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INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS®

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September 15, 1997

Corinne Macaluso
U.S. Department of Energy
c/o Lois Smith
TRW Environmental Safety Systems, Inc.
600 Maryland Avenue, SW
Washington, DC 20024
Attn: Section 180(c) Comments

SEP 16 REC'D
1997

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 therefore watched with interest and tried to participate in the Section 180(c) program. Thus far we feel our comments have been mostly sidestepped. We, once again, urge you to consider carefully our comments in light of our experience and expertise with regard to hazardous materials emergency response training. We have identified six areas of your proposal that require additional attention: oversight, training, funding level, funding mechanism and allocation, funding uses, and related matters.

Oversight. Possibly 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.

This lack of oversight is further exaggerated by DOE's assertion "...that strict compliance with Department of Transportation (DOT) and Nuclear Regularity Commission (NRC) regulations... will provide for safe routine transportation." Both these agencies are weakening their current regulations impacting shipments of nuclear waste. For example, effective September 30, 1997, DOT's Research and Special Projects Administration (RSPA) approved changing 62 FR 46214. RSPA has *removed* Radiation Protection Program regulations and related modal provisions that would have required the development and maintenance of a written radiation protection program for persons who offer, accept for transportation, or transport radioactive materials. RSPA deemed, "This action is necessary to address difficulties and complexities concerning implementation of and compliance with the requirements for a radiation protection program, as



evidenced by comments received from the radioactive material transportation industry and other interested parties.”¹ This example illustrates that DOE’s is unsound. “... strict compliance with ...regulations” will *not* lower any risk of an accident involving nuclear material when the regulations concerning radioactive materials transportation are being watered down.

Under the Nuclear Waste Policy Act, it is DOE's responsibility to ensure that emergency responders are fully prepared for the transport of spent nuclear fuel and high level radioactive waste. DOE incorrectly asserts that “If an accident should occur, with or without a radioactive materials release, state and tribal governments have a responsibility to respond and to protect the public health and safety and the environment in their jurisdiction.”

As a result of the IAFF’s, and many others’ comments, 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.

DOE, under a legally binding contract, is transporting nuclear waste through jurisdictions that have chosen not to train their emergency responders to properly mitigate an emergency involving hazardous material. The fire department does not have to be all things to all people as with confined space rescue. If a fire department is too small or does not have enough funding for on-going training and equipment to perform confined space rescue, then the industries within its jurisdiction cannot list the fire department as their rescue team in the company’s emergency response plan. Under the law, an employee must be properly trained and equipped to perform specific emergency response duties. If a jurisdiction chooses not to train its emergency responders, for whatever reason, to handle an emergency response involving nuclear material, then the sole responsibility for safe transport remains on the industry. In the case of radioactive material it is the Department of Energy.

DOE also states, “Rail inspections are not included because the Federal Railroad Administration(FRA) conducts inspections of rail cars and tracks used to ship radioactive materials.” This statement is worrisome and another example of delegating oversight. The FRA is currently investigating the eleven accidents of just one railroad over a very short period of time. The FRA generally is reactive, not pro-active. Moreover, the railroads have a history of waiting until the incident has grown out of control to ask for assistance. It is noteworthy that a majority of the sites on the EPA NPL are railroad yards.

It is in DOE's interest and it is their obligation to provide oversight, particularly since it has delegated so much authority to the other federal agencies, state and local governments. DOE will always be responsible for safe transport. The IAFF believes the DOE must do one of the following: train and equip the responders to the operations level; find an outside accredited organization to train fire fighters; provide an escort through areas where training and equipment is insufficient; or find an alternative route. Failure to take such action could be deadly.

Training. The second serious problem is the determination of appropriate training for fire fighters. Let me pose a likely scenario: A truck carrying radioactive material is involved in an accident on the highway. Someone telephones 911, and the local fire department arrives on the scene. The fire fighters cordon off the area, and stand helplessly behind the ropes for the next “48 hours” waiting for DOE action from one of the regionally based teams.

This sounds like an unlikely response, but that is exactly what is proposed by DOE. Instead of rescuing and decontaminating victims, DOE, based on the prescribed awareness level training, wants local fire departments to only call the federal government for assistance. Period. DOE

¹ Department of Transportation Website

has repeatedly called for awareness level training as an acceptable level of training for fire fighters.

DOE has lumped fire fighters with police, 911 dispatchers, public safety officials and other titles with which we are unfamiliar, when it comes to training. Thus, instead of learning how to respond, fire fighters, according to DOE, should only learn how to identify that a radioactive shipment has been involved in an accident -- awareness level training. It is defined by federal regulators in 29 CFR 1910.120 as appropriate for "persons who are likely to witness or discover" an event and who take "no further action beyond notifying the authorities." We agree that 911 dispatchers and public safety officials should receive this level of training. However, they are not expected by the public to wade headlong into the hazardous scene -- fire fighters are expected to do so. A fire fighter's primary goal is life safety. It is unconscionable for the DOE to suggest otherwise.

