

Cultural Resources Defined

Cultural resources include, but are not limited to, the following broad range of items and locations: (1) archaeological materials and sites dating to the Prehistoric, Historic, and Ethnohistoric Periods that are currently located on, or are buried beneath, the ground surface; (2) standing structures that are over 50 years of age or are important because they represent a major historical theme or era; (3) cultural and natural places, certain natural resources, and sacred objects that have importance for Native Americans; and (4) American folklife traditions and arts.

Obtaining Information about the Management of Cultural Resources

Information concerning the cultural resources that may exist on DOE facilities or on properties that may be affected by DOE programs can be obtained by contacting the DOE Point of Contact (POC) in the appropriate DOE Operations Office. Additional information can be obtained by contacting the DOE Federal Preservation Officer (FPO), the State Historic Preservation Officer (SHPO) in each state or territory, local historical organizations, American Indian tribes and other Native American organizations, and the Advisory Council on Historic Preservation (ACHP). Names, addresses, and phone numbers for the ACHP and for all the SHPOs can be obtained from the DOE FPO.

Protection of Cultural Resources on DOE Property

DOE facility and program managers must consult with their SHPO concerning specific compliance requirements and cultural resource preservation planning. In

some cases consultation may also be required with the ACHP and appropriate local historical organizations, interested individuals and groups, and American Indian tribes. Further, the National Historic Preservation Act, as amended in 1992, allows a tribe to designate a tribal preservation official to administer the tribal historic preservation program and contains a number of new provisions that expand the role of Native Americans and Native Hawaiians in preservation activities. To ensure appropriate interactions with American Indian tribes that may be impacted by the Department's activities, DOE 1230.2 delineates the specific responsibilities of various Headquarters and field elements.

Existing cultural resource management laws and their implementing regulations require operators of DOE-owned or -leased facilities to develop programs for the identification, evaluation, nomination, and protection of cultural resources located on the properties under their management and for the mitigation of negative impacts to them. DOE programs providing permits and/or allocating funding for activities that may affect cultural resources on non-DOE owned land are also required to comply with all cultural resource management laws and regulations.

Cultural Resource Management Program

A consolidated DOE cultural resource management program that is proactive and responsive to existing cultural resource laws and implementing regulations should be developed and implemented at each DOE facility and for each DOE program. A cultural resource management program will include the following elements:

- Ensure professionally trained cultural resource management personnel are employed to prepare cultural resource management plans; determine the need for and scope of field studies; carry out field, laboratory, and archival studies; and evaluate the potential National Register significance of identified cultural resources. (For guidance in selecting qualified personnel see 36 CFR Part 61 and the 1983 Department of Interior Guidelines concerning Professional Qualifications Standards.)
- Include Federal/State agency officials, the SHPO, American Indian tribes, the ACHP, and interested organizations or persons (e.g., local governments; applicants for Federal assistance, permits, or licenses; and the public) into the *Section 106* consultation process as specified in the NHPA, as amended, and its implementing regulations (36 CFR Part 800) and ARPA.
- Facilitate public involvement and participation by consulting with Federal, State, and local preservation groups and Native American groups regarding preservation planning decisions.
- In accordance with the American Indian Policy attached to DOE 1230.2, each DOE Operations Office or DOE installation with areas of cultural or religious concern to American Indians will consult with them about the potential impacts of proposed DOE actions on those resources and will avoid unnecessary interference with traditional religious practices. Cultural resource measures will include the identification of places, natural resources, and objects of sacred and religious importance as defined by designated tribal representatives.
- Protect cultural resource sites and, as appropriate, monitor unreported sites. These proactive actions should include compliance with NHPA, as amended, and ARPA.
- Develop a systematic program to inventory surface and sub-surface cultural resource sites at each DOE facility according to *Section 110* of the NHPA and ARPA. Inventories should include buildings or sites that may be less than 50 years of age that have significant historical importance.
- Use the National Register of Historic Places criteria in 36 CFR Part 60 to evaluate the significance of the cultural resources that are identified.
- Establish a permitting system for the controlled excavation, removal, and protection of cultural resources during scientific and compliance-oriented field projects as required by ARPA.
- Include sufficient lead time in the project planning process for meeting cultural resource compliance requirements for field surveys and excavations as required by *Section 106* of the NHPA, as amended. The time necessary to complete field activities and prepare compliance documents that meet Federal standards should be factored into the scheduling of projects that involve ground disturbing activities or modifications to standing structures that are more than 50 years old or are of significant historical importance.
- Budget sufficient funds to support cultural resource compliance actions and programs. (See the Archaeological and Historic Preservation Act and the NHPA, as amended.)

- Curate cultural resource collections and records in accordance with the guidance provided in 36 CFR Part 79. ~~In the public distribution of compliance-related studies and reports must comply with the NHPA, as amended.~~
- ~~Identify and repatriate human remains and associated funerary objects, unas-~~ sociated funerary objects, sacred objects, and objects of cultural patrimony in collections created as a result of past DOE activities as well as from current and proposed activities.
- To prevent looting and vandalism, protect information concerning the exact location of sensitive cultural resource sites and prohibit the dissemination of such information to the general public.
- Promptly notify the DOE FPO of the inadvertent discovery of human remains and objects and other unanticipated findings.
- Prepare a Cultural Resource Management Plan (CRMP) that identifies the individual facility/program strategies for meeting the program elements described above. Follow DOE guidance in preparing this plan and in making periodic revisions.

