

November 9, 2007

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

RE: Comments on the Department of Energy's proposed policy and procedures for implementation of section 180(c) of the Nuclear Waste Policy Act of 1982.

Dear Ms. Macaluso:

We appreciate the opportunity to comment on the Department of Energy's (DOE) "revised policy and procedures for implementation of section 180(c)" as published in the Federal Register, Volume 72, No 140. As mentioned in the register, the policy has gone through several revisions over the last decade many of which have been similarly published. We understand that the most recent version (July 23, 2007) reflects significant discussion and input from State Regional Groups, including the Council of State Governments' Midwestern Radioactive Materials Transportation Committee (MRMTC) and the DOE sponsored Transportation External Coordination Working Group (TEC/WG). As an active participant in both the MRMTC and the TEC/WG, the State of Illinois' position on most issues related to 180c has been considered and we support the forthcoming comments from the MRMTC.

Since the Illinois model for addressing transportation impacts for spent nuclear fuel or other high activity radioactive materials shipping campaigns is considerably different from the majority of other States, we believe it is appropriate to go on record with specific answers to the questions posed as part of the Federal Register notice.

### ***Answers to Questions***

*1(a) Would \$200,000 be an appropriate amount for the assessment and planning grant to conduct an initial needs assessment?*

It may be necessary to establish a "ceiling" or maximum amount available to any one state for the purpose of an assessment and planning grant and \$200,000 may be an appropriate starting point. However, the application and review process should be arduous enough that applicants must affectively justify their need and if approved, that amount should be awarded.



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

It is not likely that a State that would be minimally impacted by shipping campaigns could justify the same level of assessment and planning funding as a major corridor state. However, it should not be necessary to pre-determine maximum funding amounts for assessment and planning based on geographic location or potential impacts. Each State should be eligible for the same amount, with the award determined by the application and review process.

*1(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?*

There may be a number of circumstances that would require an update to the initial needs assessment. Some examples of these circumstances include changes in mode, changes in routes, and changes in homeland security levels, changes in inspection requirements or changes in State policies regarding shipping campaigns. While it may be difficult to pre-determine a level or timeline when assessments should be updated, as with initial assessments, if States can justify the need, DOE should provide the funding.

*2(a) Would \$100,000 be an appropriate amount for the base award annual training grant?*

The application process should be used to determine the appropriate award.

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

We believe the premise on which this question is based is false. There are too many variables involved to assume that once a shipping campaign has started, expertise will increase and training requirements will decrease.

*2(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?*

If we are establishing that a base grant of up to \$100,00.00 will be available for all eligible states, then the concept of a predetermined overall allocation between base and variable amounts does not make sense. Certainly, funding should be available for each component of the grant, and we recommend that the total funding available under the variable grant be at least equivalent to that available under the base. If applicants do not request their full share, or they cannot justify the need for the amount for which they are eligible, then the left over funding should be put toward funding any unmet needs.

*2(d) Should the entire training grant be variable based on the funding allocation formula described herein?*

No. Input from the State Regional Groups and the TEC/WG has consistently supported the concept of a combined base grants, for support and maintenance of a basic program, and additional variable grants for completion of training goals and objectives for the support of a specific shipping campaign, route or period.

*3(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?*

If a state can justify funding through the application and review process, DOE should provide the funding.

*3(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?*

See 3(a).

*3(c) If so, how should the amount of funding be calculated, and should the calculation take into account whether or not the State or Tribe would otherwise be eligible for a grant?*

The applicant should request funding to cover the proposed activities. If the applicant can justify the need, DOE should provide the funding.

*3(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?*

DOE should work with the states in advance of 180(c) implementation to determine where these types of situations exist.

*4(a) Do assessment and planning grants need to be undertaken four years prior to an initial scheduled shipment through a State or Tribe's jurisdiction?*

The application process should begin four years in advance with the option for beginning the actual assessment and planning approximately three years in advance. This process should be predicated on accurate shipping and acceptance schedules.

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

Due to the high turnover in the emergency response community commencement of actual field training three years in advance may result in significant wasted effort. However, for many states, a year of lead time for program development, contact with appropriate agencies and scheduling may be necessary to complete training goals and objectives for some transportation corridors.

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

States should be eligible to apply for training grants annually.

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

DOE's interpretation of the scope of 180(c) funding limits its use to training. While some states may collect fees that support emergency response training for current DOE shipping programs, the fees collected by the State of Illinois are used specifically to offset the "operational costs" associated with the Illinois inspection and escort program. Since DOE has specifically denied inclusion of operational costs under activities covered by 180(c), reduction in the grant values would be inappropriate. The Section 180(c) Topic Group of the TEC/WG agreed that DOE should not deduct the cost of state fees from a state's Section 180(c) award unless separately negotiated with the state.

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

DOE should simply ask states with transportation related fees to document in their applications how the fees are used.

*5(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?*

The language of the policy needs to clearly define "state fees".

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

Section 180(c) grants should not be adjusted to reflect other funding or technical assistance. The criteria for evaluating applications for both assessment and planning grants and the training grants specifically refer to training "for the increment of need specific to NWSA shipments." The applications for funding will, therefore, reflect the impact of other funding and assistance on training activities.

*6(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?*

It is not possible to put a dollar figure on assistance provided by the TEPP program, CVSA, RAP etc. States have the option to use or ignore information developed by these programs and while the materials allow for consistency from State to State,

the threat of a reduction in funding for use of TEPP training materials would likely result in a decrease in participation in the programs.

*6(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?*


DOE appears to be overly focused on avoiding duplicative funding. The criteria for evaluating applications for both assessment and planning grants and the training grants specifically refer to training "for the increment of need specific to NWPA shipments." Considering the time frame for NWPA shipments, i.e. 2017, the differences in routes and modes, it is not likely that other large scale shipping campaigns, like the WIPP campaigns, will be impacting the east and Midwest by then.

In addition to the comments above, the State of Illinois believes DOE should reconsider the scope of available activities under Section 180(c). State programs will continue to be responsible for highway and rail safety and compliance inspections conducted enroute or at the point of origin. Under current regulations for commercial spent nuclear fuel shipments, State and local law enforcement also play important roles in security. The absence of a funding source to offset the cost of these activities will likely result in more State fee programs. DOE's acknowledgment of the importance of these programs and the inclusion of these activities under the scope of Section 180(c) would result in a high quality system for both routine transportation activities and emergency response.

Finally, in the event that a national repository is further delayed or abandoned, DOE should ensure that Section 180(c) funding is available for training and operations necessary for shipments of spent nuclear fuel to a private fuel storage facility or facilities licensed and operated under the DOE's Global Nuclear Energy Partnership (GNEP).

Thank you for the opportunity to comment and we look forward for your continued progress toward finalizing this aspect of the OCRWM program.

Sincerely,

  
Joseph G. Klinger  
Assistant Director