discussed our concerns critical to the implementation of the NWPA. These statements are not meant to be complete, but are intended only to address, in principle, the

selected issues potentially affecting the legal rights of the Indian tribes. Because our participatory role intended by the Act is unique and must be recognized by the federal authorities, we offer our cooperation, in good faith, in the joint search for a judicious solution to these outstanding issues with all affected parties.