

POLICY PAPER SUBMITTED TO THE 41st ANNUAL GENERAL ASSEMBLY  
OF THE NATIONAL CONGRESS OF AMERICAN INDIANS BY THE  
NUCLEAR WASTE NATIONAL INDIAN REVIEW COMMITTEE

I. GENERAL POLICY STATEMENT ON THE ISSUE OF NUCLEAR WASTE ✓

Two years ago, "The Nuclear Waste Policy Act of 1982" was enacted by the U.S. Congress in Public Law 97-425.

The federal law was a belated recognition that no rational national policy had previously been established for addressing, and determining answers to, crucial questions relating to the use, processing and disposition of toxic and radioactive nuclear materials, by-products and wastes, being produced in the United States and elsewhere.

In the short history of the rapidly advancing technologies of a Nuclear Age, it had become clear that production and use technologies had fastly outpaced the technology on nuclear waste handling and disposal. The production and build-up of nuclear wastes outraced the development of knowledge and answers regarding how they should be handled, stored, or otherwise disposed of -- indeed, even the knowledge of the actual and potential dangers.

A growing public awareness of actual and potential, known and unknown, dangers relative to nuclear technologies and wastes disposals and repositoties, prompted enactment of the 1982 Act. Past actions were being recognized as nothing less than a careless violation of the public trust. In sense, the public became conscious of an on-going industry in nuclear wastes operating within its midst and sometimes threatening the human community with a range of possible and incipient dangers -- both to their persons and to their environment.

Because the public was concerned, and many people justifiably fearful of consequences and costs of this uncontrolled nuclear industry -- including those derived from some most beneficial uses, as in medicine or in energy production -- the Congress acted. And Congress acted with the knowledge that new wastes were being produced daily; that these wastes must be disposed of somehow -- somewhere.

Fortunately, the Congress recognized that Native people of the United States -- particularly Indian tribes -- have direct interests in the public policies governing these issues, and in related actions and practices.

It has become evident, however, that, unfortunately, the 1982 legislation may fail -- rather, does fail -- to fully recognize the range of actual interests, rights and concerns, of Native American communities, as affected by the policies and provisions of the Act and its initial implementation or administration.

Who could be more concerned about thoughtful consideration being given to the matters of nuclear wastes disposition -- with all the attendant problems of endangerment by accident in immediate terms, environmental contamination in gradual or accelerating degrees with faulty depository selections, and the time lapse endangerments inherent to the radiological lifetimes of stored contaminants -- than the American Indian and Alaskan Native people who have held this continent sacred since time immemorial, and who continue to consider its protection a mindful duty?

The question is asked more than rhetorically. It is asked because the 1982 law and its administration serves to recognize the rights of some tribes, then to deny the interests of others -- in

part by mandating a say to some, while providing no say to others, in government-to-government relations and in the workings of decision-making processes. This defect ignores the seriousness of the issues involved, and their often transcendent nature over time and place or geography. Discriminating judgment, not discrimination, is required on these issues.

Outside of Alaska in the lower 48 States, Indian tribes retain an approximate 2% of the land base of these States within established reservation boundaries. For many, tribes, the extra-territorial rights reserved by treaties -- tribal rights of hunting, fishing, gathering and harvesting -- are more extensive than the lands secured as reservations. Water, together with the rights to that water, are another tribal interest which may be impacted by nuclear waste disposal. These waters, which may arise on off-reservations, form aquifers and watersheds which may carry nuclear pollution, impacting Indian reservations. These considerations warrant concerns in the application of nuclear waste policies throughout the U.S.

The 1982 Nuclear Waste Policy Act likely did not assay the broad range of Indian interests and concerns during the process of formulation. Tribal governments were not sufficiently informed regarding its drafting and provisions, and have had but limited consultative opportunities in the P.L. 97-425 implementation.

The United States Congress is to be commended for addressing the Nuclear Wastes issues in a comprehensive approach. Yet, it is imperative that past mistakes not be repeated in the nation's continuing use and reliance upon nuclear substance technologies. The health and welfare of native people should not again be sacrificed by any neglect

or withholding of the best available information, knowledge and technology, relative to these issues, Those already injured in health and body and family life should be fully cared for; and where remedies are needed and possible for communities adversely impacted by the prim stages of nuclear development, attention should be given to remedies.

The Nuclear Waste National Indian Review Committee was formed and convened on May 15, 1984, in conjunction with the mid-year conference of the National Congress of American Indians, in response to the broad Indian concern on these issues.

