



County of Inyo  
**Planning Department**

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Yucca Mountain Repository Assessment Office  
P. O. Drawer L, Independence, CA 93526  
(619) 872-1168, FAX (619) 878-0382

Peter Chamberlin  
Director of Planning

Brad Mettam  
Project Coordinator

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Corinne Macaluso  
U.S. Department of Energy  
c/o Lois Smith, TRW Environmental Safety Systems, Inc.  
600 Maryland Avenue, S. W., Suite 695  
Washington, D.C. 20024

Attn.: Section 180(c) Comments

Thank you for the opportunity to comment, on behalf of Inyo County, in response to the May 16, 1996 Notice of Proposed Policy and Procedures on Section 180(c) of the Nuclear Waste Policy Act of 1982 as amended (NWPA). As one of the corridor counties near the proposed high-level radioactive waste repository at Yucca Mountain, Nevada, Inyo County has followed the development of Section 180(c) policy and procedures with great interest. The county provided comments on the original notice of inquiry on May 17, 1995, and representatives from Inyo County have participated in numerous forums discussing the implementation of Section 180(c).

Our comments will be presented in three sections: the proposed policy and procedures; the responses to comments; and the appendix "Basis for Cost of Program". This is intended to focus our comments. Comments made in the sections on comment response or the appendix should be considered to also be comments on the proposed policy and procedures, and not disregarded. Departmental responses to prior comments help explain by example the relatively short section describing the proposed policy and procedures, and our comments are directed toward the policy and procedures through the mechanism of the comment response process.

### **Proposed Policy and Procedures**

1. The Department has spent considerable time and effort to solicit comments and review options concerning implementation of Section 180(c), and the proposed policy and procedures reflect that effort. In the section recounting the history of Section 180(c), however, you incorrectly assert that the Department has "ten cooperative agreements with national and regional organizations representing state, *local* and tribal constituencies" [italics added]. The cooperative agreement organizations<sup>1</sup> almost exclusively represent state-level program directors, state legislators, or governors (with the exception of the NCAI). There is no

<sup>1</sup> Commercial Vehicle Safety Alliance, Conference of Radiation Control Program Directors, Inc., Council of State Governments/Main Office, Council of State Governments/Eastern Regional Conference, Council of State Governments-Midwestern Office, National Association of Regulatory Utility Commissioners, National Conference of State Legislatures, National Congress of American Indians, Southern States Energy Board, and Western Interstate Energy Board.

cooperative agreement with an organization representing local government — the level of government charged with first response to a radiological incident and the level of government toward which Section 180(c) is directed.

2. The definition of technical assistance introduces the phrase “unique to the Department” when describing the type of assistance that will be provided. What is intended by that phrase is not clear. The assumption is that the Department does not wish to provide assistance that duplicates the efforts of other federal agencies. But if that other assistance is not readily available, or is provided only at an expense to the requesting party, then the Department should assist. The policy and procedures should explain what is meant by this phrase.
3. Inyo County continues to be concerned that the proposed policy and procedures does not require any specific pass-through to the local jurisdictions that are impacted by the transportation routes. This is especially true because the proposed policy and procedures imply that the recipient state may use these funds within their own state agencies<sup>2</sup>. The language of Section 180(c) is clear that this training is “for public safety officials of appropriate units of local government and Indian tribes”. By specifying *appropriate* units of *local* government, congress provided very specific direction and limitation. The proposed policy and procedures seems to ignore this direction — allowing the states to use this money to train state personnel, and providing no direction concerning how much of the funds provided must directly benefit local jurisdictions or whether corridor jurisdictions receive any training assistance at all. The proposed policy and procedures should be revised to more accurately reflect the direction provided in the wording of Section 180(c).
4. The proposed policy and procedures make the assumption that the Department will know three to four years prior to shipment which states or tribal lands will be crossed. However, the revised draft Civilian Radioactive Waste Management Program Plan (May 1996) introduces a “market-driven” transportation approach. This approach essentially privatizes the transportation system. In a presentation to the Transportation External Coordination Working Group, Mr. Dwight Shelor described the process as one where the Department lays out the minimum legal requirements in a Request for Proposals, followed by a contract. Future transportation activities, including routing, will be handled by the contractor. While the Department may argue that at least the states/tribes that will be crossed will be known, recent experience with the WIPP program has shown that route changes can substantially change the list of states/tribes impacted. This approach to routing is likely to lead to confusion, opposition, and antagonism. We once again recommend in the strongest terms that the Department address routing directly, in consultation with affected and interested parties, rather than attempt to avoid and postpone the issue.
5. The restriction on Section 180(c)’s funds to ten percent or less, and the implication that those funds may be used for equipment used in training only, should be reconsidered. It serves no purpose to train responders with a piece of equipment not available to them in the field. The issue of equipment is one that has been discussed many times over the last several years, and one that was raised in the comments to the Notice of Inquiry. Many commenters argued that equipment should be included, while others (the Conference of Radiation Control Program Directors) questioned the benefit in equipping local responders. In a sense, both views are correct. Detection equipment such as that used by the Radiation Control Program Directors is, from the local responders perspective, fragile, overly complex, and difficult to use. Based on a

