

November 5, 2004

Mr. James Connaughton, Chair
Council on Environmental Quality
Executive Office of the President
722 Jackson Place, NW
Washington, D.C. 20503

Mr. Connaughton:

This letter responds to your October 7, 2004 memorandum providing an interim report on the progress made to formally involve Tribal, State and local governments as cooperating agencies in the federal National Environmental Policy Act (NEPA) process. Your memorandum also requested the Federal agencies to provide comments on the revisions to the cooperating agencies reporting process.

We believe that the two proposed changes in the reporting process, i.e., reducing the amount of information required, and providing the report on a fiscal year basis, will not affect the quality of the information being provided to assess the success and benefits of the objectives of Executive Order 13352 on Facilitation of Cooperative Conservation. We also believe reducing the reporting requirement from semi-annually to annually represents a resource savings.

Regarding the spreadsheets provided in your memorandum, we have one correction to the NRC statistics. The information provided on environmental assessments (EAs) for the March 1, 2002, to August 31, 2002, reporting period in the spreadsheets should reflect that the number of EAs with cooperating agencies should be one instead of two.

We would like to take this opportunity to again raise the issue of NRC's status as a regulatory agency, and the unique challenges that it poses relative to compliance with certain NEPA provisions, as reflected in the August 23, 2002, minutes from the NEPA Task Force meeting with NRC staff. Unlike most of our sister agencies that manage resources or lands for the Federal government, the NRC and other agencies (e.g., the Federal Communications Commission, the Federal Energy Regulatory Commission, and, at times, the Environmental Protection Agency), have permitting and licensing responsibilities for other entities' undertakings and/or activities. Therefore, in the context of the Council on Environmental Quality (CEQ) encouraging Federal agencies to cooperate on environmental impact statements, and requiring Federal regulators to address NEPA compliance issues, cooperating agency status may not always be feasible. We raise this issue again because CEQ staff recently encouraged the Tennessee Valley Authority (TVA), a quasi Federal agency, in its request to seek a renewal of its three operating licenses for the Browns Ferry Nuclear Power Plant, to seek cooperating agency status with the NRC on an environmental impact statement. The NRC considers the TVA to be an entity that should be treated akin to a private applicant and, therefore, the NRC cannot act as a cooperating agency. The NRC values the concept of cooperating agencies and has often served as a cooperating agency. For example, the NRC is currently cooperating with federal and state agencies on three EISs (west Valley Decommissioning and Decontamination, Rulemaking on Controlling the Disposition of Solid

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Materials and Reclamation of Sequoyah Fuels). We suggest you consider having a meeting or a separate dialog with regulatory agencies to ensure that we all understand the challenges that regulators face in fulfilling conformance with NEPA guidance and Presidential Executive Orders.

We thank you for the opportunity to provide comments on this matter. If you have any questions please contact me at 301-415-3340 or Mr. Osiris Siurano of my staff. Mr. Siurano can be reached at 301-415-2307 or email: osp@nrc.gov.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

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Paul H. Lohaus, Director
Office of State and Tribal Programs

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