



Western Interstate Energy Board/ WINB

January 17, 2008

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Ms. Corinne Macaluso
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
c/o Patricia Temple
Bechtel SAIC Company, LLC
955 N. L'Enfant Plaza, SW, Suite 8000
Washington, DC 20024

Tony Usibelli
Chairman

Dear Ms. Macaluso:

Douglas C. Larson
Executive Director

On behalf of the Western Interstate Energy Board High-Level Radioactive Waste Committee, we are providing the Western States' perspective in response to the "Notice of Revised Proposed Policy and Request for Comments on the OCRWM plan for the implementation of section 180 (c) of the Nuclear Waste Policy Act" (Federal Register/Vol. 72, No. 1401 Monday, July 23, 2007/Notices). The WIEB HLW Committee is comprised of nuclear waste transportation experts from Arizona, California, Colorado, Idaho, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

The Western States will be heavily impacted by the planned shipments to the proposed federal repository at Yucca Mountain. We share a strong commitment to work cooperatively with USDOE to help ensure their safe and uneventful transport. We appreciate the opportunity to present comments on the proposed Draft Policy for 180(c) assistance. Our attached comments focus not only on matters of importance to the Western States, but also on the planning achievements and policy recommendations of the Transportation External Coordination Working Group, 180(c) Topic Group.

Regarding other critical steps needed to prepare states and tribes for NWPA shipments, the Western Governors have adopted three policy resolutions that

identify their issues, concerns, and directives:

- **Western Governors' Association, Policy Resolution 05-15**
Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste

Addresses matters such as financial and technical assistance responsibilities (routing, timelines, operational funding for the states, needs-based funding) and privatization.

- **Western Governors' Association, Policy Resolution 06-7**
Private Storage and Transportation of Commercial Spent Nuclear Fuel

Addresses topics such as facility and transportation infrastructure, transportation plans, training and resources. Mentions that preparedness measures and funding are required whether shipments are to permanent or interim storage facility.

- **Western Governors' Association, Policy Resolution 07-2**

Assessing the Risks of Terrorism and Sabotage Against High-Level Nuclear Waste Shipments to A Geologic Repository or Interim Storage Facility Addresses matters of safety and security

We are aware that Section 180(c) of the Nuclear Waste Policy Act addresses portions of the preparedness aspect of the larger transportation system, yet to be fully designed. The Western States look forward to receiving assurances that a comprehensive repository transportation program, reflecting measures endorsed by the Western Governors will be fully developed and fully funded by the USDOE.

We are re-conveying to you the July 7,2005, letter to Secretary Samuel W. Bodman regarding the "Principles of Agreement among States on Expectations Regarding Preparations for OCRWM Shipments." These principles identify the states' expectations for a fully functioning transportation program for spent nuclear fuel (SNF) and high-level radioactive waste (HLW). They were developed and endorsed by all four state regional groups: the Western Interstate Energy Board, the Council of State Governments Midwestern Office, the Council of State Governments Eastern Regional Conference, and the Southern States Energy Board.

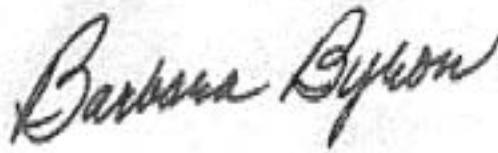
Ms. Corinne Macaluso
January 17, 2008
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We have included our references and would like them docketed. If you desire additional details or have any questions, please feel free to contact Jim Williams, Western Interstate Energy Board, 303-573-8910.

Sincerely,



Joe Strolin
WIEB HLW Committee Co-Chair



Barbara Byron
WIEB HLW Committee Co-Chair

Attachments



**Western Governors' Association
Policy Resolution 05-15**

June 14, 2005
Breckenridge, Colorado

***Transportation of Spent Nuclear Fuel and High-Level
Radioactive Waste***

- A. _____
1. This nation must dispose of significant amounts of spent nuclear fuel and high-level radioactive waste (HLW).
 2. The federal government is responsible for the disposal of these wastes under the Nuclear Waste Policy Act (NWPA).
 3. Plans of the federal government place a disproportionate share of the national burden of nuclear waste transportation on Western states, since all of the planned spent nuclear fuel and HLW storage and disposal sites are located in the West.
 4. The Governors recognize that a transportation program developed and implemented cooperatively with Western states, such as that used for cesium shipments and shipments to the Waste Isolation Pilot Plant (WIPP), can be developed with proper planning and commitment by the federal government.
 5. Litigation and proposed federal legislation have increased pressure on the federal government to accept private reactor spent nuclear fuel under the NWPA, before the Department of Energy's (DOE) plans to accept waste in 2012.
 6. The analysis by and experience of Western states show that adequate preparations to accommodate large scale shipments require at least three years following the designation of routes and shipping modes.
 7. For many years, the Western Governors have consistently urged the federal government to develop a comprehensive transportation plan, including the preparation of contingency plans for events such as the early shipment of waste.
 8. DOE has not prepared a comprehensive transportation plan and has no effective contingency plans to accommodate shipments.
 9. The Secretary of Energy has entered into an agreement with at least one utility company whereby DOE would provide for temporary storage of spent fuel at commercial nuclear power plant sites until such a time as a permanent repository is available for disposal of the spent fuel. This plan, if applied to other utility companies, would compensate them for the cost of storing the waste on-site, address DOE's failure to meet its deadlines under the Nuclear Waste Policy Act of 1982, as amended, and provide much needed flexibility

within the federal high-level waste program for carrying out scientific activities and conducting required transportation planning.

B. GOVERNORS' POLICY STATEMENT

Storage and Disposal

1. The Western Governors' Association supports permanent, safe geologic disposal as the long-term national policy for managing and finally disposing of spent nuclear fuel and HLW.
2. The Governors strongly encourage the U.S. Department of Energy to work cooperatively with the states in implementing this policy to ensure the safe storage, transportation and disposal of spent nuclear fuel and HLW and to comply with agreements which have been negotiated and entered into by a state's Governor regarding the management, transportation and storage of spent nuclear fuel and high-level radioactive waste. Moreover, the federal government should not site such waste in a state for interim storage without written agreement from the affected states' Governors.
3. The Governors support efforts by the federal government to examine alternative waste acceptance options, including but not limited to, providing funds to utilities for expanded on-site storage and taking title to spent nuclear fuel at individual reactor sites. The search for alternatives must not be construed as lessening the need to develop a permanent solution to the management of spent nuclear fuel.

