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January 15,2008

Ms. Corinne Macaluso
U.S. Department of Energy
c/o Patricia Temple
Bechtel SAIC Company, LLC
955 N. L'Enfant Plaza, SW, Suite 8000
Washington DC 20024

RE: Office of Civilian Radioactive Waste Management; Safe Routine Transportation and Emergency Response Training; Technical Assistance and Funding- Section 180 (c) of the NWPA

Dear Ms. Macaluso:

Eureka County, Nevada is an "affected unit of government" under Section 116 of the Nuclear Waste Policy Act. We have a direct interest in the proposed rule. As a local government, Eureka County is a first responder for emergencies involving the transport of nuclear waste through our county by highway or rail. Eureka County is bisected in the north by Interstate 80 and the Union Pacific mainline which both run east-west. In the southern part of the county, U. S. Highway 50 runs east-west through the county seat of Eureka.

1-F

We have volunteer fire departments and emergency medical responders. We believe that the impacts to rural Nevada counties will be major: all shipments to the proposed repository at Yucca Mountain will be experienced by Nevada counties. We are at the draining end of the funnel. Yet we do not believe the Department of Energy has addressed the challenge of safe shipments through rural areas that depend on volunteers for emergency response. And we know that in its suite of Environmental Impact Statements released in October of 2007, DOE cites 180(c) as a remedy to the many impacts identified with the decades-long shipping campaign, even before this Proposed Rule is finalized.

We appreciate the opportunity to comment; the comment extension period was very helpful. Our comments reflect our position and concerns. We have also attached answers to questions posed in the Notice.

Eureka County, Nevada's comments on the Federal Register Notice for DOE's Proposed Policy on 180(c) are as follows.

2-D

The Department of Energy's (DOE) proposed policy for implementing Section 180(c) of the Nuclear Waste Policy Act (NWPA) will not supply adequate funding to provide training for public safety officials as required by the Nuclear Waste Policy Act. The fundamental problem with the proposed policy is the reliance on an arbitrary formula to determine the amount of funds states receive to provide training to public safety officials of local government. **As a unit of local government that will be directly impacted by proposed shipments to the Yucca Mountain Project, Eureka County suggests that**

3-D

any method of distributing funds should be predicated upon ensuring that those local governments that have the greatest impact from shipments and the greatest need for assistance in training public safety officials receive the necessary assistance to ensure that they are adequately prepared for the shipments.

4-D

The proposed policy further asserts that grants to states will be subject to the availability of appropriated funds. Given the history of Congressional funding for the Yucca Mountain Project, the proposed policy should recognize the probability that adequate funds will not be available to meet the requirements of training if the proposed distribution formula is used to distribute funds. The proportional reduction in funds provided through a formula system as proposed by DOE will not ensure that local governments most in need of assistance are adequately trained to respond to an incident. Therefore, the proposed policy should include a provision to distribute funds based upon need if adequate funds are not appropriated.

5-D

DOE's proposed formula for distribution of training funds is based upon the percentage of population along route corridors, the percentage of route miles, the percentage of the number of shipments, and the percentage of shipping sites in each state along proposed routes. Fundamental problems with the proposed formula include the uncertainty in actual routes that will used for shipments, a reliance on population along route corridors which is unrelated to training needs, potential "double counting" of route miles through states, and ignoring the importance and impact of the destination site in the proposed formula. Each of these items is discussed in more detail below.

Population Along Route Corridors: DOE proposes using the population with 2,500 meters of the route. There is no justification provided in the proposed policy for using this distance from the route for population. The proposed policy states that the population figure acts as a surrogate for the number of responders or the number of

6-D

jurisdictions requiring training along the route. However, as population near the route increases, it is more likely that responders from larger towns and cities will already have more training and be better prepared to respond to hazardous waste incidents than smaller communities. In larger communities, it is likely that the communities will already have fully equipped and trained hazardous response teams that are capable of responding to these shipments with little additional training. It should also be noted that in rural western states, communities that are responsible for responding to incidents on either highways or railroads are located a significant distance from the center of the

7-D

transportation corridor. Hence, the population supporting the emergency response community would not be included in the population counted by the arbitrary distance of

2,500 meters from the route. In Eureka County, for example, the community of Crescent Valley provides emergency response capability for a significant portion of both the Union Pacific Railroad and Interstate 80. Crescent Valley, however, is located 14 miles from Beowawe where Interstate 80 and the railroad are located. If backup were necessary, the Town of Eureka emergency responders are 110 miles from away from Beowawe.