IT IS THE STATED POLICY OF THE COMMITTEE THAT:

Application of the Nuclear Waste Policy Act of 1982 should be implemented in the clearest context of the United States' obligations and trust responsibilities toward respecting, honoring, ~~enforcing~~ ~~preserving~~, protecting and guaranteeing the varied rights and interest of Indian Nations under treaties and other established law.

Equitable funding should be accorded tribal governments commensurate with their governmental responsibilities under the Nuclear Waste Policy Act, and in parity with State and local governmental funding under the Act.

The 1982 Act must not be permitted to become another back-door attack on Indian governmental and property rights; nor to resurrect a concept of Indian people and properties as being expendable as a "national sacrifice" commodity, nor be made pawns of "national security" pretexts. Tribes should be supported in preventing even "next door" attacks, particularly in protection of Indian interests in the transportation of high level radioactive waste across Indian lands and in the siting of waste deposits in dangerous or impacting proximities.

The 1982 Act should serve as a model for the best in government-to-government relationships, and nothing less. And, while actual interests in a particular issue or action may vary in degree from tribe to tribe, as it does from State to State, all caution must be taken to avoid development of any adverse legal precedents under the Act which might tend to reshape or alter Indian rights to conform with a temporary or limited interest of measures under the Act. Both State and Tribes should be afforded all necessary consultations and participation appropriate to their governmental interests.

Where doubts or defects exist in the 1982 law relative to the rights of affected Native people, any doubts should be clarified or defects removed by government-to-government relations which assure that established Indian treaty, governmental and other legal rights are adequately protected and safeguarded.

## II. STATEMENTS REGARDING PARTICULAR CONCERNS RELATING TO NUCLEAR WASTE

### Trust Responsibility

Although the NCAI is aware that the trust responsibility which the United States of America owes to American Indian Tribes is shared by all three branches of the federal government, the NCAI wishes to begin its process of dealing with the federal government on nuclear waste issues by focusing on two matters of particular concern to the Executive Branch.

Regarding the trust responsibility of the BIA, NCAI urges that the BIA explore and consider with interested tribal governments the development of a statement outlining the proper manner in which BIA fulfill its trust responsibilities to those Tribes who have not or may not meet the qualifications for "Affected Tribe" status under the NWPA even though they will be impacted by facilities authorized or planned by the NWPA.

Regarding the Trust Responsibility of the DOE, NCAI recognizes that the NWPA recognizes States and Tribes as sovereign governments. The DOE has funded States in the regions considered for the second repository, and yet has denied any funding arrangement recognizing the Tribal Governments within those regions. The effect of this is

to deny the Tribes the special status mandated by the Act, while allowing States to enter into informal agreements to enjoy the funding privileges of the Act. The NCAI therefore urges that the DOE consult with and provide funding for those Tribes in second repository regions in such a manner as to follow the precedents it has already established in consulting with and providing money for the States in those regions.

Fearful that these issues not be lost sight of within the Executive Branch, the NCAI also urges that the Department of Interior assume its burden of trust responsibility by ensuring that parity between Tribes and States in second repository regions is enforced at the earliest possible date and that the Department of Interior continue its relationship with any Tribe on these issues once the Tribe begins to consult with DOE. The NCAI believes that the particular primary trust responsibility of the Department of Interior cannot be relegated or delegated.

#### Tribal Cooperation

The NCAI encourages Tribes to explore avenues of cooperation which allow States and Tribes to circumvent barriers created by the Federal Government process mandated by the NWPA.

#### Transportation

The transportation of radioactive wastes through Indian lands jeopardizes Indian health, safety, and environment. Recognizing that the Federal Government has established processes which may enable tribal governments to participate in decisions regarding the transportation of radioactive wastes through tribal lands and lands

in which Tribes hold reserved interests, NCAI urges that the Executive Branch work with interested Tribes to reroute radioactive wastes around these lands. Guidelines or regulations on these issues should be made available to all interested Tribes, commented on by those Tribes, and revised to reflect tribal concerns if necessary.

#### Uranium Mining and Milling

Recognizing that American Indian governments are involved in the nuclear waste process, not only regarding NWSA facilities, but also in the mining which begins the cycle of these wastes, NCAI urges that the Executive Branch of the Federal Government keep Tribal leaders and their membership fully informed of the harmful effects of uranium mines or mill tailings upon their reservations or other lands in which they have an interest if such activities have been done or are ever contemplated. More importantly, tribal leaders must be kept fully involved in any remedial actions taking place as the result of tailings contamination. The responsibilities of all Federal agencies involved must be clearly defined by those agencies and interested Tribes, in order to eliminate bureaucratic entanglements and uphold the trust responsibility. It is imperative that Tribes have access to all medical, technical, and legal information available so that sound decisions can be made that will maintain the existence of Indian people free from radioactive contamination.



