

# PUBLIC SUBMISSION

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**Docket:** NRC-2015-0070

Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning

**Comment On:** NRC-2015-0070-0229

Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning

**Document:** NRC-2015-0070-DRAFT-2265

Comment on FR Doc # 2022-03131

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## Submitter Information

**Email:** tansey.moore@ncsl.org

**Organization:** Nuclear Energy Tribal Working Group

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## General Comment

Nuclear Energy Tribal Working Group

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## Attachments

NRC Decommissioning Rule Comments Final



August 29, 2022

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

ATTN: Rulemaking and Adjudications Staff

Re: Docket ID NRC-2015-0070- Comments on the Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning

Dear Secretary,

The Nuclear Energy Tribal Work Group (NETWG) is chartered by the U.S. Department of Energy (DOE) to engage tribal governments in a broad spectrum of activities related to nuclear energy production, siting and waste disposition. Many of these issues are subject to rulemaking by the Nuclear Regulatory Commission (NRC).

NETWG is comprised of representatives from tribal communities that are or may be impacted by DOE and NRC actions and is a conduit for providing insight from Tribal subject-matter experts on important matters that may be overlooked.

NRC published the Proposed Rule in the Federal Register on March 3, 2022, entitled "Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning" (87 FR 12254-12336). NETWG is pleased to submit comments for NRC's consideration. The comments are grouped into four categories: (1) Federal Trust Responsibility; (2) Environmental and Cultural Considerations; (3) Tribal Capacity and Funding Assurance; (4) Alignment of NRC's Tribal Protocol Manual and Policy.

**Federal Trust Responsibility:**

Like all federal agencies, NRC has a responsibility to protect tribal treaty rights, lands, assets, and resources. There are multiple executive orders that define or build upon the importance of tribal consultation and maintaining government to government relationships. One example is Executive Order 13175 *Consultation and Coordination with Indian Tribal Governments* requires federal agencies to honor tribal sovereignty and consult with Tribes in the development of policies and/or considering federal actions that impact Tribes. Another notable mandate is the *Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* released on January 26, 2021. The memorandum reaffirms the Administration's commitment to Executive Order 13175 and describes the

importance of sustaining meaningful relationships with tribal governments to fulfill the federal trust responsibility. Accordingly, tribes request to be included in decision-making to ensure tribal interests are considered including those relating to decommissioning of nuclear energy facilities.

#### **Environmental and Cultural Considerations:**

NRC must consider environmental and cultural impacts during the decommissioning process in accordance with all laws and procedures. The National Environmental Policy Act (NEPA) applies to every “major federal action” and requires government consultation with Tribes and states prior to considering any proposed changes or undertakings. In tandem, the National Historic Preservation Act (NHPA) requires federal agencies to consult with Tribal governments that attach religious and cultural significance to historic properties, resources or treaty rights that may be affected by a proposed action. As such, NRC must ensure that as part of the decommissioning process NEPA and NHPA are followed in accordance with the law. Specifically, NRC should integrate new or emerging information derived from NHPA Section 106 archaeological surveys and/or input from culturally affiliated Tribes as part of the decommissioning process as NEPA and NHPA may not have been in place when the nuclear power plants were constructed.

#### **Tribal Capacity and Funding Assurance:**

Many tribes are challenged by limited resources and/or capacity to adequately address important federal actions or similar requests from state and local governments or private entities. NRC must take this into consideration and offer technical assistance to Tribal Governments to ensure that they are not disadvantaged in their ability to meaningfully engage. Equally, NRC must provide funding assurance to adequately support and sustain decommissioning activities to ensure tribes are involved throughout the process. NRC should strive to develop proactive relationships with tribes on a government-to-government basis to enhance coordination, understanding and ongoing communication.

#### **Alignment of NRC’s Tribal Protocol Manual and Policy:**

NRC’s Tribal Protocol Manual and Tribal Policy Statement is a progressive step for outlining tribal engagement and must be fully integrated before and during the rulemaking process prior to public involvement. Further, NRC must expand efforts to systematically identify culturally affiliated tribes at the beginning of the rulemaking process which may have “substantial direct effects” from agency actions. Treaty and ancestral lands which often extends beyond present day reservation boundaries, must be considered. In following its own Policy, the NRC will demonstrate its commitment to fulfill its “*good faith*” effort and facilitation of meaningful government-to-government consultation. Direct interactions with Tribes described in the NRC Tribal Protocol Manual and Policy will only occur through meaningful dialogue with the elected leadership of federally recognized Tribes.

In closing, NETWG appreciates the opportunity to submit our comments and look forward to working with NRC to make regulatory improvements for production and utilization facilities transitioning to decommissioning. If you have any questions, please feel free to contact Tansey Moore at 303-856-1498 or [tansey.moore@ncsl.org](mailto:tansey.moore@ncsl.org)

Sincerely,

**NUCLEAR ENERGY TRIBAL WORKING GROUP**