



rec. 4/29

46

The Public Utilities Commission of Ohio
Transportation Department

George V. Voinovich, Governor

Craig A. Glazer, Chairman

September 29, 1995

Ms. Corinne Macaluso
U.S. Department of Energy
c/o Lois Smith
TRW Environmental Safety System, Inc.,
600 Maryland Avenue S.W., Suite 695
Washington, D.C. 20024
ATTN: Section 180(c) Comments

Dear Ms. Macaluso:

The following are comments of the Public Utilities Commission of Ohio, Transportation Department (PUCO) in response to OCRWM's Notice of Inquiry; Supplemental Information (NOI/SI) published in the Federal Register on July 18, 1995. Our comments supplement those we submitted on June 14, 1995 in response to OCRWM's original Notice of Inquiry published January 3, 1995.

Definition Of Terms

The PUCO believes that safe routine transportation includes more than "adequate vehicle, driver, and package inspection ..." as stated in OCRWM's 1992 "Strategy for OCRWM to provide Training Assistance to State, Tribal and Local Governments" document and reiterated in the July NOI/SI. Regarding highway and rail transportation, safe routine transportation includes not only vehicle, driver, and package roadside/railside inspections, but detailed carrier and shipper compliance reviews. Potential carriers should meet the highest standards set by U.S. DOT by maintaining a *consistent* "satisfactory" safety rating. Similarly, shippers/offerors of highway route controlled quantities of radioactive materials should be held to an equal standard of compliance. At this time the PUCO is not aware of an OCRWM policy regarding shipper/offeror compliance. OCRWM should recognize that shipper/offeror compliance is equally important as carrier compliance. In a 1990 interpretation, the U.S. DOT's Research and Special Programs Administration (RSPA) stated that "Any person who performs, attempts to perform, or, under the circumstances involved, is contractually or otherwise responsible to perform, any of the functions assigned by the HMR to the offeror, is legally responsible under the HMR for the proper performances of those functions. Any person's performance or attempted performance of any "offeror" functions may be evidence of that person's responsibility for performance of other "offeror" functions" (55 Fed. Reg. 38, 6760-6761). Thus, OCRWM should recognize that any contractor or subcontractor who performs an offeror function will be subject to U.S. DOT's Hazardous Materials Regulations (49 CFR 100-177). Therefore, the PUCO believes that OCRWM's definition of safe routine transportation should include "compliance with all federal, state, tribal, and local regulations by all carriers and offerors, as defined by U.S. DOT."

Safe Routine Transportation

As with other states, Ohio presently has an established motor carrier safety program and rail safety program enforcing U.S. DOT, FHWA, RSPA and Federal Rail Administration rules. OCRWM should make use of these established resources to ensure compliance by its contracted motor and rail carriers

Presently, the PUCO is a member of the Alliance for Uniform Hazmat Transportation Procedures. Under this alliance carriers are subject to a detailed review of their hazardous materials and general motor carrier safety programs in order to be granted a permit to operate in/through the Alliance's member states. The Alliance's audit program includes, but is not limited, to the U.S. DOT's carrier compliance review program. Carriers who do not maintain a consistent satisfactory safety rating are subject to closer scrutiny by member jurisdictions of the Alliance. In this way the members of the Alliance are able to monitor permitted carriers so they can maintain a fit compliance program. An established OCRWM carrier and shipper compliance fitness program should be applied to motor carrier and rail carrier programs.

The PUCO is encouraged by the joint effort of OCRWM and the CVSA to establish an enhanced vehicle inspection program for highway route controlled quantities of radioactive materials. PUCO Hazardous Materials Specialists have recently been certified by the CVSA to perform the new Enhanced North American Standard Inspection.

Schedule for Developing Section 180(c)

The PUCO concurs with the comments submitted by the Midwestern High-Level Radioactive Waste Committee (September 26, 1995) regarding the focus on safe routine transportation versus emergency response. As a stakeholder agency, the PUCO recognizes the extreme importance of proper emergency response training and preparedness at the state and local level. The PUCO wishes to stress that by incorporating established enforcement resources to an aggressive, safe, routine transportation program, OCRWM can significantly reduce the need for actual response to transportation emergencies.

Funding Allocation

In comments submitted in June 1995, the PUCO stated simply that "...training funds should be divided equitably between safe transport procedures and emergency response." The procedure to allocate these resources can be achieved through cooperative agreements with stakeholder agencies directly responsible for safe routine transport. If OCRWM decides to use the current Federal Emergency Management Agency's Comprehensive Cooperative Agreement program in order to allocate 180(c) funding, the DOE should include language in the agreement for the equitable allocation of funds for safe, routine transportation. The PUCO agrees with the Midwestern High-Level Radioactive Waste Committee that final 180(c) implementation policies and procedures program should be in place by January 1997.

In closing, the PUCO wishes to reiterate it's position that aggressive, proactive measures to ensure safe, routine transportation can work hand in hand with emergency response preparedness. The establishment of the CVSA's Enhanced North American Standard Inspection is a step in the right direction. A similar enhanced inspection procedure is needed for rail inspections. OCRWM should investigate compliance monitoring programs for both rail and highway carriers as well as offerors of highway route controlled quantities of radioactive materials. In many instances, this could be implemented through existing state enforcement programs.

As a stakeholder, the PUCO appreciates the opportunity to comment on OCRWM's development of Section 180(c) of the Nuclear Waste Policy Act. Please contact Daniel Fisher at (614)752-7991 with questions concerning the comments noted above.

Sincerely,



Alfred P. Agler,
Director, Transportation Department

cc: Steven Lesser, Deputy Director, PUCO Transportation Department
Daniel Fisher, Chief, Hazardous Materials Division
Carlisle Smith, Hazardous Materials Division
Andrew Grandjean, Consumer Services Division, Nuclear Division
Robert Owen, Ohio Department Of Health
Carol O'Claire, Emergency Management Agency