III. ENDORSEMENT OF RESOLUTIONS OF OTHER BODIES

The attached resolution of a regional inter-Tribal organization is endorsed. NCAI will counsel and cooperate with this regional organization in their efforts to implement these resolutions.

IV. ENDORSEMENT OF TRIBAL LAWS

The attached tribal law is commended. NCAI will counsel and cooperate with this Tribe in their efforts to give effect to these laws.



# GLITC INC: GREAT LAKES INTER-TRIBAL COUNCIL INC

POST OFFICE BOX 9, LAC DU FLAMBEAU, WISCONSIN 54538

PHONE (715) 588-38

Nuclear Waste

RESOLUTION NO. 7-13-84A

WHEREAS, the Great Lakes Inter-Tribal Council, Inc. is a consortium of ten (10) Federally recognized Tribes and Bands, incorporated in the State of Wisconsin to "preserve the rights of the Indian people under Treaties or agreements with the United States and with any political subdivision" and "to do all manner of things necessary to improve the education, economic status, living environment, and general welfare of American Indians, and particularly those Indians who reside in the State of Wisconsin," and

WHEREAS, the Government of the United States is presently considering the development of a high level nuclear waste repository in Northern Wisconsin rock formations which underlay lands which are occupied by Native Americans; or are adjacent to lands occupied by Native Americans who are members of the Tribes and Bands of the Great Lakes Inter-Tribal Council, and

WHEREAS, the development of a high level Nuclear Waste Repository within the sovereign borders of lands occupied by member Tribes and Bands, or on lands ceded to the Federal government by member Tribes, is contrary to those Tribes and Bands responsibility to preserve the health and welfare of their citizens and environment, and

WHEREAS, the member Tribes and Bands of the Great Lakes Inter-Tribal Council retain certain TREATY RIGHTS, and will not give the government of the United States of America the right to contaminate the lands of the subjects of these reserved rights, and

WHEREAS, the Bureau of Indian Affairs and the Secretary of the Interior have the statutory responsibility of Trusteeship over the recognized Tribes and Bands of Great Lakes Inter-Tribal Council; their lands, their people, and their environment, and have as a part of that Trusteeship the responsibility for the protection of the people, their environment, and their TREATY RIGHTS, and

WHEREAS, the Wisconsin Radioactive Waste Review Board is requesting responses from Tribes and Bands on how they will relate to Review Board activities.

NOW, THEREFORE BE IT RESOLVED, that the member Tribes and Bands of the Great Lakes Inter-Tribal Council confirm the policies of:

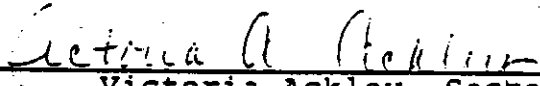
1. Total opposition to the development of any nuclear waste facility which falls within the sovereign borders of any member Tribe or Band; or within any lands ceded to the Federal government by any member Tribe.
2. Total opposition to the sinking of test holes within the sovereign boundaries by any entity associated with the United States Department of Energy.
3. Cooperation with the United States Department of Energy only to the extent that member Tribes and Bands are bound by law.

BE IT FURTHER RESOLVED, that the Great Lakes Inter-Tribal Council, Inc. and its member Tribes and Bands will work cooperatively with the Wisconsin Radioactive Waste Review Board through attendance at meetings, by providing written and oral comments and by requesting an agreement for the purposes of related information exchange.

BE IT FINALLY RESOLVED, that certified copies of this Resolution will be forwarded to the United States Department of Energy, the Wisconsin Radioactive Waste Review Board, to the Governor of the State of Wisconsin, to the Secretary of the Interior and to the entire Wisconsin Congressional delegation.

#### CERTIFICATION

I, the undersigned as Secretary of the Great Lakes Inter-Tribal Council, Inc., Board of Directors do hereby certify that the Board is comprised of ten (10) members of whom 8 were present, thus constituting a quorum, at a meeting duly called, noticed, convened and held on the 13th of July, 1984, and that the foregoing resolution was passed at said meeting by an affirmative vote of 8 members for, and 0 against, with 0 members abstaining.

  
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Victoria Ackley, Secretary  
Great Lakes Inter-Tribal Council, Inc.