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GOVERNING BOARD FOR THE TOWNS OF
HAWTHORNE, WALKER LAKE, LUNING
AND MINA
LIQUOR BOARD AND GAMING BOARD

October 2, 2007

Ms. Corinne Macaluso
U.S. Department of Energy
C/o Patricia Temple
Bechtel/SAIC Company LLC
955 N. L Enfant Plaza SW., Ste 8000
Washington, D.C. 20024

RE: Revised Proposed Policy Section 180 (c)

Dear Ms. Macaluso:

Mineral County appreciates the opportunity to submit comments on the notice of revised proposed policy for implementing Section 180 (c) of the Nuclear Waste Policy Act of 1982. Our principal concern with the revised proposed policy is that it has the potential to dilute the original intent of Section 180 (c) by diverting the focus of technical and financial assistance away from affected local governments and Indian Tribes. The Department of Energy's responsibility with respect implementation of Section 180 (c) extends well beyond the distribution of funds. It is vital the DOE remain fully engaged in emergency response training and preparation of appropriate units of local government and Indian tribes along waste transportation routes before and during waste shipments to Yucca Mountain.

If you have any questions concerning these comments, please do not hesitate to call me.

Sincerely,



Ed Fowler
Chairman

CC: Jerrie Tipton, Vice Chairman
Richard Bryant, Member
Linda Mathias, Director Mineral County Nuclear Projects

**Mineral County's Comments to the
Notice of Revised Proposed Policy Section 180 (c)**

I. Policy Statement

1. Policy Statement first paragraph - DOE defines technical assistance to be: “DOE’s specific knowledge, expertise, and existing resources to aid training of public safety officials....

Comment

The sentence should be revised to state local public safety officials and Indian Tribes.

Policy statement goes on to define technical assistance to what appears to be administrative and planning assistance. Has technical assistance been defined outside the policy statement?

2. Policy Statement 4th paragraph- “DOE will work with States and Tribes to evaluate current preparedness for safe and routine transportation and emergency response capability and will provide funding as appropriate to ensure that State, Tribal, and local officials are prepared for OCWRM shipments”.

Comment

DOE’s responsibility to provide funds to states for training public safety officials of appropriate units of local government. The purpose of Section 180 (c) is not to provide funds to ensure that States are adequately prepared for OCRWM shipments. The law does not include such language. The policy statement should be revised.

3. Policy Statement Last Paragraph-states “Any deficiency in basic emergency response capability may be addressed through consultation and technical assistance.

Comment

Would it be correct to say that financial assistance is another means to address deficiencies in basic emergency response? Those deficiencies will largely be found with local emergency response capabilities. The policy statement should be revised.

4. Policy Statement General Comment DOE is responsible for providing technical and financial assistance for training of local public safety officials to States and Indian Tribes.

Specifically Section 180(c) directs the Secretary to provide technical assistance and funds to States for training public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level.

DOE's responsibility lies with the training of appropriate units of local government and Indian tribes. The emphasis of this notice appears to be on administrative functions tied to the allocation of funds. Instead DOE needs to devise a system whereby appropriate local governments and Indian tribes along transportation routes receive technical assistance and funding for emergency response. That responsible is not met by simply allocating funds to states.

DOE needs to establish performance measures for emergency preparedness along transportation routes. Without them, how does DOE gauge the level of preparedness for shipments to Yucca Mountain? How can resources be allocated to areas with the most needs? How does DOE ensure that appropriate local governments and Indian tribes are adequately trained and equipped?

The emphasis of the 180 (c) currently lies with the distribution of funds to states. This emphasis is inconsistent with the intent of the law which requires training and technical assistance for those entities and not funding distribution.

5. Policy Statement 4th Paragraph - This revised proposed policy supports the DOE's OCRWM objective to develop and begin the implementation of a comprehensive national spent fuel transportation plan.

Comment

With respect to planning efforts, DOE needs to establish specific routes in order to begin implementation of its responsibility associated with Section 180 C.

