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**AGENCY FOR NUCLEAR PROJECTS
NUCLEAR WASTE PROJECT OFFICE**

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September 18, 1996

Corinne Macaluso
U.S. Department of Energy
c/o Lois Smith
TRW Environmental Safety Systems, Inc.
600 Maryland Avenue, S.W., Suite 695
Washington, DC 20024

Dear Ms. Macaluso:

Enclosed are the State of Nevada's comments in response to the Department of Energy's Federal Register Notice of May 16, 1996 on "Safe Transportation and Emergency Response Training; Technical Assistance and Funding."

Should you have questions concerning these comments or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", written in a cursive style.

Robert R. Loux
Executive Director

RRL/JCS/cs

Enclosure

cc Governor Miller
Congressional Delegation
Julie Butler, State Clearinghouse
Affected State agencies
Affected local governments/tribes

**STATE OF NEVADA COMMENTS
ON THE U.S. DEPARTMENT OF ENERGY'S MAY 16, 1996
NOTICE OF PROPOSED POLICY AND PROCEDURES FOR SAFE
TRANSPORTATION AND EMERGENCY RESPONSE TRAINING**

**Prepared By
The Nevada Agency for Nuclear Projects**

1.0 Background Comment

The State of Nevada, individually¹ and in conjunction with the Western Interstate Energy Board (WIEB) and the Western Governors' Association (WGA), has commented extensively on the U.S. Department of Energy's (DOE) various proposals and notices regarding the implementation of Section 180(c) of PL 97-425, the Nuclear Waste Policy Act of 1982, as amended (NWPA). Nevada continues to endorse the approach to Section 180(c) implementation contained in the WGA resolution of August, 1994² and the WIEB comments submitted in response to DOE's January, 1995 Notice of Inquiry³. Nevada believes that assistance for training emergency response and for safe routine transportation of spent nuclear fuel (SNF) and high-level radioactive waste (HLW) must begin 3 to 5 years before shipments through a jurisdiction can begin; that grants should be made directly to each eligible jurisdiction; that planning grants and assistance must be part of the Section 180(c) implementation program; that states and tribes must have discretion in planning and implementing training activities appropriate to their individual needs and circumstances; that funds provided under the Section 180(c) program must be adequate to cover all training costs incurred by states and tribes as a result of NWPA shipments through their borders⁴; that shipments to any private storage facilities that may be developed (such as the proposed Mescalero facility in New Mexico) must be covered by Section 180(c) assistance; and that no shipments can be made through a jurisdiction unless adequate training assistance has been provided.

¹ See State of Nevada comments in response to DOE's January 3, 1995 *Federal Register* Notice of Inquiry (Letter R. Loux to D. Dreyfus, April 3, 1995); State of Nevada Comments on DOE's Preliminary Draft Strategy to Provide Training Assistance as Required by Section 180(c) of the Nuclear Waste Policy Act, as Amended Letter R. Loux to J. Bartlett, January 31, 1991).

² Ref. Western Governors' Association Resolution 94-005 (August, 1994).

³ Letter from the Western Interstate Energy Board High-Level Radioactive Waste Committee to Daniel Dreyfus, OCRWM, dated May 4, 1995.

⁴ The Nuclear Waste Policy Act of 1982, as amended, clearly intends that all costs associated with the disposal of spent fuel and high-level waste be borne by the generators of that waste. All costs associated with emergency response and safe routine transportation for spent fuel and HLW that are above and beyond what would ordinarily be incurred by states, tribes, and local governments in the absence of the federal program must be paid for out of the Nuclear Waste Fund or Defense appropriations for the program.

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, implementing policies and procedures should be codified in regulation by DOE. Nevada endorses the proposed "Section 180(c) Strawman Regulations" submitted to the Secretary of Energy as part of the WGA resolution acted on in August 1994. 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 the case of a program that must assure adequate training and preparation for a shipping campaign of unprecedented scope (from a minimum of 15,000 to as many as 50,000 or more shipments by a variety of modes and routes) and duration (25 to 50 years).

