

Seneca Nation of Indians

12837 ROUTE 438
CATTARAUGUS TERRITORY
SENECA NATION
IRVING 14081

Tel. (716) 532-4900
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90 OHI:YO' WAY
ALLEGANY TERRITORY
SENECA NATION
SALAMANCA 14779

Tel. (716) 945-1790
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AT THE REGULAR SESSION OF COUNCIL OF THE SENECA NATION OF INDIANS HELD ON JUNE 10, 2017 AT THE WILLIAM SENECA ADMINISTRATION BUILDING ON THE CATTARAUGUS TERRITORY, IRVING, NEW YORK, 14081.

CN: R-06-10-17-08

EXECUTIVES PRESENT:

PRESIDENT -	TODD GATES
CLERK -	LENITH WATERMAN
TREASURER -	MAURICE A. JOHN SR.

EPD

MEMORANDUM OF AGREEMENT BETWEEN THE SENECA NATION AND THE US DEPARTMENT OF ENERGY (DOE)

MOTION: by John Williams Jr., seconded by William Canella that the Nation's Council approves the following resolution, as read;

WHEREAS, the Seneca Nation is responsible for the health, safety and welfare of the Seneca people, and of visitors to the Seneca Territory; and,

WHEREAS, the United States Department of Energy requires a Memorandum of Agreement be executed with the Seneca Nation so that notification may be made to the Seneca Nation in advance of any shipments of West Valley high level waste or radioactive materials across Seneca Territory; and,

WHEREAS, the Seneca Nation objects to the passage of any and all such waste across Seneca Territory, but acknowledges that, despite this objection, the Department of Energy may ultimately consider the shipment of high level waste and/or radioactive materials from its West Valley Demonstration Project across Seneca Nation Territory; and,

WHEREAS, the Seneca Nation intends to, but has not yet, adopted regulations governing such shipments; and,

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WHEREAS, the Seneca Nation believes that advance notification to the Seneca Nation, through its designee, of any shipments is necessary to ensure public safety of our citizens;

NOW THEREFORE BE IT RESOLVED, that the Seneca Nation Council authorizes the President, Todd Gates to sign the Memorandum of Agreement between the Seneca Nation and US Department of Energy in order to ensure that the Seneca Nation receives advance notification of such shipments; and,

BE IT FURTHER RESOLVED, that the Seneca Nation reserves its right to object to such shipments passing through or near Seneca Nation Territories.

ALL IN FAVOR


MOTION CARRIED

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Regular Session of Council of the Seneca Nation of Indians held on June 10, 2017 on the Cattaraugus Territory, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Administration Building, on the Cattaraugus Territory, on the 13th day of June 2017.

ATTEST:



LENITH WATERMAN, CLERK
SENECA NATION OF INDIANS

{S E A L}

**MEMORANDUM OF AGREEMENT
BETWEEN THE SENECA NATION OF INDIANS
AND THE U.S. DEPARTMENT OF ENERGY**

This Memorandum of Agreement (Agreement) is entered into between the Seneca Nation of Indians and the U.S. Department of Energy (DOE) to provide for notification to the Seneca Nation in advance of any shipments of West Valley high level waste across Seneca Nation lands and to provide for the safe and secure transportation of such material, including the development of culturally sensitive risk management strategies and emergency planning and response, in coordination with the Seneca Nation.

Recitals

WHEREAS the Seneca Nation is a federally recognized Indian Nation with sovereign governmental authority over its lands, including over activities affecting the health or welfare of the Seneca Nation; and

WHEREAS the DOE has an American Indian Policy to ensure an effective implementation of a government to government relationship with tribal governments, including fulfillment of trust obligations and equal protection measures arising from DOE actions which may potentially impact American Indian traditional, cultural and religious values and practices, natural resources, treaty and other federally recognized and reserved rights; and

WHEREAS the DOE may ultimately consider the shipment of high level waste from its West Valley Demonstration Project across Seneca Nation land en route to disposition at a geologic repository; and

WHEREAS the DOE may consider shipping other radioactive material across Seneca Nation land in the future; and

WHEREAS the Seneca Nation and the DOE desire to work together to ensure the safe and secure transportation of such high-level waste, with advance notification to the Seneca Nation, through its designee, of any such shipments; and

Now, therefore, in consideration of the foregoing recitals and the following terms and conditions, the Seneca Nation and the DOE agree as follows:

I. Purposes and Authority

- A. Purposes.** This Agreement designates the Seneca Nation point of contact. The DOE agrees to notify that contact in advance of any shipments of high-level waste across Seneca Nation land, in accordance with applicable federal law, DOE directives, and the provisions set forth herein. The DOE agrees to provide emergency planning and response with regard to such shipments, in cooperation and consultation with the Seneca Nation and in compliance with applicable federal law and the provisions set forth herein; and establishes a government-to-government relationship between the Seneca Nation and the DOE in the

administration and implementation of this Agreement. For purposes of this Agreement, the term "Seneca Nation land" means all land within the territorial boundaries of the Seneca Nation, including all land within the exterior boundaries of the Allegany, Cattaraugus and Oil Spring Reservations, and all other land over which the Seneca Nation exercises governmental jurisdiction.

B. Authority. The DOE is authorized to enter into this Agreement by the Atomic Energy Act of 1954, as amended; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Presidential Memorandum of April 29, 1994; Government-to-Government Relations with Native American Tribal Governments (published May 4, 1994 in 59 Fed. Reg. 2295 1); Presidential Memorandum of November 5, 2009, Tribal Consultation; DOE Order 144.1, Department of Energy American Indian Tribal Government Interactions and Policy; and DOE Order 460.2A, Department Materials Transportation and Packaging Management.

