



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

January 11, 2018

Mr. John Warren, Chairman  
Pokagon Band of Potawatomi Indians  
58620 Sink Road  
Box 180  
Dowagiac, MI 49047

SUBJECT: INVITATION FOR SECTION 106 CONSULTATION PURSUANT TO THE NATIONAL HISTORIC PRESERVATION ACT REGARDING THE U.S. ARMY'S REQUEST FOR AN AMENDMENT AND EXEMPTION TO ITS LICENSE FOR POSSESSION OF DEPLETED URANIUM AT JEFFERSON PROVING GROUND (DOCKET NUMBER 40-8838)

Dear Chairman Warren:

By letter dated December 21, 2016, the U.S. Department of the Army (Army) submitted to the U.S. Nuclear Regulatory Commission (NRC) staff a request for an amendment to NRC Source Material License SUB-1435. License SUB-1435 is for possession of depleted uranium (DU) at the Jefferson Proving Ground (JPG) ordnance testing facility in southeastern Indiana, near Madison, Indiana. Specifically, the Army is requesting an amendment that would modify License Condition 9 to change the authorized use of licensed material from "possession only for decommissioning" to "possession only." The Army has also requested an exemption from the NRC's "decommissioning timeliness" requirement in Title 10 of the *Code of Federal Regulations* (10 CFR) Section 40.42, "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas," subparagraph (d). This amendment request follows the Army's November 25, 2015, letter to the NRC formally withdrawing its Decommissioning Plan and request for license termination and release of the site under restricted conditions.

JPG is located in Jefferson, Jennings, and Ripley Counties in southeastern Indiana. As mentioned above, License SUB-1435 authorizes the Army to possess DU at JPG. DU is kept onsite in the restricted area known as the Depleted Uranium Impact Area (DU Impact Area). The DU Impact Area is located entirely within Jefferson County. A map showing the location of JPG and the DU Impact Area is enclosed (Enclosure 1). To assist in your understanding of the JPG site, the following paragraphs provide some background and history of the site.

JPG was established in 1941 on 224 square kilometers [km<sup>2</sup>] (55,264 acres [ac]). A firing line (shown in Enclosure 1) with 268 fixed-gun positions separated JPG into two areas: a 17.5-km<sup>2</sup> (4,314-ac) southern portion and a 206-km<sup>2</sup> (50,950-ac) northern portion. JPG was used by the Army between 1941 and 1994 for the test firing of a wide variety of conventional explosive munitions into the area north of the firing line. During that time, more than 24 million rounds were fired. Approximately 1.5 million rounds did not detonate upon impact, remaining as unexploded ordnance (UXO) on or beneath the ground surface, along with an additional 3 to 5 million rounds with live detonators, primers, or fuzes.

As part of its munitions testing program, the Army also test fired DU projectiles into the 8.4-km<sup>2</sup> (2,080-ac) DU Impact Area, which is also located north of the firing line (see Enclosure 1). DU

projectiles are used as armor-piercing, anti-tank weapons. The DU test firings, which were conducted under NRC Source Materials License SUB-1435, began on March 18, 1984, and concluded on May 2, 1994. Approximately 100,000 kilograms [kg] (220,462 pounds [lb]) of DU projectiles were fired at cloth targets and mostly remained intact. Approximately 73,500 kg (162,040 lb) of DU remain in the DU Impact Area as DU projectiles, projectile fragments, and degradation products. Also, the Army suspects that a “very high” density of high-explosive UXO (85 UXO/acre) is present in the DU Impact Area.

JPG was closed in September 1995 under the Defense Authorization Amendments and Base Realignment and Closure Act of 1988. Under a 2000 Memorandum of Agreement (MOA) between the Army, the U.S. Fish and Wildlife Service (USFWS), and U.S. Air Force, the Army retains ownership of all real property north of the firing line. Also under the terms of the MOA, the USFWS operates the Big Oaks National Wildlife Refuge (BONWR) on approximately 214 km<sup>2</sup> (53,000 ac) in the northern part of JPG (including the DU Impact Area and the other areas north of the firing line), and the Indiana Air National Guard operates two bombing practice ranges for the U.S. Air Force on 4.2 km<sup>2</sup> (1,038 ac) within the BONWR, both under 25-year leases with 10-year renewal options.

In August 2013, the Army submitted a license termination request to the NRC, proposing to decommission the DU Impact Area for release under restricted conditions, leaving the DU and UXO in place while continuing to maintain institutional controls in the area north of the firing line. Institutional controls include legal controls (e.g., the Federal Government retains property ownership of JPG north of the firing line) and physical and administrative access restrictions to prevent unauthorized entry. The Army concluded that removal of DU would be hazardous and prohibitively expensive because of the need for UXO clearance, radiological soil treatment, and offsite transportation and disposal of the DU and DU-contaminated soil as low-level radioactive waste. As noted above, the Army withdrew this proposal for restricted release of the site in November 2015.