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<sup>2</sup> In Eligibility and Timing of the Grants and Technical Assistance Program; first paragraph: “...If funding needs to be passed on to other agencies (for example, from the emergency services agency to the highway patrol to pay for inspector training) then...”.

technical assessment of the risk of radiation exposure, such equipment may be difficult to justify. However, equipping local responders with detection equipment may be essential to ensure an appropriate response to an accident. Today, emergency responders are being trained to not approach a hazardous materials incident until the exposure risk can be assessed. Without the ability to directly assess the hazard with detection equipment, local responders could be justified in establishing a huge exclusion zone around the incident. This could lead to massive precautionary evacuations and the abandonment of victims at the scene. Inyo County strongly believes that basic detection equipment should be provided to first responders along the transportation routes, in conjunction with the necessary training for first responders to assess the risk and respond appropriately. If the issue of equipment ownership is a problem, the Department should investigate those other federal programs (notably FEMA and BLM) who have developed mechanisms for supplying equipment to responders.

6. The restriction that Section 180(c) funds not be used for the conduct of drills and exercises leads to confusion. There appears to be a difference in definition, as the proposed policy and procedures considers drills and exercises to be a means to measure preparedness. Most trainers of emergency response personnel consider drills and exercises to be an integral part of the training process. During discussions at the Transportation External Coordination Working Group Meeting in July, it appeared that the Department's concern was the funding of large, time-consuming exercises similar to those conducted in cooperation with WIPP and the states. This restriction should be clarified.

## Response to Comments

1. Under "General Themes" the Department has indicated that it considers the purpose of the Section 180(c) provisions is "to provide jurisdictions assistance in an increment above their current level of preparedness". While in general this is understandable, the Department must consider what role it will play in areas where there is no underlying hazardous materials response capability to build upon.
2. When discussing escorts under "Safe Routine Transportation", there are two issues that the Department should consider. First, the question of the balance between responder training and escorts must also consider one of the important benefits gained from first responder training: the confidence at the local level that these incidents can be handled safely and efficiently. A good example of this benefit can be seen in a WIPP-related videotape produced by the Idaho Department of Law Enforcement<sup>3</sup>, where local responders attest to their level of training and confidence. This kind of local support for the transportation procedures and response training can be invaluable. Second, the reference to NRC regulations as partially answering the issue of whether or not escorts should be used may be misleading. While escorts are required in heavily populated areas, the relief driver meets the NRC regulations for an escort in the remainder of the country. I doubt that most commenters are considering the relief driver asleep in the truck as an escort.
3. The response to comments on technical assistance and equipment did not directly address many commenter's position that response equipment should be provided by the Department. The proposed policy and procedures implies that this would not be allowed (see comment #5 under *Proposed Policy and Procedures*), but makes no explicit statement. If it is the position of the Department that equipment should not be provided, then you should give the rationale behind that decision. As stated before, it is Inyo County's position that, in order to provide the

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<sup>3</sup> A Safe Way Out (The TRUPACT II Transportation System)

requisite level of local confidence in emergency responder capability, basic detection equipment should be provided.

### **Basis for Cost of Program**

While no specific dollar amounts are given, the basis for determining the state-by-state grant allocation seems unreasonably low. For example, the base amount for emergency response is equivalent to sending six people per state to training classes. The variable amount is equivalent to training three people per 160 route miles. The Department should consider comparing this level of effort to the training provided by WIPP, and then compare the materials being shipped by each program.

In particular, the assumption that it is sufficient to train three additional hazardous materials personnel for every 160 miles "because other emergency response organizations have used a two-hour response time as the limit to how frequently hazardous materials response teams **should** be placed" [emphasis added] is without connection to reality. Everything is not always as it should be in the real world, which is where your shipments will occur. In many rural areas of the country, there is either no hazmat team that will respond, or the responding team is many hours away<sup>4</sup>.

Thank you again for the opportunity to comment on this proposed policy and procedures. While the Department has worked to involve external parties in the development of this material, the Department needs to review its decisions on:

- The responsibility and timing for routing decisions;
- Assuring sufficient training and assistance to local jurisdictions impacted by shipment routes;
- The basis used for determining the amounts provided under Section 180(c).

If there are any questions on these comments, please feel free to contact me.

Sincerely,



Brad Mettam  
Yucca Mountain Project Coordinator

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<sup>4</sup> Even in areas with nearby hazmat response teams, the average speed is significantly less than 80 mph.