DOE Managers Must Consider Cultural Resources In Planning

DOE managers must follow the planning considerations discussed above whenever direct or indirect DOE activities result in ground disturbance and/or alterations to standing structures that are more than 50 years old or are important because they represent a major historical theme or era. Managers must ensure that compliance is maintained for activities that are on DOE-owned as well as non-DOE-owned

properties. DOE activities include day-to-day operations; new construction; Resource Conservation and Recovery Act (RCRA)- and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)-related cleanup actions; as well as DOE-licensed and DOE-funded actions. Managers should also ensure that personnel are kept apprised of new amendments to cultural resource statutes (e.g., NHPA Amendments of 1992) and the development of cultural resources regulations (e.g., those planned to implement NAGPRA).

Penalties for Failing to Protect Cultural Resources

Failure to protect both known and unrecorded cultural resource sites and materials can lead to criminal and civil penalties, including up to five years imprisonment and a fine of up to \$250,000 per violation, as well as the forfeiture of all equipment and vehicles used to facilitate a violation. [See the ARPA and the Omnibus Crime Control Act of 1984 (PL 98-596).]

Questions of policy or questions requiring detailed answers will not be dealt with in this information brief unless they have already been established through appropriate coordination. Please refer any questions concerning the subject material covered in this information brief to Lois Thompson, Federal Preservation Officer, Office of Environmental Guidance, Department of Energy, EH-232, 1000 Independence Ave., S.W., Washington, D.C. 20585; telephone (202) 586-9588.



8. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD WORK COOPERATIVELY WITH TRIBAL GOVERNMENTS TO ACHIEVE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS, CONSISTENT WITH THE PRINCIPLE OF INDIAN SELF-GOVERNMENT.

The EPA Indian Policy recognizes Tribal Governments as the key governments having responsibility for matters affecting the health and welfare of the Tribe. Accordingly, where tribally owned or managed facilities do not meet Federally established standards, the Agency will endeavor to work with the Tribal leadership to enable the Tribe to achieve compliance. Where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as we do to noncompliance by the private sector off-reservation.

Actions to enable and ensure compliance by Tribal facilities with Federal statutes and regulations include providing consultation and technical support to Tribal leaders and managers concerning the impacts of noncompliance on Tribal health and the reservation environment and steps needed to achieve such compliance. As appropriate, EPA may also develop compliance agreements with Tribal Governments and work cooperatively with other Federal agencies to assist Tribes in meeting Federal standards.

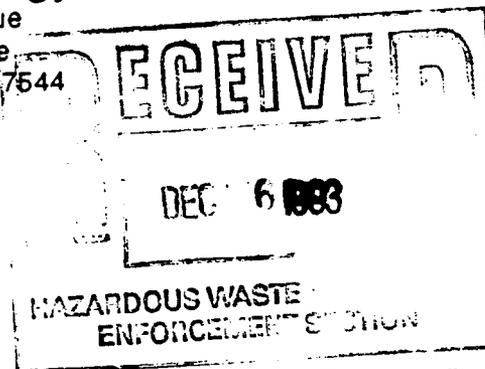
Because of the unique legal and political status of Indian Tribes in the Federal System, direct EPA actions against Tribal facilities through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion. Regional Administrators proposing to initiate such action should first obtain concurrence from the Assistant Administrator for Enforcement and Compliance Monitoring, who will act in consultation with the Assistant Administrator for External Affairs and the General Counsel. In emergency situations, the Regional Administrator may issue emergency Temporary Restraining Orders, provided that the appropriate procedures set forth in Agency delegations for such actions are followed.



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Department of Energy

Field Office, Albuquerque
Los Alamos Area Office
Los Alamos, New Mexico 87544



November 30, 1993

Dear Neighbor,

On July 31, 1993, a letter was sent to the Secretary of Energy, from the "LANL Coalition," requesting establishment of a Site-Specific Advisory Board for Los Alamos National Laboratory. A September 10 response from DOE Headquarters, said DOE Los Alamos and LANL were just beginning to explore the concept of an advisory board. Since that time, the Coalition Secretary and three other stakeholders participated in one of two meetings held with DOE Los Alamos and LANL staff to brainstorm this concept further. The Coalition Secretary has been in regular contact with us about the request for an advisory board, and we appreciate the group's constructive input on how best to involve affected stakeholders when this process begins.

It is important to advise you that DOE and LANL have committed to the establishment of an advisory board. We agree with the Coalition position that a Los Alamos-specific advisory board should have a scope that addresses a variety of key programmatic issues. We will fund the establishment and operation of an advisory board. Composition, operating structure and "ownership" of the advisory board will rest with our stakeholders; DOE and LANL are available to assist in these processes if asked. These commitments are in concert with stakeholder interests expressed to us thus far.