Transportation

4. The Governors' objective is the safe and uneventful transport of nuclear waste which must be paramount in all federal policies regarding nuclear waste transportation.
5. The Governors find that as a result of federal government inaction and delays, and inadequate strategic planning involving stakeholders, a national transportation system for commercial spent nuclear fuel is not presently available and would, at the earliest, be available no sooner than three years after routes have been identified and technical assistance and funds have been provided to states.
6. Early coordination and effective communications with state, tribal, and local governments is essential to the ultimate success of any nuclear waste transportation safety program.
7. In order to develop a safe and effective system for accepting commercial spent nuclear fuel and HLW at a repository or any other central storage facility, the federal government must expand its focus beyond siting, and develop, in coordination with the states and tribes, a logical and timely transportation program. This requires policy commitments from DOE and other federal agencies to:

- a. Fix the shipping origins and destination points as early as possible;
 - b. Ensure the availability of rail and truck shipping casks;
 - c. Conduct full-scale testing of casks to be used to transport spent nuclear fuel and HLW;
 - d. Prepare a comprehensive transportation plan that includes the analysis of all needed transport-safety activities in a single document;
 - e. Develop responsible criteria for selecting shipping routes;
 - f. Develop a sound methodology for evaluating optional mixes of routes and transportation modes; and
 - g. In light of the events of September 11th, conduct a thorough review of the risks of terrorism and sabotage against spent fuel and HLW shipments and work with state governments to assure that adequate safeguards are in place prior to shipments occurring.
8. The Governors believe that DOE or any other operator of a central interim storage facility must look to the WIPP transportation and cesium capsule return programs for guidance in conducting any SNF and HLW shipping campaign to a repository or any central storage facility:
- a. A safety and public information program similar to that developed with Western states for shipments of transuranic waste to WIPP and cesium capsules to Hanford should be utilized for all highway route-controlled quantity (HRCQ) DOE shipping campaigns. Safety programs should be evaluated and improved as needed.
 - b. The WIPP Transportation Safety Program Implementation Guide is an excellent framework for transportation planning, and a similar document should be used as a base document for DOE's or any other central interim storage facility operator's various transportation programs.
 - c. DOE or any other central interim storage facility operator should follow the WIPP example of working through its regional cooperative-agreement groups to propose a set of shipping routes to affected states and tribes for their review and comment. This process should result in the identification of a set of primary and secondary routes from each site of origin to each destination. DOE should require the use of these routes through mandatory contract provisions with any private contractors.
 - d. DOE should work to identify flexible funding resources and cooperative agreements between their civilian, power and defense agencies as a means for supporting WGA and DOE application of lessons learned through the WIPP safety program to other DOE shipping campaigns.
9. DOE or any other central interim storage facility operator should operate a tracking system capable of monitoring the location and status of the vehicle and cask and provide access to this system to the states. The system should have a communications capability for notifying the vehicle operator, DOE, and states and tribes of the location, potential bad weather and road conditions, and occurrence of incidents.

Financial and Technical Assistance Responsibilities

10. The Governors believe it is the responsibility of the generators of spent nuclear fuel and HLW and the federal government, not the states and tribes, to pay for all costs associated with assuring safe transportation, responding effectively to accidents and emergencies that will inevitably occur, and otherwise assuring public health and safety. This includes costs associated with route evaluations and inspecting and escorting shipments.
11. The Governors insist that no shipments of spent nuclear fuel and HLW be made to storage facilities or a repository, until shipping routes have been cooperatively identified and funds and assistance have been made available to states at least three years prior to the start of shipments, notwithstanding whether such facilities are publicly or privately owned or whether there are any sudden changes in DOE's shipping schedule.
12. Critical steps need to be taken to prepare states and tribes for shipments, including but not limited to:
 - a. Appropriate funds for technical assistance and training programs for states and tribes through whose jurisdictions spent nuclear fuel and HLW are to be transported;
 - b. Implement policies and procedures to assure that states are fully compensated for all training, preparedness, and response costs associated with spent nuclear fuel and HLW shipments. Assistance to states must not be based on arbitrarily established criteria, but closely linked to state-specific assessments of need;
 - c. Adopt regulations to implement a mutually acceptable program of technical assistance and training funds. Such regulations should:
 - i. Provide for the development and funding of state and tribal plans that identify the minimum elements necessary to ensure safe routine transportation and procedures for dealing with emergency response situations, the current capabilities along each corridor, the activities needed to achieve minimum elements, and performance measures to evaluate programs implemented under the plan.
 - ii. Provide annual implementation grants to states and tribes. to ensure adequate funding levels and program capabilities among impacted states and tribes.
 - iii. Provide flexibility in the expenditure of funds by states and tribes pursuant to the provisions of the state or tribal plan.
 - iv. Prior versions of this resolution included a formula for the annual implementation grants, with 75 percent of grant funds allocated according to the number of projected shipment miles in the jurisdiction and 25 percent allocated to ensure minimum funding levels and program capabilities among impacted states and tribes. Because of the current uncertainties in the transportation system (e.g., routing, mode, intermodal transfers, schedules, security measures), it is premature for DOE to finalize 180(c) and other funding allocations for annual implementation grants. Once states and tribes have assessed their needs through planning

grants provided by DOE, DOE should then consult with states and tribes to determine how to best allocate funds to states and tribes effectively, efficiently and equitably.

Privatization

13. In any Nuclear Waste Policy Act shipping campaign, the Department of Energy cannot privatize or delegate to a contractor key transportation responsibilities, including but not limited to:
 - a. Interaction with states and tribes;
 - b. Selection of transportation modes and routes;
 - c. Preparation of environmental impact statements addressing transportation concerns;
 - d. Selection of transportation casks;
 - e. Working with states and tribes to develop acceptable transportation communication, training and security plans; and
 - f. Decisions regarding the provision of adequate technical assistance and funding to states and tribes to prepare for shipments.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Western Governors' Association (WGA) shall post this resolution to its Web site to be referred to and transmitted as necessary.
2. This policy resolution shall be specifically conveyed to the President of the United States, the Secretaries of Energy and Transportation, the chairman of the Nuclear Regulatory Commission, the Chairman of the Board and the Chief Executive Officer of Private Fuels Storage, LLC, and the appropriate members and committees of Congress.

The WGA staff, in cooperation with the Western Interstate Energy Board, shall monitor implementation of this resolution and inform the Governors of progress towards meeting the Governors' objectives. WIEB is directed to evaluate and report on actions necessary for the safe and uneventful transportation of spent fuel to any proposed interim storage site. WGA and WIEB are to provide the federal government and nuclear utility industry with assistance in the development and implementation of transportation, communications and security plans for spent nuclear fuel and high-level radioactive waste.

This resolution was originally adopted in 1999 as WGA Policy Resolution 99-014 and readopted in 2002 as WGA Policy Resolution 02-05.



