



INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

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President

VINCENT J. BOLLON
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September 30, 1996

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

Attn: Section 180(c) Comments

Dear Ms. Macaluso:

Thank you for giving us this opportunity to comment on the Department of Energy's proposed policy statement on its program of technical and financial assistance for the training of public safety officials in those jurisdictions through which DOE will transport highly-radioactive materials. The International Association of Fire Fighters ("IAFF") represents more than 225,000 fire fighters and emergency medical personnel. These emergency responders, who are the first line of defense during any hazardous material incident, provide an essential public service to every community in the United States.

The IAFF has long been concerned about the need for adequate training of our members who must handle hazardous material incidents, which have become both increasingly frequent and increasingly complex in nature. Our dedication to ensuring proper training is demonstrated through the continued efforts of our Hazardous Materials Training Department, which conducts first responder training programs as well as more advanced programs. These programs are designed to teach fire fighters and other emergency personnel how best to mitigate an incident and control the scene to minimize the risks to the public and to themselves. We have thus watched with interest the progression of the Section 180(c) program, and urge you to consider carefully our comments in light of our experience and expertise with regard to such training. We have identified six areas of your proposal that require additional attention: funding level, eligibility for funding, funding mechanism and allocation, funding uses, oversight, and related matters.

Funding Level. First, the level of funding is inadequate. In 1981, the Nuclear Regulatory Commission issued a report written by Rockwell International (NUREG/CR-2225), "An Unconstrained Overview of the Critical Elements in a Model State System for Emergency Response to Radiological Transportation Incidents." This report, which specified in great detail the equipment, training, and state support that will be necessary, clearly suggested that a medium-sized state should have in place an emergency response system with ten well-trained, quick-response teams stationed along the routes. This proposal would entail training at least 100 people and would require an operating budget of \$5.6 million for each such state. That figure would be even greater once adjusted for inflation, and it does not even include the cost of emergency response vehicles. Moreover, in the fifteen years since the report was issued, there have been numerous advances in equipment, but this better technology also carries a higher price. Finally, experience has taught us that it requires significantly more first responders to control the scene. The Federal Emergency Management Agency recommends that radiological emergency response teams have at least sixteen members.

Eligibility for Funding. The second serious problem is the determination of eligibility for funding. DOE contemplates notifying governors or tribal leaders of the imminent transport of high level nuclear waste or spent nuclear fuel, and notifying them of their eligibility for technical and financial assistance. When this was initially proposed, the IAFF was one of several groups to express concern that the funding might never reach the local level. It is unclear that DOE has adequately addressed this concern.

DOE asserts in its discussion of the history of Section 180(c) that DOE "has ten cooperative agreements with national and regional organizations representing state, local and tribal constituencies to provide information and solicit input..." This assertion is incorrect. So far as we are aware, these organizations represent state-level program directors, state legislators, or governors (except National Congress of American Indians). There is no agreement with an organization representing local government, which is regrettable when one considers that this is the level of government responsible for first response to a direct radiological incident.

Congress expressly recognized the essential involvement of local government. Section 180(c) states that the "Secretary shall provide technical assistance and funds to States for training of public safety officials of appropriate units of Local Government and Indian Tribes." Clearly, this language charges DOE with ensuring that representatives from local governments and Indian tribes receive appropriate training - not state

agencies. While DOE recognizes that the tribal governments should determine how best to apply their resources and assigns them a certain measure of autonomy, DOE leaves it up to the states to apply resources to affected municipalities. According to DOE, the statute provides that the states "determine how best to allocate the assistance to local government." The IAFF questions why this is inconsistent with the treatment of the tribal governments, and urges that DOE allow local governments input in how the funds are distributed. DOE further states that grant recipients will be "required to encourage local government participation in planning and to provide awareness training materials and public information...to local public safety officials." This level of participation by local government is inadequate.

In its proposal, DOE says only that a state applying for grants will "be required to demonstrate in its plan how the local jurisdictions are benefiting from the program." The IAFF agrees that, at the very least, applicants should be required to demonstrate in advance of receiving funds that the funds will be used to train responders. While we understand that the purpose of the block grant funding proposed by DOE is to allow maximum flexibility, DOE must set some parameters on use of the funds in order to ensure that the program operates effectively. As the IAFF stated in our previous comments on Section 180(c), there must be clear national standards that leave no room for interpretation. This should include not only the standards for safe routine transportation and emergency response plans, but also the appropriate use of the grants.