It was recently proposed to the Coalition Secretary that stakeholder consideration be given to inviting an independent facilitator (for example, The Keystone Center, Western Network, or another mutually-acceptable group), to begin this process publicly. We understand that a Coalition planning meeting will be held in December to discuss this proposal. We look forward to the outcome of that meeting, and stand ready to assist in arranging for a public, facilitated session which will address the interests of all stakeholders.

Enclosed is a sheet outlining the status of advisory board establishment at Los Alamos. If you have any questions, please call Christina Armijo at the DOE Los Alamos Area Office (665-5025), or Harry Otway with Los Alamos National Laboratory (665-4400).

Sincerely,

Jerry L. Bellows
Area Manager

Enclosure: as stated

copy w/enclosure:

B. G. Twining, Manager, DOE AL

S. S. Hecker, Director, LANL

J. F. Jackson, Deputy Director, LANL



Department of Energy

Field Office, Albuquerque
Los Alamos Area Office
Los Alamos, New Mexico 87544

November 1993

STATUS OF ADVISORY BOARD ESTABLISHMENT AT LOS ALAMOS

The Department of Energy Los Alamos Area Office and its Los Alamos National Laboratory are committed to improving stakeholder involvement by obtaining their recommendations for key programmatic decisions. In doing so, we ask the public's participation as we work toward addressing the interests of all stakeholders through a citizens advisory board for DOE and LANL facilities.

Background

The Environmental Protection Agency (EPA) chartered the Federal Facilities Environmental Restoration (FFER) Dialogue Committee in 1992. The Committee, facilitated by The Keystone Center of Colorado, consisted of a diverse group of interests, such as federal, Tribal, state, citizen, environmental, and labor interests. At the Committee's December 1992 meeting, an Interim Report was approved, the recommendations of which encouraged establishment of "Site-Specific Advisory Boards" at federal facilities. It was felt that SSAB's would provide early and meaningful stakeholder involvement in federal cleanup decisions, and establish a new way of conducting environmental restoration at federal facilities, including those under the purview of the Department of Energy.

After the Interim Report was released, it became clear that at several DOE sites stakeholder interests were much broader than environmental restoration. With the Secretary of Energy supporting the concept of SSAB's, a number of DOE sites including Los Alamos have expressed interest in an advisory board that would address all programs of the site involved.

Status of Advisory Board for Los Alamos

- √ On July 31, 1993, a request from the LANL Coalition including 61 stakeholder signatures was sent to the Secretary of Energy, requesting an SSAB for Los Alamos under the Keystone process.
- √ In a September 10 response to the Coalition, DOE Headquarters acknowledged receipt of the request, and said DOE and LANL were just beginning to discuss the concept with its staff.
- √ Two official meetings within DOE and LANL to brainstorm the concept were held in September and October, with one of the meetings including four stakeholder representatives.
- √ During late October and early November, DOE and LANL continued to maintain contact with the LANL Coalition Secretary about this concept.
- √ On November 8, a verbal offer was made to the Coalition Secretary, that The Keystone Center staff be brought to New Mexico for a Coalition- and agency-cosponsored informational meeting, allowing the public to learn first-hand about the Center's process and establishing a public forum to explore alternatives for moving forward with preferred stakeholder options. We understand this offer is currently being considered and discussed among Coalition members.

√ Three additional community dialogue/working groups expressed an interest in the SSAB process during November. These, and all stakeholders' interests will be included equally as this process evolves.

While DOE or LANL program staff may discuss the advisory group process as part of their broader stakeholder involvement programs, these discussions should not be misconstrued as initiating an advisory board process without stakeholder input. Informal discussions will likely continue, and should be viewed as a healthy process in acclimating DOE and LANL staff to a changing environment that emphasizes the importance of stakeholder involvement in their activities.

Principles We Have Adopted

The following representative principles will guide DOE and LANL in this effort. They may not be all-inclusive, but attempt to merge the intent of the Keystone process with stakeholder interests expressed thus far.

- √ Stakeholders include affected or interested parties, e.g., residents that live in the community or region; representatives of citizen, environmental, and public interest groups whose members live in the region; workers or their representatives involved in or affected by LANL operations; elected and appointed government officials; Native American Tribes; and regulators of LANL activities.
- √ DOE and LANL will not move forward without stakeholder input. We will rely on the judgment of a third party to facilitate the process of establishing an advisory board.
- √ As the regulated agency, DOE will fund the establishment of an advisory board, including costs involved to host public meetings. At these public meetings, all stakeholders will be treated as equals. All decisions regarding this process are made by the stakeholders.
- √ As stakeholders have expressed, a Los Alamos advisory board will address a broad range of issues with respect to Los Alamos. Ultimately, the interests of the stakeholders will determine the advisory board scope.
- √ DOE and LANL endorse the FFER Committee recommendation that, at most, one advisory board be established at the facility, in this case Los Alamos.
- √ The composition of a Los Alamos advisory board will be determined by the stakeholders. DOE, LANL, EPA and the State of New Mexico will serve only in an ex-officio capacity.
- √ DOE has an obligation to reject for reconsideration a proposed list of advisory board members if the list does not ensure a sufficient diversity of viewpoints, or an appropriate balance of affected stakeholders. DOE will not, however, reject individual members from the proposed list.
- √ Stakeholders are ultimately the owners of the advisory board and its process. DOE and LANL responsibilities are to respond to advisory board advice and recommendations.