Fire fighters, at a minimum, must be trained to the operations level. According to the seventeenth edition of the *NFPA Fire Protection Handbook*, "Operational-level competency is to be attained by those persons, such as fire fighters and rescue personnel whose duties and functions include responding to hazardous materials incidents to mitigate the effects of a release without actually trying to stop the release. Operations-level personnel must meet the requirements for awareness level." Operations-level training is not "enhanced;" it is the bare minimum for fire fighters to respond safely. In addition, the determination of who "...receives refresher training and with what frequency" is minimally determined by 29 CFR 1910.120 and not the by "...local governments and first responders along the route and within their annual budget." Annual refresher training is mandatory or the person may not perform the job duty.

Along with the aforementioned training issues are three other training issues. First, "With the contingency plan in place, OCRWM sees no public health or safety reason to limit or prohibit shipments through a jurisdiction until all training is complete." Unless the shipments are accompanied by personnel trained in radiation mitigation under several regulations, DOE cannot ship (e.g., 29 CFR 1910.120, 29 CFR 1910.1200). Second, the number of hours required in the classroom is a non-issue. Training must be competency based. Once again, we urge the DOE to adhere to the bare minimum industry standards of the NFPA and the requirements of 29 CFR 1910.120.²

Third, the interface between the private contractors and the local emergency responders needs to be defined. In the DOE Notice of Proposed Policy and Procedures (NOPP) on implementation of Section 180(c) of the Nuclear Waste Policy Act (NWPA), Section 180(c) specifies the provision of training and technical assistance by DOE along transportation routes. The Request For Proposal () put out by DOE refers to training by the Regional Servicing Agents (RSAs) of personnel, but fails to define DOE's role in the training of local emergency responders.

Judging from comments at the TEC meetings, in this document, and the dangerous awareness training level proposed, it appears that DOE has decided that most volunteer fire departments could never meet the recommendations of operation-level training. The IAFF believes the comments made regarding training by the fire chiefs: local responders are already overburdened with training and that two to four hours, possibly in a video format would be sufficient; and, not to use 29 CFR 1910.120(q) because it is too great a burden may be illegal. The fire chiefs and volunteer chiefs can operate below federal requirements if they want to, but they do not have a right to impose their will and training weaknesses on the professional fire fighters who protect 80% of the population of this country.

Funding Level. Eligibility for Funding. The third 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

² 29 CFR 1910.120 is inaccurately quoted in the appendix

level. It is unclear that DOE has adequately addressed this concern. As we have suggested before, the local officials need a way to have a discussion with DOE that is two-way communication. Filtering questions through a state representative does not allow them to feel part of the system. More importantly, it does not give them the opportunity to follow-up with additional questions and concerns.

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 benefitting 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 standardized third-party inspections.

In previous 180 (c) comments, the IAFF has expressed the concern that politics could play a large 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.

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. DOE 's response to this is not adequate. DOE suggests that those affected jurisdictions "...may receive funding from the jurisdiction that will receive shipments." The response is patronizing and 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.

Funding Mechanism and Allocation. As has been stated in previous IAFF 180 (c) comments, 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.

While DOE does not feel that a tremendous administrative burden will be placed on the states under this proposed policy, we still disagree. 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 the will to carry out this program. DOE seems to think that a state health physicist can handle financial management, emergency route pre-planning, coordination with local governments and a cadre of other requirements.

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 basic amount of the grant money may be used for the purchase of equipment. While the IAFF is pleased to see that there has been an increase in the funds that may be used for equipment, this limit still seems 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. Certainly, the DOE should not force a grant recipient to choose whether to purchase emergency response or inspection equipment. Each is needed for two mutually exclusive employees: inspectors and fire fighters. The IAFF does not feel the jurisdiction should be forced to decide which employees receive the appropriate equipment to perform their job duties and which do not.

DOE also asserts that risk monitoring and assessment are outside the scope of safe routine transportation activities. That assertion the IAFF believes to be 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).


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. However, DOE has 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.

The IAFF is greatly concerned by the potential financial impact that an incident involving these highly-radioactive materials may have on local governments. The policies as written do little to assuage those concerns. DOE does not address indemnification under the Price-Anderson Act. Does DOE have an obligation to indemnify the contractor if its negligence is the proximate cause of an accident? Will DOE reimburse local officials for the costs it might expend should such an accident occur? Who precisely is responsible for clean-up? Who will pay clean-up costs? DOE must recognize that no clean-up standards exist for radiological incidents. If there is not a standard for recovery, it is impossible to determine when clean-up is complete.

Prior to awarding a contract, DOE must assure that the contractor is financially sound. That determination should not be made without full knowledge of whether the contractor could sustain the financial blow that an accident could conceivably deal to it. Thus, the IAFF further recommends that preparation for a worst case scenario be considered. Information on whether the contractor will reimburse local governments for equipment, personnel and any overtime involved in responding to an accident must be addressed, as well as comprehensiveness of insurance policies held by the contractors should also be reviewed.

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,

Handwritten signature of Bradley M. Sant in black ink. The signature is written in a cursive style and includes the initials "CM" at the end.

Bradley M. Sant
Director Department of Hazardous Materials Training