

104



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

Capitol Complex
Carson City, Nevada 89710
Telephone: (702) 687-3744
Fax: (702) 687-5277

September 15, 1997

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 on DOE's July 17, 1997 Notice of Revised Proposed Policy and Procedures for Safe Transportation and Emergency Response Training Technical Assistance and Funding.

Should you have questions regarding these comments, please contact me a (702) 687-3744.

Sincerely,

A handwritten signature in black ink, appearing to read "J.C. Strolin".

Joseph C. Strolin
Administrator, Planning Division

JCS/js
Enclosure



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

Capitol Complex
Carson City, Nevada 89710
Telephone: (702) 687-3744
Fax: (702) 687-5277

**STATE OF NEVADA COMMENTS
ON THE U.S. DEPARTMENT OF ENERGY'S JULY 17, 1997
NOTICE OF REVISED POLICY AND PROCEDURES FOR SAFE
TRANSPORTATION AND EMERGENCY RESPONSE TRAINING
TECHNICAL ASSISTANCE AND FUNDING**

September 15, 1997.

1.0 General Comments

The comments which follow are provided in response to the July 17, 1997 *Federal Register* Notice of Revised Proposed Policy and Procedures titled, "Office of Civilian Radioactive Waste Management: Safe Transportation and Emergency Response Training; Technical Assistance and Funding." Overall, the revised policy and procedures are a significant improvement over those published in the January 1995 Notice of Inquiry, and the Department of Energy (DOE) is to be commended for responding positively to public comments critical of the cost basis and fund allocation mechanism proposed in the original Notice.

The revised policy and procedures do, however, continue to incorporate a number of provisions that raise serious concerns about DOE's proposed approach to implementing the technical assistance and funding provisions of Section 180(c) of the Nuclear Waste Policy Act of 1987, as amended. In addition, the July, 1997 *Federal Register* Notice fails to adequately address how the proposed policy and procedures will be affected by the initiative to privatize spent fuel (SNF) and high-level radioactive waste (HLW) transportation services as proposed in DOE's recent Notice of Waste Acceptance, Storage, and Transportation Services. If DOE intends to delegate Section 180(c) responsibilities to one or more transportation contractors, the program could become extremely complicated for states and tribes having to deal with for-profit contractors operating on fixed price contracts. The specific roles and responsibilities of DOE and any transportation contractor employed under the privatization initiative must be clearly spelled out in the final policy and procedures, and DOE must retain responsibility for directly providing Section 180(c) funding to states and tribes.

Overall, Section 180(c) assistance must begin 3 to 5 years before shipments through a jurisdiction can begin; grants should be made directly by DOE to each eligible jurisdiction; adequate planning grants and assistance must be part of the Section 180(c) implementation program; states and tribes must have discretion in planning and implementing training activities appropriate to their individual needs and circumstances; 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 NWSA shipments through their borders¹; shipments to any private storage facilities that may be developed (such as the proposed Goshute Tribe facility in Utah) must be covered by Section 180(c) assistance; and no shipments can be made through a jurisdiction unless adequate training assistance has been provided at least three years prior to shipment.

In addition to the comments provided here, Nevada endorses the comments submitted by the Western Interstate Energy Board High-Level Radioactive Waste Committee relative to the July, 1997 Notice.

2.0 Specific Comments on Revised Proposed Policy and Procedures

2.1. Need for Codifying Policy and Procedures Through Formal Rulemaking

2.1.1. DOE's revised policy and procedures specify that "OCRWM plans to publish, in early 1998, a Notice of Final Policy and Procedures which OCRWM intends to follow in implementing Section 180(c)" Nevada contends that publication of such a Notice is insufficient to assure consistent and fair implementation of this program over the time period required. 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 must 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 1994.² 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 a

¹ 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.

² Ref. Western Governors' Association Resolution 94-005 (August, 1994) and the Western Interstate Energy Board comments on DOE's January, 1995 Notice of Inquiry.

program that must assure adequate training and preparation for a spent fuel and HLW 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). 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, changes in administrations, and the inevitable changes that will occur within DOE and the high-level waste program nationally.

Nevada strongly recommends that DOE institute a formal rulemaking process under the Administrative Procedures Act, as recommended by the Western Governors' Association and the Western Interstate Energy Board.

2.2. Funding Mechanism

2.2.1. Nevada supports DOE's proposal to implement Section 180(c) assistance by means of an OCRWM grants program directly to affected states and tribes. The use of other federal agencies' grants programs would only add bureaucracy and costs to the program.

2.2.2. The final policy and procedures should specify that no shipments will be made through states or tribes unless funding has been made available at least 3 years prior to the first shipment. This commitment is essential to assure that DOE will fulfill its obligations under Section 180(c), and that states and tribes can have confidence that required assistance will, in fact, be provided. In a program of this type and duration, it is not unreasonable to expect that funds for emergency response training and for safe routing transportation will be available not less than 3 years before shipments are scheduled to begin.

2.3. Basis for Cost Estimate/Funding Allocation

2.3.1. DOE's decision to drop the arbitrary formula-based approach by which the "variable grant amount" is established, as articulated in the January, 1995 Notice of Intent, and replace it with one that is needs-based and individualized to specific states and tribes circumstances is the single most important improvement in the revised proposed policy and procedures. Nevada remains concerned, however, that the amount established for the proposed "base grants" continues to be arbitrary and inadequate, and that there is no assurance the amount of funds to be provided will be adequate to cover the full costs of carrying out necessary training for safe transportation and emergency response.