2.0 Comments on Proposed Policy and Procedures

2.1 Funding Mechanism

2.1.1 Nevada supports DOE's proposal to utilize direct grants to states as the mechanism for making Section 180(c) funding available for training. The Act clearly intended that the DOE implement the Section 180(c) requirements for funding and assistance in a manner consistent with its other obligations involving states and Indian tribes. It is most effective and efficient for OCRWM to implement the Section 180(c) program directly, without using other federal agencies and bureaucracies. It is imperative that individual states and tribes be permitted to determine what training is needed and how to best implement the training. Training for each state and tribe will differ markedly. Each state/tribe has different needs, and some state programs are more advanced than others. Each state/tribe will require training depending on what type of situation each may encounter. For example, states hosting nuclear power plants or federal nuclear facilities may have needs different from transportation corridor states. Nevada believes the individualization of training assistance based on each state's or tribe's particular circumstances can best be done through a direct, bilateral grant program administered by DOE.

2.1.2 The May 16, 1996 *Federal Register* Notice (Notice) states that "... the Department does not intend to codify the policy and procedures in this notice as substantive regulations." Nevada believes that DOE should promulgate regulations under the federal Administrative Procedures Act to assure continuity and stability in the training assistance program and assure that future Secretaries - or individual Department staff - will have a formal and structured framework for implementing the program over the 25 - 50 year period that would be required. States and tribes must be able to count on Section 180(c) assistance year after year, despite the continuing uncertainties that will plague the NWPA program and the inevitable changes that will occur within DOE and the high-level waste program nationally.

2.2 Definition of Key Terms

2.2.1 The definition in the Notice of “safe routine transportation” refers to “the enforcement of standards and inspection of shipments of spent nuclear fuel and high-level radioactive waste to a repository or an MRS pursuant to the NWPA” Nevada contends that this definition should be broadened to include the shipment of SNF and HLW to a repository, MRS, 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 Mescalero facility in New Mexico). States like Nevada 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 or preparatory to disposal in a repository.

2.2.1.1 The definition of “safe routine transportation” must include, in addition to the enforcement of standards and the actual inspection of shipments, the planning and preparation needed to carry out such enforcement and inspections. Nevada does not have the capability to begin to provide inspection and enforcement for the large numbers of shipments and ongoing nature of the shipping campaign that would result from NWPA shipments to a repository. “Safe routing transportation” must be defined broadly enough to include personnel, equipment, and planning needed to make training effective and assure adequate capabilities for effective enforcement and inspections. “Safe routing transportation” also must encompass activities required for escorting shipments, not merely inspecting them.

2.2.2 The definition of “technical assistance” should not exclude the provision of equipment, as the Notice currently does. There may be instances where DOE will find it expedient and efficient to provide states with specific equipment as part of a technical assistance effort. Items such as radiation detection equipment for local responders, computers for accessing shipment monitoring information, and other such equipment could be provided by DOE under the technical assistance provisions of the Section 180(c) program. DOE should not be precluded definitionally from providing such assistance if the circumstances warrant.

2.2.3 Need for a broad definition of “training”: The final policy and procedures for Section 180(c) assistance must also contain an adequate definition of the term “training” as it applies to NWPA shipments. While Section 180(c) of the Act requires that assistance be provided for training emergency response providers, state, tribes and local governments must have done the planning necessary for effectively providing training, and they must have the necessary administrative and infrastructure capabilities to implement adequate training programs. They must also have done the needed in-state route and risk and needs analyses to effectively target training where it is needed. In providing assistance and funding, DOE should permit states and tribes to include planning and related functions in their programs for Section 180(c) implementation. Assistance should also cover the development and testing of training curricula. The term “training” as it pertains to Section 180(c) must be defined broadly enough to

permit states and tribes receive assistance not only for the actual training of responders and public safety officials, but also for those administrative, planning, and infrastructure requirements essential to implementing such training.

2.3 Eligibility and Timing of the Grants and Technical Assistance Program

2.3.1 Timing: Nevada believes that providing technical and financial assistance under Section 180(c) at least 3 years prior to the onset of shipments through a jurisdiction is adequate to assure preparation and training (assuming, of course, that routes have been identified and the funding and assistance levels are adequate to the needs of particular states, tribes, and local jurisdictions). The proposal in the Notice to begin the grant application process 4 years prior to the onset of shipments should provide adequate time for assistance to begin 3 years prior to shipments. However, there may be instances where assistance can and should begin earlier than 3 years prior to shipments, as in the case of states which are designated as hosts for storage of disposal facilities or states that are shown to be major transportation corridors jurisdictions. The Section 180(c) policy and procedures should not preclude the Department from making funds and assistance available to such states and tribes earlier than 3 years before anticipated shipments, should circumstances so dictate.