WESTERN
GOVERNORS'
ASSOCIATION

Western Governors' Association Policy Resolution 07-2

Assessing the Risks of Terrorism and Sabotage Against High-Level Nuclear Waste Shipments to A Geologic Repository or Interim Storage Facility

A. BACKGROUND

1. The Nuclear Waste Policy Act (NWPA), as amended provides for the siting and construction of a repository for spent nuclear fuel and high-level radioactive wastes (HLW) and for the transportation of spent fuel and HLW from over 100 generator sites around the country to the repository.
2. The NWPA directs the U.S. Department of Energy (DOE) to transport spent fuel and HLW in casks certified by the U.S. Nuclear Regulatory Commission (NRC) and to conduct transportation operations in accordance with NRC regulations.
3. Thousands of shipments of spent nuclear fuel and high-level radioactive waste will affect at least 43 states and hundreds of cities throughout the country over a 25 - 40 year period.
4. In the Final EIS for Yucca Mountain, DOE acknowledged that spent fuel shipping casks are vulnerable to terrorist attack and sabotage, and determined that worst case accident cleanup costs could be up to \$10 billion. DOE has stated it intends to re-examine the consequences of acts of sabotage and terrorism in the Yucca Mountain Supplemental EIS, due to be released in late 2007.
5. NRC contractor reports prepared in the late 1970s estimated that sabotage of a spent fuel shipment in an urban area could result in hundreds of early fatalities, thousands of latent cancer fatalities and economic losses in the billions of dollars. In 1979, the NRC promulgated regulations (10 CFR 73) to safeguard shipments from sabotage and terrorism. The published NRC shipment safeguards regulations have not been significantly revised since the 1980s.
6. The increasing lethality of terrorist attacks in the United States, such as the World Trade Center and Oklahoma City bombings and the attacks in New York and Washington, DC on September 11, 2001, argue for a new, more comprehensive assessment of the risk of terrorism and sabotage against repository shipments.
7. Since September 11, 2001, the NRC has revised measures for the safe and secure transportation of spent fuel and other radioactive materials. The NRC has also conducted additional package vulnerability studies for spent fuel transportation containers. However, the results of these studies have not yet been made available to state and local governments.

8. A recent study by the National Academy of Sciences (NAS) concluded that malevolent acts against spent fuel and HLW shipments are a major concern, and that this concern is likely to grow when shipments begin. The NAS study recommended an independent examination of the security of spent fuel and HLW shipments be carried out before large quantity shipments to a repository or interim storage site begin. The study also recommended the results of the security studies should be shared with elected officials and the general public.
9. The NRC has committed to ensuring that state and local governments have sufficient information concerning these package vulnerability assessments to fulfill their obligations to plan for the safety and security of spent fuel shipments.¹ The State Regional Groups are currently working with NRC staff to identify what specific information the states need, and how that information can be shared.

B. GOVERNORS' POLICY STATEMENT

1. The Governors acknowledge the work the NRC has done since 2001 to ensure the safety and security of spent fuel shipments. The Governors encourage the NRC to continually re-evaluate the safety and security of these shipments to ensure protective measures stay consistent with the latest intelligence on terrorist threats.
2. These assessments should fully address the consequences of attacks against all components of the nuclear waste handling and transport system, to include: attacks against transportation infrastructure, the theft of a shipment, use of high energy explosives against a shipment cask, and direct attacks upon a shipment cask using antitank missiles or other armament that could cause a loss of containment. NRC should update and revise 10 CFR 73 based on the findings of these assessments and studies to ensure that the regulations assure adequate protection for spent fuel shipments from sabotage and terrorism.
3. The NAS study recognized the conflict between the open sharing of information on spent fuel and HLW shipments, and the security of transportation programs. The study noted that this conflict is impeding effective risk communication, and may reduce public acceptance of shipments. NRC should strengthen its efforts to share information with state and local governments regarding spent fuel shipment vulnerabilities and consequences. State and local governments need this information to make appropriate safety, security and emergency response preparations for spent fuel and HLW shipments. The Governors recognize this sharing of information must be conducted within the framework of preventing the release of sensitive or classified information to individuals without a need to know.

¹ August 16, 2006 letter to Mr. Robert Owen, Chair, Midwestern Radioactive Materials Transportation Committee.

4. DOE should continue to address acts of sabotage and terrorism in its NEPA documents, and should incorporate terrorism/sabotage risk management and countermeasures in all DOE transportation plans, protocols, and practices relating to operation of a repository, interim storage facility, and/or intermodal transfer facility, including liability for costs and damages resulting from terrorism/sabotage against nuclear waste shipments. DOE should share security-related information with state and local governments to the maximum extent practicable.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. This resolution is to be posted on the Western Governors' Association Web site and it should be referenced and used as appropriate by Governors and staff.
2. The WGA, in cooperation with the Western Interstate Energy Board, shall monitor implementation of this resolution and inform the Governors of progress towards meeting the Governors' objectives.
3. The Governors' representatives, along with WGA and WIEB staff, will continue to interact with the U.S. Department of Energy and the Nuclear Regulatory Commission to interactively develop and implement the objectives of this resolution.

This resolution was originally adopted as Policy Resolution 98 - 008.

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Western Governors' Association
Policy Resolution 06-7

June 13,2006
Sedona, Arizona

***Private Storage and Transportation of
Commercial Spent Nuclear Fuel***

A. BACKGROUND

1. The Nuclear Waste Policy Act of 1982 requires the Federal Government to provide for permanent disposal of spent nuclear fuel.
2. The Nuclear Waste Policy Act requires the owners and operators of nuclear power reactors to assume primary responsibility for providing interim storage of spent nuclear fuel. The Act requires that federal officials expedite the effective use of existing reactor storage facilities and the addition of needed new storage capacity, consistent with:
 - a. Protection of public health and safety, and the environment;
 - b. Economic considerations;
 - c. Continued operation of such reactor;
 - d. Any applicable provisions of law; and
 - e. Views of the population surrounding such reactor.
3. U. S. Department of Energy (DOE) originally projected that a deep geologic repository would be available for acceptance of spent nuclear fuel in 1998. Recently DOE revised their schedule to project that the repository will not be available until at least 2020.
4. Both DOE and the Nuclear Regulatory Commission (NRC) have determined that technology for safe, cost effective, dry cask, at-reactor storage exists; thirty-eight dry-cask storage sites are already operating safely in this country.
5. On December 1, 1989, the Western Governors' Association adopted Resolution 89-024, which stated that spent nuclear fuel should remain at reactor sites until a state has agreed to storage and DOE has provided reasonable transportation, safety, and emergency response assurances to the western states. The resolution was readopted in 1992, 1995, 1997,1999,2002 and 2005.
6. WGA's current resolution 05-15 expresses our concerns with DOE interim storage sites, and recommends that the Federal government should not locate an interim storage site without written agreement from the affected states' Governors. The Resolution also directs that:

"[No] shipments of spent nuclear fuel and HLW be made to storage facilities or a repository, until shipping routes have been cooperatively identified and funds and assistance have been made available to states at least three years prior to the start

of shipments, notwithstanding whether such facilities are publicly or privately owned."

7. At a private, interim storage facility, each nuclear utility that stores spent nuclear fuel will retain ownership and liability for its own waste.
8. Moreover, federal resources will not be available to enhance state and local infrastructure and emergency response capabilities.
9. Without an available permanent disposal site, there is no guarantee that a private interim storage site will be temporary. There is no way to ensure spent fuel rods that are shipped and stored at a private temporary or interim facility will ever be removed.
10. Under its current regulatory authority, NRC can license a surface storage area for 20 years. The license may be renewed. NRC has determined that spent fuel can be stored safely for 100 years and some congressional bills have called for an initial 100 year licensing period.
11. The Government Accountability Office, with concurrence from DOE, has determined that sufficient temporary capacity exists for spent fuel to be stored at existing sites, pending completion of a permanent disposal facility.
12. On February 21, 2006, the NRC issued a license to Private Fuel Storage, LLC, to operate a private interim storage site for spent nuclear fuel in Skull Valley, Utah, on land leased from the Skull Valley Band of Goshute Indians.

