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January 18, 2008

Ms. Corinne Macaluso
Office of Civilian Radioactive Waste Management
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: State of Nevada Comments on DOE's Notice of Revised Proposed Policy and Request for Comments on the OCRWM Plan for the Implementation of Section 180(c) of the Nuclear Waste Policy Act (Federal Register/Vol. 72, No. 140/ Monday, July 23, 2007/Notices)

Dear Ms. Macaluso:

Attached please find the State of Nevada's comments on the above-referenced revised proposed policy. Please note that all past State of Nevada comments on prior DOE approaches and proposals for implementing Section 180(c) are hereby incorporated by reference to the extent that they apply to the current proposed policy. In addition, Nevada endorses the comments of the Western Interstate Energy Board's High-Level Radioactive Waste Committee and incorporates those by reference into these comments.

If you have questions regarding the State's comments, please contact me or Mr. Joe Strolin, Planning Division Administrator for the Nevada Agency for Nuclear Projects, at 775-687-3744.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux".

Robert R. Loux
Executive Director

RRL/cs

Attachment

cc Nevada Congressional Delegation
Marta Adams, Attorney General's Office
Susan Scholley, Legislative Counsel Bureau
Nevada Local governments and Tribes

**STATE OF NEVADA COMMENTS
ON THE U.S. DEPARTMENT OF ENERGY'S
NOTICE OF REVISED PROPOSED POLICY AND REQUEST
FOR COMMENTS ON THE OCRWM PLAN FOR THE IMPLEMENTATION
OF SECTION 180(C) OF THE NUCLEAR WASTE POLICY ACT (Federal
Register/Vol. 72, No. 140/ Monday, July 23, 2007/Notices)**

January 18, 2008

Over the years, the State of Nevada has provided numerous, substantive comments on various U.S. Department of Energy (DOE) proposed approaches for implementing Section 180(c) of the Nuclear Waste Policy Act of 1982, as amended (NWPAA). Those prior comments are hereby incorporated by reference into these comments to the extent that they apply to the current proposed policy.

The following comments are made in direct response to DOE's July 23, 2007 Federal Register Notice:

DOE Fails to Provide a Mechanism For Determining the Amount of Funding and Technical Assistance Needed for an Adequate National Program

The DOE revised proposed Section 180(c) policy lacks any mechanism for determining the total amount of funding and technical assistance that would be required nationally to support an effective and adequate program to train and equip state and local emergency response and public safety officials to deal with shipments of spent nuclear fuel (SNF) and high-level radioactive waste (HLW) to a repository. The proposed policy sets arbitrary amounts for annual planning and training grants, but contains no basis for determining if such amounts are adequate or even reasonable.

The Notice states that DOE expects the total amount of funding available nationally for Sec. 180(c) assistance would be determined by "congressional appropriations." There is no provision in the Notice for DOE to assume responsibility for informing Congress as to the actual amount of funds needed to implement an adequate Sec.180(c) program. DOE's policy with respect to Sec. 180(c) must begin with DOE conducting a comprehensive national needs assessment as the basis for adequate annual budget requests that will ensure sufficient funds are available to prepare states and tribes adequately for NWPAA shipments and for implementing a long-term Sec. 180(c) program. It is unacceptable for DOE to merely specify an arbitrary total amount in an annual budget request. Sec. 180(c) should be a specific line item in DOE's budget, based on a realistic assessment of the cost of an adequate national program for each year.

The proposed policy should be revised to require DOE to undertake a national needs assessment aimed at determining what the actual costs will be for initiating and

maintaining state programs for training response personnel to effectively deal with SNF and HLW shipments – both for routine transportation and for credible worst-case accidents and successful terrorist attacks. Absent such a credible national needs assessment, DOE will have no basis for requesting Section 180(c) funds from Congress as part of the Department’s annual high-level waste management budget requests.

An Adequate Section 180(c) Program Must Meet Minimum Requirements That Go Beyond the Provisions Contained in the Proposed Policy

Nevada reiterates comments made with respect to previous DOE Notices: (1) Section 180(c) assistance must begin 3 to 5 years before shipments through a jurisdiction can commence; (2) grants should be made directly by DOE to each eligible jurisdiction; (3) states and tribes must have discretion in identifying, planning, and implementing training activities appropriate to their individual needs and circumstances; (4) funds provided under the Section 180(c) program must be adequate to cover *all* training and related costs incurred by states and tribes as a result of NWPA shipments through their borders; (5) shipments to any private storage facilities that may be developed (such as the proposed PFS facility in Utah) must be covered by Section 180(c) assistance; and (6) no shipments can be made through a jurisdiction unless adequate training assistance has been provided at least three years prior to shipment.

