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January 21, 2009

Mr. Frank Moussa
U.S. Department of Energy
c/o Patricia Temple
Bechtel SAIC Company, LLC
Suite 8000
955 N. L'Enfant Plaza SW
Washington, D.C. 20024

**RE: Notice of Revised Proposed Policy and Request for Comments, October 31, 2008
(73 FR 64933) – 180(c) implementation**

Dear Mr. Moussa:

Eureka County, Nevada submits the following response to the notice of revised proposed policy implementing Section 180 (c) of the Nuclear Waste Policy Act of 1982, as amended. This policy notice updates the proposed policy that the DOE published on July 23, 2007 (72 FR 40139) by providing the funding allocation approach for grants to federally recognized tribes that may be eligible for assistance under 180 (c), and including changes for clarification to the policy as it applies to states and tribes.

As an affected unit of local government under the Nuclear Waste Policy Act, Eureka County commented on the 2007 notice of revised policy with a letter dated January 15, 2008. All past Eureka County comments on prior DOE approaches and proposals for implementing Section 180(c) are incorporated by reference to the extent that they apply to the current proposed policy.

We stated in our January 2008 comments that the formula based approach is flawed. Eureka County still strongly believes that the formula based approach is flawed, and that funding should be based upon identified needs, not an arbitrary formula.

We strongly object to a subtle change in wording in the revised proposed policy. In the revised notice, the policy statement language was changed. The revision states that DOE “will **help** State, Tribal and local officials prepare for OCRWM shipments,” rather than the original policy statement which said that DOE would “provide funding as appropriate to **ensure** that State, Tribal and local officials are prepared for OCRWM shipments.” (**bold** emphasis added for clarification.) The word change and the new approach are totally unacceptable. Emergency responders must be capable of responding to any incident involving these shipments. Without adequate training, they cannot, and should not respond. DOE’s proposal to “help” states provide emergency response training would not ensure that emergency responders would be capable of

responding to an incident, since the amount of training that would be provided is not quantifiable. Theoretically, DOE could provide \$100.00 to each state, and claim that they have “helped” fund training. In its proposed policy, DOE does state the “Training with Section 180(c) funds should be to the level of detail and the degree necessary to prepare for shipments to a NWPA-authorized facility.” If this is the goal of the training program, then DOE’s proposed policy should be to ensure that this level of training is met. DOE may be trying to recognize that other sources of federal, state, and local funds are available to provide training to meet this goal. If so, the policy could recognize that other funds may be available to assist in meeting the goal and the policy should explicitly state that intent. However, **ensuring** that state, tribal and local officials are prepared for shipments is DOE’s responsibility.

Although it is appropriate to provide technical assistance and funding to Tribes, the DOE’s proposed method of funding Tribes is not appropriate. Under the proposed policy, funding to states would be based upon a formula system that includes population, route miles, and number of shipments along a route through a state and the number of shipping sites for each state. This formula would be used to determine each state’s percentage of available funds for each year. In contrast, each tribe would prepare a needs assessment which would be the basis for a grant application. DOE would then award a grant based upon the merits of the application.

Eureka County believes that the funding required for both states and tribes should be determined based on need. Similar to the approach for states, the amount of funding required by collective tribes should be based on the cumulative total of needs assessed for all affected tribes. That funding should constitute a separate pot of money allocated specifically for preparing tribes for NWPA shipments. The policy should also address how funds will be allocated under a needs based approach if Congress does not appropriate sufficient funds to address the identified needs.

DOES also requested comments on two new questions related to tribal funding.

Question 1: Should a certain percentage of the funding received from Congress be set aside for Tribal applicants? Should State and Tribal applicants’ funding come from a single allocation of funds?

In previous comments, Eureka County strongly requested that all funding be based upon a needs assessment process. If Congress does not provide adequate funding for the identified needs, then all grants should be reduced by the appropriate percentage of the applicants need compared to the total need identified. If DOE insists on using a formula based approach for funding grants, then all grants should be determined based upon the same formula.

Question 2: Should the formula described in the revised proposed policy for allocating the variable portion of States’ training grants be clarified to prohibit the counting of mileage along a route through Tribal jurisdictions in the calculation of route miles unless the state retains emergency response authority along that stretch of route?

As noted in the response to Question 1, Eureka County believes that funding should be based on assessed need.

Eureka County continues to be concerned that the proposed amounts for assessment and planning grants are arbitrary. Some states are already well prepared, for example if they are handling shipments between reactors, and are funded by the utilities to increase their response capabilities. Other states and local jurisdictions, such as Nevada, would be receiving all shipments, but have not experienced “routine” periodic shipments, and would need more funds for planning and needs assessment. This is why the formula approach is flawed.

We reiterate our comment from a year ago. Any method of distributing funds should be predicated upon ensuring that those local governments that have the greatest impact from shipments and the greatest need for assistance in training public safety officials received the necessary assistance to ensure that they are adequately prepared for shipments.

Thank you for the opportunity to comment on the proposed policy.

Sincerely,

A handwritten signature in blue ink, appearing to read "RD Damele".

Ronald Damele
Public Works Director

cc: Richard Moore, PE
Abigail Johnson