There is no relationship between the estimated salary of a "state health physicist"³ and the amount of funds required by a state or tribe to carry out the activities required for "conducting an assessment of incremental training needs and the planning and coordination activities associated with interacting with local jurisdictions and neighboring jurisdictions." The arbitrary amount of \$74,152 proposed in the July, 1997 Notice is inadequate for a state like Nevada (and other small western states) that must, essentially, start from the ground up in planning for NWSA shipments. The planning process involves much more than having someone sit at a desk and write up a plan. It will involve extensive consultation and coordination among a number of State agencies over a lengthy period of time. The process will also require the identification of affected local governments/communities and the evaluation of training and preparedness needs within each. In Nevada's case, planning and coordination will also necessitate involvement with training and response personnel in California, Arizona, Utah, Idaho, and Oregon. It is unreasonable to expect that a base grant of less \$75,000 will cover the costs associated with this effort. In effect, DOE will be shifting significant costs for planning and coordination to the states if the proposed formula for establishing the base grant amount is adopted. Nevada strongly urges DOE to adopt the Western Governors' Association recommendation that planning or base grants of \$150,000 be awarded to affected states and tribes, and that provisions be built into the final policy and procedures to allow for increased funding in cases where there is a need for planning and coordination assistance above that amount.

2.4. Definition of Key Terms

2.4.1 Safe Routine Transportation

2.4.1.1 Nevada continues to contend that 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 anywhere near the capability that would be needed to provide inspection and enforcement for the large numbers of shipments and ongoing nature of the shipping campaign that would result from NWSA shipments to a repository. "Safe routing transportation" must be defined broadly enough so as to encompass 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.

³ The average salary of a "state health physicist" as reported in the July, 1997 Notice is in no way reflective of the realities of the workplace. Even if such the salary of such a person was accepted as a justifiable basis for establishing the base grant amount (which it is not), the real cost of employing such an individual would be closer to \$80,000 or \$100,000.

2.4.1.2 The definition "safe routine transportation" must 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 Goshute Tribe facility in Utah). States through which SNF and HLW would be transported 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. In limiting Section 180(c) assistance to only a facility constructed under the NWPAA, DOE is needlessly foreclosing its clear discretion to more broadly interpret the intent of the law that all shipments ultimately destined for a repository can be covered under the provisions of Section 180(c).

2.4.2 Technical Assistance

2.4.2.1 "Technical assistance" should also include, at DOE's discretion, the provision of equipment that would assist states and tribes in training for emergency response and for safe routine transportation. As was pointed out in Nevada's comments on the January, 1995 Notice, 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. Such assistance appears to be well within DOE's discretion as a technical assistance function, and the Department should not be precluded definitionally from providing such assistance if the circumstances warrant.

2.5. Eligibility and Timing of the Grants Program

2.5.1. Identification of Eligible Jurisdictions

2.5.1.1 The identification of eligible jurisdictions is tied to the identification of shipment modes (rail or truck) and specific shipping routes. The statement in the revised proposed policy and procedures that "OCRWM anticipates knowing three to four years prior to shipment through which states or tribal lands the shipments will likely travel, even if specific routes have not been selected" does not provide adequate basis for identifying affected states/tribes. DOE must make a clear commitment to undertake a route identification process and to actually select routes from reach reactor/generator site to the repository site at least 3-5 years prior to anticipated shipment. Route selection must be a clearly defined DOE responsibility and articulated in the final policy and procedures.

This matter is complicated by DOE's 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. 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 specify the respective roles and responsibilities of DOE and its chosen private contractors with respect to route selection (and other 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 NWPA 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.

Mode/route identification must be done at least 3 and preferably 5 years prior to shipments to enable affected states and tribes to be identified and to permit consideration of alternative routes within their borders and assessment of 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.

2.6 Allowable Activities for Funding

2.6.1. The arbitrary limits on the amounts of funds that can be used for the purchase of equipment (25% in TY-2 and TY1 and 10% thereafter) are inappropriate and unnecessary. There will be legitimate instances where certain states and tribes will require a greater percentage of grant funds to be used for essential training equipment and supplies, and permitting states/tribes to do so should not be foreclosed by the formal policy and procedures. DOE, in conjunction with the individual state/tribe, will readily be able to evaluate equipment requirements as part of the grant application process and thereby assure that equipment and supplies being proposed for acquisition are appropriate and necessary.

2.6.2 Under the section on "Objectives" in the July, 1997 Notice, there appears to be a limitation placed on what is allowable in terms of travel costs under the proposed grants. The Notice states, "... OCRWM plans to provide funds for the cost of trainers' travel *within the jurisdiction*" (emphasis added). Limiting travel to within a particular state's or tribe's boundaries could seriously hamper coordination and training activities that might best be conducted jointly by neighboring states. Nevada might, for example, determine that a collaborative effort involving neighbor states would be more effective and efficient for training rural responders in communities bordering California, Utah, Arizona, Idaho, or Oregon. Such an effort might well involve travel by trainers or trainees across state lines and should not be precluded in the final policy and procedures.

2.7. Other Comments

2.7.1. Rail Inspections

The July, 1997 Federal Register Notice states that "rail inspections are not included because the Federal Railroad Administration (FRA) conducts inspections of rail cars and tracks used to ship radioactive materials." However, manpower shortages within the FRA mean that the Agency is not prepared to handle inspections for the number of nuclear waste shipments that would be required under a NWSA shipping campaign. Consequently, Section 180(c) funds must be made available to states and tribes for the purpose of providing training under the Federal Rail Safety Act (FRSA) in order to increase the number of federally-certified state railroad inspectors.