In its current license amendment request, the Army proposes to maintain a possession-only license for the residual radioactive material on the site (i.e., all DU material remaining in the restricted DU Impact Area) and to receive an exemption from the NRC’s decommissioning timeliness requirement. The amendment would allow the Army’s possession-only license to continue for a fixed period of time, after which the license would need to be renewed. The exemption would allow the Army to forego decommissioning for a limited period of time, after which the NRC would need to re-review the terms of the exemption in light of site conditions and other factors. As described above, unexploded ordnance is present in the DU Impact Area, and the Army has concluded that removal of DU would be hazardous and prohibitively expensive. Thus, the Army does not plan to conduct any demolition, construction, or land-disturbing activities and would continue to maintain institutional controls and land use restrictions to minimize exposure to the public and the environment.

The NRC staff’s detailed review of the Army’s request is in process and consists of both an environmental review and a safety review. As part of the environmental review, the NRC staff is preparing an environmental assessment (EA) in accordance with the NRC’s regulations in 10 CFR Part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.” These regulations implement the requirements of the National Environmental Policy Act (NEPA), which requires federal agencies, as part of their decision-making process, to consider the environmental impacts of their proposed actions. The Army’s proposal, as described above, is the “proposed action” that the NRC staff is evaluating in the EA.

In accordance with 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the EA will also evaluate the potential for impacts to historic properties. The NRC staff is using the NEPA process to comply with its obligation under Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. In so doing, the NRC staff is collecting information to facilitate the identification of historic properties that may be of religious and cultural significance to Native American Tribes. Accordingly, the NRC staff is identifying parties who may wish to consult with the NRC on the potential effects of the proposed action on any historic properties that may be identified.

Through this letter, the NRC staff invites you to participate as a consulting party as part of our review and welcomes your input. As a consulting party, you would assist in the identification and evaluation of historic properties that may be affected by the proposed action and in the development of alternatives and proposed measures to avoid, minimize, or mitigate any adverse effects on historic properties. To support this review, the NRC is requesting any information you may have regarding historic or cultural resources within and surrounding the DU Impact Area that may be affected by the proposed action. You may also provide information on properties of religious or cultural significance that may be eligible for listing in the National Register of Historic Places under the NHPA to support the NRC's Section 106 determinations. Please note that, as stated above, the Army does not propose to conduct any land-disturbing activities as part of its proposed license amendment and exemption. Please also note that conducting site surveys within the DU Impact Area and elsewhere within JPG north of the firing line is not feasible due to the presence of high levels of UXO and DU and the resultant access restrictions in these areas.

Please indicate whether or not you wish to participate as a consulting party by completing the enclosed Tribal Response Form (Enclosure 2). The NRC requests that the enclosed form be returned within 30 days of your receipt of this letter. You may also contact us if you want to discuss concerns about the confidentiality of information that may be provided to the NRC.

Please note that according to NRC policy, correspondence provided to the NRC, including that provided by email, will be made publicly available. The NRC recommends that your Tribe avoid including any information in its submissions that tribal officials do not want to be publicly disclosed, such as personal email addresses or other personal contact information. If tribal officials do not wish that their personal contact information be made public, please use an alternate email address or other alternate contact information when corresponding with the NRC.

The Army's application for the license amendment is publicly available in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at <http://www.nrc.gov/reading-rm/adams.html>. The ADAMS Accession Number for the application is ML17004A186. You may also access the application at <https://www.nrc.gov/docs/ML1700/ML17004A186.pdf>.

The NRC had contacted the Pokagon Band of Potawatomi Indians in June of 2015 regarding the Army's previously planned decommissioning actions. The ADAMS Accession Number for the NRC's June 4, 2015, letter to Chairman Moody is ML15154B492, or you can access the document directly at <https://www.nrc.gov/docs/ML1515/ML15154B492.pdf>. The Tribe's response, dated June 15, 2015, can be found using ADAMS Accession Number ML15225A258, or you can access this document directly at <https://www.nrc.gov/docs/ML1522/ML15225A258.pdf>.

A copy of this letter will be available electronically for public inspection in the NRC Public Document Room and ADAMS. If you have any questions or need additional information about the proposed licensing action or the environmental review process, please contact Ms. Christine Pineda, NRC Project Manager for the EA, at (301) 415-6789 or via e-mail at [Christine.Pineda@nrc.gov](mailto:Christine.Pineda@nrc.gov).

Sincerely,

**/RA/**

Brian W. Smith, Deputy Director  
Division of Fuel Cycle Safety, Safeguards,  
and Environmental Review  
Office of Nuclear Material Safety  
and Safeguards

Docket No.: 40-8838  
License No.: SUB-1435

Enclosures:

1. Map of JPG and DU Impact Area
2. Tribal Response Form

cc: Jason Wesaw, THPO

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POSSESSION OF DEPLETED URANIUM AT JEFFERSON PROVING  
GROUND (DOCKET NUMBER 40-8838)

DATED: January 11, 2018

DISTRIBUTION:

FCSE r/f J.Smith, NMSS/DUWP

**ADAMS Package Accession Number: ML17349A812**

**\*via email**

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