

GIVENS, FUNKE & WORK

ATTORNEYS AT LAW
TOP FLOOR OLD CITY HALL
424 SHERMAN AVE. P.O. BOX 969
COEUR D'ALENE, IDAHO 83816-0969
(208) 667-5486
FAX (208) 667-4695

DOCKETED
USNRC

97 JAN 27 P5:19

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

January 21, 1997

DOCKET NUMBER
PROPOSED RULE PR 150-170
(61FR30839)

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Attn: Docketing and Service Branch

Re: Recognition of Agreement State Licenses in Areas Under
Exclusive Federal Jurisdiction Within an Agreement State, 61 Fed.Reg.
30839 (June 18, 1996)

Dear Sir/Madam:

I am special environmental counsel to the Spokane Tribe of Indians. At present, the Tribe is confronting numerous legal and technical issues involving two uranium mines and two uranium mills which directly impact its Reservation. The Spokane Tribe of Indians' Reservation is located in Eastern Washington, an agreement state under the Atomic Energy Act.

During recent litigation activities concerning these sites, the Tribe for the first time became aware of the above referenced Federal Register Notice. While it is understood that the comment period regarding this notice expired September 3, 1996, the Tribe nonetheless submits these comments for your consideration. Additionally, due to the Tribe's interest in these matters, please place my name on your list of interested parties to receive NRC notices pertaining to NRC's agreement state program.

As proposed, the rule will create jurisdictional problems wherever an Indian reservation exists within an agreement state. As a matter of law, federal agencies simply are not empowered to disturb the jurisdictional relationships between the United States, Indian tribes, and states, absent express Congressional authority to do so. Assiniboine and Sioux Tribes v. Board of Oil and Gas Conservation, 792 F.2d 782 (9th Cir. 1986) (federal trustees cannot delegate responsibilities regarding

1/0



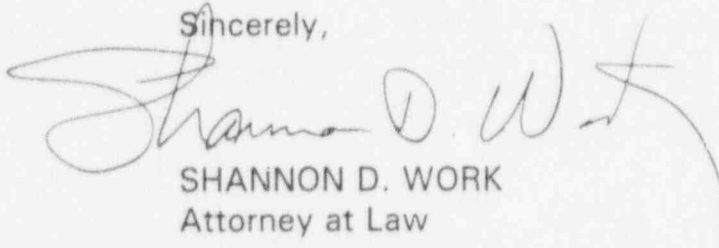
tribes and their Reservations). While the Atomic Energy Act contains broad language permitting agreement states to regulate nuclear materials within those states, it contains no provision expressly authorizing state jurisdiction on Indian reservations. As you probably are aware, states have no such jurisdiction on Indian reservations as a general rule, and can have none absent delegation pursuant to Congressional authority. Department of Ecology v. U.S. E.P.A., 752 F.2d 1465 (9th Cir. 1985) (states have no jurisdiction on Indian reservations without express Congressional authority).

Because these jurisdictional relationships have been carefully developed through over 150 years of federal jurisprudence, it is critical that the NRC seek and obtain comment on this rule from all potentially affected Indian tribes. The notice should be reissued, with specific notice sent directly to any Indian tribe affected by uranium or thorium mines or mills. The well-established federal trust responsibility and this administration's strong policy of relating to Indian tribes on a government-to-government basis, demand no less.

In general, the Spokane Tribe of Indians objects to the exercise by Washington of jurisdiction within the Spokane Indian reservation. Attempts to do so severely undermine tribal efforts to protect and preserve homeland solemnly promised to them. More specifically, recognition of state jurisdiction on Indian reservations may well be an illegal abdication of the NRC's trust responsibilities which is not authorized by the Atomic Energy Act. Accordingly, the Spokane Tribe of Indians objects to the proposed reciprocal recognition of agreement state actions within areas of exclusive federal jurisdiction to the extent Indian lands are involved and concurrence of the affected tribe has not been obtained.

The Spokane Tribe of Indians appreciates the opportunity to submit these comments, and hopes that they will be given due consideration by the NRC. Should NRC comply with the Tribe's recommendation that the above notice be reissued, more detailed comments will be submitted.

Sincerely,



SHANNON D. WORK
Attorney at Law

SDW.jf

cc: David C. Wynecoop, Jr.
Spokane Tribal Council

