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NUCLEAR WASTE CITIZENS COALITION

CITIZENS UNITED FOR A SOUND NUCLEAR WASTE POLICY

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U.S.
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Research Group

Comments
by the Nuclear Waste Citizens Coalition
September 30, 1996

On the U.S. Department of Energy (DOE)'s May 16, 1996
Notice of Proposed Policy and Procedures for
Safe Transportation and Emergency Response Training
61 Federal Register 24772 ff.
Implementing Section 180(c)
of the Nuclear Waste Policy Act of 1982

The Nuclear Waste Citizens Coalition (NWCC) submits the following comments on the Section 180 (c) proposal ("the proposal"):

I. Background Comments:

NWCC has been increasingly concerned about the delay in implementation of Section 180(c), and we are pleased that DOE is moving ahead with it. We urge the expeditious initiation of its implementation, especially in the context of the 1995-96 Congressional bills on centralized interim storage at Yucca Mountain that if enacted would have resulted in a dramatic increase in irradiated fuel transportation to Nevada, across 43 states, to begin by 1999. No massive national DOE shipment program has a prayer of achieving public acceptance, we maintain, without a new and massive effort to identify and communicate accident and sabotage risks and to upgrade security, accident prevention and emergency response capabilities accordingly.

We believe that no shipments can be made through a jurisdiction unless adequate assistance has been provided under Section 180(c) and that such assistance must begin at least 3 to 5 years before the onset of shipments. Otherwise there will be significant unfunded mandates shifted to states, tribes and local governments. (In this we agree with the Western Governors' Association "Strawman Regulations", part 1.4) We urge DOE to codify this principle in regulations to implement 180(c).

The proposed program is greatly deficient in not dealing at all with the Congressional mandate for "prevention of accidents in transportation as well as emergency response after an accident."

When the whole of Congressional intent underlying Section 180(c) [as identified in OCRWM's "Preliminary Draft: Options for Providing Technical Assistance and Funding under Section 180(c)", November 1992, p. 2], namely in the Senate Report accompanying Senate Bill 1668, consists of only one paragraph (from which the above quote comes), it would seem difficult to miss such a clear mandate. We would argue that "safe routine transportation" **implies** effective accident prevention.

How might DOE and its contractors learn what Congress means by the legislative term "accident prevention" (undefined in the legislation, indicating possibly that Congress felt it was self-evident)? Probably the most efficient way is to look at the analogous developments in Congress's chemical safety legislation.

After the broadly-conceded gross failure of the Local Emergency Planning Committee system set in motion by SARA Title III (also known as EPCRA of 1986), Congress made a clear and explicit turn to "Chemical Accident Prevention" legislation in the Clean Air Act Amendments of 1990, especially in Section 112(r), signed by President Bush.

The core of the broad new national consensus on accident prevention in the handling of ultra-hazardous materials, given the inherent weaknesses of emergency response planning, is to mandate that chemical handlers provide credible and full risk information to potentially affected parties, explicitly including the workforce, local emergency responders, public officials, and the public. Both the OSHA ("Process Safety Management") and the EPA ("Risk Management Plans") regulations mandated by and promulgated under the CAA require companies' (or governments') facilities handling the most dangerous materials to provide some 13 new kinds of risk documents to these parties, so that the latter can become new forces for accident prevention.

The core of the new documentation required of the chemical facilities under the CAA of 1990 is:

- o a set of the most serious possible accident scenarios, including unlikely worst case scenarios, included in the OSHA regulations as "Process Hazard Analyses" and in the EPA regulations as "Off-Site Consequence Analyses".

- o a clear presentation of the accident consequences for on-site workers and for the off-site community in case of various serious accidents.

- o documentation of accident prevention factors, risk management equipment, procedures and emergency response capabilities present at the facility.

o action items that show what the companies must do to prevent the accident scenarios identified.

Loading and unloading operations and the presence of chemical tankers or railcars on the site are included in the scope of these regulations. [DOT has initiated an ANPRM to explore these issues.]

So the central principle in Congress's accident prevention legislation is: accident prevention necessitates and follows identification and communication of possible accident risks and consequences.

