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July 29, 1998

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

Dear Ms. Macaluso:

Enclosed are the State of Nevada's comments on DOE's April 30, 1998 Federal Register "Notice of Revised Policy and Procedures for Safe Transportation and Emergency Response Training Technical Assistance and Funding."

Should you have questions regarding the comments or need anything further, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Strolin".

Joseph C. Strolin
Administrator, Planning Division

JCS/js
Enclosure

**STATE OF NEVADA COMMENTS
ON THE U.S. DEPARTMENT OF ENERGY'S APRIL 30, 1998
NOTICE OF REVISED POLICY AND PROCEDURES FOR SAFE
TRANSPORTATION AND EMERGENCY RESPONSE TRAINING
TECHNICAL ASSISTANCE AND FUNDING**

July 27, 1998

1.0 General Comments

The comments which follow are provided in response to the April 30, 1998 *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."

Nevada reiterates comments made with respect to previous DOE *Notices* that (1) Section 180(c) assistance must begin 3 to 5 years before shipments through a jurisdiction can commence; (2) grants should be made directly by DOE to each eligible jurisdiction; (3) states and tribes must have discretion in identifying, planning, and implementing training activities appropriate to their individual needs and circumstances; (4) 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 NWPA shipments through their borders¹; (5) 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 (6) no shipments can be made through a jurisdiction unless adequate training assistance has been provided at least three years prior to shipment.

2.0 Specific Comments on the Revised Proposed Policy and Procedures

2.1. Funding Mechanism

2.1.1. 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. Nevada does not, however, support incorporation of Section 180(c) assistance into any future Department-wide transportation assistance program, as referred to in the *Notice*. Section 180(c) assistance should be implemented specifically in response to OCRWM's activities under the NWPA and should not be further complicated or diluted by 'mixing' the program with other DOE radioactive materials transportation efforts.

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.

Future NWPA shipments will be significantly different than the Department's current radioactive materials shipments. In particular, civilian spent fuel shipments to a repository or storage facility will involve much greater radiological hazards than the cesium, WIPP, and foreign research reactor return shipment campaigns, in addition to differences in the containers, modes, and routes utilized. Efforts to promote "standardization of funding mechanisms, training standards, allowable equipment purchases, and the definitions of technical assistance and safe routine transportation"[page 23755] appear to be based on the erroneous assumption that substantial economic savings can be achieved without sacrificing safety.

2.1.2. The final policy and procedures must clearly 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, in fact, fulfill its obligations under Section 180(c), and that states and tribes can have confidence that required assistance will be provided in time to undertake adequate planning and preparedness. Given the unprecedented nature of the proposed NWPA shipping campaign, 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.

The Notice's discussion of contingency plans states that "if the route for a shipment is selected too close to the start of the shipment" to allow adequate training, DOE "may use escorts with more training and equipment than those normally used for the purpose of security until a reasonable time period for training has expired." [page 23756-23757] The State of Nevada believes that the risk of terrorism and sabotage requires DOE security escorts to accompany all spent fuel shipments for the entire length of their journey, not only through highly populated areas as currently required under NRC safeguards regulations, regardless of any other aspects of Section 180(c) implementation. The State of Nevada strongly objects to DOE's suggestion that DOE escorts with additional training and equipment can compensate for inadequate emergency response training for state, tribal, and local first responders.

2.2. Basis for Cost Estimate/Funding Allocation

Nevada remains concerned that the amount of funds proposed to be available to states and tribes under the *Notice* continues to be arbitrary and inadequate, and there is no assurance that 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.

2.2.1. Planning Grant Amount

The notice proposes that DOE provide a one-time only planning grant of \$150,000 to each eligible state and tribe to "cover the costs associated with conducting the determination of

incremental needs required to complete the application package." [page 23755] While this amount is consistent with the minimum funding deemed necessary by WIEB and WGA, it is completely inadequate for the State of Nevada. Nevada (and most other western states), has no previous experience with emergency planning for commercial nuclear power plants, and very little previous experience planning for spent fuel transportation, and must, essentially, start from scratch in planning for NWPAs shipments. As noted in previous comments, the planning and assessment 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 and tribal governments, over a lengthy period of time. In Nevada, the process will also require the assessment of route-specific hazards and risks along more than five hundred miles of existing rail lines, up to four hundred miles of new rail access spurs, and up to one thousand miles of potential highway routes. In Nevada, the process will involve the identification of affected local governments and communities in at least ten large, geographically dispersed counties, 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 at least California, Arizona, Utah, Idaho, and Oregon. It is unreasonable to expect that a planning grant of \$150,000 will cover the costs associated with this effort. DOE will, instead, be shifting significant costs to the states if the proposed planning grant amount is adopted.