B. GOVERNORS' POLICY STATEMENT

1. It is the objective of the Western Governors' Association (WGA) to support the national policy for permanent deep geologic disposal of spent nuclear fuel, consistent with the principles of science, fairness, safety, environmental protection, and equity. Congress and the Administration should recognize that, if a permanent deep geologic repository does not open on schedule, most reactor sites are believed to have the capacity for additional on-site storage.
2. No interim storage facility, whether publicly or privately owned, shall be located within the geographic boundaries of a Western state without the written consent of the governor.
3. Commercial spent nuclear fuel should remain at the reactor site until:
 - a. A permanent storage/disposal site is operational.
 - b. DOE and the nuclear utility companies have worked with the corridor states to implement an acceptable transportation plan for shipping the waste to permanent storage or disposal sites.

- c. DOE and the nuclear utility companies have put into place adequate infrastructure capacity to handle, store, and dispose of this waste.
 - d. DOE, the U.S. Department of Transportation and the nuclear utility companies have ensured adequate state and local emergency and medical responder training and the resources in case of an accident or mishap while shipping this waste.
4. Should any commercial interim storage site begin operations, it will, out of necessity, play a major role in the NWPA transportation system. Therefore, DOE must include any such sites in its transportation planning. This planning should begin as soon as such site receives a license from the NRC.
5. The Governors find that the creation of privately-owned interim storage sites is a direct result of the Federal government's failure to begin accepting spent fuel on schedule. Therefore, it is the Federal government's responsibility to ensure adequate preparation for shipments to these facilities, coordination with states, and provision of adequate funding to reimburse the states for costs associated with shipments to any interim storage facility, whether publicly or privately owned. The Governors consider it to be entirely appropriate to use the Nuclear Waste Fund to pay for these activities.
6. The Governors support existing federal radioactive waste transport safety requirements designed to protect public health and safety, including the Hazardous Materials Transportation Authorization Act and the Resource Conservation and Recovery Act.
7. It is not the intent of this resolution to interfere with DOE's compliance with agreements that have been negotiated with the western states for the cleanup of DOE sites and facilities or which are contained as part of a court decree or settlement agreement, such as those now in place between DOE and the states of Colorado, Idaho, and Washington.

C. GOVERNORS MANAGEMENT DIRECTIVE

1. The Western Governors' Association shall post this resolution to its web site to be referred to and transmitted as necessary.
2. WGA shall work with Congress, the Nuclear Regulatory Commission, the U.S. Department of Energy and the National Association of Utility Regulators to develop the appropriate elements of policy to anticipate the need for interim storage at reactor sites.

July 7, 2005



The Council of State Governments
Midwestern Office
641 E. Butterfield Road, Suite 401
Lombard, Illinois 60148-5651
(630) 810-0210

The Honorable Samuel W. Bodman
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585



Southern States Energy Board
6325 Amherst Court
Norcross, Georgia 30002
(770) 242-7712

Dear Mr. Secretary:

Enclosed please find our February 2, 2005, letter to Theodore Garrish and the attached "Principles of Agreement among States on Expectations Regarding Preparations for OCRWM Shipments." These principles identify the states' expectations for a fully functioning transportation program for spent nuclear fuel (SNF) and high-level radioactive waste (HLW). They were developed and endorsed by all four state regional groups: the Western Interstate Energy Board, the Council of State Governments Midwestern Office, the Council of State Governments Eastern Regional Conference, and the Southern States Energy Board.



Western Interstate Energy Board
1515 Cleveland Place, Suite 200
Denver, Colorado 80202
(303) 573-8910

Although these principles were originally developed in the context of shipments to a federal geologic repository, we expect them to apply as well to commercial SNF and HLW shipments to any away-from-reactor storage facility. In light of the increasing focus on the proposed Private Fuel Storage (PFS) facility in Utah and the recent proposal for federal interim storage, we are sharing these expectations with you so that you can incorporate them into your planning for shipments to any interim storage facility. The states believe it is the responsibility of the SNF and HLW generators, as well as the federal government, to cover all the states' shipment-related costs associated with SNF and HLW shipments. The states further believe that this principle applies regardless of the destination of the shipments and the funding mechanism.

Samuel Bodman

July 1, 2005

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We look forward to hearing from you on how the U.S. Department of Energy plans to engage the states in planning for shipments to PFS or any other storage facility.

Sincerely,



Thor Strong
Michigan Department of Environmental
Quality and Chair, CSG Midwestern
Radioactive Materials Transportation
Committee



Michael Cash
Alabama Department of Public Health
and Chairman, SSEB Radioactive
Materials Transportation Committee



Ken Niles
Oregon Office of Energy and
Co-Chair, WIEB High-Level Radioactive
Waste Committee



Joseph Strolin
Nevada Agency for Nuclear Projects and
Co-Chair, WIEB High-Level Radioactive
Waste Committee

Enclosure

cc: John Parkyn, PFS, LLC
Paul Golan, US DOE
Judith Holm, US DOE
Earl Easton, US NRC



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Southern States Energy Board
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(770) 242-7712



The Council of State Governments
Eastern Regional Conference
40 Broad Street, Suite 2050
New York, New York 10004
(212) 482-2320

February 9, 2005

Theodore J. Garrish
Deputy Director for Strategy and Program Development
Office of Civilian Radioactive Waste Management
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Garrish:

On behalf of the four state regional groups, we are pleased to present the enclosed "Principles of Agreement Among States on Expectations Regarding Preparations for OCRWM Shipments." These principles, unanimously endorsed by all four regions, identify the states' expectations for a fully functioning transportation program for spent nuclear fuel and high-level radioactive waste. We believe these principles should serve as policy guidelines for the OCRWM transportation program, including DOE's policy recommendations for the *Federal Register* notice on the implementation of Section 180(c).

Our intent is to share these fundamental, overarching expectations with all levels of DOE management involved with this project. We look forward to continuing to work with you through the state regional groups, the Transportation External Coordination Working Group, and other forums to develop the OCRWM transportation program.