We urge DOE to address seriously the Congressional intent underlying the Section 180(c) program, and to include in its implementation a respectable program of accident prevention commensurate with that imposed on facilities handling the most dangerous chemicals, including at a minimum:

o mandating the provision by shippers (whether DOE or its contractors) of worst case accident scenarios and other risk documents analogous to those in the CAA framework.

o since routing is clearly a major accident prevention measure well understood and utilized by many states already, we urge DOE to allow use of 180(c) funds for tribal, state and local route and risk assessments, contrary to DOE's proposal. These assessments will be needed in the context of the non-federal jurisdictions' participation in modifying or approving DOE's preliminary route and mode designations.

o We urge DOE to allow some flexibility for special funding in jurisdictions with areas that might be difficult to reach or to evacuate in an emergency, for example, tunnels and densely populated areas. These have been long recognized in Federal law as special problem areas for hazardous materials, e.g., in 49 CFR 397.9 on the routing of trucks carrying hazardous materials.

II. Three Major Concerns:

As demonstrated in the July 31, 1996 Senate debate on S. 1936, the interim storage bill which passed the Senate, there are several major concerns about the hasty beginning contemplated for this unprecedented thirty-year campaign of rail and highway shipments, including these directly relevant to your Section 180(c) implementation:

A. Terrorism risks: DOE and NRC have identified nuclear irradiated fuel shipments as attractive targets for saboteurs. A prominent theme in the recent Senate debate was the significant increase in risk of terrorism that would come from removing irradiated fuel from the security regimes at nuclear power plants (flawed as they are) and putting it out into railyards and onto highways across the nation. President Clinton, as you know, has been declaiming that "Terrorism is the problem of our time, and we must overcome it."

The recent bomb at the Atlanta Olympics should remind us, as the Washington Post has reported (4/23/96), that one of the three scenarios chosen for priority drills by federal and local emergency planners prior to the Olympics was, in fact, a saboteur's seizure of an irradiated fuel cask in Atlanta. Atlanta would be a major corridor city for future nuclear waste shipments under H.R. 1020, as would 109 other cities with populations over 100,00.

Both the U.S. Nuclear Regulatory Agency and the Department of Energy have judged the sabotage threat to irradiated fuel shipments serious enough to conduct actual field tests to see if an explosive charge placed on a transportation cask would blow it open and release radioactive material. **Both agencies proved in the field that such attacks would be successful.** In the meantime experts have identified many types of hand-held anti-tank weapons that are widely available on world markets and which are specifically designed to penetrate heavy metal plating such as a nuclear waste cask.

To pretend ignorance of such dangers puts our populations at unnecessary peril. **We urge DOE carefully to mandate attention to potential terrorism scenarios and anti-terrorism training as an important element in your implementation of Section 180(c).**

B. Current lack of emergency response capabilities. The Department of Energy recently released new maps depicting the national and state routes, by highway and rail, over which massive numbers of irradiated fuel shipments will move beginning around 1999 if the legislation is enacted. Local governments in corridor cities such as St. Louis and Denver have passed resolutions against the current interim storage bills, in part because they fear they are not ready to deal with accidents or sabotage in regard to these shipments.

States, tribes and localities know they are nowhere near ready to begin handling a thirty-year major industrial shipping program bringing most East Coast states' nuclear wastes to the West. A Nuclear Regulatory Commission report by Rockwell International, **NUREG/CR-2225 (1981) "An Unconstrained Overview of the Critical Elements in a Model State System for Emergency Response to**

Radiological Transportation Incidents," suggests that a medium-sized state should have in place an emergency response system with ten quick-response teams stationed along the routes, with a total of roughly 100 people, and with an annual operating budget of \$5.1 million, excluding the necessary response vehicles.

No tribes or states that we know of have such a system. The Department of Energy, which will be the shipper of the wastes, has so far refused to designate exactly what highways and rail routes its carriers, the trucking companies and railroads, will choose, so that tribal, local and state officials could have time to analyze and perhaps alter these choices, introduce necessary re-routing to lower risks, and begin to assess what route-specific emergency response and security equipment, training and preparations will be needed.

We therefore urge DOE in its implementation of Section 180(c):

a. **to update the analysis** in NUREG/CR-2225 in light of current information on accident and sabotage scenarios and potentials, training and tribal and state planning needs, and equipment availability and capabilities, and to elaborate this analysis with up-to-date accident consequence and risk analysis, including worst-case scenarios.

b. based on these new analyses, and without removing all tribal-, state- and locale-specific flexibility for designing emergency response programs, **to set a federal "floor"** under state, tribal and local emergency response training, planning and equipment by designating what is an "adequate" emergency response capability for an average-sized state for high-level nuclear waste shipments. This designation should guide the dispersion of Section 180(c) funds, and should specifically rely on **performance-based evaluations and criteria** that allow flexibility for states, tribes and localities to meet performance standards (i.e., to put in place an adequate emergency response system) by various means appropriate to the physical and administrative situation of each.