2.3.1.1 The policy and procedures should clearly articulate that no shipment can be made through any state or tribe unless Section 180(c) assistance has been provided and the state/tribe is adequately prepared to assure safe routine transportation and respond to emergencies, and the level of preparedness and training that constitutes *adequacy* must be clearly defined⁵. The provision of assistance should be a condition of shipment through a jurisdiction, not something that the Secretary of Energy can arbitrarily waive for the sake of schedule or expediency. While such a requirement may put an added burden on DOE to assure the prompt and efficient implementation of required assistance, in the long run it will insure that the NWPA transportation system is safe and will enjoy a higher degree of public trust and confidence.

2.3.2 Calculation of funding amounts: The Notice stipulates that "the Department intends to calculate the base amount and variable amount available to each jurisdiction and include that information in the application package." Nevada strongly objects to DOE arbitrarily determining the amount of funds a state will require to adequately train personnel and prepare for shipments under Section 180(c). (See additional comments below regarding the "Basis for Cost of the Program") No formula that DOE can devise will be adequate to account for the vastly different circumstances found in the various states and tribes affected by NWPA shipments. Any grant

⁵ One document that attempts to establish such standards with respect to emergency response capabilities is NUREG/CR-2225, "An Unconstrained Overview of Critical Elements in a Model State System for Emergency Response to Radiological Transportation Incidents," U.S. Nuclear Regulatory Commission.

program that is implemented must allow individual states and tribes to assess their own funding needs and present these to DOE as part of the application package for grant assistance. The approach recommended by WGA and WIEB in the "strawman regulations" submitted to DOE in 1994 provides a model whereby states will be assured an adequate annual base allocation. Other models that DOE could draw from for developing funding policies include the Inland Energy Impact Assistance Program and the Coastal Energy Impact Assessment Program.

2.3.3 Identification of eligible jurisdictions: The Notice states that "the Department anticipates knowing three to four years prior to shipment which states or tribal land shipments will travel through, even if routes have not been selected." There does not seem to be any basis whatsoever for this statement. In fact, in the same paragraph, the Notice stipulates that "[t]wo years prior to the shipments ..., the Department would announce proposed routes." This matter is further complicated by DOE's recent Notice of Waste Acceptance, Storage, and Transportation Services, in which it appears that ultimate responsibility for actual selection of routes will be delegated to private contractors selected to manage the transportation system for DOE. In addition, that same notice indicates that as many as four separate regional contractors could be employed, meaning that there could be four different routing schemes depending on which region the shipments are coming from. DOE's Section 180(c) policy and procedures must clearly articulate the respective roles and responsibilities of DOE and its chosen private contractors with respect to emergency response and safe routine transportation issues and describe the interface between government and private sectors in this critically important area. Nevada and other states have long held that the only way states can be assured of adequate preparation for NWSA shipments is for DOE to take responsibility for identifying and enforcing shipping modes and routes from each reactor or waste generator site to each storage or disposal site. Such mode/route identification must be done at least 3 and preferably 5 years prior to shipments to enable states and tribes to consider the need for alternative routing within their borders and assess training and related needs. DOE's Section 180(c) implementing policy and procedures must clearly articulate that it is DOE's - not private contractors' or carriers' - responsibility for early route identification as the basis for eligibility for Section 180(c) assistance.

2.4 Allowable Activities for Funding

2.4.1 Broad state discretion in determining training activities: Nevada supports the intent specified in the Notice that "... it would be the applicant's [state's or tribe's] decision as to who gets trained, the level of training obtained, and the organization that administers the training." However, that statement may not be broad enough to cover the amount of discretion required by states and tribes in developing effective programs. The Notice should stipulate that each state and tribe will be afforded broad discretion in determining the components of an adequate training program responsive to the individual needs of that particular state/tribe. Activities related to planning, administration, and targeting of training should be allowable. These include state-level program planning and administration, needs and risk analysis to determine routes along which

training needs to be focused, infrastructure needed to insure training can be successfully delivered, and other aspects of training unique to individual state/tribes.