Theodore J. Garrish
February 9, 2005
Page 2


Sincerely,



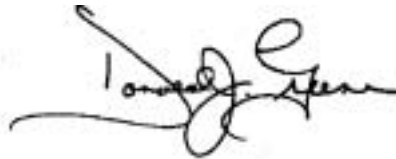
Ken Niles
Oregon Office of Energy and Co-Chair,
WIEB High-Level Radioactive Waste
Committee



Joseph Strolin
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Waste Committee



Thor Strong
Michigan Department of Environmental
Quality and Chair, CSG Midwestern
Radioactive Materials Transportation
Committee



Donald Greene
Arkansas Department of Health and
Chairman, SSEB Radioactive Materials
Transportation Committee



Thomas Hughes
Pennsylvania Emergency Management
Agency and Co-Chair, CSG Northeast
High-Level Radioactive Waste
Transportation Task Force



Edward L. Wilds, Ph.D.
Connecticut Department of
Environmental Protection and Co-Chair,
CSG Northeast High-Level Radioactive
Waste Transportation Task Force

Enclosure

cc: Gary Lanthrum
Judith Holm
Corinne Macaluso

**Principles of Agreement Among States
On Expectations Regarding Preparations for OCRWM Shipments
February 2005**

These principles identify the expectations of the states for a fully functioning transportation program for spent nuclear fuel and high-level radioactive waste.

1. To help ensure the safe and secure transport of shipments under the Nuclear Waste Policy Act, the overall objective of the 180(c) program must be to assist states in developing the capability to help prevent accidents and respond in a timely, appropriate fashion to accidents involving spent fuel and high-level radioactive waste shipments.
2. Funding to states must be predictable to ensure program continuity.
3. Section 180(c) funds and technical assistance must be provided to states at least three years prior to the start of shipments.
4. To maximize the effectiveness of the 180(c) program, the states must know which routes DOE will use prior to applying for assistance. Once routes have been identified, states must have sufficient time (a minimum of three years after routes are identified) to prepare those routes before shipments begin.
5. Scheduling of shipments must be done in a way that balances the priority of shipments established in OCRWM's Annual Capacity Report with impacts on state and local responders. A shipping campaign based on the Annual Capacity Report would result in occasional shipments traveling through many jurisdictions. Consideration needs to be given to the efficient use of federal, state, local, and tribal resources for planning and emergency response in shipment scheduling. States will need predictability with regard to shipment scheduling.
6. The 180(c) program must give the states maximum flexibility to implement accident prevention and emergency response programs that best meet their needs. The states, in turn, will be accountable for documenting that the assistance they receive from DOE is, indeed, accomplishing the overall goal of the 180(c) program.
7. DOE must continue to support the State Regional Groups to ensure consistency and compatibility of shipment planning activities.
8. An upfront planning grant (minimum of \$200,000 per state) must be provided to each affected state to cover the costs of planning and conducting a needs assessment. As long as shipments continue, however, there will be an ongoing need for planning. The states must be able to use their annual 180(c) grants for planning as well as for training.
9. DOE and states must develop a list of allowable activities that are eligible for funding under Section 180(c), as well as a list of transportation-related activities for which DOE will also provide funding from the Nuclear Waste Fund or other sources.
10. DOE must provide the states with financial and technical assistance for both training and operations activities as long as shipments continue along a shipping corridor.

. Overview

The comments of the Western Interstate Energy Board High-Level Radioactive Waste Committee are divided into the following categories:

- Regional Stakeholder Process
 - Stakeholder Involvement Directives
 - Primary External Coordination Mechanism
 - State Regional Group Collaboration
- General Comments
- Answer Matrix
- Comment References

Regional Stakeholder Process

Stakeholder Involvement Directives

The WIEB HLW Committee appreciates DOE's references to stakeholder documents and processes that were utilized in the development of this proposed 180(c) policy.

In addition, we draw your attention to a federal directive that assures stakeholder involvement, and to the Memorandum of Agreement (MOA) that founded the formation of the Transportation External Coordination Working Group (TECIWG). The TECIWG, which, regarding Section 180c, has served its intended purpose as the *key stakeholder group* by which DOE interfaces in matters dealing with the transportation of radiological waste:

Executive Order 12327:

Executive Order 12372, "Intergovernmental Review of Federal Programs" (July 14, 1982) was issued to "foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development".

Regarding the national transportation campaign for transport of spent nuclear fuel and high-level waste, western states expect DOE to meet the provisions of Executive Order 12327, which provides that federal agencies:

- *Shall provide opportunities for consultation by elected officials that would be directly affected by proposed Federal financial assistance or direct Federal Development;*
- *Shall make efforts to accommodate State concerns with proposed Federal financial assistance and direct Federal development;*
- *Shall seek the coordination of views of affected State officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. [1]*

The DOE TEC Foundational MOA:

The document that established the TECIWG is entitled "Memorandum of Agreement Between the OCRWM, Environmental Restoration and Waste Management, and Defense Programs, concerning the TECIWG Involvement with DOE Radioactive Materials Transportation Activities." The DOE TECIWG has been active since 1992, fulfilling the original objective: "to solicit the aid of various stakeholder groups in resolving common transportation issues, and focus and coordinate the DOE program efforts." [2]

Primary External Coordination Mechanism for 180 (c)

The US Department of Energy has chosen to utilize, as it's *primary external coordination mechanism for 180(c)*, the Transportation External Coordination Working Group (TECIWG).

Through the TEC/WG, DOE interacts with representatives of organizations at the state, tribal, and local levels who are working cooperatively with DOE, to obtain input for program needs assessment, development and management, and to enhance their capability to carry out transportation emergency preparedness and safety activities specifically related to radioactive materials shipments. [3]

The TECIWG membership is comprised of 43 national, international, state, industry, tribal, union, and professional organizations as well as state regional groups. The state regional groups represent the Governors of states through whose jurisdictions transportation of commercial spent nuclear fuel is being contemplated. The state regional groups and their member states were actively involved in identifying and addressing issues related to the design and implementation of the Section 180(c) grant program.

The WIEB HLW Committee believes that the Federal Register Notice (FRN) should have placed greater emphasis on the importance and policy recommendations of the Section 180(c) Topic Group of the TEC/WG and the coordinated, collaborative consultative process that it undertook over several years to help DOE craft viable 180(c) program considerations.

Therefore, the Western States, as committed stakeholders in the regional process, are submitting the "Principles of Agreement Among States on Expectations Regarding Preparations for OCRWM Shipments" as a demonstration of a national consensus among affected states that was successfully negotiated within the 180(c) Topic Group. [4] Further, the Principles of Agreement were incorporated into the Briefing Package for Section 180(c) Implementation that was sent to DOE management in preparation for this Draft Policy. <http://www.tecworkinggroup.org/180c.html> [6]

While we appreciate that DOE has incorporated many of the consensus driven principles in the Draft Policy, the WIEB HLW Committee recommends that DOE reconsider other principles of agreement for adoption in the overall Transportation System:

Principles Regarding Continuity/Predictability: [6]

2. *Funding to states must be predictable to ensure program continuity.*

Funding should not cease or diminish during shipment lapses of less than four years as it is difficult to ramp up activities and provide training on short notice. [16]

5. *Scheduling of shipments must be done in a way that balances the priority of shipments established in OCRWMS Annual Capacity Report with impacts on state and local responders. A shipping campaign based on the Annual Capacity Report would result in occasional shipments traveling through many jurisdictions. Consideration needs to be given to the efficient use of federal, state, local, and tribal resources for planning and emergency response in shipment scheduling. States will need predictability with regard to shipment scheduling.*

Principle Regarding State Regional Group Funding: [7]

6. *DOE must continue to support the State Regional Groups to ensure consistency and compatibility of shipment planning activities.*

State Regional Groups are an extremely effective means for states to work together with DOE to plan, prepare, and maintain an effective transportation program.

