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75

**NUCLEAR
WASTE
STRATEGY COALITION**



September 27, 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 SW, Suite 695
Washington, D.C., 20024

Dear Ms. Macaluso:

On May 16, 1996, the U.S. Department of Energy (DOE) issued for comment a proposed policy statement setting forth plans for providing technical and financial assistance to states for training public safety officials of local government and Indian tribes through whose jurisdictions DOE plans to transport high-level radioactive waste. Training would cover both safe routing transportation procedures and emergency response procedures. The original comment due date of August 15, 1996, has been extended to September 30, 1996.

The Nuclear Waste Strategy Coalition (NWSC) appreciates this opportunity to comment on DOE's proposed policy.

The Nuclear Waste Strategy Coalition

The Nuclear Waste Strategy Coalition is a group of State utility regulators, State Attorney Generals, and utilities advocating the safe, timely, and cost-effective storage and disposal of high-level nuclear waste. Having grown to 39 members from 22 states, NWSC members have been instrumental in initiating the lawsuit holding the DOE accountable under its nuclear waste contracts, in exploring private approaches to centralized storage, and in building consensus in the Congress on the need to reform the U.S. high-level nuclear waste program.

Historical Context: The Nuclear Waste Policy Act of 1982

In 1982 Congress passed the Nuclear Waste Policy Act promising to provide our nation with both the means to centrally store and dispose of nuclear waste, and the funding mechanism to do so. Section 180(c) of the Act encompasses the shipment of spent nuclear fuel and high-level radioactive waste to a centralized temporary storage facility or permanent disposal facility. Subsequent to the Act, the DOE entered into contracts under which it pledged to begin removing waste from nuclear power plants beginning in 1998 and to provide for its safe storage and disposal. Under these contracts America's electricity consumers have faithfully paid over \$12 billion dollars into the Federal Nuclear Waste Fund to underwrite program expenses.

Unfortunately, instead of moving forward to meet its statutory and contractual obligations, DOE's projected opening date for the permanent repository has actually grown farther away -- slipping from 1998 to the year 2010 or later. In May 1994, the DOE issued a request for comments on its need to comply with the Nuclear Waste Policy Act and its nuclear waste contracts. One year later DOE announced that it would unilaterally break its contractual obligations. Forty (40) state agencies, twenty-five (25) investor owned utilities, and 8 municipal utilities then sued the DOE in Federal Court requesting that the DOE's contractual obligations be upheld. The U.S. Court of Appeals (DC Circuit) affirmed on July 23, 1996, that DOE is responsible to begin removing waste beginning in 1998. In order to fulfill its obligations as specified in contracts and affirmed in Federal Court, the DOE must begin implementation of Section 180(c) technical assistance and funding on an urgent and priority basis, to ensure the safe and timely transportation of nuclear waste.

Transportation history has shown, and many studies have concluded, that spent fuel transportation can be accomplished safely. Because hazardous and radiological material are already routinely being transported throughout the United States, efficiency, timeliness, and thoroughness dictate that spent fuel transportation be incorporated into existing emergency planning and transportation methods.

Transportation planning delay should not, and must not, become an excuse for DOE's failure to perform its contractual obligations.

The Proposed 180(c) Policy

The proposed 180(c) policy provides a framework for the distribution of funds for timely, safe transportation and emergency response training. While others will comment on the details of this framework, the general framework is sound and will develop the necessary funds for states to accomplish training in various ways to meet their needs.

There would be no need for immediate disbursing of funds under 180(c) if DOE were not to begin transportation until 2010. As stated above, the Federal Court has held DOE responsible to begin shipments as contracted in 1998. If DOE were not to begin disbursing 180(c) funds, this would indicate that DOE was not giving due diligence to its obligation. The only way for DOE to give due diligence to its obligation is to plan for timely transportation of high-level nuclear waste beginning in 1998. DOE's timely preparations for the foreign fuel return program demonstrate its ability act in a timely manner. If DOE's authority to provide timely transportation planning is challenged the Federal Courts will resolve the dispute.

Priority Implementation of 180(c) Needed

Two aspects of the proposed policy are not compatible with the required commencement of shipments in 1998. The first is the plan to publish DOE's final policy in 1997. If DOE waits until 1997 it will be extremely difficult to meet the contractual obligation to begin removing waste on January 31, 1998. Second, insufficient time remains for the four year process described at 61 FR 24773. The 180(c) process should be able to be initiated in a year's time and fully implemented shortly thereafter.

We note that the DOE - OCRWM Transportation Contingency Plan for Limited Capacity Shipment, Rev. 1, May 22, 1995, states:

“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 have just passed the 18 month time limit DOE estimated as being needed for route planning and coordination, DOE must move quickly. The DOE should build on existing programs to incrementally provide funding and technical assistance to States and Indian Tribes for emergency preparedness and first response for shipments of spent fuel. The focus should be on responding to requests to augment existing federal, State, or private initiatives to develop appropriate training or response programs. DOE must build on previous routine U.S. and overseas experience in transporting hazardous waste and nuclear materials or risk failing to prepare in a complete and timely manner.

The recent court ruling holding the DOE responsible to begin removing nuclear waste from plant sites beginning in 1998, and the possible consequences of DOE failure, may now provide the impetus for timely action. If the Federal government can provide timely centralized storage space for spent foreign nuclear fuel, it must also find the will to provide centralized storage, and transportation to that site, for limited amounts of commercial fuel until a permanent repository is established.

The Nuclear Waste Strategy Coalition appreciates this opportunity to comment on the activities of DOE's Office of Civilian Radioactive Waste Management. If you have questions concerning these comments, please contact Mike McCarthy, NWSC Administrator, at (612)296-1883.

Sincerely,



Kris Sanda
Commissioner, Minnesota Department of Public Service
on behalf of the Nuclear Waste Strategy Coalition Executive Committee

KS/MM/mm