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May 15, 1995

U.S. Department of Energy
c/o Lois Smith
TRW Environmental Safety Systems
2650 Park Tower Drive, Suite 800
Vienna, Virginia 22180
ATTN: Section 180(c) Comments

For Whom It Concerns:

The following comments to the DOE Office of Civilian Radioactive Waste Management (OCRWM) correspond to a Federal Register notice of inquiry, "Safe Transportation and Emergency Response Training; Technical Assistance and Funding."

The OCRWM NOI is a priority issue for tribes due to a host of potential impacts to an unestimated but substantial number (e.g., hundreds of thousands) of tribal peoples and their homelands. The federal trust responsibility bestows various rights and benefits upon tribes and comes into effect with the 180(c) process: tribes need to be informed, advised and consulted on the OCRWM intent to provide funding for technical assistance, safe transportation and emergency preparedness and response training of tribal public safety officials whose jurisdictions the Secretary of Energy plans to transport spent nuclear fuel (SNF) and high-level radioactive waste (HLRW) material.

Tribal perspectives and concerns need yet to be represented, understood, and addressed and must not be neglected, dismissed or suppressed in the 180(c) process, especially when these decisions may incite permanent cultural adversity.

If you require further clarification or information regarding these comments, please contact me at the address provided below.

Sincerely,



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Enclosure

**Comments on the Implementation of Section 180(c)
of the Nuclear Waste Policy Act of 1982, as amended,
for consideration by
The U.S. Department of Energy
Office of Civilian Radioactive Waste Management
(Submitted by L.J. Hopkins)**

These comments do not represent a final comprehensive opinion on section 180(c) but is an initial review of 180(c). The comments are organized accordingly:

- I. Intergovernmental Issues
- II. General Comments
- III. Funding Options
- IV. Conclusion

I. Intergovernmental Issues

Tribes possess sovereign status, bear treaties and continue to negotiate government-to-government legal arrangements with the federal government: with this in mind, OCRWM must provide adequate funding, training, assistance for the tribes impacted by the transport of radioactive waste material through or near by Indian Country.

- ▶ DOE understands and acknowledges that tribes should not to be equated with "local governments" nor with "states" and should interact with tribes according.
- ▶ The sovereign attribute of tribal nations exist due to exercise of sovereign powers and established intertribal, national and international recognition.

A. Affected Tribes

At issue is the transport of some of the deadliest radioactive material known to man that is to pass through or near by Indian lands. The health, welfare and environmental risk acceptable to a tribal nation cannot be characterized nor compared nor quantified to that of any other nation:

- (1) Each tribe is unique culturally, governmentally, and influenced by its environment in a manner that only its citizens recognize, value and choose to comment on.
- (2) Federal intentions which could impact tribes adversely raise questions relevant as to how these intentions could affect tribes and then which tribes will be affected?
- (3) Affected tribal entities have or haven't at all been advised of how they'll be impacted. Tribes haven't been properly consulted with on issues although there exist official documents stating that the tribes will be consulted in matters affecting their peoples and territories.
- (4) Several tribes affected by the transport, storage or disposal planning of radioactive waste have requested forums for consultation and financial assistance discussion -- with no resolve. The intent of 180(c) progresses without proper tribal participation.

- (5) DOE should consider hosting future 180(c) public meetings or 180(c) tribal briefings in cities close to or perhaps at an affected tribal nation to acquire and maintain proper relations with tribes.

II. General Comments

A. Assistance for Affected Tribes

State and local governments already having attained "affected" status receive technical assistance funding and work to diligently inform their communities re: radioactive waste, and activate emergency officials to prepare for waste shipment and storage measures. Tribes haven't yet received such funding even though scores of tribes are currently affected by radioactive waste transport, storage and disposal plans and activities. It cannot be presumed that all affected tribes will be able to locate and qualify for various funding sources.

- (1) "Funding" should provide for technical assistance which includes purchasing state-of-the-art equipment necessary to adequately conduct emergency response training and procedures (i.e., course training, exercises, drills) and safe transportation training and procedures (i.e., certification of drivers and vehicles, speed limitations)

B. Training for Tribes

- (1) The full implementation of 180(c) requirements should provide funding not only for technical assistance, safe transportation and emergency training to states and tribes but include funding for re-training to insure skills and coordination are maintained, and awareness of updated methods and technology.