Principle Regarding Operational Activities: [15]

9. *DOE and states must develop a list of allowable activities that are eligible for funding under Section 180(c), as well as a list of **transportation-related activities for which DOE will also provide funding from the Nuclear Waste Fund or other sources.***
10. *DOE must provide the states with financial and technical assistance for both training and operations activities as long as shipments continue along a shipping corridor.*

State Regional Group Collaboration

The WIEB HLW Committee endorses many of the Specific Comments in the CSG Midwestern Radioactive Materials Transportation Committee's Comments on OCRWM's Draft Policy and Procedures for Implementing Section 180(c), October 9, 2007, pages 2-4 of 7 [16], with one key exception: the WIEB HLW Committee does not support the proposed allocation formula. Instead, the Western Governors support a needs-based approach "because of the current uncertainties in the transportation system (e.g., routing, mode, intermodal transfers, schedules, security measures), it is premature for DOE to finalize 180(c) and other funding allocations for annual implementation grants. Once states and tribes have assessed their *needs* through planning grants provided by DOE, DOE should then consult with states and tribes to determine how to best allocate funds to states and tribes effectively, efficiently and equitably." [17]

WIEB HLW Committee General Comments

1. Funding allocation methods should be based in regulation and upon need.

The Western Governors' Association Policy Resolution 05-15 states that regulations should be adopted "to implement a mutually acceptable program of technical assistance and training funds. Such regulations should:

- i. Provide for the development and funding of state and tribal plans that identify the minimum elements necessary to ensure safe routine transportation and procedures for dealing with emergency response situations, the current capabilities along each corridor, the activities needed to achieve minimum elements, and performance measures to evaluate programs implemented under the plan.
- ii. Provide annual implementation grants to states and tribes to ensure adequate funding levels and program capabilities among impacted states and tribes.
- iii. Provide flexibility in the expenditure of funds by states and tribes pursuant to the provisions of the state or tribal plan.
- iv. Prior versions of this resolution included a formula for the annual implementation grants, with 75 percent of grant funds allocated according to the number of projected shipment miles in the jurisdiction and 25 percent allocated to ensure minimum funding levels and program capabilities among impacted states and tribes. Because of the current uncertainties in the transportation system (e.g., routing, mode, intermodal transfers, schedules, security measures), it is premature for DOE to finalize 180(c) and other funding allocations for annual implementation grants. Once states and tribes have assessed their needs through planning grants provided by DOE, DOE should then consult with states and tribes to determine how to best allocate funds to states and tribes effectively, efficiently and equitably." [17]

The Western States position is that DOE should issue a policy and then promulgate a rule for the implementation of the policy and grant application. This position was supported by the Section 180(c) Topic Group, which evaluated the "policy versus rulemaking" issue and provided specific recommendations in "APPENDIX G . [12] The Topic Group recommended that DOE issue a policy and then promulgate a rule for the implementation of the policy and grant application.

The WIEB HLW Committee agrees with the Midwest and Northeast that rulemaking for Section 180 (c) policy and procedures is imperative as a means for preserving the financial and technical assistance system DOE is establishing.

2. DOE should develop realistic budget requests for Congress.

The WIEB HLW Committee is concerned about how DOE will develop their budget requests for submission to Congress to fund this program. The numerous references to "appropriated funds" and "availability of appropriated funds" implies that funding for the states may not be a priority. We recommend that DOE develop realistic budget projections based on aggregate state needs assessment. We recommend that DOE provide details as to how they are going to request monies from Congress.

3. Funding allocation formula should be proven.

Since there are variables in the proposed funding formula, please explain to the states how DOE will deal with those variables when DOE has stated that it will be receiving fixed dollars from Congress. Please provide your planning assumptions including number of shipments, queue of shipments, routes, and any other variables. Please run the formula with assumptions including variables then provide results and methodology.

4. DOE needs to provide funding for operational activities.

The Nuclear Waste Policy Act (NWPA) obligates that the costs of carrying out activities relating to the disposal of waste and spent fuel will be "borne by the generators and owners of the waste and spent fuel", not the states. The NWPA, Section 180(c) addresses the particular topics of technical assistance and funds to States for training. Section 180(c) does not constrain the DOE from providing funding for the costs of the other activities in support of shipments. Therefore, the DOE has legal responsibility to ensure that funds are made available to States and Tribes to meet the operational needs in support of the transportation and repository plans. It is DOE's responsibility to identify the source of funds and secure such funds for these necessary activities. [19]

The Section 180(c) Topic Group recommended in "APPENDIX J - Funding Operational Activities" that DOE commit to funding the same kind of safety program that they support for WIPP shipments, that is, a program that includes operational activities such as state inspections, escorts, staff time for satellite tracking, contingency route designation, and public information activities. The states strongly believe these activities contribute materially to safe routine transportation, and also enhances public acceptance of shipment safety.

Past and present DOE shipping programs have established the precedent of providing financial assistance to states and tribes for these non-training shipment-related activities. Examples include the WIPP, Foreign Research Reactor, West Valley, and depleted uranium hexafluoride shipping programs.

DOE should affirm its commitment to the states to fund a comprehensive transportation program regardless of funding sources. It is also recommended that OCRWM work in conjunction with Environmental Management in order to take full advantage of DOE's existing transportation infrastructure. [15]

5. Funding to states should be predictable and reliable to assure program continuity.

Comments on prior Federal Register Notices dealt with the "hot" topic of lapses in shipments and a corresponding proposed denial of grant monies to the states. For example, the WIEB HLW Committee provided the following example and sample questions:

If there were a lapse of NWPA shipments for three or more years, that state or tribe would receive no funds for those years and would regain eligibility three years prior to another NWPA shipment through its jurisdiction.

- How exactly will OCRWM know in advance that there will be a three-year lapse in shipments through a state or a tribal jurisdiction?
- Would DOE continue to fund a state until three years have passed without a shipment before denying grant monies?
- If funding was based upon projections, would it even be possible for the DOE Grants Manager to guarantee that an expected lapse of three or more years would actually occur?

Please describe to the states how lapses in shipments will be handled.

6. State Regional Groups are an extremely effective means for states to work together with DOE to plan, prepare, and maintain an effective transportation program.

The State Regional Groups (SRGs) have been proven to provide invaluable assistance to affected states and to DOE in identifying issues, helping DOE and its contractors to deal productively with states, local governments, and Indian tribes, and coordinating activities among key participants. For the Section 180(c) program, it is important that the SRG's role be maintained.

While 180(c) funding is to be provided through direct grants to states and tribes, DOE needs to find a way to assure that the SRGs continue to have the resources necessary for intra- and inter-regional coordination, collaboration, communication, and consultation in the commercial spent nuclear fuel program. Further, the important role of the SRGs in the Section 180(c) program should be acknowledged in DOE's final policy.