8-D

Many proposed routes for highway shipments and rail shipments will have both highways and railroads in close proximity to each other. When the arbitrary distance from the corridor of 2,500 meters is applied in these situations, the population along the route will be greatly increased, particularly through large metropolitan areas. Yet, there will be the same number of jurisdictions affected or the same number of emergency responders requiring training. In these cases, the proposed distribution formula would greatly increase the percentage of funds available without recognizing that the formula "double counts" the need.

9-D

Percentage of Route Miles: The proposed policy states that route miles act as a surrogate for accident risk. Accident risk, however, should not be a basis for determining the distribution of funds for training local responders. Regardless of the risk in a particular state, each local government with responsibility for emergency response must be provided with adequate training for their emergency responders to ensure that if an accident does happen in their jurisdiction, they are prepared to respond.

10-D

DOE has yet to finalize any routing methodology for selecting routes used for these shipments. Therefore, at this time it is very difficult to assess accurately how route miles through the various states will influence the distribution of funds. Even so, some conclusions regarding route miles can be made at this time that indicate that route miles should not be used in a distribution formula. From all the discussion of routing that has gone on with stakeholders over the years, one obvious conclusion can be drawn: east of the Mississippi River there are numerous routes that can be used for shipments. As you proceed west, the possible numbers of routes become fewer and fewer, until only one or two possible routes exist. Even considering DOE's concept of a "Suite of Routes" being required to provide security and flexibility, many possible routes exist in the east, while only a few exist in the west. Adding in the complication of the multitude of shipping sites in the mid west and east, there becomes almost an infinite number of routes. Hence, using route miles as a significant factor in the distribution formula will greatly increase the funds allocated to eastern states that may see only a limited number of shipments compared to western states that will have almost all of the shipments passing through their communities.

11-D

As noted above, many proposed routes for highway shipments and rail shipments will have both highways and railroads in close proximity to each other. The formula approach does not recognize that the same emergency responders will be responsible for shipments regardless of mode. Therefore, route miles may very well "double count" the need through these jurisdictions.

Percentage of Number of Shipments: The proposed policy states that the numbers of

shipments are included to recognize the additional burden placed on states that are heavily impacted by shipments. Although it is probably true that states that see more shipments are more heavily impacted, it does not logically follow that more funding is required to meet this burden. Whether a local jurisdiction sees one shipment per month or one shipment per week, the fundamental training requirements for local emergency responders will probably be the same. Any funding distribution method should ensure that emergency responders along any route used for shipments are adequately trained to respond.

12-D

Percentage of Shipping Sites: Shipping sites are included in the formula based upon the recognition that point-of-origin inspections are an important procedure required for safe routine transportation of these materials. Experience with the Waste Isolation Pilot Project transportation program, however, has clearly demonstrated that destination inspections provide a valuable tool in maintaining the quality assurance for vehicles and packages. Therefore, if a formula is used, the destination site for the shipments should be included as well as shipping sites.

13-D

The formula approach in the proposed policy also will be very difficult to administer accurately since it largely depends on determining the number of shipments from each shipping site well in advance of actual shipments. The proposed policy is unclear as to how DOE will accurately determine the number of shipments and the routes used for these shipments three years in advance of the shipments. Under the Standard Contract with utilities, DOE does not control the shipping schedule from the various sites. The Standard Contract establishes a priority right system for utilities to ship fuel, but also allows utilities to trade these rights. Utilities with several sites may also use their priority rights established for one site to ship from another site. The formula approach, however, assumes that shipment sites and routes can be accurately determined three years in advance of shipments and distributes funds based upon assumed shipping schedules.

14-D

Once shipments do begin, the formula approach is also flawed in that funding for subsequent years is based upon the number of shipments passing through a given state. In all probability, many states may see shipments one year, and then no shipments the next year, with shipments then resuming in the following year. The formula approach would result drastic variations in funding to states in this situation from year to year. Yet to maintain a consistent, effective training program, states will need a reliable source of funding from year to year.

15-D

Ironically, after proposing that funds will be distributed based upon an arbitrary formula, in the proposed policy to implement the 180(c) program, DOE then proposes that the actual award of training grants will be "based on the needs assessment conducted under the Assessment and Planning Grant." If a needs assessment is required to receive the Training Grant, it is logical to assume that an acceptable needs assessment should be used to determine the amount of funds required. DOE should also use the needs assessments conducted under the Assessment and Training Grant to determine the total level of funding required to implement the 180(c) program in its appropriation request to Congress.

