

May 17, 1995

Dr. Daniel A. Dreyfus, Director
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
RW-1, Room 5A-085
1000 Independence Avenue, S.W.
Washington, D.C. 20585

ATTN: SECTION 180(c) COMMENTS OF THE STATE OF NEW MEXICO

Dear Dr. Dreyfus:

This is in response to DOE/OCRWM's Notice of Inquiry (NOI) pertaining to the establishment and implementation of a program for providing technical assistance and funding to states under Section 180(c) of the Nuclear Waste Policy Amendments Act of 1987. The referenced NOI was published in the *Federal Register* of January 3, 1995, Vol.60, No.1, p.99 (60 FR 99) and March 14, 1995, Vol.60, No.49, p.13715 (60 FR 13715).

The following comments are submitted on behalf of the State of New Mexico's Radioactive Waste Consultation Task Force. The Task Force was created by statute in 1979 [Laws of New Mexico 1979, Chapter 380; Section 74-4A-6 New Mexico Statutes Annotated (NMSA) 1978]. It is composed of the Cabinet Secretaries of the Energy, Minerals and Natural Resources Department; Environment Department; Department of Public Safety; Highway and Transportation Department; Department of Health; and the Taxation and Revenue Department. In addition, the Chairman and Vice-Chairman of the joint interim Radioactive and Hazardous Materials Committee of the New Mexico State Legislature serve as advisory members. The Task Force Chairman is appointed by the Governor of New Mexico.

The duties of the Task Force are set out in Section 74-4A-7 NMSA 1978. That statute specifies the Task Force "...shall negotiate for the State with the federal government in all areas relating to the siting, licensing and operation of new federal disposal facilities, including research, development and demonstration, for high-level radioactive wastes, transuranic radioactive wastes and low-level radioactive wastes." Consequently, activities relating to management of civilian spent nuclear fuel fall within the purview of the Task Force.

To date, the State of New Mexico has been an active participant in addressing Section 180(c) issues. Through its Radioactive Waste Consultation Task Force, New Mexico submitted comments dated May 1, 1992, on DOE/OCRWM's Draft Strategy to Provide Section 180(c) Training Assistance to State, Tribal and Local Governments. In addition, New Mexico is a member of the Western Interstate Energy Board's High-Level Radioactive Waste Committee and, as such, has contributed to development of the Committee's Section 180(c) comments over the years, including those of January 30, 1991, December 6, 1993, and April 26, 1995. Finally, the State has participated on DOE's Transportation External Coordination Working Group (TEC/WG) since its inception; significantly, implementation of Section 180(c) is one of the key issues being addressed by the TEC/WG. Given our long history of involvement in Section 180(c) issues, the State of New Mexico respectfully requests that DOE/OCRWM review and consider all previous comments referenced above, as well as those which follow, in formulating an effective Section 180(c) assistance program for states.

We are pleased with the degree to which DOE/OCRWM has involved the public thus far in the Section 180(c) implementation process. In a program of this nature, widespread public participation makes imminent sense. However, the pace of implementing Section 180(c) has become more and more of a concern to us over the past few years, and especially since last summer when various nuclear utilities and state public service commissions filed suit seeking to have DOE take title to their wastes by January 31, 1998. This pending lawsuit, as well as federal legislation (S.167, H.R.1020) introduced during this session of Congress, could result in the commencement of spent fuel shipments in less than three years.

In order to ensure adequate protection of public health and the environment, a Section 180(c) program must be operational as soon as possible. Hence, DOE/OCRWM is strongly encouraged to commit whatever resources are necessary to establish without undue delay a high-quality, administratively efficient assistance program. The Section 180(c) program should be established in regulations using an expedited rulemaking process under the federal Administrative Procedure Act, as this will provide the public continuing participatory opportunities while accommodating obvious time constraints. Moreover, implementing Section 180(c) by regulation will promote consistency from administration to administration over the life of this long-term program.