The Notice Fails to Provide a Method for Determining Fair and Adequate Base Grants to States and Tribes

Nevada remains concerned that the amount of funds proposed to be available to states and tribes under the Notice continues to be arbitrary, and there is no assurance that the amount of funds to be provided will be adequate to cover the full costs of carrying out training and other activities necessary for safe transportation and emergency response.

The notice proposes that DOE provide an assessment and planning grant of \$200,000 to each eligible state and tribe. While this amount is consistent with the minimum funding deemed necessary by Western Interstate Energy Board (WIEB) and Western Governors’ Association (WGA), it is inadequate for the State of Nevada. Nevada (and most other western states) has no previous experience with emergency planning for commercial nuclear power plants, and very little previous experience planning for spent fuel transportation, and must, essentially, start from scratch in planning for NWPA shipments. As noted in previous comments, the planning and assessment process involves much more than having someone sit at a desk and write up a plan. It will involve extensive consultation and coordination among a number of Federal and State agencies, local governments, and tribal governments, for five decades or more.

In Nevada, which is at the end of the nuclear waste shipping "funnel" and will have to deal with 100% of NWPA shipments to a repository, the process will also require the assessment of route-specific hazards and risks along more than five hundred miles of existing rail lines, up to four hundred miles of new rail access spurs, and up to one

thousand miles of potential highway routes. In Nevada, the process will involve the identification of affected local governments and communities in at least ten large, geographically dispersed counties, and the evaluation of training and preparedness needs within each county. The State of Nevada must also coordinate with ten or more affected Indian tribes and Native American communities. In Nevada's case, planning and coordination will also necessitate involvement with training and response personnel in other states, including but not necessarily limited to, California, Arizona, Utah, Idaho, and Oregon. There is simply no basis for assuming that a planning grant of \$200,000 will cover the State of Nevada's costs associated with this effort. DOE will, instead, be shifting significant costs to the states if the proposed flat-rate, planning grant amount is adopted.

Nevada also disagrees with the proposal for determining annual training grant amounts for individual states and tribes. As with the base grants, there is no foundation for arriving at the proposed \$100,000 base amount for the grant. For some states, such an amount may be adequate. For others, it would be woefully inadequate, even if supplemented by the proposed variable amount.

The proposed formula for determining the "variable" amount for the annual training grants is also inappropriate and fails to adequately reflect actual needs associated with training and preparations for shipments. Instead, DOE should base annual grants on actual needs as documented by individual states and tribes.

Section 180(c) Implementing Policies and Procedures Should Be Codified in Regulation

Nevada continues to believe that implementing policies and procedures must be codified in regulation to insure stability and continuity in any program of technical and financial assistance developed pursuant to Section 180(c) or any subsequent statutory training requirement. Nevada again endorses the proposed Section 180(c) "Strawman" Regulations submitted to the Secretary of Energy as part of the WGA resolution adopted in August 1994 and re-adopted several times since then. Nevada and other western states are concerned that, in the absence of formal regulations, the implementation - and even the availability - of Section 180(c) assistance could be uncertain from year-to-year and subject to changing interpretations by different individuals and administrations. This is unacceptable in a program that must assure adequate training and preparation for a spent fuel and HLW shipping campaign of unprecedented national scope and duration. States and tribes must be able to count on Section 180(c) assistance year after year, despite the continuing uncertainties that will affect the NWSA program and changes in administrations.

Nevada strongly recommends that DOE institute a formal rulemaking process under the Administrative Procedures Act, as recommended by the Western Governors' Association and the Western Interstate Energy Board.

Lifting the Prohibition on Direct Grants to Local Governments

The State of Nevada believes that DOE has properly interpreted the intent of Congress by proposing an implementation plan for Section 180(c), which gives states and tribes the lead role in planning for safe routine transportation and emergency response to accidents involving NWPAs shipments. At the same time, however, Nevada recognizes that local governments, especially county governments in Western states, would have significant responsibilities for first response to transportation accidents, and would be heavily impacted by rail and highway shipments, if a repository is constructed at the proposed Yucca Mountain site. Considering the potential heavy impacts on local government jurisdictions, and considering the responsibilities of counties in Western states to provide emergency response service, the State of Nevada urges DOE to reexamine the current prohibition on direct grants to local governments and to identify policy options for submittal to Congress that would allow direct grants to local governments.

Identification of Eligible Jurisdictions and Route/Mode Identification

DOE must make a clear commitment to undertake a formal route identification process and to actually select routes from each reactor/generator site to the repository site at least 3 and preferably 5 years prior to the beginning of shipments. Without this degree of advance notification, states and tribes cannot effectively plan for shipments.