2.2.2. Base Grant Amount

The notice proposes that DOE provide an annual base grant of \$75,500 to each eligible state and tribe to "cover costs associated with planning for NWPAs shipments" [page 23755] The State of Nevada reiterates its earlier objection that there is no meaningful relationship between the estimated salary of a "state health physicist"² times two (the proposed basis for calculating the base grant amount) and the amount of funds annually required by a state or tribe to carry out the activities required to plan for NWPAs shipments. The arbitrary amount of \$75,500 per year [each year subsequent to the planning grant year] proposed in *Notice* is inadequate to support extensive, ongoing consultation and coordination among a number of State agencies, up to a dozen tribal governments, local governments in ten or more counties, and the neighboring states of California, Arizona, Utah, Idaho, and Oregon. It is unreasonable to expect that a base grant of \$75,500 per year will cover the costs associated with this effort. DOE will, instead, be shifting significant costs for planning and coordination to the states if the proposed annual base grant amount is adopted.

² The average salary of a "state health physicist" as reported in *Notice* is in no way reflective of the realities of the workplace. Even if 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.

2.2.3 Variable Grant Amounts

While a considerable improvement over the arbitrary formula-based funding levels for variable grants proposed in 1995, the current *Notice* continues to side step the issue of assuring adequate funding for states in relation to the impact on individual states from projected NWPA shipments. The current *Notice* provides only the opportunity for states and tribes to apply for assistance “to obtain the appropriate increment of awareness level training and to prepare for safe routine transportation inspections of NWPA shipments.” States and tribes may also apply for financial assistance “to obtain the appropriate increment of operations and/or technician level training for emergency response for NWPA shipments,” but such assistance would only be provided “depending on available funds.” These limitations on the amount of funds to be provided under the variable grants are unacceptable and are contrary to the clear intent of the NWPA that the waste generators pay the full costs associated with disposal, including those related to transportation.

The *Notice* as currently written would limit the focus of Section 180(c) assistance to “awareness level” training. More advanced training would only be provided if DOE deemed that sufficient funds were available, and then it would be DOE’s decision whether to make such funds available to individual states and tribe. Given DOE’s demonstrated history of cutting assistance to states and tribes - and more recently to regional organizations of states - whenever Congress reduces the OCRWM budget, there is no basis to assume that DOE would act in the states’ and tribes’ interests in apportioning Section 180(c) funding in light of other DOE/OCRWM priorities.

Nevada continues to insist that DOE commit to providing an adequate level of financial support for the Section 180(c) program, and that such financial assistance not be arbitrarily limited in advance by the assumption that only “awareness level” training is required to meet the letter and spirit of the Section 180(c) language in the NWPA.

2.3. Definition of Key Terms

2.3.1 Safe Routine Transportation

2.3.1.1 As noted in prior comments, the definition of “safe routine transportation” must encompass more than simply the enforcement of standards and the actual inspection of shipments. The definition for Section 180(c) purposes must also incorporate the analyses, planning, and preparation needed to carry out such enforcement and inspections, as well as the need for extra-regulatory activities that have been shown in previous spent fuel, HLW, and other shipping campaigns (such as the Cesium shipments, the TMI shipments, the foreign research reactor spent fuel shipments, and the WIPP TRU Waste shipping program) to be needed to assure

public safety and reduce risk. "Safe routing transportation" also requires analyses of potential shipping routes within states, the designation of alternate routes to enhance safety and reduce risk, and related risk reduction activities (such as preparations for escorting shipments) deemed necessary by individual states and tribes.

2.3.1.2 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 NWPA, 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).

2.3.1.3. The State of Nevada completely disagrees with OCRWM's stated belief "that the current definition of safe routine transportation, in combination with the policy statement on safe routine transportation, provides a sufficient measure of safety for the shipments that will be, at least, on par with the WIPP campaign." [page 23763] At the present time, in our opinion, nothing could be further from the truth. In order for NWPA shipments to meet the high safety standards established by the WIPP transportation plan, OCRWM must take the following actions: (1) all shipping containers to be used for NWPA shipments must be physically tested full-scale to demonstrate compliance with the NRC cask performance standards for crash impact, fire, puncture, and immersion; (2) preferred modes and routes for shipments from each reactor and storage site must be identified in the draft EIS for the repository and/or storage facility; (3) final mode and route decisions must be made by OCRWM, in consultation with the affected states and tribes, regional organizations, and other stakeholders, at least three years prior to the beginning of shipments; (4) a single long-term contract carrier using dedicated vehicles and crews for each mode of transport to the repository and/or storage facility must be selected according to criteria jointly developed by the affected states and tribes, regional organizations, and other stakeholders; and (5) detailed mode- and route-specific safety protocols (such as bad weather procedures, safe parking designations, and emergency routing plans) must be jointly developed by OCRWM, the affected states and tribes, regional organizations, and other stakeholders, and tested in drills and exercises prior to the beginning of shipments.

2.3.2 Technical Assistance

The definition of "technical assistance" should also encompass 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 and the September, 1997 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.