Questions concerning DOE or LANL roles in the SSAB process may be answered by contacting DOE LAAO at 505 665 5025, or the Los Alamos National Laboratory at 505 665 4400.

LIBRARY REFERENCES

American Digest System

- Armed services; battlefields and monuments, see Armed Services ¶54.
 Armed services; forts, posts, and bases, see Armed Services ¶28.
 Forest reservations, preserves, or parks, see Woods and Forests ¶8.
 United States; acquisition of property in general, see United States ¶55.

Encyclopedias

- Armed services; battlefields and monuments, see C.J.S. Armed Services § 24.
 Armed services; forts, posts, and bases, see C.J.S. Armed Services § 21.
 Public forests, preserves, and reservations; national forests, see C.J.S. Woods and Forests § 11.
 United States; acquisition and ownership of property in general, see C.J.S. United States § 71.

WESTLAW ELECTRONIC RESEARCH

- Armed services cases: 34k[add key number].
 United States cases: 393k[add key number].
 Woods and forests cases: 411k[add key number].
 See, also, WESTLAW guide following the Explanation pages of this volume.

§ 432. Permits to examine ruins, excavations, and gathering of objects; regulations

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. The Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this section and sections 431 and 433 of this title.

(June 8, 1906, c. 3060, §§ 3, 4, 34 Stat. 225.)

HISTORICAL AND STATUTORY NOTES

Codifications

The last sentence only of this section was derived from section 4 of Act June 8, 1906, the remainder being from section 3.

Change of Name

The Department of War was designated the Department of the Army and the

title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, c. 343, Title II, 61 Stat. 501. Section 205(a) of Act July 26, 1947, was repealed by section 53 of Act Aug. 10, 1956, c. 1041, 70A Stat. 641. Section 1 of Act Aug. 10, 1956, enacted "Title 10, Armed Forces"

which in sections 3011 to 3013 cover the military Department of the Interior under the administrative supervision of a Secretary of the Army.

Transfer of Functions

Enforcement functions of Secretary of the Interior in Department of the Interior related to compliance with permits issued under sections 431, 432 and 433 of this title and such functions of Secretary of the Interior or other official in Department of the Interior or other official in Department of the Interior, insofar as they involve such programs under jurisdiction of the Department, related to compliance with removal of objects of antiquity under sections 431, 432, and 433 with respect to pre-construction, construction and final operation of transportation facilities for Canadian and Alaskan lands.

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Disposition and custody of objects of antiquity: Establishment; Great Basin National Monument; Excavation and removal, see National monument in Rivers and Lakes; Smithsonian Institution, see 2 Use of wilderness areas, see 1 Withdrawals of lands, see 43

LIBR

Administrative Law

Preservation of antiquities, see

American Digest System

Armed services; battlefields and monuments, see Armed Services ¶54.
 Armed services; forts, posts, and bases, see Armed Services ¶28.
 United States; control, regulations, see United States ¶55.
 Woods and forests; statutory

Encyclopedias

Armed services; battlefields and monuments, see C.J.S. Armed Services § 24.
 Armed services; forts, posts, and bases, see C.J.S. Armed Services § 21.
 United States; control, regulations, see C.J.S. United States § 71.
 Woods and forests; statutory

WESTLAW I

Armed services cases: 34k[add key number].
 United States cases: 393k[add key number].
 Woods and forests cases: 411k[add key number].
 See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

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 Power of Secretary 1
 Procedure for permits 3
 Removal of objects 2

1. Power of Secretary

This section gives the Secretary of the Interior broad discretionary power to dispose of objects of antiquity found on federal land under his jurisdiction. *People of State of Cal. ex rel. Younger v. Mead*, C.A.Cal.1980, 618 F.2d 618.

2. Removal of objects

Complaint wherein the state of California and a county museum alleged that the Secretary of the Interior violated this section and regulations promulgated thereunder when he permitted the Smithsonian Institute to remove and study a 6,070 pound meteorite that was found on federal land in Southern California did not state a cause of action. *People of State of Cal. ex rel. Younger v. Mead*, C.A.Cal.1980, 618 F.2d 618.

§ 433. American antiquities

Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than \$500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

(June 8, 1906, c. 3060, § 1, 34 Stat. 225.)

HISTORICAL AND STATUTORY NOTES

Transfer of Functions

Enforcement functions of Secretary or other official in Department of Interior related to compliance with permits issued under sections 431, 432, and 433 of this title and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with removal of objects of antiquity under

3. Procedure for permits

Though regulations issued under this section establish a uniform method of applying for antiquities permits, the regulations do not limit the ability of the Secretary of the Interior to act in the absence of application nor do they require that the Secretary solicit and choose between competing applications for antiquities permits. *People of State of Cal. ex rel. Younger v. Mead*, C.A.Cal.1980, 618 F.2d 618.

