

DRAFT

Navajo Nation Environmental Protection Agency

Navajo Nation Superfund Program

Guidance on the Transport of Radioactive Materials across the Navajo Nation

I. NNEPA AND NNSP RESPONSE AUTHORITY UNDER THE NNCERCLA AND RMTA

The Navajo Nation Comprehensive Environmental Response, Cleanup & Liability Act (“NNCERCLA”), 4 NNC §§ 2101-2805, provides the Navajo Nation Environmental Protection Agency (“NNEPA”) and specifically the Navajo Nation Superfund Program (“NNSP”) with broad authority to address contamination caused by releases of hazardous substances on Navajo Nation land. The NNCERCLA authorizes NNEPA, through the NNSP, to identify and provide for the clean-up of sites contaminated with hazardous substances. Under the Act, NNEPA may take immediate action to respond to releases of hazardous substances to address imminent and substantial hazards. NNEPA also may engage in long-term clean-up of contaminated sites, order a party responsible for the contamination to clean up, or allow a party to clean up voluntarily, according to an approved “voluntary response program.” The NNSP is the lead NNEPA program for the cleanup of abandoned uranium mines (“AUMs”) on the Navajo Nation.

In 2012, the Navajo Nation Council enacted the Radioactive and Related Substances Equipment, Vehicles, Persons and Materials Transportation Act, 18 N.N.C. §§ 1304-1307 (“RMTA”). The RMTA regulates the transportation of radioactive materials within or across the Navajo Nation to the extent permissible within the federal scheme established under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §§ 5101-5128. Specifically, the RMTA requires that notice be given to NNEPA and the Navajo Nation Division of Public Safety at least four days prior to transport of any “Products,” RMTA § 1307(B), which it defines as “uranium ore, yellowcake, radioactive waste and other radioactive products other than those used for medical purposes,” § 1305(5). It also requires license fees, route descriptions, and related requirements for such transportation. RMTA § 1307(F) requires NNEPA to promulgate regulations implementing the Act. *See also* RMTA § 1304(J).

In light of the NNSP’s lead role under the NNCERCLA, NNEPA has also assigned a lead role to the NNSP under the RMTA: the RMTA addresses transportation of the types of hazardous substances (namely, radioactive materials) that the NNSP encounters with the AUMs. The NNSP is in the process of promulgating regulations implementing the RMTA. In the meantime, however, there is some urgency in carrying out the RMTA notice and related requirements, due to increased cleanup activity at the AUMs on the Navajo Nation and the increased potential for renewed uranium mining in areas adjacent to the Nation. Therefore, the NNSP is issuing this guidance regarding the RMTA to bridge the gap until the RMTA regulations are promulgated and effective.

II. NNSP WILL PROCESS APPLICATIONS FOR TRANSPORTATION OF RADIOACTIVE MATERIALS AND INFORM SHIPPERS OF THE AMOUNT OF PAYMENT AND CONDITIONS OF TRANSPORT

1. When there is a need to transport “Products” within or across the Navajo Nation, the entity desiring to transport the “Products” should apply to the NNSP for a license at least thirty (30) calendar days before the proposed transport. The license issued will be valid for one year. The application fee will be \$100 in 2020 dollars and adjusted using the Consumer Price Index. Additionally, a \$50 fee will be imposed by NNSP for each shipment of radioactive waste, and this fee will be similarly adjusted for inflation.
2. In addition, pursuant to RMTA § 1307(B), the Transporter shall notify the Executive Director of NNEPA and the Director of the Navajo Nation Division of Public Safety at least four days prior to its intended date of transport. Notice should be provided consistent with the federal requirements for notifying a state governor. Notice should also be provided to the Navajo Nation Police Department in case emergency response is needed. See RMTA § 1307(C).
3. The Transporter must secure financial assistance in the form of a bond that meets the requirements of 49 C.F.R Part 387.
4. NNEPA will consult with the Navajo Nation Division of Public Safety and with affected local jurisdictions, States, and Tribes to provide the best route for the transportation of nuclear waste. This selected route will be provided to the License holder. The license holder shall provide a description of the vehicles that will be used, pursuant to RMTA § 1307(D).
5. The transportation of the “Products” should occur between 6:00 am and 8:00 pm Monday through Friday. The times stated shall be consistent with the time zone observed by the Navajo Nation.
6. The procedures followed by NNEPA and NNSP shall be construed to not conflict with any federal laws or regulations concerning the transportation of radioactive materials and shall be consistent with the RMTA.

Any questions regarding this guidance may be directed to the Navajo Nation Superfund Program at:

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