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October 30, 2002

Dorothy N. Callier, RW-44
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

*RE: Eureka County, Nevada Comments on DOE's Draft Statement of Work for a
Transportation Integration Contractor*

Dear Ms. Callier:

The following are the comments of Eureka County, Nevada on the Department of Energy's "Draft Statement of Work for a Transportation Integration Contractor" for the Office of Civilian Radioactive Waste Management. Eureka County is an "affected unit of local government" under section 116 of the Nuclear Waste Policy Act as amended.

Overall, the Draft Statement of Work is putting the cart before the horse. DOE still needs to finalize mode and route decisions for transportation to a repository at Yucca Mountain. Firing a Transportation Integration Contractor before those institutional decisions are made by DOE is premature.

Also the lack of a comprehensive transportation Environmental Impact Statement, as pointed out by many agencies and individuals who commented on DOE's Yucca Mountain Draft Environmental Impact Statement, is a further impediment to responsible transportation planning in Nevada and nationally.

General Comments on the Draft Statement of Work (SOW)

(I) **Lack of Specificity and Lack of Policy Direction**

The SOW's lack of specificity and its vagueness highlight the need for a comprehensive transportation EIS that fully analyzes the SNF/HLW transportation issues from the national level and within Nevada. Such an EIS would be the basis for making decisions that are prerequisites

for the SOW - i.e., modal mix, routing; roles of DOE, the contractor, state and local governments, and tribes and other stakeholders; the regulatory framework used to govern the program; etc.

The work required of a potential contractor will be considerably different for DOE's mostly rail or mostly truck shipping scenario. The modal choice affects almost every aspect of planning *and* operational activities. Decisions such as mode of transport and routes need to be made before proceeding with a solicitation for a transportation contractor, and the SOW must be significantly more specific as to the nature of the transportation program and the details of the work the contractor is being asked to do. The SOW appears to have been written as justification for hiring a contractor to tell DOE what to do, rather than DOE outlining the major programmatic and policy objectives and parameters and, then, employing a contractor to implement those decisions.

It is significant that there **is** no statement in the SOW stipulating that the Transportation Integration Contractor (TIC) will follow the *maximum* rail scenario in *its* planning. Instead, the contractor is being **asked** to go site by site and determine shipment numbers and modes. If DOE has, in fact, made a decision to maximize rail transportation, there must be a statement to that effect in the SOW. It may well be that, given the problems and expense **of** direct rail access to Yucca Mountain and the difficulties of rail access at many reactor sites, the mostly **rail** scenario is not a *feasible* planning assumption. This issue should **be fully** evaluated and put to rest *before* a transportation services RFP is issued. If DOE has made a decision *to* maximize rail shipments - and can support that decision in the face of operational realities, there must be a statement to that effect in the SOW.

(2) Failure to Address Related Elements of the Transportation Program

While the work elements in the SOW appear to circumscribe a suite of activities that comprise only one element of what should be a three element plan for SNF/HLW transportation, i.e., the national operational planning element, the institutional element, and the Nevada element. The SOW addresses only the national planning component. The other two essential elements are missing. Without input from those other components, the SOW is incomplete.

(3) Lack of Clarity About Roles and Involvement of States and Tribes

Because, as set forth in the SOW, it is the contractor that is responsible for developing the various plans, there is a question of what the relationship of affected states, tribes, local governments and other stakeholders is to DOE in terms of both involvement in and oversight of those efforts. Where does state/tribal/local government input come in? Who is responsible for securing that input - DOE or the TIC?

(4) Lack of Clarity Regarding the Regulatory Framework

The preamble to the SOW should state unequivocally **that** all aspects of DOE's transportation program must comply with NRC and USDOT regulations governing SNF and HLW shipments and with the identified extra-regulatory requirements.

Currently, there is no reference at all to USDOT regulations in the SOW. The only clear application of NRC regulations is the cask certification requirements contained in 10 CFR ~~Part~~ 71

A thorough explication of the regulatory framework, as well as extra-regulatory requirements needed to provide for enhanced safety and public acceptance, should be done in advance of any contract solicitation. At a minimum, however, the SOW should direct the TIC to advise DOE on how to comply with the all applicable NRC and USDOT regulations. The SOW should go further and instruct the TIC to include in its planning extra-regulatory measures that enhance shipment safety

(5) Lack of Emphasis on Safety and Public Acceptance

The emphasis throughout the SOW is on economics and efficiency. There is very little reference to safety and public acceptance as major guiding principles for both the planning effort and the transportation program. The SOW does not indicate how the TIC is to prioritize safety and public acceptance vs. other competing prerequisites (i.e., efficiency, economics, schedule, etc.).

(6) Ambiguity About Route Selection

The SOW is contradictory and ambiguous about the selection of modes and routes. Like prior drafts of the RFP, this one says only that "preliminary routes will be selected in accordance with **applicable** NRC regulations for **all** modes selected" (see Section 2.1.3 - Campaign Operations Plan). For SNF and HLW shipments, NRC only requires routes to be identified seven (7) days prior to shipment, and this is done by the carrier. This is unacceptable for repository shipments. Routes must be identified: in conjunction with states, tribes, and local governments at least 3 and preferably 5 years prior to the onset of shipments to provide states adequate time to identify alternatives within their borders (if necessary) and to carry out required training and preparatory activities.

(7) Lack of Schedule and Time Frames

The SOW does not contain time frames for implementing key activities. It should contain a table or chart showing when various activities need to be accomplished and the interrelationships between the various tasks

(8) Relationship Between SOW and State/Local Emergency Preparedness Planning

There is a glaring disconnect between the Emergency Preparedness activities described in the SOW **and** the Nuclear Waste Policy **Act** Section 180(c) emergency preparedness activities for state and local responders. While it appears DOE intends to follow an unspecified separate path for planning and implementing Section 180(c) training, the SOW should clearly require *the* TIC to integrate its activities with those of the Section 180(c) program

Conclusion

The Statement of Work is inadequate for the **many** reasons stated. The SOW appears to have been written as justification for hiring a contractor to tell DOE what to do, rather than DOE outlining the major programmatic and policy objectives and parameters and, then, employing a contractor to implement those decisions.

Of particular concern to Eureka County is that DOE recognize the unique role and responsibility that local governments have as first responders and protectors of public health and safety. Accordingly, the SOW should direct the contractor to work with state, **tribal** and local governments regarding issues of shipping and emergency management. Further, the **SOW** should explain the integration and coordination of DOE's activities under this contract and DOE's activities under 180(c).

Eureka County appreciates the opportunity to comment on **this** draft document.

Sincerely,



Abigail C. Johnson
Nuclear Waste Advisor

cc Leonard Fiorenzi
AULGs
Joe Strolin, Nuclear Waste Project Office