

rec 9/29



# Western Interstate Energy Board/ WINB

44

September 30, 1995

Alberta  
Arizona  
British Columbia  
California  
Colorado  
Hawaii  
Montana  
Nebraska  
Nevada  
New Mexico  
Oregon  
Saskatchewan  
Utah  
Washington  
Wyoming

Tom Bratherton  
Chairman

Douglas C. Larson  
Executive Director

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

**RE: Detailed Options for Section 180(c) Policy and Procedures Per the Federal Register Notice of July 18, 1995**

Dear Mr. Dreyfus:

The High-Level Radioactive Waste Committee of the Western Interstate Energy Board is concerned that the federal government is not living up to its commitment to help states and local governments prepare for shipments of spent nuclear fuel and high-level waste (SNF/HLW) as required by law (Section 180(c) of the NWA). Several times in the past few years the western states have offered comments on Section 180(c) development to DOE. For example, last year the Western Governor's Association adopted a resolution urging the expeditious implementation of Section 180(c) and provided DOE with proposed "strawman" regulations. (See Attachment A.) In May 1995, the Committee provided comments to DOE in response to a January 6, 1995 *Federal Register* Notice of Inquiry on Section 180(c). (See Attachment B.) Despite these repeated efforts by the Committee, the Department has failed to take any affirmative action regarding Section 180(c).

The Committee is concerned that it is becoming increasingly likely that the Department of Energy's procrastination in implementing Section 180(c) will result in inadequate training for state and local governments. DOE apparently fails to see the urgency in implementing Section 180(c) now since under its repository schedule shipments would not occur until 2010 or beyond. However, if the Congress takes action to establish an interim storage facility, or if current lawsuits successfully force DOE to accept SNF in 1998, there will not be adequate time to implement Section 180(c). Additionally, DOE's continuing delay in implementing the law could send an inaccurate, unfounded, and ultimately counterproductive message to Congress that Section 180(c) is not a critical component of the nation's nuclear waste management program.

It should be clear that western states will require adequate emergency preparedness before a large scale shipping campaign could be undertaken in the West. The Committee sees no rational justification for continued delays in developing the system for delivering Section 180(c) assistance. Indeed, it is already past the time when the Section 180(c) delivery system should be in place.

Mr Daniel Dreyfus  
September 30, 1995  
Page 2

*Detailed Comments*

This letter serves as a supplement to the April 26, 1995 comments of the High-Level Radioactive Waste Committee of the Western Interstate Energy Board on DOE's January 6, 1995 Notice of Inquiry on Section 180(c) of the NWPA.

Of the options outlined in the Notice of Inquiry (NOI), the Committee supports an OCRWM Grant Program established in regulations. This option will provide flexibility for states to coordinate the OCRWM program with other transportation safety programs, while ensuring that the unique hazards presented by NWPA shipments are addressed. The Committee believes that the regulations should:

- ▶ Apply to all shipments to interim storage facilities and/or a repository(s) regardless of whether such facility is operated by DOE or a private entity (which accepts waste that otherwise would have been shipped to an NWPA facility if such a facility was operating);
- ▶ Prohibit large-scale shipments (e.g., shipments from multiple sites) unless assistance under Section 180(c) has been provided at least three years prior to the start of shipments;
- ▶ Provide for the development and funding of state and tribal plans which identify —
  - (1) the minimum elements necessary to ensure safe routine transportation and the establishment of effective procedures for dealing with emergency response situations,
  - (2) the current emergency response capabilities along each corridor,
  - (3) the activities needed to achieve minimum elements, and
  - (4) performance measures to evaluate programs implemented under the plan;
- ▶ Provide annual implementation grants to states and tribes, with 75 percent of the grant funds allocated according to the number of projected shipment miles in the jurisdiction and 25 percent of the funds allocated by the Secretary of Energy to ensure minimum funding levels and program capabilities among impacted states and tribes;
- ▶ Provide that funding must be provided to eligible host and corridor jurisdictions not less than three to five years prior to the commencement of shipments;
- ▶ Provide flexibility in the expenditure of Section 180(c) funds by states and tribes pursuant to the provisions of the state or tribal plans; and
- ▶ Establish Regional Training Advisory Teams of states and tribes to review and coordinate plans along shipment corridors and a National Training Advisory Committee to report to DOE on progress and needed additional actions.

Using established federal agency programs as a possible avenue to channel financial and technical assistance for all aspects of the Section 180(c) mandate would not be the most efficient option. For example, the Committee believes that the Federal Emergency Management Agency (FEMA) is not capable of providing the needed specialized assistance to address the unique features of responding to incidents involving SNFHLW. FEMA does not have the required expertise in the area of accident prevention to carry

Mr. Daniel Dreyfus  
September 30, 1995  
Page 3

out a program of safe routine shipments. FEMA's Comprehensive Cooperative Agreement program has been the subject of substantial disagreement with several western states and is viewed by experts in our region as ineffective and inappropriate for dealing with SNF/HLW.

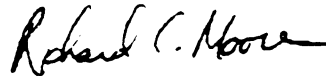
Unlike the FEMA program, preparations for shipments under the NWPA must be targeted to the specific shipment corridors that will be used and focus on the unique types of materials being shipped. States must have the flexibility to design and implement training delivery systems which fit their legal and institutional situations.

The western states are dismayed over the lack of progress with regard to Section 180(c) implementation. Effective assistance must be delivered for all SNF/HLW shipments. Failure to provide such assistance will not only result in a lack of public confidence in the program, but will also create another unfunded federal mandate which will result in inadequate preparations and/or new tax burdens on state and local governments that receive no benefit from such shipments. This issue is particularly problematic given pending legislation to begin SNF/HLW shipments to an interim storage site prior to the opening of a repository. The Committee and the Western Governors urge the Department of Energy to move ahead with the implementation of Section 180(c) to ensure that preparations are in place before shipments begin and thereby avoid unwarranted and unnecessary litigation and delays.

Sincerely,



Daniel Nix, Co-Chair  
High-Level Radioactive Waste Committee



Richard C. Moore, Co-Chair  
High-Level Radioactive Waste Committee

cc: The Honorable Hazel R. O'Leary  
Linda Desell, OCRWM  
Lois Smith, TRW Environmental Safety Systems

Attachments: A. WGA resolution and strawman regulations implementing Section 180(c).  
B. WIEB's April 26, 1995 comments on DOE's January 6, 1995 Notice of Inquiry on technical assistance and funding to states under Section 180(c) of the Nuclear Waste Policy Act.