4. Hearing

Neither the State of California nor the San Bernardino County Museum demonstrated the kind of interest in a 6,070 pound meteorite that had been found on federal land in Southern California which would entitle them to a hearing as a matter of constitutional right before the Secretary of the Interior could act under this section to authorize an out-of-state museum to remove the meteorite for study. *People of State of Cal. ex rel. Younger v. Mead*, C.A.Cal.1980, 618 F.2d 618.

sections 431, 432, and 433 with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System. See Reorg. Plan No. 1 of 1979, §§ 102(e).

Ch. 1 MONUMENTS AND MEM

EXX), 44 F.R. 33663, 33666, 93 Stat. § 1376, effective July 1, 1979, set out

CROSS RE

Disposition and custody of archaeological Establishment; Great Basin National Excavation and removal, see 16 USC National monument in Riverside Co Permits to examine ruins, excavate § 432.

Smithsonian Institution, see 20 USC Use of wilderness areas, see 16 USC Withdrawals of lands, see 43 USCA

LIBRARY I

Administrative Law

Criminal law enforcement, see 43 C

American Digest System

Armed services; battlefields and monuments Armed services; forts, posts, and buildings United States; control, regulation, places, see United States § 5

Encyclopedias

Armed services; battlefields and monuments Armed services; forts, posts, and buildings United States; control, regulation, places, see C.J.S. United States

Forms

Fine, see West's Federal Forms § 7

Law Reviews

Preserving Utah's cultural resources 10 J.Energy L. & Policy 93 (

WESTLAW ELEC

Armed services cases: 34k[add key] United States cases: 393k[add key] See, also, WESTLAW guide follow

NOTES C

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1. Constitutionality
 As applied in prosecution of defendants for taking artifacts from ancient

16 § 470ee

resources and cost of restoration and repair of such resources to \$500 from \$5,000.

Legislative History

For legislative history and purpose of Pub.L. 100-588, see 1988 U.S. Code Cong. and Adm. News, p. 3983.

NOTES OF DECISIONS

Constitutionality 1/2

1/2. Constitutionality

Archaeological Resources Protection Act was not unconstitutionally overbroad or vague with respect to defendant who was convicted of excavating scrapers and arrow points that were clearly

weapons and tools; although defendant claimed that curiosity motivated him and academic freedom protected him, he was not affiliated with academic institution and did not claim that First Amendment protected any activity prohibited by Act; and statute provided fair notice. U.S. v. Austin, C.A.9 (Or.) 1990, 902 F.2d 743, certiorari denied 111 S.Ct. 200, 112 L.Ed.2d 161.

§ 470ii. Rules and regulations; intergovernmental coordination

[See main volume for text of (a) and (b)]

(c) Federal land managers' public awareness program of resources on public lands and Indian lands

Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program.

(As amended Pub.L. 100-588, § 1(d), Nov. 3, 1988, 102 Stat. 2983.)

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Subsec. (c). Pub.L. 100-588 added subsec. (c).

Legislative History

For legislative history and purpose of Pub.L. 100-588, see 1988 U.S. Code Cong. and Adm. News, p. 3983.

§ 470mm. Surveying of lands; reporting of violations

The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

(a) develop plans for surveying lands under their control to determine the nature and extent of archaeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources; and

(c) develop documents for the reporting of suspected violations of this chapter and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies.

(Pub.L. 100-555, Oct. 28, 1988, 102 Stat. 2778.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 100-555, see 1988 U.S. Code Cong. and Adm. News, p. 3625.

LIBRARY REFERENCES

- United States 41, 57.
- WESTLAW Topic No. 393.
- C.J.S. United States §§ 41, 74.

CONSERVATION

CONSERVATION

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Working Copy

ACCORD

between the

PUEBLO OF SAN ILDEFONSO, A FEDERALLY RECOGNIZED INDIAN TRIBE

and the

UNITED STATES DEPARTMENT OF ENERGY

I. PREAMBLE AND GUIDING PRINCIPLES

This ACCORD, with an effective date of December 15, 1992, is executed between the Pueblo of San Ildefonso, a Federally recognized Indian Tribe, hereafter referred to as "the Pueblo," through its Governor, and the United States Department of Energy, an Executive Department of the United States of America, hereafter referred to as "DOE," through its Assistant Secretary on behalf of the Secretary, in order to better achieve mutual goals through an improved relationship between the parties. The Assistant Secretary has program authority for carrying out Department of Energy missions and functions authorized by the Atomic Energy Act of 1954 and has overall administrative responsibility for the Los Alamos National Laboratory. His execution of this ACCORD is binding on the Department of Energy as a whole.

This ACCORD provides the framework for a government-to-government relationship between the parties and procedures to assure implementation of that relationship.

Each party to this ACCORD respects the sovereignty of the other. Consistent with Federal laws, DOE acknowledges that the sovereign character of the Pueblo gives it the authority to

govern and DOE recognizes and respects the continued existence of the Pueblo's government, values, and culture.

DOE has authority to enter into this ACCORD and conduct negotiations concerning issues of mutual concern with the Pueblo pursuant to Public Law 95-91 and other applicable law. The Pueblo has authority, as recognized by the United States of America, to enter into this ACCORD and conduct negotiations concerning issues of mutual concern with DOE.