2.4.2 Limit on the use of funds for equipment: The Notice proposes that states/tribes would be limited in the amount of funds that could be budgeted for the purchase of equipment each year (10% of the annual grant amount). Nevada contends that such a limitation is inappropriate, unwarranted, and dismissive of the differential needs and circumstances of the various states and tribes. A state should be able, under the Section 180(c) assistance program, to assess its training needs and develop a program based on that assessment. Some states, especially those that have nuclear power plants and/or a history of experience with SNF or HLW shipments, will likely have more of the needed equipment than states, like Nevada, which have not had to contend with such shipments in the past - or at least not in significant numbers. States should have discretion to use funds to adequately assure safe routine transportation and train public safety people, including determining the level of expenditures that will be needed for equipment. DOE has no basis for arbitrarily limiting the amount of funds states may use for equipment - or other activities - as long as that equipment is used for the purposes of Section 180(c) of the NWPA.

2.4.3 Exclusion of funds for the conduct of drills and exercises: The Notice states categorically that "Section 180(c) funds would not be available for the conduct of drills and exercises" because these are considered a means to measure preparedness and are beyond the scope of Section 180(c). It goes on to propose that DOE would, instead, conduct drills and exercises "in conjunction with states, tribes and local governments." Nevada believes this exclusion is unwarranted and potentially destructive of the intent of Section 180(c). Drills and exercises are an integral part of training for emergency response personnel, not an adjunct activity. Drills and exercises allow training to be infused with real world conditions, not merely classroom teaching. The use of drills and exercises are essential to effective emergence management/response training and should not be excluded. Each state and tribe should be able, based on its own assessment of training needs and design of its particular training program, to use drill and/or exercises as part of its Section 180(c) training program. (See attached comments from the Nevada Office on Emergency Management regarding the need for exercises as part of training.)

3.0 Appendix - Basis for Cost of Program

Nevada takes strong exception to the whole concept contained in the Appendix to the Notice regarding the calculation of costs for individual state and tribe programs. The formula proposed by DOE appears designed to intentionally shift the financial burden for preparedness and training to individual states, thereby creating potentially major unfunded mandates for states and tribes. The financial burden would fall heaviest on states and tribes that are least prepared and most likely to experience major impacts as a result of the commencement of spent fuel/HLW shipments.

DOE contends (in its response in the Notice to prior comments on Section 180(c) implementation proposals) that Section 180(c) assistance should be designed only "to provide jurisdictions assistance in an increment above their current level of preparedness rather than to supply complete emergency response or safe routine transportation capabilities along NWPAs transportation routes." Clearly, the proposed cost basis for the program as articulated in the Appendix is designed to operationalize this interpretation of the law. As such, it fails to satisfy the requirement in the NWPAs that the waste generators pay for the costs of waste disposal, including states', tribes', and local governments' emergency response/safe routine transportation-related costs. Determining a state's or tribe's needs based on arbitrarily set costs for a predetermined and static number of people trained - unrelated to the volume of shipments and the level of preparedness preexisting within a state or tribe, as the Notice would do, is wholly inappropriate for the type of programs states and tribes must undertake in the face of the kind of unprecedented radioactive materials shipping campaign contemplated by the NWPAs. Rather, costs for individual states/tribes programs must be based on state/tribe-specific needs assessments undertaken as part of the grant application process. It must be left to the state or tribe to determine what its training needs are and to develop a budget and program to meet those needs. Through bilateral negotiations, DOE and the state or tribe would then need to arrive at a mutually acceptable level of funding.

The assumption that Section 180(c) need only to assist states and tribes to incrementally increase their level of preparedness obfuscates the fact that almost no jurisdiction currently has the capacity to adequately respond to the level, intensity, and duration of the shipping campaign required under the NWPAs. If the shipping schedule is accelerated to provide for early (i.e. 1998 or 1999) shipments to an interim storage facility, as proposed in legislation before Congress, the consequences of DOE's "incremental" approach could be financially and operationally devastating to corridor and host states alike. Obviously, some states will need more assistance initially just to reach a level of minimal competence in this regard. The proposed cost basis does not require the Section 180(c) to identify and guarantee this minimal level of preparedness. The cost basis proposed in the Notice will result, unavoidably, in significant unfunded mandates being transferred to states, tribes, and local governments. This is the very situation Section 180(c) of the Act was intended to avoid.

Nevada recommends that DOE scrap the proposed cost basis contained in the Notice and instead utilize the approach recommended by the Western Governors and the Western Interstate Energy Board in its "strawman regulations" for Section 180(c) implementation.

