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**AGENCY FOR NUCLEAR PROJECTS
NUCLEAR WASTE PROJECT OFFICE**

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April 3, 1995

U.S. Department of Energy
c/o Lois Smith
TRW Environmental Safety Systems
2650 Park Tower Drive, Suite 800
Vienna, Virginia 22180

RE: Section 180 (c) Comments

Dear Ms. Smith:

The Nevada Agency for Nuclear Projects, on behalf of the State of Nevada, has reviewed the U.S. Department of Energy's Notice of Inquiry (NOI) regarding the implementation of Section 180(c) of the Nuclear Waste Policy Act (Act), as amended, which appeared in the *Federal Register* of January 3, 1995 and has the following comments with respect to the provision of technical and financial assistance pursuant to the statute.

It should be noted that the State of Nevada has worked closely with other western states through the Western Interstate Energy Board (WIEB) on the Section 180(c) issue and endorses the draft ("strawman") implementing regulations prepared by the WIEB High-Level Radioactive Waste Committee, adopted through resolution by the Western Governors' Association, and provided to DOE's Office of Civilian Radioactive Waste Management (OCRWM). The "strawman" regulations embody the approach that the State of Nevada considers to be most responsive to the intent of the Congress in incorporating Section 180(c) into the amendments to the Nuclear Waste Policy Act in 1987. The following specific comments reflect key aspects of the Section 180(c) implementation process the State has focused on. We will continue to monitor DOE's planning and implementation of this important program and will make additional comments and suggestions as appropriate.

Specific Comments on the Notice of Intent

- (1) *Of the options listed in the NOI for implementing the funding and technical assistance requirements of Section 180(c), the State of Nevada strongly recommends that grants be made directly by OCRWM to each eligible host and corridor state and Indian tribe.*

Discussion: The Act clearly intended that the DOE implement the Section 180(c) requirements for funding and assistance in a manner consistent with its other obligations involving states and Indian tribes. It is most effective and efficient for OCRWM to implement the Section 180(c) program directly, without using other federal agencies and bureaucracies. The State of Nevada is concerned that, implementing this program through FEMA, US DOT or another federal agency would only add other layers of federal red tape between the states/tribes and the funding and assistance that is to be provided. In addition, using other federal agencies would likely be more costly in that Section 180(c) funds would necessarily be siphoned off for overhead and other costs. Likewise, combining the Section 180(c) program with programs other than OCRWM within DOE would have the effect of complicating the provision of assistance by making it subject to considerations beyond those related to OCRWM shipments of HLW and spent fuel.

It is imperative that individual states and tribes be permitted to determine what training is needed and how to best implement the training. Training for each state and tribe will differ markedly. Each state/tribe has different needs, and some state programs are more advanced than others. Each state/tribe will require training depending on what type of situation each may encounter. For example, states having nuclear power plants may have needs different from states through which spent fuel and HLW are shipped.

The State of Nevada further recommends that DOE/OCRWM make Section 180(c) assistance available based on plans developed by individual states and tribes that specify the type and amount of assistance requested, the activities proposed to implement training for local governments and local emergency response personnel, and the measures used to evaluate the effective of the training and assistance provided. These grants should be individualized based on the unique requirements of each state and tribe. Funding levels should be based on the unique needs of each individual state/tribe and should not be arbitrarily established by DOE. Grants should be provided annually, and OCRWM should deal with the agency of the state that is designated by the governor for this purpose or, in the case of an Indian Tribe, the tribal agency designated by the tribe's chief elected official or tribal council.

- (2) *DOE/OCRWM should make planning grants available to potential host and transportation corridor states and tribes to enable them to develop implementation plans for providing training and assistance to local governments and emergency response providers, and these grants should be implemented as soon as possible.*

Discussion: States and tribes will need funds prior to the implementation of training and assistance activities in order to plan programs, do necessary groundwork, network with local agencies, and carry out other preparatory work. DOE should view Section 180(c) requirements as a process that begins by empowering states (and through them, local governments) and Indian tribes to effectively prepare for high-level radioactive waste shipments. Providing initial funds for planning purposes will facilitate the development of effective and successful implementation programs at the state, tribe and local levels. The planning grants should also be made available with a minimum of "strings" so that states and tribes can access these resources without having to create large administrative structures to manage the grants.

- (3) *Section 180(c) assistance should be provided without regard to whether the waste/spent fuel is being shipped to a repository, MRS or other facility under the Nuclear Waste Policy Act or to a private interim storage facility.*

Discussion: While the provision for technical and financial assistance for training and emergency response contained in Section 180(c) indisputably applies to shipments of spent fuel and high-level waste to facilities provided for in the Act, it is imperative that DOE provide the same assistance with regard to shipments that might occur should a private facility for interim spent fuel storage be developed either by a utility or group of utilities or by some other consortium or agreement between utilities and an Indian tribe, state or local government. The fact that any spent fuel or high-level waste shipped to such a private facility is ultimately destined for a repository and is, under current law, considered to be the responsibility of the federal government for ultimate disposition should be rationale enough for DOE to extend Section 180(c) assistance to shipments destined for such a facility.