DOE recognizes that a trust relationship derives from the historical relationship between the Federal government and American Indian Tribes as expressed in certain treaties and Federal Indian law.

DOE will consult with the Pueblo to assure that tribal rights, responsibilities, and concerns are addressed prior to the DOE taking actions, making decisions, or implementing programs that may affect the Pueblo.

Consistent with Federal laws, including the American Indian Religious Freedom Act (Public Law 95-341), DOE, through its Albuquerque Field Office, its Los Alamos Area Office, and other DOE organizations, including DOE Headquarters as appropriate, will consult with the Pueblo about the potential impacts of proposed actions on the Pueblo and its cultural, religious and environmental resources and will avoid unnecessary interference with traditional practices.

DOE will identify and seek to remove impediments to working directly and effectively with the Pueblo on DOE programs.

DOE will work with other Federal agencies and State and local agencies that have responsibilities related to activities at the Los Alamos National Laboratory to clarify the roles and responsibilities of such organizations which appear to be conflicting or overlapping as they relate to the Pueblo. DOE will also work with its contractors and subcontractors, including the University of California, that have, from time to time, responsibilities related to activities at the Los Alamos National Laboratory to clarify their roles and responsibilities as they relate to the Pueblo.

DOE will incorporate the principles of this ACCORD into its long-term planning and management processes.

Finally, the parties to this ACCORD share a desire for a complete understanding between DOE and the Pueblo reflecting a full government-to-government relationship and the parties will work with all elements of DOE and the Pueblo to achieve such an understanding.

II. DEFINITIONS

"ACCORD," for purposes of this ACCORD, shall mean a written agreement stating the basic understandings and commitments of the parties and describing the general framework for their working together.

"ASSISTANT SECRETARY," for purposes of this ACCORD, shall mean the DOE Assistant Secretary for Defense Programs, who is the Department of Energy's principal secretarial officer with line

management responsibility for and accountability for both DOE Headquarters and field operations related to the Los Alamos National Laboratory.

"CHARTER," for purposes of this ACCORD, is the agreement among the Pueblos of San Ildefonso, Santa Clara, Cochiti, and Jemez which governs inter-Pueblo rights and responsibilities in relation to the LOS ALAMOS-PUEBLO PROJECT.

"GOVERNOR" is the Governor of the Pueblo of San Ildefonso.

"LOS ALAMOS NATIONAL LABORATORY" is a facility of the Department of Energy, which is located in Los Alamos County, New Mexico, and which is operated by The Regents of the University of California pursuant to a contract with the Department of Energy.

"LOS ALAMOS-PUEBLO PROJECT" is the working group or team established pursuant to this ACCORD composed of authorized representatives of the Pueblos of San Ildefonso, Santa Clara, Cochiti, and Jemez and DOE.

"SECRETARY" is the Secretary of the United States Department of Energy.

"TRIBAL COUNCIL," for purposes of this ACCORD, is the Tribal Council of the Pueblo of San Ildefonso.

III. PARTIES

The parties to this ACCORD are DOE and the Pueblo.

IV. PURPOSES AND OBJECTIVES

This ACCORD formalizes the government-to-government

relationship between DOE and the Pueblo, a relationship consistent with DOE policy issued by the Secretary on November 29, 1991. This relationship respects the sovereignty of the Pueblo and affirms the trust relationship of the United States of America towards the Pueblo as a Federally recognized tribe.

This ACCORD is intended to build confidence and trust and to improve communication between the parties in the government-to-government relationship by outlining the process for implementing the relationship and by institutionalizing the relationship within the organizations represented by the parties.

This ACCORD provides the foundation and framework for developing agreements between the parties to address and resolve specific issues of mutual concern.

This ACCORD will assure that the Pueblo, through participation in the Los Alamos-Pueblo Project, has access to information which is not otherwise restricted by law and resources necessary for the Pueblo to participate meaningfully in DOE activities prior to DOE taking actions, making decisions, or implementing programs that may affect the interests of the Pueblo.

V. IMPLEMENTATION PROCESS AND RESPONSIBILITIES

The parties have established the Los Alamos-Pueblo Project to carry out the purposes and objectives of this ACCORD.

The Pueblo has already approved, or will approve in the near future, a Resolution accepting the Charter which authorizes the participation of Pueblo representatives in the Los Alamos-Pueblo Project. The Pueblo will participate in negotiations and other discussions with DOE through the Los Alamos-Pueblo Project with representatives from other Pueblos which have adopted the Charter.

Did they?

The parties agree that the Los Alamos-Pueblo Project shall meet regularly to establish goals, objectives and delineation of tasks relating to implementation of the principles of this ACCORD and to identify obstacles to the achievement of those goals, objectives and tasks.

The parties agree to work toward more efficient and beneficial communications to enhance participation by the Pueblo in DOE actions, including, but not limited to, on-going activities, long-range planning, and decisions and their implementation, which may affect the interests of the Pueblo.

