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September 26, 1996

Ms. Corrine Macaluso
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
c/o Lois Smith
TRW Environmental Systems
600 Maryland Avenue, S.W.
Suite 695
Washington, D.C., 20024

Subject: Comments on Notice of Proposed Policy and Procedures, on "Safe Transportation and Emergency Response Training, Technical Assistance and Funding" (61 F.R. 24772)

Dear Ms. Macaluso:

On behalf of the Northeast High-Level Radioactive Waste Transportation Task Force, we are writing to respond to the U.S. Department of Energy's (DOE) Notice of Proposed Policy and Procedures, on "Safe Transportation and Emergency Response Training, Technical Assistance and Funding," published in the *Federal Register* on May 16, 1996. The Task Force appreciates the opportunity to comment and recognizes that many of the comments from our letters of May 22, 1995 and September 26, 1995 have been incorporated into the proposed policy.

The Task Force is composed of representatives from Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania and Vermont. Because of the high concentration of spent nuclear fuel located in the region, the Northeast states have a significant interest in assisting the development of policies and procedures to implement Section 180(c) of the Nuclear Waste Policy Act (NWPA).

In both of our previous letters providing comments, we stated our belief that DOE has the legal obligation to begin accepting spent fuel on January 31, 1998 according to the priority in the waste acceptance schedule. The ruling of the U.S. Court of Appeals (DC Circuit) on July 23, 1996, now makes clear this obligation. As we have said before and will propose in these comments, DOE must begin implementation of Section 180(c) technical assistance and funding on a priority, rather than a contingency basis.

Priority Implementation of 180(c)

Two aspects of the proposed policy are not compatible with the required commencement of shipments in 1998. First, insufficient time remains for the four year process described at 61 FR 24773. We have stated previously that the 180(c) process should be able to be accomplished in one to three years. We note that the OCRWM Transportation Contingency Plan for Limited Capacity Shipment, Rev. 1, May 22, 1995, states:

"For early shipments, routes must be determined as soon as possible to allow timely implementation of Section 180(c) policy ... A route must be identified as soon as feasible, but at least 18 months will be required to conduct necessary coordination after the plan or strategy is developed." At 14.

"Considering the small number of shipments, based on cask availability, it is feasible to develop a phased approach to focus efforts on those states and Indian tribes that will be impacted in the first years." At 15.

Since we are just passing the 18 month limit for route planning and coordination, OCRWM must move quickly.

The second aspect which is incompatible with the 1998 commencement date is the plan to publish the final policy in 1997. Obviously, if OCRWM waits until 1997 it will be impossible to meet the contractual obligation.

Considering these incompatibilities, the Task Force believes OCRWM should execute an expedited limited trial implementation of the proposed policy on an immediate basis. The proposed policy, while needing some modification, is adequate in its present form to allow a trial implementation. This will have the effect of working out difficulties with the proposed policy early and will provide valuable feedback.

Destination has been a obstacle in the past. However, it is clear to us from the court ruling that 1998 deliveries will need to be at the same existing federal facilities being used for the foreign fuel return program, Savannah River, SC, and the Idaho National Engineering Laboratory. If there is storage space for foreign fuel at existing federal facilities, there is also storage space for commercial fuel until interim storage is established at Yucca Mountain. If the Administration is concerned about the potential that the total number of shipments will increase, it could address that concern by supporting the Nuclear Waste Policy Act of 1996. This Act establishes interim storage at Yucca Mountain in late 1999, and based on the Senate vote on July 31, 1996, has broad national support.

We therefore urge OCRWM to implement this proposed 180(c) policy on a trial basis for three destinations using points of origins of contract holders for the initial year on the Acceptance Priority Ranking:

1. In the States between Savannah River (and either of Yankee Rowe, Haddam Neck, Indian Point 1, Oyster Creek 1, Nine Mile Point 1, Millstone 1 or Ginna).
2. In the States between the Idaho National Engineering Laboratory (and either Dresden, Lacrosse, General Atomics, Humbolt Bay, San Onofre 1 or Point Beach).
3. In the States between Yucca Mountain (and either Humbolt Bay or San Onofre 1).

Given OCRWM's legal obligations, we believe this expedited limited trial implementation to be a prudent course of action.

Specific Comments on the Proposed Policy

1. The Task Force applauds the policy of giving states broad latitude in the use of funds as stated at 61 FR 24782, "there would be few limitations on how the recipient actually spends its budget, as long as they are used for training related to safe routine transportation."
2. The variable amount basis of 160 route miles (see 61 FR 24783) is neither an adequate or nor a fair basis for allocating the variable amount. In our previous comments, we stated that funds for first responders should be proportional to the number of responders along the route. The Department's response to this comment, at 61 FR 24778, is "Population was not used to determine funding levels because the same level of effort is required in responding to an emergency no matter how many people may be affected."

The Department's response is not accurate. The number of responders to be trained are based on the number of responders along the route. The more responders, the more training. In sparsely populated areas, there may be few responders along the route. A stretch of 160 miles along the northeast coast will have many more responders to be trained than a stretch on unpopulated highway in the west.

Furthermore, the two-hour response criteria for the 160 miles basis is not accurate for our densely populated areas. In many of our response situations, it is completely unreasonable to expect that traffic conditions would allow a two-hour response in a 160 mile limit.

Therefore, we strongly state that in order to be fair the variable amount must take into account population as well as route length.

3. We and our colleagues strongly disagree with the statement at 61 FR 24774, "Section 180(c) funds would not be available for the conduct of drills and exercises." We know from our experience that drills and exercises are an integral part of training. Therefore, the basis for the costs allocated through Section 180(c) must include funding for drills and exercises, including scenario planning and development, pre-exercise coordination with state and local elements, conduct of the exercise, and post-exercise critique, evaluation and retraining. The Department may wish to observe these drills and exercises to evaluate the document the use of 180(c) funds.
4. The estimate for planning and coordination (at 61 FR 24782) does not adequately take into account how states work. In the states, the functions for safe transportation and emergency response training are divided among transportation, health and public safety agencies, and all will have planning and coordination responsibilities. The policy proposed to take "the estimated salary of a health physicist employed full-time by a state government and providing a percentage of that salary" will not result in sufficient funds to accomplish necessary planning. Rather, it will be necessary to take a percentage of the salaries of personnel from transportation, health and public safety agencies to properly account for planning and coordination.

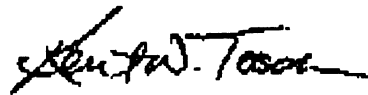
5. At 61 FR 24774, it is stated "an applicant would be able to budget up to ten percent of each year's 180(c) funds to purchase appropriate (i.e., training related) equipment provided the equipment is identified in its application and approved in the grant." Rather than "purchase," this should be amended to read "purchase, maintain and calibrate" appropriate equipment.
6. In addition, within the 10% limitation, consideration must be given to the fact that first year equipment purchases need to be higher than other years. Allowance should be included to expand the 10% limit to account for front-loaded costs.
7. The list of training standards used by the Department (at 61 FR 24782) should be expanded to include Attachment H, "Recommended Sequence of Radiological Training," of FEMA TD-100, "Management Plan for the Radiological Training Series." The basis for cost of the program should be adjusted as appropriate in inclusion of this reference.
8. The states have experienced wide fluctuations in the levels of funding available through HMTA. The Task Force cannot overstate the importance of maintaining relatively constant funding levels from year to year.

If you have questions regarding these comments, please contact Phillip Paull, Council of State Governments, at 802-223-4841.

Sincerely,



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