4.0 Other Comments

4.1 Coordination: The Section 180(c) policy and procedures must provide for the coordination of Section 180(c) training with other state, tribe, and federally supported

hazardous materials/radioactive materials transportation emergency response training provided through the Hazardous Materials Transportation Uniform Safety Act (HMTUSA), the WIPP transportation program, the Cesium transportation program, and the foreign research reactor and DOE-owned spent fuel transportation program. This should include provisions dealing with how other federal agencies (such as the Federal Rail Administration and U.S. Coast Guard) will be involve in preparation for and training in safe routine transportation and emergency response activities.

4.2 Defense waste shipments: The implementing policy and procedures must also clearly articulate that Section 180(c) covers not only commercial spent fuel shipments, but also defense waste shipments to a repository or other facility. Other wastes that may, in the future, be shipped to a repository of interim facility (e.g. miscellaneous wastes requiring geologic disposal, mixed waste, etc.) must also be covered by the Section 180(c) program.

5.0 Comments of the Nevada Office of Emergency Management

The comments of the Nevada Office of Emergency Management are incorporated into these State of Nevada comments as Attachment I.

ATTACHMENT I

Comments of the Nevada Office of Emergency Management



DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY
DIVISION OF SPECIAL SERVICES
OFFICE OF EMERGENCY MANAGEMENT
Capitol Complex, 2525 S. Carson Street
Carson City, Nevada 89710
(702) 687-4240 • Fax (702) 687-6788

August 1, 1996

Joseph Strolin
Administrator of Planning
Nevada Agency for Nuclear Projects
Capitol Complex
Carson City, Nevada 89710

RECEIVED

AUG - 3 1996

NUCLEAR WASTE PROJECT OFFICE

Dear Mr. Strolin:

The Office of Emergency Management's comments on the restrictions of the Department of Energy's Section 180 (c) Notice of proposed policy and procedures.

The Office of Emergency Management (OEM) takes exception with the narrow definition of training in the Federal Register. It is nationally recognized that "training" in any capacity is not complete unless validated by exercise. To exclude exercise from a "training program" is to leave the training incomplete. Historically, both the Federal Emergency Management Agency (FEMA), the Environmental Protection Agency (EPA) the Department of Energy (DOE) have used "exercise" as a validation tool within their training programs. A good example is DOE's Radiological Emergency Response Operations Course (RERO). This course is not complete until the participants have all taken part in a full-scale exercise, testing the information covered in the class. It is inappropriate for DOE to exclude this vital tool from the states within the Section 180 (c) training grant.

Exercise is also a valuable tool in determining training needs. All three of the federal agencies previously mentioned use this method to assess internal and external training needs. DOE's proposal to limit the grant to "training" only, excluding exercise, is not in line with nationally excepted training assessment practices.

The proposal limits the recipients from building new programs and states that it is only to be used for augmenting existing training programs. (1) What if no program(s) exist? (2) If a jurisdiction is starting from scratch in this area, are they then excluded from participating? (3) How does this exclusion assist public safety? In many jurisdictions a new program would be necessary. It is our conclusion that this exclusion should be removed.


The formula for determining a state's award does not allow for the current response readiness level of each jurisdiction. Some states will need more help in getting started. The current proposal does not address this need. Rural areas, regardless of "miles traveled" will not be starting at par with more metropolitan states. The formula used should be changed to account for this difference.

The proposal limits equipment purchase to "training related" equipment only. This exclusion lets the states purchase and use modern equipment to train first responders but forces these responders to use antiquated equipment or at worse no equipment at all, for real emergencies. (1) How does DOE justify training state and local responders for this type of emergency and not provide them the "Response Tools" required for the job? (2) Why is it assumed that a jurisdiction would have access to these types of tools/equipment before the high level waste shipments start? We suggest that the restriction on equipment purchase should be removed from the grant.

The proposal does not address the needs of volunteer responders of rural jurisdictions. It is imperative that these special needs be addressed in the scope of the grant. More freedom is needed in the grant to allow states to address these special needs. The site of transfer station(s) and the interim storage site state will have special needs both in training and equipment that are not addressed in the proposal. In the proposal all states are treated the same regardless of differing needs. The scope of the grant should be changed to allow for them.

Should you have any questions, please do not hesitate to give me a call at 687-7362. Thank you for your consideration in this matter.

Sincerely,



Joseph A. Quinn
Training Manager

JAQ:jp