C. Technical Assistance

- (1) "Technical assistance" should not be limited by inflexible options but should provide for a wide spectrum of activities involving information and document dissemination, advise ment, training funding, equipment, and general training to build a base of knowledge, resources and infrastructure.
- (2) Providing technical assistance would encompass point(1) items to carry out the procedures relevant to accident or incident prevention in the scope of transportation of radioactive waste, and with procedures relevant to addressing emergency preparedness and response training.
- (3) The scope of technical assistance must remain broad to encompass various needs of tribal nations. For example, several of the tribal nations are in rural areas where access to emergency institutions, fire and medical facilities is limited, distant and often difficult to range getting to, let alone arranging transportation.
- (4) Technical assistance funds should be addressed to the tribal governments to coordinate technical assistance spending tailored to its needs. In this instance the tribal government will maintain the decision-making responsibilities on addressing safe routine transportation and emergency measures within their jurisdiction.
- (5) DOE has stated it will provide technical assistance, training and funding directly to tribes three years prior to beginning shipment of radioactive waste material.

D. Equipment

- (1) OCRWM does not consider 180(c) requirements to include funding for equipment yet expects local governments and affected tribal governments to provide for their own equipment. Several tribes are overwhelmed economically and most certainly won't be able to afford the needed equipment to protect their communities should a radiological incident occur. If this scenario looms in the future, lack of providing for equipment funding places tribes in dire straits and immediately places the trust responsibility in as much also.
- (2) Equipment is determined to be a wide spectrum of tools, instruments, manuals, protective devices and clothing --all physical manifestations serving the purpose of 180(c).

E. Shipment Notification

- (1) Tribes require advanced notification of when spent fuel or high-level radioactive waste shipments are within or near their jurisdiction in order to have emergency preparedness and response teams put on alert.
- (2) Tribes require access to safeguards information in order to achieve advanced notification. Safeguards information needs to include provisions for tribes.
- (3) OCRWM needs to establish a tribal notification policy.
- (4) The Nuclear Regulatory Commission needs to include tribes in its regulations, especially that which provides states with advanced notification of spent fuel or high-level radioactive waste shipments. The NRC has set regulations for OCRWM to notify states but none for notifying tribes.

III. Funding Options

The selected funding mechanism should employ the following characteristics to assist tribal governments:

- (1) The implementation of direct grant funding should be directed to corridor states and tribes affected by radioactive waste shipments.
- (2) Matching of funds should not be a requirement.
- (3) Allocate a percentage of funding to states and tribes based on the shipment-miles through jurisdictions.
- (4) Provide for pre-shipment funding as soon as possible (3 to 5 years minimum before actual shipments occur) to allow tribes to coordinate transportation route security, upgrade road or rail route; coordinate emergency response workforce and educate local communities on shipment necessity.

A. Funding Mechanisms

- (1) Group One: Linkage with Established Federal Agency Programs. Overhead cost of administering programs through federal agencies ~~through~~ would drain funding away from the tribal program.

Sub-option one - Linkage of HMTUSA public sector planning and training grant program in combination with another program such as the Motor Carrier Safety Assistance Program (MCSAP) could possibly work well for providing funds to tribal jurisdictions to build basic skills to begin to participate within these programs. Tribes could begin to take a lead on building infrastructure and attaining technical assistance prior to 180(c) implementation. Programs would need to acquire provisions to address flexible tribal eligibility criteria, necessities, and grant matching requirements. Whereas a program such as the Research and Special Programs Administrations (RSPA) grant program doesn't provide tribal eligibility for planning grants.

- (2) Group Two: Cooperative Agreements with State, Tribal, and other Organizations. This option also incurs overhead costs and would redirect funding from the affected tribes. Expansion of existing programs providing training for tribes may prove effective.
- (3) Group Three, Option Three: Provide Direct Payments to States and Tribes for Specified Use. DOE programs are diversified to meet the goals of specific projects (i.e., WIPP) and would operate efficiently if eligibility criteria were such to meet the range of state, local and tribal conditions. A Formula Consolidated Grant plan would work if tailored to meet tribal needs. Neither of these would function effectively though if broad criteria means less funding provided for safe transportation and emergency response training. Cooperative Agreements involving DOE participation is desirable in anticipation of tribes requiring direct expert assistance in establishing and maintaining safe transportation and emergency preparedness and response training programs.
- (4) Group Four: An OCRWM Program. It would be reasonable to covet an existing model currently operating or combining models rather than to develop a new program scheme.
- (5) Group Five: Mixed Options. The option to develop linkages might function favorably for tribes which do not fit the eligibility criteria of one or more existing programs. Programs would yet be required to provide provisions that would be flexible to the needs of tribes which are not homogenous.

IV. Conclusion

These comments should be of assistance to OCRWM in clarifying what some of the tribal issues are upon further developing implementation of section 180(c) of the Nuclear Waste Policy Act of 1982, as amended. I look forward to reviewing updates on 180(c) implementation planning. Further input by tribes on this matter might be better obtained if other mechanisms are utilized to insure tribes are made aware of future requests for comments.