7. Key definitions need to be included in the grant guidance.

The Section 180(c) Topic Group spent an inordinate amount of time trying to develop two key definitions that meet the needs of the diverse stakeholders of the Group. Background information and multiple justifications from other federal agencies may be found in "APPENDIX D – Definitions". [10]

In the best interests of grant management, both for the grantor and the grantee, the WIEB HLW Committee recommends that DOE should use the following standardized definitions:

1) Public Safety Official

"Public Safety Officials are state, tribal, and local personnel who are involved with emergency public safety, inspection and enforcement, emergency response, emergency medicine (including hospital emergency services), and related personnel, agencies, and authorities."

2) Safe Routine Transportation

"Safe routine transportation means the shipment of spent nuclear fuel and high-level radioactive waste pursuant to the NWPA through state, tribal, and local jurisdictions in a manner compliant with applicable Federal, state, tribal, and local laws, regulations, policies, and agreements. Examples of these include:

- Safe routine highway transportation is characterized by adequate vehicle, driver, and package inspection and enforcement of the U.S. Department of Transportation's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations, as well as the Commercial Vehicle Safety Alliance's inspection procedures and out-of-service criteria as consistent with state requirements.
- Safe routine rail and barge transport is characterized by compliance with the Hazardous Materials Regulations, as well as rail and barge transportation policies and regulations, including those of the Federal Railroad Administration and Coast Guard.
- Safe routine transportation is also characterized by compliance with the Nuclear Regulatory Commission's package certification and pre-notification regulations and the Department of Energy's applicable transportation requirements."

We would appreciate an explanation as to why DOE felt it was necessary to drop the definitions for public safety official and for safe routine transportation in the Notice.

8. Contingency re-routing should be part of the transportation plan.

The Section 180(c) Topic Group recommended in "APPENDIX F – Contingency Re-routing" that "contingency re-routing be considered as part of a comprehensive transportation plan, rather than limiting the discussion to Section 180(c) concerns." This particular topic, along with the "Definitions" shown in Item 4 above, represented extensive negotiations. Again, in the interests of grant management, DOE should use the following standardized definition:

"A contingency, for the purposes of the 180(c) program, is an occurrence such as an emergency route closure that turns into a long-term route closure that affects planned or on-going shipments. It is not because of a lack of planning or proper preparations."

The Group recommended that, if contingency re-routing becomes necessary, that:

"In the event of unforeseen circumstances, DOE will make funds available, if necessary, and work with state, local and tribal governments as necessary to reach a mutually acceptable solution."

[11]

9. Organizational structure of the repository transportation program should be evaluated to give the current transportation program greater planning authority.

The National Academy of Science made an observation and corresponding recommendation that is worthy of noting here. In their publication: *Going the Distance? The Safe Transport of Spent Nuclear Fuel and High-Level Radioactive Waste in the United States*, NAS reports that the Secretary of Energy and the U.S. Congress should examine options for changing the "embedded" organizational structure of the program for transporting spent fuel and high-level waste to a federal repository. NAS made recommendations that would enable "greater planning authority; greater budgetary flexibility to make the multiyear commitments necessary to plan for, procure, and construct the necessary transportation infrastructure; and greater flexibility to support an expanding future mission to transport spent fuel and high-level waste for interim storage or reprocessing." Thus, many of the recurring states' concerns could be ameliorated. [18]

Answer Matrix

The High-Level Radioactive Waste Committee of the Western Interstate Energy Board, as one of the state regional groups, is pleased that DOE recognized and utilized many important aspects of the suggested program designed by the Section 180(c) Topic Group.

However, the WIEB HLW Committee is disappointed that the DOE decided to request comments on many issues that had already been addressed by the Topic Group. Therefore, the WIEB HLW Committee is resubmitting the entire briefing package that was sent to DOE management for their use as the foundation documents in the development of this Federal Register Notice. The Executive Summary and Introduction are shown as exhibits [5] [6] in the attached list of references. The WIEB HLW Committee summarizes its responses in the matrix below.

Question number	Topic Group Recommendations in Issue Papers	WIEB Comments on Questions
1(a) Would \$200,000 be an appropriate amount for the assessment and planning grant to conduct an initial needs assessment?	This was addressed in "APPENDIX H – Funding Allocation Method" where the Topic Group recommended a one-time planning grant of \$200,000 per corridor state. [13]	<p>In most States, yes, but in some States, no. States have varying planning and funding needs depending on their size, number of generator sites, length of routes, and the complexity of modal choices and routing. Any state specific issues and recommendations regarding the amount of the planning grant will be submitted individually by state.</p> <p>We are pleased to note in the announcement that should a state find that their planning activities have not been concluded, they may continue those activities under the Training Grant which indicates that allowable activities may include the continuation of the activities initiated under the Assessment and Planning Grant.</p>
1(b) Should the amount be the same for each eligible State and Tribe?	This was addressed in the "EXECUTIVE SUMMARY – Section 180(c) Policy and Procedures" where it is noted that the <i>Topic Group discussions focused primarily on the concerns of state and local governments, two tribes participated in the Topic Group. Tribal issues... through OCRWM formal consultations with the tribes beginning in 2005.</i> [5]	<p>No, the Western states believe that it should be based upon need, not on an arbitrary or fixed amount. Every state should have the opportunity to apply for the same amount of planning grant funding. DOE must establish eligibility standards for the program monies. The application process will determine if a state is eligible for the entire monetary designation.</p> <p>It is speculative to provide an opinion about DOE's agreements with sovereign nations in comparison with states.</p>

<p>1(c) Would there be a need to update the initial needs assessment and, if so, at what intervals and should funding be made available for this purpose and in what amount?</p>	<p>This was discussed in the issue paper "APPENDIX B - Timing and Eligibility" where it is noted that <i>If shipments through a jurisdiction stop for 4 or more years, then jurisdictions lose eligibility until shipments are scheduled to occur within 3 years. In this case, jurisdictions could apply for another planning grant since so much time had elapsed since they last planned for NWA shipments. The planning grants would be available 3 years prior to scheduled shipments and the training grants would be available 2 years prior to scheduled shipments and every year thereafter that there were shipments scheduled, unless of course there was more than a four year interruption again.</i>[8]</p>	<p>In some cases, "yes". A state with multiple generator sites could have shipments beginning at different times from different sites, requiring the periodic opening of new corridors. Needs assessments would be required on each of these new corridors before shipments could begin or following lapses in shipments.</p> <p>Loss of eligibility because of a lack of shipments over a period of time or a change of route would require States to begin the entire planning and assessment process anew.</p>
<p>2(a) Would \$100,000 be an appropriate amount for the annual training grant?</p>	<p>The complexities of developing a training system were discussed thoroughly in "APPENDIX C - Allowable Activities/Training" including OSHA levels of training, target audiences, high turnover rates, career vs volunteer status, need for flexibility to meet individual state needs. [9]</p>	<p>No, a set amount of \$100,000 is insufficient for both the base and variable amounts combined, as the question implies.</p> <p>The state's identified needs would determine the appropriate amount.</p>
<p>2(b) Recognizing that, after commencement of shipments through an eligible State or Tribe, training to maintain capability may become less costly with increased expertise and efficiency, should the base amount of subsequent annual training grants be adjusted downward to reflect the number of years that annual training grants have been received?</p>	<p>The complexities of developing a training system were discussed thoroughly in "APPENDIX C - Allowable Activities/Training" including OSHA levels of training, target audiences, high turn over rates, career vs volunteer status, need for flexibility to meet individual state needs. [9]</p>	<p>No. The presumption is incorrect, given the extensive list of considerations (including turnover rates) identified in the "Allowable Activities/Training" Issue Paper.</p> <p>Substantiated grant application information should clearly indicate the ongoing need for the base amount of \$100K along with documented need for any additional variable amount that was requested.</p>
<p>2(c) What should be the allocation of available appropriated funds for a fiscal year between the base amount and the variable amount of the annual training grants?</p>	<p>A broad array of planning and training activities were proposed in the "APPENDIX C - Allowable Activities/Training" Issue Paper providing recipients flexibility to direct funds towards their individual needs. Carryover issues</p>	<p>The question implies that the variable portion of the training grant will be used to adjust the difference between what the states are requesting for base amounts versus what the DOE actually allocates to the process. Therefore, slim years would translate to lesser variable amounts.</p>

