



NATIONAL CONGRESS OF AMERICAN INDIANS

January 22, 2008

Corinne Macaluso  
Office of Civilian Radioactive Waste Management  
U.S. Department of Energy  
c/o Patricia Temple  
Bechtel SAIC Company, LLC  
955 North L'Enfant Plaza, SW  
Suite 8000  
Washington, D.C. 20024

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**NCAI HEADQUARTERS**  
1301 Connecticut Avenue, NW  
Suite 200  
Washington, DC 20036  
202.466.7767  
202.466.7797 fax

Dear Ms. Macaluso:

Please accept, on behalf of the National Congress of American Indians (NCAI), the oldest and largest national tribal government advocacy organization in the country, the attached comments to the U.S. Department of Energy Notice of Revised Proposed Policy regarding the implementation of Section 180(c) of the Nuclear Waste Policy Act, published July 23, 2007, in the *Federal Register*.

If you have any questions regarding this matter, please contact NCAI staff Robert Holden at the NCAI.

Sincerely,

Joe Garcia  
President

## National Congress of American Indians

### Comments on the Department of Energy Notice of Revised Proposed Policy Department of Energy Notice of Revised Proposed Policy regarding the implementation of Section 180(c) of the Nuclear Waste Policy Act of 1982

January 22, 2008

As the oldest and largest tribal government advocacy organization in the country, part of the mission of the National Congress of American Indians (NCAI) is to protect tribal sovereignty and ensure that federal government agencies carry out the federal trust responsibility imbedded in the doctrines of federal Indian law and policy derived from treaties. The NCAI has commented periodically on behalf of its constituent tribes on legislation and policies impacting tribal inclusion in the Nuclear Waste Policy Act of 1982 (NWPA), as amended, activities since the U.S. Department of Energy (DOE) implementation of the NWPA. The following general comments are provided with the expectation that tribal governments will be consulted directly on a government-to-government basis as provided in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments issued in 2000.

The minimum level of \$200,000 annually for training should apply to tribes. There is nothing in the NWPA that should limit parity of funding to tribes with that of states. The NWPA also must provide the appropriate levels of training and readiness requested by the tribes.

Memoranda of Understanding and Memoranda of Agreements regarding Mutual Aid should not impact or lessen tribal direct funding. Though tribal governments are working towards mutual response and cooperation, it does not and will not occur in all jurisdictions. Should a disaster overwhelm a tribal jurisdiction and a neighboring non-native jurisdiction, the tribal government will need appropriate capability to take care of tribal community needs. A tribal government needs and needs to prepare and train for such a significant event.

No needs assessments have been done despite the NCAI making such recommendations to that end for the last several in years. A tribal needs assessment should be undertaken in the near future. A needs assessment should include tribal considerations and risk factors. Threats to cultural and natural resources are a high priority, extra preparation and planning regardless of possible additional cost is appropriate. Native peoples rely on cultural and natural resources for their survival and continuity. In the event of a radioactive waste transportation accident, irreplaceable cultural and natural resources may be harmed. Tribes need financial resources to mitigate impacts upon their communities.

Regarding the proposed requirement for electronic application (Funding Mechanism) through the [www.grants.gov](http://www.grants.gov) site, tribal governments should have the option to submit in the format that is best for them. Not all tribes have the appropriate technology, therefore paper submission may be best suited in the event they are unable to submit electronically.

Tribes that receive NWPA assistance should not be penalized for submitting or receiving grants and assistance from other federal sources for activities related directly or indirectly to

NWPA 180(c) transportation. Historically, tribes have not received funding as have the states for emergency preparedness and planning, as well for hazardous materials transportation inspection monitoring and enforcement. NWPA hazardous materials shipments fall into the category of potential terrorist threats. Since the passage of the Homeland Security Act of 2002, states have received hundreds of millions of dollars for activities including enhancing first responder capability, terrorist prevention strategies, public safety communications interoperability, government continuity of operations and many other purposes. Tribal governments did not receive similar homeland security grants. Department of Homeland Security funding to states and local governments has been utilized in developing programs and staffing that is related to NWPA safe routine transportation preparation and planning. Legislation was past last year to directly fund a limited number of tribes for homeland security grants but has not been implemented and funding has not been authorized or appropriated. Some tribes eligible for homeland security dollars as well as DOE NWPA shipments should be afforded the opportunity to develop their infrastructure with no restraint on the funding stream or the amount. The majority of tribes impacted by NWPA transportation campaign are lacking in emergency management infrastructure development. According to most tribal officials, it will take several years to achieve readiness for safe routine transportation of spent nuclear fuel and radioactive waste and emergency response capability.