DOE acknowledges that meaningful Pueblo participation in DOE actions and in the Los Alamos Pueblo-Project requires access to accurate information concerning the Los Alamos National Laboratory and other related DOE activities, the resources to independently verify the validity of the information received, as well as its consequences to the Pueblo, and the resources to take actions which are necessitated by DOE actions affecting the interests of the Pueblo. DOE also acknowledges that meaningful participation requires access to monetary resources beyond that

available to the Pueblo at this time. DOE agrees to pursue funding for the Pueblo for these purposes.

The parties recognize that implementation of this ACCORD will require a comprehensive effort to educate members and officials of the Pueblo and agents, employees, contractors, and subcontractors of DOE and other interested Federal, State, and County agencies of the government-to-government relationship between DOE and the Pueblo. The parties agree to develop strategies for carrying out this educational effort.

The parties recognize that a key principle of their relationship is a requirement that individuals working to resolve issues of mutual concern are accountable to act in a manner consistent with this ACCORD. In furtherance of this principle, the Area Manager of the DOE Los Alamos Area Office shall be accountable to the Assistant Secretary, who shall, in turn, be accountable to the Secretary, for implementation of this ACCORD.

Pursuant to the Charter of Pueblo members of the Los Alamos-Pueblo Project, the Pueblo representative is accountable to the Pueblo's Tribal Council and the Governor.

As a component of the system of accountability, the parties agree that the Los Alamos-Pueblo Project will review and evaluate, on an annual basis, the Los Alamos-Pueblo Project's ability to implement the government-to-government relationship and to prepare for the Secretary and the Tribal Council an annual report summarizing this evaluation.

The Secretary shall, in good faith, use his executive discretion to help implement the government-to-government relationship. The Governor shall, in good faith, use his discretion to implement the government-to-government relationship.

VI. RESERVATION OF RIGHTS

In executing this ACCORD, neither party waives any rights, including, but not limited to, treaty rights, immunities, including sovereign immunities, or jurisdictional defenses or defenses based on other laws protecting status. Neither does this ACCORD diminish any rights or protections afforded other Indian persons or entities under state or Federal law.

Except as otherwise provided herein, nothing in this ACCORD creates, nor shall be construed to create, any right of action by either party against the other.

VII. DISPUTES

While the relationship described by this ACCORD increases the ability of the parties to solve problems, it likely will not resolve all issues. Therefore, the ACCORD does not affect the right of each party to elevate any disputed issue, which is being considered by the Los Alamos-Pueblo Project, to a higher decision-making authority of another party, and to defer to that decision-making authority, including, when appropriate, to the Secretary, the Tribal Council, or the Governor.

VIII. AMENDMENT

This ACCORD may be amended by mutual written agreement between the Pueblo and DOE.

NOW, THEREFORE, the signatory parties have executed this ACCORD on the dates shown by their signatures and agreed to be duly bound by its commitments as of the effective date hereinbefore stated.

UNITED STATES DEPARTMENT OF ENERGY

BY: Richard A. Claytor
Richard A. Claytor, Assistant Secretary
for Defense Programs

DATE: Dec. 8, 1992

PUEBLO OF SAN ILDEFONSO

BY: Agapito Martinez
Agapito Martinez, Governor

DATE: D-8-1992

APPROVED AS TO FORM:
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

BY: Sidney Mills
Sidney Mills, Area Director

DATE: 12-11-92

11/8/84

EPA POLICY FOR THE ADMINISTRATION OF ENVIRONMENTAL PROGRAMS ON INDIAN RESERVATIONS

INTRODUCTION

The President published a Federal Indian Policy on January 24, 1983, supporting the primary role of Tribal Governments in matters affecting American Indian reservations. That policy stressed two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal Governments on a "government-to-government" basis.

The Environmental Protection Agency (EPA) has previously issued general statements of policy which recognize the importance of Tribal Governments in regulatory activities that impact reservation environments. It is the purpose of this statement to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-government" relations between Federal and Tribal Governments. This statement sets forth the principles that will guide the Agency in dealing with Tribal Governments and in responding to the problems of environmental management on American Indian reservations in order to protect human health and the environment. The Policy is intended to provide guidance for EPA program managers in the conduct of the Agency's congressionally mandated responsibilities. As such, it applies to EPA only and does not articulate policy for other Agencies in the conduct of their respective responsibilities.

It is important to emphasize that the implementation of regulatory programs which will realize these principles on Indian Reservations cannot be accomplished immediately. Effective implementation will take careful and conscientious work by EPA, the Tribes and many others. In many cases, it will require changes in applicable statutory authorities and regulations. It will be necessary to proceed in a carefully phased way, to learn from successes and failures, and to gain experience. Nonetheless, by beginning work on the priority problems that exist now and continuing in the direction established under these principles, over time we can significantly enhance environmental quality on reservation lands.

POLICY

In carrying out our responsibilities on Indian reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the Agency will pursue the following principles:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE "GOVERNMENT-TO-GOVERNMENT" RELATIONSHIP), RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENTS.

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivisions of States or other governmental units.

2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.

The Agency will assist interested Tribal Governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Within the constraints of EPA's authority and resources, this aid will include providing grants and other assistance to Tribes similar to that we provide State Governments. The Agency will encourage Tribes to assume delegable responsibilities, (i.e. responsibilities which the Agency has traditionally delegated to State governments for non-reservation lands) under terms similar to those governing delegations to States.