2.4. Eligibility and Timing of the Grants Program

2.4.1 Identification of Eligible Jurisdictions and Route/Mode Identification

DOE must make a clear commitment to undertake a route identification process and to actually select routes from each reactor/generator site to the repository site at least 3 and preferably 5 years prior to anticipated shipment. As currently written, the *Notice* contains inherently contradictory statements relative to when mode and route selection occurs and who does it. The *Notice* indicates that DOE plans to identify "preliminary" shipping routes at the time it notifies governors of their eligibility for Section 180(c) assistance, but that the Regional Servicing Contractor(s) will be responsible for the actual selection of routes. This is unacceptable as it could lead to confusion and inconsistencies in the mode and route selection process and complicate the provision of Section 180(c) program unnecessarily.

There is no reason why DOE cannot formally identify the actual shipping routes well in advance of the shipments. The reactor/generator sites are known and the destination site will also be known. It is a relatively straightforward matter to evaluate alternative routes between origins and destinations and make decisions about which of the available options will be used. This permits both DOE and the affected states, tribes, and communities to make plans based on hard and fast decisions rather than on speculation about preliminary routes.

This matter is complicated DOE's plans to privatize the transportation system for NWPA shipments. Under DOE's current plans, as many as four separate regional contractors could be employed, meaning that, when routes are finally identified by the RSCs, 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 full responsibility for identifying and enforcing shipping modes and routes from each reactor or waste generator site to each storage or disposal site.

2.5. Allowable Activities for Funding

Nevada continues to believe that the arbitrary limits on the amounts of funds that can be used for the purchase of equipment (25% in TY-2 and TY-1 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. States/tribes should not be foreclosed from doing so 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. The equipment limitation is unnecessary and could be counter productive

The notice states that planning grant activities "may include a risk assessment, and other assessment activities" [page 23757], and that "risk assessment and alternative route analysis is an allowable expense." [page 23761]. Nevada endorses the specific inclusion of risk assessment and route analysis as allowable uses for planning grant and subsequent year funding.

2.6. Other Comments

2.6.1. Training for Rail Inspections

The *Notice* excludes from Section 180(c) assistance the funding of rail inspection training because "the FRA [Federal Railroad Administration] covers the training cost to state employees in the [FRA's] State Participation Program." While the FRA does provide some training, it is wholly inadequate to deal with the massive amounts of rail shipments of spent fuel and HLW that could occur under DOE's proposed NWPA transportation program or under the provisions of Interim Storage Facility legislation before Congress. Moreover, 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 NWPA shipping campaign. It will be up to individual states to assure adequate rail inspections for NWPA shipments occurring in their jurisdictions. 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) and other rail safety measures.

2.6.2. Need for Codifying Policy and Procedures Through Formal Rulemaking

Nevada continues to believe that implementing policies and procedures must be codified in regulation 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. Nevada again endorses the proposed "Section 180(c) Strawman Regulations"

submitted to the Secretary of Energy as part of the WGA resolution acted on in August 1994.³ 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 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 affect the NWPA program and changes in administrations.

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.

2.6.3. Lifting the Prohibition on Direct Grants to Local Governments

The State of Nevada believes that DOE has properly interpreted the intent of Congress by proposing an implementation plan for Section 180(c) which gives states and tribes the lead role in planning for safe routine transportation and emergency response to accidents involving NWPA shipments. At the same time, the State of Nevada recognizes that local governments, especially county governments in Western states, would have significant responsibilities for first response to transportation accidents, and would be heavily impacted by rail and highway shipments, if a repository is constructed at the proposed Yucca Mountain site.

Routing studies conducted for the State of Nevada indicate that the vast majority of spent fuel shipments to the proposed Yucca Mountain repository site will likely enter Nevada by one or two primary highway/rail corridors: the I-80/Union Pacific corridor and the I-40/I-15/Burlington Northern corridor. Either of these routes could heavily impact the nine Nevada counties (Nye, Clark, Lincoln, White Pine, Eureka, Lander, Churchill, Mineral, and Esmeralda) and one California county (Inyo) officially designated as affected counties. At least seven of the ten affected counties are traversed by 75 miles or more of potential rail and/or highway routes, and nine could potentially be impacted by 50 percent or more of the total rail and/or highway shipments to Yucca Mountain.

Various options utilizing the I-80/Union Pacific corridor to Nevada traverse about 12 counties in Utah and Wyoming. Various options utilizing the I-40/I-15/Burlington Northern

³ Ref. Western Governors' Association Resolution 94-005 (August, 1994) and the Western Interstate Energy Board comments on DOE's January, 1995 Notice of Inquiry.

corridor to Nevada traverse about 15 counties in California, Arizona, and New Mexico. While the total number of counties along the final thousand miles to Yucca Mountain by either route is relatively small, the transportation impacts on these counties are potentially quite large. The majority of these counties have at least 50 miles of potential highway and/or rail routes, and could potentially be traversed by 50% or more of total rail and/or truck shipments.

The notice clearly states DOE's position that "local governments will not be able to apply for Section 180 (c) grants directly." [page 23756] Considering the potential heavy impacts on local government jurisdictions, and considering the responsibilities of counties in Western states to provide emergency response service, the State of Nevada urges DOE to reexamine the current prohibition on direct grants to local governments, and identify policy options for submittal to Congress that would allow direct grants to local governments.