16-D

17-D

The Western Governors have long advocated this approach for 180(c) funding. The Governors' Policy Resolution 05–15 specifically states: "Assistance to states must not be based on arbitrarily established criteria, but closely linked to state–specific assessments of need." It adds, "Once states and tribes have assessed their needs through planning grants provided by DOE, DOE should then consult with states and tribes to determine how to best allocate funds to states and tribes effectively, efficiently and equitably." This approach would ensure that funding requests to Congress are based upon state specific assessments of need, and that appropriated funds for the 180(c) program are distributed

18-D

based upon these needs, not upon some arbitrary formula. Finally, the Governors also noted that, "Because of the current uncertainties in the transportation system (e.g., routing, mode, intermodal transfers, schedules, security measures), it is premature for DOE to finalize 180(c) and other funding allocations for annual implementation grants."

19-A

As presently proposed, Eureka County cannot support the proposed policy described in the Federal Register Notice. The County proposes that DOE should withdraw the proposed policy and reissue a simplified policy that provides for the Planning and Assessment Grants to the states, with distribution of funds based upon needs assessments developed under the Planning and Assessment Grants. The policy should also provide a method of funding the highest priority needs first in the likely event the Congress does not appropriate adequate funds for the program.

Thank you for considering our comments. We have attached the answers to the questions posed in the Notice to this letter.

If you have questions, please contact me at 775/237-5372.

Sincerely,

Ronald Damele
Public Works Director

Attachment: Response to Questions Posed in 180(c) Federal Register Notice

cc: Richard Moore, PE
Abigail Johnson

Attachment

Eureka County, Nevada
Response to
Specific Questions in the 180(c)
Federal Register Notice

Question 1

(a) Would $200,000 be an appropriate amount for the assessment andplanning grant to conduct an initial needs assessment?

20-J

Response: Yes, provided additional funds would be made available if a state determines that more is needed after preliminary information is produced during the initial phases of the needs assessment.

(b) Should the amount be the same for each eligible State and Tribe?

21-J

Response: Yes, provided additional funds are available based upon a demonstrated need as described above.

(c) Would there be a need to update the initial needs assessment and, if so, at what intervals and should funding be made available for this purpose and in what amount?

22-J

Response: Needs assessments should be updated periodically over the life of the program to reflect changes in routes, population along routes, changes in emergency response organizations, etc. It is suggested that a minor update could be provided every five years, with a complete reassessment every ten years. States should have sufficient experience to be able to request appropriate amounts for these updates, rather than having a specific amount set by policy.

Question 2

(a) Would $100,000 be an appropriate amount for the annual training grant?

23-J

Response: No. Annual training grant amounts should be based upon the actual needs determined through the needs assessment required during the Planning and Assessment phase.

(b) *Recognizing that, after commencement of shipments through an eligible State or Tribe, training to maintain capability may become less costly with increased expertise and efficiency, should the base amount of subsequent annual training grants be adjusted downward to rejlect the number of years that annual training grants have been received.*

24-J

Response: No. The amount of training grants should be based upon the actual needs as determined through a needs assessment. The hypothesis for this question the increased expertise and efficiency may reduce costs is probably correct, and demonstrates why including population along the route in a distribution formula skews the funding in favor of larger population areas, where need is probably less since these areas probably already have emergency responders with increased expertise and training programs with better efficiency.

25-J *(c) What should be the allocation of available appropriated funds for a fiscal year between the base amount and the variable amount of the annual training grants?*
Response: The allocation of available appropriated funds should be based upon demonstrated needs, with higher priority needs receiving a greater allocation of funds.

26-J *(d) Should the entire training grant be variable based on the funding allocation formula described herein?*
Response: No. The entire training grant should be based upon demonstrated need. If a base grant is provided, the variable amount should be based upon need, not an arbitrary formula.

Question 3

27-J *(a) Should the amount of funding be adjusted where a route forms a border between two States, a State and a Tribal reservation, or two Tribal reservations?*
Response: If the funding is based upon a needs assessment, this issue could be addressed by requiring States and/or Tribes with routes along common borders to address this issue in their needs assessments conducted during the Planning and Assessment Phase.

28-J *(b) Should States or Tribes with mutual aid responsibilities along a route outside their borders be eligible for 180(c) grants on the basis of the mutual aid agreement?*
Response: Emergency responders who are responding to an incident involving these shipments need to be adequately trained. Since the Nuclear Waste Policy Act is fairly specific in stating that the funding should be provided to States through whose jurisdiction shipments are made, it may be difficult to provide this funding directly. Where mutual aid agreements are critical to the response capability of a directly affected jurisdiction, funds could be provided to that jurisdiction to provide training to all of the emergency responders who will be responding to an accident.