Additionally, the IAFF can easily imagine politics playing too large a role in the distribution of funds by the state to its local government. A state official could try to shore up a political base or appease a politically sensitive interest group. This problem might not arise if there were sufficient funds. However, given the likelihood that the grants will not cover all the expenses, it is especially important that DOE set clear standards to ensure that the money reaches the local level and that the funds are used to train the emergency responders. DOE also "intends to notify the governor or tribal leader of a state or tribal government with a letter and information packet, including an application." The IAFF urges DOE to provide in this policy for direct notification to affected local governments as well, since their being notified by the state is by no means assured.

Finally, DOE responded to comments inquiring about assistance for jurisdictions adjacent to those through which spent nuclear fuel or high level waste will be transported. DOE will not provide such assistance as it is not required under the statute. However, the IAFF urges DOE to revisit this

issue. There could be many routes along state borders or in isolated areas where the closest hazardous materials response team is located in another state. Since DOE envisions the use of Section 180(c) funds to provide incremental training, it would be sound policy for these teams to receive radiological emergency response training, even though they are not physically located in affected jurisdictions.

Funding Mechanism and Allocation. DOE's proposal to give base grants with variable amounts based on the number of highway miles that will be involved, may not sufficiently allow for the "varying levels of preparedness" of jurisdictions. Indeed, the very concept of block grants seems to indicate that DOE assumes that "one size fits all" - that training needs do not vary from state to state. DOE does not only set federal standards but is also responsible for ensuring their implementation. This includes assisting the grantees in assessing their preparedness for a radiological emergency and developing emergency response plans. Since DOE specifically prohibits the grantees from using Section 180(c) funds for risk assessment, and since risk assessment is an essential part of developing an emergency response plan, DOE must provide at least technical assistance in that area.

A tremendous administrative burden will be placed on the states under DOE's proposed policy. States and tribes will have to monitor the process for route selection and shipment schedules. They will have to know the preparedness of each potentially-affected community in order to be able to apply for training and technical assistance funds within the parameters set by DOE for use of the funds. The application for Section 180(c) funds requires a three-year plan detailing how the funds will be spent each year as well as a description of the coordination with local governments. All of this requires a staff with the programmatic knowledge and experience to compile the information, make long-term decisions and manage the projects. The IAFF questions whether these states have the staff, equipment, finances, and will to carry out this program. It seems that DOE's current proposal will necessitate the creation of state-level offices analogous to the Office of Civilian Radioactive Waste Management.

Furthermore, DOE discounted population as a factor for determining the allocation of funds, stating that "the same level of effort is required in responding to an emergency no matter how many people may be affected." The IAFF strongly disagrees. Controlling the scene of a hazardous materials incident is more complex and often more urgent in well-populated areas. Ensuring the public's safety during a hazmat emergency is the single most important goal of an emergency responder, and population is obviously a

factor in that response. For example, an accident could necessitate that the surrounding populace be evacuated, a task whose difficulty grows exponentially as population increases.

Training needs vary not only from state to state but from jurisdiction to jurisdiction. For example, our research shows that if an incident involving a DOE shipment were to occur in Denver, Colorado, the emergency responders would do two things only: isolate the area and telephone the emergency response team at Rocky Flats. Denver has allocated only two hours to this training for radiological emergency response. In counties a greater distance from Rocky Flats, the response is completely different, involving longer response times and fewer first responders, and it just begins with controlling the scene. An accident might well occur where there is no radiological response training in place, or where there is not enough manpower or equipment to handle the accident within the critical time period.

Funding Uses. DOE anticipates allowing the states a great deal of flexibility in determining the use of Section 180(c) funds. DOE, fittingly enough, places restrictions on the use of the funds. However, the IAFF questions the wisdom of certain prohibitions.

DOE proposes allowing that a maximum of 10% of the grant money may be used for the purchase of equipment. While the IAFF is pleased to see that some funds may be used for equipment, this limit strikes us as arbitrary. Since some jurisdictions lack even the most basic equipment for hazardous materials response, such as turn-out gear and self-contained breathing apparatus, much less more advanced equipment for radiological emergency response, DOE should adjust this number upward to account for local needs. DOE might consider providing a sliding scale for equipment purchases. For example, in Transportation Year minus three, the jurisdictions could spend a higher percentage on equipment, and then use the funds provided in subsequent years for training on that equipment.

DOE also asserts that risk monitoring and assessment are outside the scope of safe routine transportation activities. That assertion is absolutely false. A good pre-plan begins with assessing the risk and determining and monitoring for reduction of those risks. The emergency response team's ability to minimize the impact to civilians, the environment and themselves begins with a baseline assessment. In the statute governing the transportation of hazardous materials, Congress specifically endorsed the importance of risk assessments when it required the Secretary of Transportation to conduct such

an assessment during a study of "routes and modes that would enhance overall public safety" (49 USC Section 5105).