II. Specific Responsibilities

A. Notification. The Seneca Nation shall appoint a Primary Designee as the single point of contact for all communications from DOE regarding the transportation of high-level waste across Seneca Nation land. Seneca Nation designated representatives may be updated at the discretion of the Seneca Nation. Should the Primary Designee be unavailable, the Secondary Designee will be contacted by DOE. The DOE will ensure that notification will be delivered by mail and postmarked at least 7 days before transport of a shipment across Seneca Nation land to the Designee. Notification will be sent to the following address: Seneca Nation Designees:

Michael Gates (Primary)
Anthony Memmo (Secondary)

Seneca Nation of Indians
Cattaraugus Territory
12837 Route 438
Irving, NY 14081

Michael (Mike) Gates:
Phone (cell): (716) 244-0820
Secondary Phone: (716) 532-3271
Anthony Memmo:
Phone: (716) 532-4900, extension 5022

Such notification shall comply with the applicable provisions DOE Order 460.2A. In addition, DOE commits in this Agreement to contact the Seneca Nation's Designee by telephone at (716) 244-0820 as soon as practical after the DOE plans to ship high-level waste across Seneca Nation land, even if such plans are not finalized, and to continue to provide the Seneca Nation's Designee with updates regarding such shipment.

- B. **Protection against Unauthorized Disclosure.** The Seneca Nation commits that information provided to the Seneca Nation's Designee pursuant to paragraph A above shall be protected against unauthorized disclosure until at least ten days after a shipment has entered Seneca Nation land or a shipment campaign has concluded, provided that the President's Designee may disclose information contained in the notification to emergency response authorities at any time. The information to be protected is that information specified in the applicable provisions of DOE Order 460.2A.
- C. **Emergency Response and Mitigation/Remediation.** The DOE and/or the State of New York will provide for emergency response, mitigation and remediation, which shall include both the personnel and the equipment necessary to perform such activities, in the event of any incident or accident involving the transportation of high-level waste across Seneca Nation land. The Seneca Nation will provide a tribal monitor at the incident site to facilitate an effective cleanup. The DOE has worked with the Seneca Nation to develop culturally sensitive risk management strategies and emergency planning to prepare for and implement protective actions when responding to incidents and accidents. The DOE shall incorporate such strategies into its emergency response plans and actions.
- D. **Information on Route Conditions.** The Seneca Nation's Designee will be the point of contact for information on weather, highway conditions and any other conditions which might impact a shipment traveling across Seneca Nation land. The Seneca Nation's Designee will be available to provide information on such conditions, and also will contact the person identified by the DOE as the DOE's point of contact whenever the President's Designee becomes aware of conditions that may impact an impending shipment.
- E. **Other DOE Responsibilities under Federal Law.** The DOE shall remain responsible for performing its responsibilities under Federal law connected with shipments of high-level waste, including but not limited to, ensuring compliance with requirements for driver qualification, driving rules, vehicle and equipment inspections, packaging and labeling, registration, permitting and licensing.

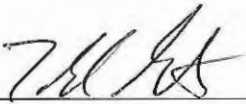
III. Other Terms and Conditions

- A. **Effective Date.** This Agreement shall become effective upon execution by the Seneca Nation and the DOE.
- B. **Term.** This Agreement supersedes all prior agreements and shall remain in effect until terminated by either party, or until superseded by an amendment which explicitly modifies or replaces this Agreement.
- C. **Termination.** Either the Seneca Nation or the DOE may terminate this Agreement without cause by giving at least 30 days written notice to the other.
- D. **Amendment.** This Agreement is intended to be a working document which may be modified by the parties by written amendment executed by both the Seneca Nation Tribal Council and the DOE. For example, the parties may expand this Agreement to cover other waste materials, to provide for training of Seneca Nation personnel, and to add additional parties to the Agreement.

- E. **Cooperation.** The Seneca Nation and the DOE shall cooperate fully with each other, consult with and assist each other and act reasonably, in good faith and without delay in the performance of all activities hereunder.
- F. **Dispute Resolution.** All disputes under this Agreement shall be resolved; if possible, through mutual cooperation between the Seneca Nation and the DOE, provided that where such resolution is not possible, this Agreement may be terminated pursuant to section III.C. No action may be taken in any court to enforce this Agreement against the Seneca Nation or the DOE. However, DOE remains liable for compliance with applicable Federal statutes, regulations, and other requirements.
- G. **Sovereign Immunity.** This Agreement is not intended and shall not be construed to waive in any way the sovereign immunity of the Seneca Nation, the DOE, or any of their agencies or instrumentalities.
- H. **Severability.** If any provision of this Agreement is held invalid, such holding shall not invalidate any other provision hereof.

IN WITNESS WHEREOF the Seneca Nation and the DOE have caused this Agreement to be executed and approved.

Seneca Nation



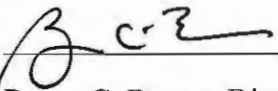
Date: 7-13-17

Todd Gates, President
Seneca Nation



Date: 11-09-2017

James M. Owendoff, Acting Assistant Secretary
Office of Environmental Management
U.S. Department of Energy



Date: 08-01-2017

Bryan C. Bower, Director
West Valley Demonstration Project
U.S. Department of Energy