In general, we believe an effective Section 180(c) program is one that will provide sufficient flexibility for all eligible parties to plan, develop, and implement a transportation safety program for spent nuclear fuel and high-level waste shipments which best meets their respective individual needs. Each state, tribal and local government is organized differently, with varying levels of personnel and capabilities to ensure the safe transport of these

radioactive wastes. For this reason, it is imperative for DOE/OCRWM to structure the 180(c) program in a manner which is flexible enough to accommodate the myriad and diverse requirements of all potential participants.

Toward this end, it is recommended the WIPP Transportation Safety Program be closely reviewed and considered in developing a policy and procedures for implementing Section 180(c). The WIPP Transportation Safety Program resulted from an ongoing cooperative effort between DOE and the Western Governors' Association Technical Advisory Group for WIPP Transport. It consists of the following program elements:

ACCIDENT PREVENTION

- * High-Quality Drivers and Carrier Compliance
- * Independent Inspections
- * Procedures for Handling Bad Weather and Road Conditions
- * Safe Parking during Abnormal Conditions
- * Advance Notification and Monitoring of Shipments

EMERGENCY RESPONSE

- * Medical Preparedness
- * Mutual Aid Agreements
- * Emergency Response Plans and Procedures
- * Training and Exercises
- * Emergency Response Equipment

PUBLIC INFORMATION AND PARTICIPATION

SHIPMENT ROUTING

PROGRAM EVALUATION

We recognize that not every component of the WIPP Transportation Safety Program may be appropriate for incorporation verbatim in a program implementing Section 180(c). Modifications would be necessary to address the specific requirements of affected jurisdictions and the Civilian Radioactive Waste Management transportation program, particularly with respect to the nature of the cargo, the modes of transport, and the routes to be used. Notwithstanding this, it is important to note the WIPP Program served as a model and was successfully adapted for use in DOE's Cesium-137 Capsule Return shipping campaign. This campaign, which occurred between the IOTech facility near Denver and the Hanford Site in Washington State over the last year, experienced no accidents and was completed ahead of schedule and presumably under budget. The success of the Cesium-137 campaign provides compelling evidence why the WIPP Transportation Safety Program should be considered in determining what elements may be appropriate for inclusion in a Section 180(c) assistance program.

Implementation Options

In its Notice of Inquiry, DOE/OCRWM lists five potential mechanisms or options for implementing Section 180(c): 1) Use

Established Federal Agency Programs Other Than the Department's; 2) Establish Agreements With State/Tribal/Local Governments and Other Organizations; 3) Establish a Department-wide Grant Program; 4) Establish an OCRWM Grant Program; and 5) Use Elements From the Previous Four Groups. The State of New Mexico supports Option 4: Establish an OCRWM Grant Program, with some minor modifications.

We believe the establishment of an OCRWM grant program is preferable to the other listed options for two primary reasons. First, the Section 180(c) program will be unprecedented in its scope and magnitude. It must ultimately accommodate and be responsive to the interests of 30 to 40 states, hundreds of municipalities, and numerous Indian tribes. Given the many and diverse affected jurisdictions, the Section 180(c) program merits its own independent organizational structure. Trying to fit this new large program within the framework of some other existing federal agency program will in all likelihood cause further delays in implementing Section 180(c) and result in the creation of an unworkable bureaucracy.

Second, by establishing a grant program within OCRWM, the DOE agency responsible for managing the Civilian Radioactive Waste Management (CRWM) Program maintains full control over implementation of Section 180(c). Such autonomous control offers significant potential benefits in terms of program administration, efficiency, and accountability--benefits that the other options cannot provide. OCRWM is where the relevant experience and expertise on the CRWM Program reside; so, too, should the corresponding Section 180(c) assistance program.

With respect to the option of establishing cooperative agreements with state and tribal governments, it is important to note that this type of program has been successfully implemented, albeit on a limited scale, for DOE's Waste Isolation Pilot Plant (WIPP). To date, only seven western states and two Indian tribes have been intimately involved in the WIPP Transportation Safety Program. It therefore remains to be seen whether the cooperative agreement approach will continue to be effective once the number of program participants triples or quadruples in preparation for full WIPP operations.