- (4) *Section 180 (c) assistance should apply to all wastes that ultimately would require disposal in a geologic repository, not just spent fuel and what is commonly identified as defense high-level waste.*

Discussion: It is likely that, should a repository or interim storage facility be constructed, wastes other than spent fuel and defense HLW will be transported to such a facility. There are considerable quantities of wastes that have been referred to as "greater than Class C" or "miscellaneous wastes requiring geologic disposal" that could constitute substantial numbers of shipments. Section 180(c)

funding and assistance must apply to these wastes in the same fashion as they apply to spent reactor fuel shipments.

- (5) *Section 180(c) funding must be made available at least 3 years prior to the onset of shipments through a state or tribe, and DOE should be prohibited from shipping spent fuel or high-level waste through a state or tribe that has not been provided with Section 180(c) assistance.*

Discussion: The Western Interstate Energy Board has looked closely at the issue of timing of Section 180(c) assistance and has determined that three years prior to shipments is the minimum time required to adequately plan for shipments and train and equip personnel. DOE has, in the past, indicated that Section 180(c) assistance will, in fact, begin 3 years prior to shipments. In implementing the Section 180(c) program, DOE should reaffirm this commitment.

To avoid the defacto imposition of a major unfunded mandate on states, tribes and local governments, DOE should commit itself to require that Section 180(c) funding be made available as a condition of shipments occurring through a particular state or tribe. Without such a requirement, DOE would be able to partially implement the program or provide assistance only to selected states/tribes along transportation corridors. By stipulating up front that Section 180(c) assistance is a requisite for shipping through any state or tribe, DOE will assure that the program will be effectively and comprehensively implemented, with the result that public confidence will increase as will the likelihood of safe, uneventful transportation of the waste.

To forestall the possibility that a state or tribe might attempt to block waste shipments by refusing Section 180(c) assistance or declining to participate in DOE's program, a provision could be codified into the implementing regulations for the Section 180(c) program whereby a state or tribe waives its right to object if it has rejected assistance and funding that was offered.

- (6) *DOE should begin immediately to implement a program for the provision of Section 180(c) funding and technical assistance.*

Discussion: Given the recent restructuring of DOE's high-level radioactive waste program and the initiation of private storage projects (i.e. the Mescalero interim storage consortium), it is now possible that spent fuel from reactors could be shipped as early as 1998. In addition, legislation before Congress could accelerate shipment schedules. To assure that states, tribes and local communities are adequately prepared for the onset of shipments, DOE must begin implementing the Section 180(c) program immediately.

DOE has been dragging its feet on addressing Section 180(c) requirements for seven years. In the past, DOE could point to the fact that shipments were still far off in the future, and there was no need for making Section 180(c) implementation a priority. The situation has now changed, and DOE must act if it is to faithfully carry out its responsibilities in this regard. There is not enough time for further foot-dragging and obfuscation. Forty-three states and hundreds of communities stand to be affected by spent fuel and high-level waste shipments, and those shipments are now just around the temporal corner.

- (7) *DOE should interpret what is meant by "technical assistance" and "training" under Section 180(c) of the Act broadly to encompass the provision of assistance and funding for planning, administration, management and equipment associated with emergency preparedness.*

Discussion: While Section 180(c) requires that assistance be provided for training emergency response providers, state, tribes and local governments must have done the planning necessary for effectively providing training, and they must have the necessary administrative capabilities to implement adequate training programs. In providing assistance and funding, DOE should permit states and tribes to include planning and related functions in their programs for Section 180(c) implementation. Assistance should also cover the development and testing of training curricula.

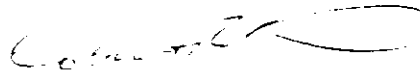
In addition, Section 180(c) must be interpreted to permit states/tribes to purchase necessary equipment (such as radiation detection instruments) prior to the commencement of training. In many instances, equipment that responders have are not adequate to deal with the type of radiation that may be present at an accident scene.

- (8) *DOE must include funds for Section 180(c) implementation in its budget submissions to Congress.*

Discussion: To date, DOE has not included any funds for Section 180(c) implementation in its budget submissions, either to OMB or to Congress. Beginning with the FY '96 budget, OCRWM must incorporate adequate funds in its budget to begin program implementation. To determine the amount that should be included, DOE should immediately begin a process of consultation with the 43 states and numerous Indian tribes that would be affected by high-level waste and spent fuel shipments. Based upon those consultations, which must be more than simple information meetings - they must deal with actual costs states and tribes will incur, DOE should develop a budget line item for Section 180(c) assistance. Prior to finalizing the line item for inclusion in DOE FY '96 budget, OCRWM should advise the affected states and tribes of the level of funding it will propose and provide opportunities for them to respond and influence the process.

I hope these comments are helpful to DOE's planning for the provision of Section 180(c) assistance. How DOE goes about implementing this important program will directly impact the level of public confidence in the high-level waste transportation system being developed for Nuclear Waste Policy Act shipments.

Sincerely,



Robert R. Loux
Executive Director

RRL/JCS/cs

cc State/Tribe/Local Government representatives
Jim Hawke, Division of Emergency Management
Bill Owen, Emergency Response Commission
Bill Goddard, Nevada Highway Patrol
Stan Marshall, Radiological Health
Doug Larson, WIEB
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