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September 15, 1997

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SEP 16 REC'D
NOV 1997

Attn: Section 180(c) Comments.

Thank you for the opportunity to comment on the Notice of Revised Proposed Policy and Procedures for Safe Transportation and Emergency Response Training; Technical Assistance and Funding (*Notice*). This Notice represents a substantial improvement over the original draft of the policy and procedures. Many of the comments from stakeholders have been considered in the revisions made to the Notice. The following comments reflect areas where the Notice requires revision.

- As the Notice states, the Department of Transportation and the Nuclear Regulatory Commission have promulgated regulations concerning the safe transportation of spent nuclear fuel. However, the Department of Energy cannot rely solely on these regulations to ensure safe transport, appropriate response during incidents or accidents, and public tolerance of a shipping campaign of the magnitude contemplated during the movement of the nation's backlog of spent nuclear fuel.
- The policy states: "In addition, OCRWM will adopt, to the extent practicable, any future Department-wide standardization of assistance to states and tribes for the Department's radioactive materials shipments. This could include standardization of funding mechanisms, training standards, equipment purchases, and the definition of technical assistance." This clause essentially negates the effort that has gone into developing these policies and procedures. As the single largest campaign for transportation of spent nuclear fuel, the OCRWM program should lead the Department in the development of methods of assisting state, tribal, and local governments. Certainly many stakeholders, including Inyo County, have pointed to other areas of the Department (such as the WIPP program) as examples of ways to interact with state, tribal, and local governments. In the past, OCRWM has proven resistant to this comparison, citing differences in enabling legislation. You cannot have it both ways. If the enabling legislation for WIPP provides for extensive interaction with state, tribal, and local governments that is not available to the OCRWM, then the Nuclear Waste Policy Act of 1982, as amended provides for specific interactions, such as Section 180(c), with state, tribal, and local governments that is not available to other divisions of the Department. Provisions that allow reduction from the level of commitment detailed in the Notice to lower, Department-wide standards are inappropriate.
- Nuclear Waste Policy Act of 1982, as amended provides for the provision of funds to states and tribes for "training for public safety officials of appropriate units of local government and Indian tribes". Therefore the policy and procedures for implementation of Section 180(c) must acknowledge that these funds are restricted to training of local and tribal officials and responders, and not for state officials, inspectors, or responders.
- The Notice describes training to the awareness level as the standard, with lesser emphasis on operations or technician levels. Awareness level training is not sufficient or appropriate for responders charged with operations and control at the scene of an accident involving materials being transported for disposal at a

repository. To make these levels of training available "to the extent funds are available" is inappropriate, and greatly impairs the ability of local agencies to respond effectively.

- Restricting travel expenses to travel only within the local jurisdiction unfairly and improperly limits the ability of local jurisdictions to train their responders. For example, the Inyo County responders along State Route 127 would likely best be trained at the radioactive materials training facility at the Nevada Test Site. This restriction would prohibit paying the travel expenses for these responders. There are likely many other instances where this situation exists. If there is some potential abuse of the use of these funds envisioned when this restriction was drafted, then a more specific restriction should be written. A blanket restriction for travel expenses outside of the state is inappropriate.
- The disclaimer throughout the Notice that the Department will perform "to the extent that funds appropriated for Section 180(c) are available", is consistent with the Department's continuing attempts to relinquish control, and therefore responsibility, of its interaction with other levels of government. Certainly, the Department is constrained by specific instruction from Congress contained in appropriations acts, but by volunteering the funding for Section 180(c) to congressional control, the Department appears to invite micro-management from Congress.
- There is still considerable confusion concerning the respective roles of the Department and potential contractors should the transportation of materials to a repository be privatized. Routing functions appear to be one of the responsibilities that may be delegated to RSA contractors. However, the determination of routes is critical to the distribution of technical support and financial assistance under Section 180(c). This is complicated by the fact that routing authority rests with the various states. In order for the Department to have reliable routing determination sufficiently early to allow timely implementation of Section 180(c) provisions, the Department should work proactively with stakeholders to develop a system of routes for these shipments. Because of the critical nature of these routing decisions, the policy and procedures for Section 180(c) implementation must include a discussion of these concerns. The description of implementation timing and contingency plans as currently presented is inadequate to provide the assurance local governments need that technical assistance and funding will be available prior to shipment of radioactive material to a repository.
- The lack of continuity within the OCRWM argues for the promulgation of regulation, rather than the flexibility of the proposed Notice. Over the past ten years, Inyo County has seen personnel and policies of the Department repeatedly change, with each change bringing different approaches to transportation issues. The codification of OCRWM's policies and procedures in the form of regulation would provide the programmatic continuity state, tribal, and local governments need to accommodate a transportation campaign that will last decades.

Inyo County believes the Department should demonstrate its commitment to the principles in Section 180(c) by refusing to volunteer for congressional micro-management, by codifying the policies and procedures in regulation, and by proactively addressing the routing issue.

Sincerely,



Brad Mettam
Special Projects Coordinator