Furthermore, the cooperative agreement process is not particularly well-suited for the timely establishment and provision of the type of programmatic assistance contemplated under Section 180(c). If OCRWM is indeed committed to the expeditious implementation of Section 180(c), then a mechanism involving cooperative agreements should be avoided at this time. As stated previously, however, much can be gleaned from the WIPP Program in terms of its structure and scope, as well as its effectiveness in facilitating coordination and communications among affected entities along the transportation corridor.

Questions Posed in the Notice of Inquiry

In response to the NOI questions, the State of New Mexico directs OCRWM's attention to the draft Section 180(c) regulations proposed by the Western Interstate Energy Board's (WIEB) High-Level Radioactive Waste Committee and unanimously endorsed by the Western Governors' Association (WGA). These draft regulations were forwarded to DOE Secretary Hazel O'Leary, along with WGA Resolution 94-005, in correspondence from WGA dated August 16, 1994. A copy of the referenced draft regulations and WGA resolution are attached for your perusal. We believe implementation of Section 180(c) through regulations comparable to those drafted by the WIEB Committee is the option that will be the least administratively burdensome on OCRWM, while offering the greatest flexibility for recipients.

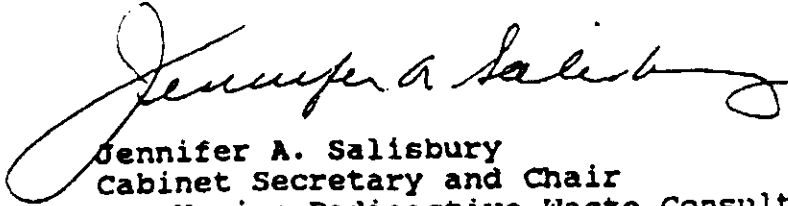
Again, it is important that OCRWM provide in its implementing regulations considerable latitude to program participants regarding the expenditure of Section 180(c) funds. The use of such funds must not be restricted to any significant degree (except, of course, to ensure compliance with all applicable laws, regulations, and standards governing appropriations from the Nuclear Waste Fund). Based on our experiences with WIPP, the State of New Mexico has determined there are substantial benefits to be gained by integrating and coordinating selected elements of the WIPP Transportation Safety Program with other existing hazardous/radioactive materials programs. For example, the incorporation of a WIPP-specific training modules into various hazardous materials emergency response courses has proven to be a cost-effective measure in reaching a broader audience of response personnel. OCRWM should allow for similar such innovation and flexibility in its Section 180(c) program.

In closing, the State of New Mexico encourages OCRWM to keep foremost in mind as it formulates the Section 180(c) program: 1) the long-term nature of the program; 2) the numerous and diverse affected jurisdictions throughout the United States that are prospective program participants; and 3) the components of the WIPP Transportation Safety Program. Because state, tribal, and local governments have primary responsibility for ensuring the health and safety of their citizens, the Section 180(c) program must afford them sufficient flexibility to fulfill this important obligation as they determine to be appropriate.

Additionally, we strongly believe the Section 180(c) program must be applicable to all shipments of commercial spent nuclear fuel or defense high-level radioactive waste to an interim storage facility and/or a permanent repository, irrespective of DOE ownership of such facilities. WGA Resolution 94-005 (attached) supports the use of Section 180(c) funds for spent fuel shipments to a private storage facility.

Thank you for this opportunity to supplement our previous comments on implementing Section 180(c) of the Nuclear Waste Policy Act, as amended. The State of New Mexico remains committed to working cooperatively with OCRWM and other parties in bringing this issue to a mutually beneficial resolution.

Sincerely,



Jennifer A. Salisbury
Cabinet Secretary and Chair
New Mexico Radioactive Waste Consultation Task Force

Enclosure (2)

c: Task Force Member Agencies
Linda Desell, DOE/OCRWM
Lois Smith, TRW Environmental Safety Systems