Until Tribal Governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations (unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State Government). Where EPA retains such responsibility, the Agency will encourage the Tribe to participate in policy-making and to assume appropriate lesser or partial roles in the management of reservation programs.

4. THE AGENCY WILL TAKE APPROPRIATE STEPS TO REMOVE EXISTING LEGAL AND PROCEDURAL IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON RESERVATION PROGRAMS.

A number of serious constraints and uncertainties in the language of our statutes and regulations have limited our ability to work directly and effectively with Tribal Governments on reservation problems. As impediments in our procedures, regulations or statutes are identified which limit our ability to work effectively with Tribes consistent with this Policy, we will seek to remove those impediments.

5. THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations.

6. THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.

Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of government. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local governments. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both.

7. THE AGENCY WILL WORK WITH OTHER FEDERAL AGENCIES WHICH HAVE RELATED RESPONSIBILITIES ON INDIAN RESERVATIONS TO ENLIST THEIR INTEREST AND SUPPORT IN COOPERATIVE EFFORTS TO HELP TRIBES ASSUME ENVIRONMENTAL PROGRAM RESPONSIBILITIES FOR RESERVATIONS.

EPA will seek and promote cooperation between Federal agencies to protect human health and the environment on reservations. We will work with other agencies to clearly identify and delineate the roles, responsibilities and relationships of our respective organizations and to assist Tribes in developing and managing environmental programs for reservation lands.

8. THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.

In those cases where facilities owned or managed by Tribal Governments are not in compliance with Federal environmental statutes, EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

In those cases where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as the Agency would to noncompliance by the private sector elsewhere in the country. Where the Tribe has a substantial proprietary interest in, or control over, the privately owned or managed facility, EPA will respond as described in the first paragraph above.

9. THE AGENCY WILL INCORPORATE THESE INDIAN POLICY GOALS INTO ITS PLANNING AND MANAGEMENT ACTIVITIES, INCLUDING ITS BUDGET, OPERATING GUIDANCE, LEGISLATIVE INITIATIVES, MANAGEMENT ACCOUNTABILITY SYSTEM AND ONGOING POLICY AND REGULATION DEVELOPMENT PROCESSES.

It is a central purpose of this effort to ensure that the principles of this Policy are effectively institutionalized by incorporating them into the Agency's ongoing and long-term planning and management processes. Agency managers will include specific programmatic actions designed to resolve problems on Indian reservations in the Agency's existing fiscal year and long-term planning and management processes.



William D. Ruckelshaus

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SENT BY: LAO COUNSEL'S OFC.

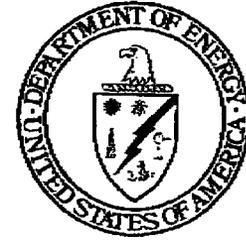
Human societies seem always to stumble upward toward a more sublime and humane ordering of their domestic relations. Despite our contemporary shortfalls, there is no question that we live in a better world, that we have more concern for the weak and helpless, and that we are evolving better and more comprehensive ways of handling our human problems...The *process* of formulating the federal government's posture toward Indians has changed substantially and definitely for the better in almost every instance. Not only do we possess a keener sense of justice today, we also have a better sense of what is appropriate for communities.

Vine Deloria, Jr.

"American Indian Policy in the 20th Century"

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US Department of Energy

American Indian Policy



BACKGROUND

American Indian Tribal Governments have a special government-to-government relationship with the Federal Government of the United States, defined by history, treaties, statutes, court decisions, and the U.S. Constitution. Although the Department of the Interior, through the Bureau of Indian Affairs, has the principal responsibility for upholding obligations of the Federal Government to American Indians, this responsibility extends to all federal agencies.

This policy outlines the principles to be followed by the Department of Energy (DOE) in its interactions with American Indian Tribes. The policy provides general guidance to DOE personnel for management actions affecting American Indians, and emphasizes implementation of such activities in a knowledgeable and sensitive manner.

POLICY

The Department shall:

- (1) Recognize and commit to a government-to-government relationship with American Indian Tribal governments.
- (2) Recognize that a trust responsibility derives from the historical relationship between the Federal government and American Indian Tribes, as expressed in certain treaties and Federal Indian law.
- (3) Consult with Tribal governments to assure that Tribal rights and concerns are considered prior to DOE taking actions, making decisions, or implementing programs that may affect Tribes.
- (4) Consistent with Federal cultural resource laws and the American Indian Religious Freedom Act (Public Law 95-341), each field office or DOE installation with areas of cultural or religious concern to American Indians will consult with them about the potential impacts of proposed DOE actions on those resources, and will avoid unnecessary interference with traditional religious practices.
- (5) Identify and seek to remove impediments to working directly and effectively with Tribal governments on DOE programs.
- (6) Work with other Federal and State agencies that have related responsibilities to clarify the roles, responsibilities, and relationships of our respective organizations as they relate to Tribal matters.
- (7) Incorporate this Policy into its ongoing and long-term planning and management processes.

For more information, contact:

*US Department of Energy
Intergovernmental Affairs (CP-30)
Washington, DC 20585
(202) 586-5544*



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