DOE's current proposal for identifying a "suite" of routes poses significant problems for states and tribes, requiring them in many cases to plan for the use of multiple routes through their jurisdictions and creating unnecessary uncertainties as to which routes would be used, when, and for what shipments.

There is no reason why DOE cannot formally identify the actual shipping routes well in advance of the shipments. The reactor/generator sites are known and the destination site will also be known. It is a relatively straightforward matter to evaluate alternative routes between origins and destinations and make decisions about which of the available options will be used. This permits both DOE and the affected states, tribes, and communities to make plans based on hard and fast decisions rather than on speculation about preliminary routes.

Nevada and other states have long held that the only way states can be assured of adequate preparation for NWPAs shipments is for DOE to take full responsibility for identifying and enforcing shipping modes and routes from each reactor or waste generator site to each storage or disposal site. DOE currently has the opportunity to identify routes in the NEPA process for the Supplemental EIS and the Rail Alignment EIS.

Safe Routine Transportation of SNF and HLW Must Encompass More Than Enforcement of Standards and Inspection of Shipments

For Section 180(c) purposes, safe routine transportation must also incorporate the analyses, planning, and preparation needed to carry out such enforcement and inspections, as well as the need for extra-regulatory activities that have been adopted in previous spent fuel, HLW, and other shipping campaigns (such as the Cesium shipments, the TMI shipments, the foreign research reactor spent fuel shipments, and the WIPP TRU Waste shipping program). These extra-regulatory precautions have been shown to enhance public safety and reduce impacts and risks. Safe routine transportation also requires analyses of potential shipping routes within states, the designation of alternate routes to enhance safety and reduce risk, and related risk reduction activities (such as preparations for escorting shipments) deemed necessary by individual states and tribes.

Assistance Must be Provided for All SNF and HLW Shipments

Sec. 180(c) assistance must be broadened to cover the shipment of SNF and HLW to a repository, MRS/interim storage facility, or any other facility that may be developed for temporary or interim storage pending disposal, whether that facility is developed by the federal government or through private efforts (such as the proposed PFS facility in Utah). States through which SNF and HLW would be transported must be assured that training assistance will be provided with respect to any shipments through their borders that are made as part of the national program to manage SNF and HLW prior to, or preparatory to, disposal in a repository.

Section 180(c) Assistance is Only One Aspect of a More Comprehensive System for Assuring Safe and Routine Shipments of SNF and HLW

In order for NWPAs shipments to meet the high safety standards demanded by the western states and established as precedent by the WIPP transportation program, OCRWM must take the following actions: (1) all shipping containers to be used for NWPAs shipments must be physically tested full-scale to demonstrate compliance with the NRC cask performance standards for crash impact, fire, puncture, and immersion; (2) preferred modes and routes for shipments from each reactor and storage site must be identified in the draft EIS for the repository and/or storage facility; (3) final mode and route decisions must be made by OCRWM, in consultation with the affected states and tribes, regional organizations, and other stakeholders, at least three years prior to the beginning of shipments; (4) a single long-term contract carrier using dedicated vehicles and crews for each mode of transport to the repository and/or storage facility must be selected according to criteria jointly developed by the affected states and tribes, regional organizations, and other stakeholders; and (5) detailed mode- and route-specific safety protocols (such as bad weather procedures, safe parking designations, and emergency routing plans) must be jointly developed by OCRWM, the affected states and tribes, regional organizations, and other stakeholders, and tested in drills and exercises prior to the beginning of shipments.

Funding for Operational and Other Essential Activities

The Nuclear Waste Policy Act (NWPA) obligates that the costs of carrying out activities relating to the disposal of high-level waste and spent fuel will be borne by the generators and owners of the waste and spent fuel, not the states. The NWPA, Section 180(c) addresses the particular topics of technical assistance and funds to States for training. Section 180(c) does not constrain DOE from providing for the costs of the rest of the activities in support of shipments. Therefore, DOE has legal responsibility to ensure that funds are made available to States and Tribes to meet the operational needs in support of the transportation and repository plans. It is up to DOE to assure funding for such activities.

Past and present DOE shipping programs have established the precedent of providing financial assistance to states and tribes for critical non-training shipment-related activities. Examples include the WIPP, Foreign Research Reactor, West Valley, Cesium, and depleted uranium hexafluoride shipping programs. DOE should affirm its commitment to the states for funding a comprehensive transportation program regardless of funding sources.

Comments of the Western Interstate Energy Board

Nevada endorses the comments submitted by the Western Interstate Energy Board's High-Level Radioactive Waste Committee and incorporates those comments by reference into the State's comments.