DOE further excludes drills and exercises from funding. It appears that DOE considers drills and exercises a measure of preparedness, and allows participation only "as budget allows." However, after over a decade of fire fighter training in emergency response, the IAFF strongly believes that drills and exercises are essential to training emergency responders and should be specifically encouraged. Fire fighters do not learn how to perform their job duties by sitting in a classroom or watching a video. They must actually perform each task, such as reading a meter, in order to learn it. Basic adult education principles recognize that the key to memory retention is performance. In addition, to be consistent with 29 CFR 1910.120, the training must be competency-based. There is no apparent way to prove competency without performance. From a logistical standpoint, drills and exercises can assure the smooth coordination of several agencies, which might otherwise be working at cross purposes during an actual incident. As an example of the chaos that can happen during an incident, we cite a fire in Springfield, Massachusetts, where a cargo of spent fuel rods was allowed to burn largely because the chief received conflicting information from some of the 28 different agencies, representing all levels of government, who responded to the incident.

Oversight. DOE is fully aware that the majority of first responders along the proposed transportation routes are not trained to the basic federally-required operations level for hazardous materials. One of DOE's own contractors trained the Rolla-Rural Fire Department in Missouri in hazardous materials emergency response. This same department responded to a truck accident and tried to open a clearly-marked container of radioactive waste. Thankfully, they were unsuccessful. Under the Nuclear Waste Policy Act, it is DOE's responsibility to ensure that these responders are fully prepared for the transport of spent nuclear fuel and high level radioactive waste through their jurisdictions.

Perhaps our strongest criticism of DOE's proposed policy is this: DOE provides no oversight or enforcement mechanism, which is essential to sound public policy-making. Since it is DOE's responsibility to ensure safe transport and emergency response training, DOE cannot assume that that responsibility is fulfilled merely by the granting of money. DOE needs some sort of follow-up with the state and tribal governments to ensure that they utilize the resources wisely. DOE further needs a method by which local governments, left out of this decision-making process but ultimately most

directly affected by it, can communicate any concerns and obtain direct assistance.

The compelling reason for using block grant funding is that it allows flexibility among the states. It sanctions the sort of radical state experimentation that ultimately will, over the next few years, demonstrate what works and what does not. Some states may use the funds to train state-level bureaucrats, while some may train local emergency responders or inspectors; several states will probably choose a combination. It's unlikely, but a state may choose not to apply for the funding, or spend all the funds on a massive statewide education program informing many of the potential risk but ultimately benefiting no one. Without DOE oversight, there is no guarantee that the funds will be used appropriately, or even in accordance with DOE's liberal policy.

It is in DOE's interest to provide oversight, particularly since it has delegated so much authority to the state and local governments. If the state or tribal authorities, for whatever reason, choose not to ensure the local emergency responders are adequately trained and equipped, DOE still has that responsibility. DOE would then have to train and equip the responders, find an outside accredited organization to train them, provide an escort through those areas, or find an alternative route. Failure to take such remedial action could be deadly.

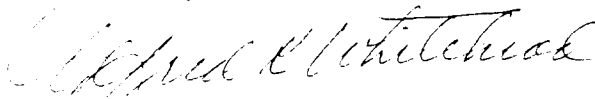
Related Matters. A final concern involves the determination of the routes, which DOE is delegating to others as well. The effectiveness of the Section 180(c) grants program assumes that DOE will know what jurisdictions will be traversed by a shipment at least three years in advance. At the July meeting of the Transportation External Coordination Working Group in Pittsburgh, Pennsylvania, Dwight Shelor of OCRWM introduced a "market-driven" approach to the transportation of civilian radioactive waste. DOE issued a request for proposals in which it outlined the bare minimum legal requirements for transportation. Future transportation, including routing, will then be handled by the contractor. While DOE may argue that it will know which states and tribal lands will be crossed, the most recent experience with the WIPP programs prove that substantial changes can occur, leading to confusion and anger. DOE should not allow the privatization of route determination. Specific routes should be pre-determined in direct consultation with the affected governments. Should DOE privatize route selection, it must create a mechanism for oversight to ensure that the program operates effectively.

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Furthermore, this policy creates an ambiguity as to whether a DOE contractor would be exempt from the registration requirements of 49 USC Section 5108, pursuant to subsection (i)(B). The carrier might be exempt from registering with the Secretary of Transportation and thus from the payment of fees required of other hazardous materials transporters. These fees are used for the administration and enforcement of the hazardous materials training regulations. The registration form itself is available for review by the public and may be useful to state and tribal governments in their oversight programs. We therefore request that DOE specify in its final policy statement that any contractors are subject to 49 USC 5108(a) through (h).

We thank you for your consideration of these comments. Please do not hesitate to telephone us if you have any questions or would like additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alfred K. Whitehead".

Alfred K. Whitehead
General President