



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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September 17, 2007

James L. Joyce, Document Manager  
Office of Regulatory Compliance (EM-10)  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585-0119

Re: *Comments on Notice of Intent to Prepare an Environmental Impact Statement for the Disposal of Greater-Than-Class-C Low-Level Radioactive Waste*

Dear Mr. Joyce:

The Nez Perce Tribe retains reserved treaty rights in the Mid-Columbia region under the Treaty of 1855 with the United States Government. These rights have been recognized and affirmed through subsequent Federal and State actions. These actions protect Nez Perce rights to utilize our usual and accustomed resources and resource areas, including those in the Hanford Reach of the Columbia River. Accordingly, ERWM has support from the U.S. Department of Energy (DOE) to participate in and monitor relevant DOE activities. We believe that most of what occurs at Hanford is relevant to reserved treaty rights, and therefore we maintain involvement in waste management issues.

It is our understanding that the Nuclear Regulatory Commission (NRC) regulations (Low-Level Radioactive Waste Policy Amendments Act of 1985) require that Greater-Than-Class-C waste (GTCC) is disposed in an NRC licensed facility. More importantly, we understand that the disposal facility must be a deep geologic repository - unless another disposal facility has been approved by the NRC. No GTCC waste has been disposed of since the NRC placed a prohibition/restriction on the disposal of GTCC in shallow land disposal after enactment of the Low-Level Waste Policy Act.

We further understand that Low-Level radioactive waste (LLW) is defined by its source - from commercial NRC licensed operations. LLW is further sub-divided into Classes A, B, C and GTCC Low-Level-Waste. Classes A, B and C are defined by the number of years required for radioactive decay of its constituents to reach safe levels (100, 300, 500 years, respectively). GTCC exceeds the concentration limits of radionuclides established for Class C Waste. This EIS also includes, we are told, GTCC-like waste generated by DOE.



In addition, we are aware there are currently only two sites in the in United States licensed for disposal of LLW – Hanford, Washington; and Barnwell, South Carolina. WIPP in New Mexico is an operating deep geologic repository, but is not permitted for GTCC waste; Yucca Mountain is the only deep geologic repository potentially coming on line, and it is fraught with technical, ethical, legal and social issues that may continue to delay its development, or prevent it all together.

Based on the information outlined above, we offer our comments on this Notice of Intent.

1. We are not aware that either the DOE or NRC is exploring the potential for any additional deep geologic repositories. If this is the case, it makes consideration of alternatives invoking potential use of a deep geologic repository for GTCC waste somewhat problematic.

In our view it is shortsighted for DOE not to evaluate potential additional deep geologic repositories when it is clear that neither WIPP nor Yucca Mountain can be considered a certainty. If it remains determined that the material should be in a deep geologic repository, then consideration of a small volume back-up repository to Yucca Mountain would seem imperative.

2. If, as you note in the NOI, "...most of the DOE GTCC-like waste consists of transuranic waste..." how do you reconcile that as LLW? Transuranic waste has a murky position in radioactive waste categorization. The Nez Perce Tribe (NPT) will not support any alternative which seeks to leave transuranic waste anywhere other than in a deep geologic repository.
3. Neither Alternative 4 nor 5 are viable under current regulations. NRC regulations require that disposal of GTCC waste must be done in a deep geologic repository.
4. The NOI indicates the activity of the currently estimated volume of GTCC is 140 MCi. In comparison, the activity of all the High-Level-Waste (HLW) at Hanford from the 177+ tanks is currently 190 MCi. This fact alone is strong argument for disposal in a deep geologic repository.
5. What are your sources for projected waste volume estimates? If this EIS is intended only for inventory that currently exists and that is estimated to be produced from currently existing facilities, then it does not begin to respond that future GTCC material from other (i.e., GNEP proposed) sources. The current sources being considered need to be clearly acknowledged, defined, and clarified as separate from other potential future sources, such as GNEP.


Our conclusions at this time are: Waste definitions currently make Alternatives 2, 4, and 5 non-viable; and, having no clear deep geologic repository makes Alternative 3 quite questionable at this point. We contend that to have an effective EIS process, you need to present at least one viable, stand-alone alternative. The Nez Perce Tribe will not support a No Action alternative as a resolution to this crucial national environmental issue.



We urge you to be open and transparent in clarifying what legislative or regulatory modifications will be necessary for implementation of these alternatives. We urge you to acknowledge and clarify the uncertainty of the opening of the Yucca Mountain deep repository. And we urge you to recognize that crucial decisions about the nature of much of this waste may need to be made before final disposal decisions are made.

We appreciate the opportunity to share these comments with you.

Sincerely,



for Samuel N. Penney  
NPTEC Chairman

Cc: Kevin Clarke, DOE  
Dave Brockman, RI-DOE  
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