We make these recommendations, of course, in strong opposition to DOE's basic position that the 180(c) program is only for "incremental" improvement in tribal, state and local emergency response capabilities. Studies have shown that some states and tribes have virtually no capabilities -- "incremental" improvement is not sufficient as a basic stance.

Our position also entails opposition to DOE's proposal of an arbitrary limit of 10 percent for spending on equipment. We note that the WIPP assistance program, which DOE has called the "most comparable" to the civilian waste program, specifically requires "...provision to States of equipment..." (OCWRM, "Options...",

op.cit., 1992, p. 25). In this context, we would argue that the "purpose of the program" in 180(c) is safe transportation and emergency response, not only training for these ends.

c. **Routing and mode choice.** We urge DOE to effect an early designation of proposed major routes for tribes, states and localities to comment upon and modify if necessary. (In this we agree with the Western Governors Association resolution 93-003.) Routing activity by non-federal jurisdictions should also be funded under 180(c).

We believe that DOE's current posture of not taking responsibility for "safest" (by various criteria that must be weighted) mode and route designation is wrong-headed and politically unsustainable. (As is the similar DOE posture, technically irrelevant here, of not committing to full-scale testing of casks, which the Western Governors' Association also has called for.)

It is inconceivable that various combinations of DOE regional contractors (under the new DOE policy of privatization of waste acceptance and transportation) and various combinations of carriers and state governments can come to any mode and route designations that would be given credibility and trust by the public. (States currently have only a crippled ability to designate alternative highway routes, under extremely onerous federal restrictions, and no authority at all to designate rail routes. Most of those states which have designated routes have done so with fatalistically minimal analysis and initiative, seemingly convinced that all their Interstate routes are going to be used by the most dangerous cargoes.)

Do we really have to think about reconciling and meshing (hypothetically) "the Westinghouse route" in the Northeast and "the Georgia Pacific route" in the Southeast with "the GE route" in the Midwest with "the Walt Disney, Inc. route" into Nevada? (The Santa Fe and UP route swings close to Los Angeles before entering Nevada)

DOE should take responsibility for identifying shipping modes and routes from each reactor to each storage or disposition site at least five years prior to shipments.

III. Miscellaneous comments:

A. NWCC urges DOE to implement a mandatory pass-through by States of Section 180(c) funding to local governments for emergency response training and planning, as is done now in the federal training program under the Hazardous Materials Transportation Act of 1990.

B. We oppose DOE's proposal that allows no use of 180(c) funds for drills and exercises. Some of us are members of Local Emergency Planning Committees and agree with those commenters who argue that drills and exercises are absolutely key components for emergency responders.

We have learned that WIPP shipment campaign exercises already conducted have revealed serious problems in:

- a. Coordination between states and localities with tribes. There seems to be some bias against calling tribal authorities in case of accident.
- b. Vagaries of local weather patterns, affecting, e.g., the unfortunate location of command posts upwind from accidents without ability to deal with wind direction shifts.
- c. Field communications -- often unavailable in some terrains.
- d. High degree of media interest in drills and exercises. We assert that this is no reason not to fund them under 180(c).

C. We urge DOE not to limit funding to actual transportation corridor jurisdictions, but to make funding available also to potentially affected neighboring jurisdictions.

D. We urge DOE to consider encouraging as part of 180(c) planning some accountability system for shippers that requires them to have an up-to-date listing contact numbers for emergency response jurisdictions at every point along the routes, as the State of California currently requires under Public Utility Commission regulations of railroad shippers of hazardous cargoes.

E. We urge DOE to make Section 180(c) funds available to all states impacted by irradiated fuel transportation, even if to an interim and/or private facility, and for defense waste shipments and other DOE shipments (e.g., foreign research reactor irradiated fuel) of materials that will probably contribute to the inventory of wastes at NWPA facilities.

F. We agree with those commenters, including the Western Governors' Association in Resolution 94-005, who have urged DOE to codify the 180(c) policies and procedures into regulation.

G. We urge DOE to broaden the scope of "safe routine transportation" to include planning, administrative and infrastructure capabilities in general, and specifically planning and preparation of accident and sabotage prevention activities, enforcement and inspection, preparation of training curricula, and activities required for escorting shipments.