29-J *(c) If so, how should the amount offunding be calculated, and should the calculation take into account whether or not the State or Tribe would otherwise be eligible for a grant?*
Response: This is a good example of why a funding formula is not appropriate, and funding should be based upon a specific needs assessment.

30-J *(d) Should the State or Tribe that received notification of eligibility from DOE indicate in their grant application that a neighboring State or Tribe has a mutual aid agreement along a particular route, whereupon DOE would then notify the neighboring State or Tribe of its eligibility?*
Response: A mutual aid agreement should address the provision of training for first responders. If this is the case, the terms of the mutual aid agreement should form the basis for the eligible State to notify the neighboring State or Tribe early on in the process, and include the necessary information on these training requirements in their needs assessment.

Question 4

31-J *(a) Do assessment andplanning grants need to be undertaken four years prior to an initial scheduled shipment through a State or Tribe's jurisdiction?*
Response: Although the timing of the assessment and planning grants would perhaps best be left to individual States and Tribes, DOE must gather the appropriate information in a timely manner to have valid, defensible information for appropriation requests to Congress for the program. The success of adequate funding is thus dependant on all

affected States and Tribes providing needs assessments to DOE in the same time frame.

(b) Do training grants need to commence three years prior to a scheduled shipment through a State or Tribe's jurisdiction?

32- Response: Experience with the WIPP training program indicates that three years is generally adequate lead time. States, in conducting their needs assessment, may very well determine that they don't need three full years lead time. Funding should be based upon these types of determinations, rather than a strict formula.

(c) Do training grants need to be provided every year that shipments are scheduled?

33-I Response: Training needs should be based upon specific training needs identified in a needs assessment. State or Tribes with a limited number of jurisdictions requiring training may not need to provide training each and every year. However, they will need to maintain some basic core capability regardless of the number of shipments in a given year. Therefore, the year to year funding allocations should be based upon specific needs that are identified.

Question 5

(a) Should the Section 180(c) grants be adjusted to account for fees levied by States or Tribes on the transportation of spent fuel or high–level radioactive waste through their jurisdiction?

34-I Response: In order to be consistent with federal regulations, States or Tribes that levy fees must demonstrate that they are using the funds generated by the fees for emergency response related activities. The 180(c) program will only provide funding for training, and does not address the many costs associated with providing an actual response capability. Therefore, there is no need to adjust 180(c) grant funding just because an emergency response fee is levied.

35-I *(b) How should DOE determine if a fee covers all or part of the cost of activities allowed under Section 180(c) grants?*

Response: DOE could require this issue to be addressed in the needs assessment.

36-I *(c) Is the language in this policy, requiring States and Tribes to explain in their grant application how the fees and Section 180(c) grant awards are separate and distinct, sufficient to prevent DOE from paying twice for the same activity?*

Response: No. The proposed policy is based upon a funding formula that does not recognize specific needs and resources available to meet those needs. Therefore, strict application of the formula for distribution of funds may result in States or Tribes receiving an allocation of funds even if they do not need it due to other sources of funding.

Question 6

37-I *(a) How should Section 180(c) grants be adjusted to reflect other funding or technical assistancefrom DOE or other Federal agencies for training for safe routine transportation and emergency response procedures?*

Response: Section 180(c) grants should be based upon needs assessments. A requirement of the needs assessment should be the inclusion of other funding and technical assistance to meet the needs.

38-I *(b) In particular, how should DOE account for TEPP and other similar programs that provide funding and/or technical assistance related to transportation of radioactive*

materials?

Response: TEPP and similar programs may very well form the cornerstone of many States or Tribes training programs. The best way to account for this is to address within the Planning and Assessment Grant how training will be provided. The specific funding needs in the needs assessment should be reduced if the proposed training program will rely upon training that DOE provides through the TEPP or similar programs. Correspondingly, however, DOE should be required to commit to providing this training under the technical assistance provision of Section 180(c).

39-I *(c) To what extent is Section 180(c) funding necessary where funding and/or technical assistance are being or have been provided for other DOE shipping campaigns such as to DOE's Waste Isolation Pilot Plant?*

Response: The needs assessment should specifically address this issue, including the need for incremental training specific to the actual type of material to be shipped and the need for refresher training for emergency responders who may have received training previously for another DOE program. It should also be recognized that there is considerable turnover in emergency responders, many of whom are volunteers, so that training is required on a continual basis to keep the emergency responders qualified.