6. Policy Statement 4th Paragraph - This revised proposed policy is consistent with DOE's longstanding commitment to meet or exceed requirements and standards applicable to the transportation of spent nuclear fuel and high-level radioactive waste;

Comment

DOE has yet to determine what the basic minimum standard for appropriate local governments and Indian Tribes are. The revised policy needs to stipulate the minimum standards for appropriate local governments and Indian Tribes and begin to focus resources on those areas needing the most assistance. Again, the revised policy should establish minimum performance measures as a baseline for Yucca Mountain shipments.

7. Policy Statement Last Paragraph - When necessary or appropriate, training should be consistent with the OSHA awareness or operations levels. Any deficiency in basic emergency response capability may be addressed through consultation and technical assistance.

Comment

DOE needs to be more definitive with regard to local emergency response standards. The policy statement attempts to suggest appropriate standards for training. Training alone should not be the bench mark, but rather corresponding capabilities and preparedness levels. The revised policy does not define who will be the entity or contact to address in any deficiencies in basic emergency response capabilities. Who will provide consultation and technical assistance? Deficiencies are also addressed with financial assistance to local governments and Indian Tribes that is the purpose of Section 180 (c).

DOE needs to define specific measures it will take when deficiencies in emergency response are identified. The policy should identify how DOE will determine when such deficiencies will exist.

II. Basis for Cost Estimates/Grant Funding Allocation to States

8. Second Paragraph - The variable amount of the training grant will be determined through a risk based formula using the factors of population along routes, route miles, number of shipments, and shipping sites.

Comment

DOE is absolutely wrong here and inconsistent with Homeland Security and Presidential directives none of which are risk based, but instead capabilities based. Population along routes should not be a factor because response capabilities are generally opposite to population. Most large urbanized areas have significant emergency management capabilities with professional staff. How does DOE justify allocating funds to large urban areas with public safety officials who are already trained to handle hazardous material shipments versus smaller less populated areas without any capabilities?

Similarly route miles and number of shipments have nothing to do with preparedness and capabilities. Section 180 C is not directly concerned with risk but rather preparedness. The variable grant allocation does not address the basic needs questions.

The formula developed for distribution of grants funds is a politically acceptable formula but does little to provide technical assistance and financial aide to appropriate units of local government and Indian tribes who are in the greatest need for assistance.

Site or point of origin inspections can be done with a trained team of people from one or more states that travel to sites of origin instead of training hundreds of individuals. If

shipment sites are used as allocation criteria then the number of shipments from the site should be factored into the allocation formula.

Also, Section 180 (c) only makes reference to providing funding and technical assistance to states for public safety officials of appropriate units of local government and Indian Tribes. Section 180 (c) does not authorize funding for inspection of waste shipments and does not authorize training for state officials. The revised policy needs to be consistent with the law.

III. Eligibility and Timing of Grants Program

9. Comment

First paragraph DOE will provide grants and technical assistance to jurisdiction with inspection authority. When does Section 180 (c) mention or imply inspection authority as eligibility for funding?

IV. Allowable Activities

10. Allowable Activities Paragraph 2 – Under Section 180 (c) of the NWSA, DOE shall provide technical and financial assistance to States and Indian tribes.

Comment

This sentence is incorrect and needs to be replaced with the following, “The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local governments and Indian Tribes.

11. Allowable Activities-Potential activities for the Assessment and Planning Grant include third bullet.

Comment

Bullet three should be revised to state “Planning for how to provide needed training for public safety officials of appropriate local governments and Indian Tribes.”

12. Allowable Activities- General Comment

The allowable activities need to be restated to include activities related to local public safety officials of appropriate units of local government. Inspections are a state function. Section 180 (c) was not intended to provide such support. If DOE supports such activities and the need for such activities suggests that Yucca Mountain waste shipments have not been properly prepared at the generator site.

13. General Comment

Overall the current policy is a very broad interpretation of the law in that it takes the focus away from providing funds and technical assistance to States for training for public safety officials of appropriate units of local government and Indian Tribes. The current language in the policy puts in place sufficient avenues to channel funding to other agencies and other capabilities outside of those Section 180 (c) is explicitly designed to assist. It is very easy to envision the majority of Section 180 (c) funding being allocated to programs, agencies and activities that are only remotely related to the laws original intent. The current policy needs to be revised to replace the emphasis back on emergency response capabilities of affected local governments and Indian Tribes.