	were addressed. [9]	In order to facilitate the budget process, the DOE should assure at least an equal amount of base funding for each state, plus variable funding to meet individual state needs, for every state through whose jurisdiction shipments are being contemplated.
2(d) Should the entire training grant be variable based on the funding allocation formula described herein?		No. A base amount is necessary to enable states to establish and maintain a basic program to address safe, routine transportation.
3(a) Should the amount of funding be adjusted where a route forms a border between two States, a State and a Tribal reservation, or two Tribal reservations?	We recommend that DOE use the following definition, which is drawn directly from the "APPENDIX B - Timing and Eligibility" <i>Where a route constitutes a border between two states, a state and tribal government, or two tribal governments, every jurisdiction with emergency response responsibility and inspection authority over the route will be eligible for Section 180(c) assistance [8]</i>	The wording in the FRN indicates that: "DOE will provide grants... to every jurisdiction with emergency response responsibility and inspection authority over the route." Therefore, if the state can justify the need for commensurate funding with the neighboring state, then it would be appropriate for DOE to award that level of funding. We are aware of a particular situation, in which Colorado has response authority on Interstate 80 in southwestern Nebraska.
3(b) Should States or Tribes with mutual aid responsibilities along a route outside their borders be eligible for 180(c) grants on the basis of the mutual aid agreement?	We recommend that DOE use the following definition, which is drawn directly from the "APPENDIX B - Timing and Eligibility" <i>If a state or tribe will not have shipments but has cross-deputization or mutual aid agreements with a jurisdiction that will have shipments, the former may work with DOE to receive funding. [8]</i>	Yes. Preparedness is necessary to fulfill the responsibilities of a mutual aid agreement. Therefore, if the state can justify the need for funding commensurate with that of a neighboring state, it would be appropriate for DOE to award that level of funding.
3(c) If so, how should the amount of funding be calculated, and should the calculation take into account whether or not the State or Tribe would otherwise be eligible for a grant?		This is a two part question: The answer to the first part is that the state should request funding to cover their proposed activities. If the state can justify the need, DOE should award the funding to the same level just as with any other jurisdiction that is preparing for shipments.

		The second half of the question is not clear: If an applicant were not "otherwise eligible", why would the applicant be applying?
3 (d) Should the State or Tribe that received notification of eligibility from DOE indicate in their grant application that a neighboring State or Tribe has a mutual aid agreement along a particular route, whereupon DOE would then notify the neighboring State or Tribe of its eligibility?		States may report this in their application. DOE also has an obligation to solicit this information prior to issuing grant eligibility notices.
4(a) Do assessment and planning grants need to be undertaken four years prior to an initial scheduled shipment through a State or Tribe's jurisdiction?	In "APPENDIX B - Timing and Eligibility", the Topic Group recommended the following timing: <i>- 5 years prior to scheduled shipment: Letter to governors announcing anticipated routes, and therefore, eligibility. After the initial letter to the governor, succeeding letters of eligibility will be sent to the state or tribal agency or staff that administers Section 180(c) or to whomever the governor designates</i> <i>- 4 years prior to scheduled shipment: Planning grants issued. Funds may be carried over past initial 12-month grant period. [8]</i>	Yes, the WIEB HLW Committee agrees with the original recommendations of the Section 180(c) Topic Group.
4(b) Do training grants need to commence three years prior to a scheduled shipment through a State or Tribe's jurisdiction?	In "APPENDIX B - Timing and Eligibility", the Topic Group recommended the following timing: <i>- 3 years prior to scheduled shipment: Training grants issued each year prior to first scheduled shipment. This timing is optional. States and tribes are not required to start training and planning this soon. [8]</i>	Yes, the WIEB HLW Committee agrees with the original recommendations of the Section 180(c) Topic Group.
4(c) Do training grants need to be provided every year that shipments are scheduled?	In "APPENDIX B - Timing and Eligibility", the Topic Group recommended the following timing: <i>- Training grants continue each year of eligibility. [8]</i>	Yes, the WIEB HLW Committee agrees with the original recommendations of the Section 180(c) Topic Group.

<p>5(a) Should the Section 180(c) grants be adjusted to account for fees levied by States or Tribes on the transportation of spent nuclear fuel or high-level radioactive waste through their jurisdiction?</p>	<p>Complete background information on the topic of state fees may be found in the "APPENDIX I – State Fees" Issue Paper.</p> <p>The Section 180(c) Topic Group made a recommendation to: <i>DOE not to deduct the cost of state fees from a state's Section 180(c) award unless separately negotiated with the state.</i> [14]</p>	<p>The WIEB HLW Committee supports the Topic Group recommendation to DOE to NOT deduct the cost of state fees from a state's Section 180(c) award unless separately negotiated with the state.</p>
<p>5(b) How should DOE determine if a fee covers all or part of the cost of activities allowed under Section 180(c) grants?</p>	<p>Complete background information on the topic of state fees may be found in the "APPENDIX I – State Fees" Issue Paper:</p> <p>Option 3: Require states to show no overlap between activities funded by Section 180(c) and fees.</p> <ul style="list-style-type: none"> - This option incorporates the SRG's recommendation that DOE consult with the states on a case-by-case basis. - This option also addresses DOE General Counsel's concern overpaying twice for the same services. [14] 	<p>Substantiated grant application information should clearly indicate how fees are assessed and appropriated for use. The application should detail if fees are used for planning and training activities in support of commercial spent nuclear fuel shipments.</p> <p>Documentation would have to include explaining how the monies for 180(c) would be handled differently than state fees.</p>
<p>5(c) Is the language in this policy, requiring States and Tribes to explain in their grant application how the fees and Section 180(c) grant awards are separate and distinct, sufficient to prevent DOE from paying twice for the same activity?</p>	<p>Complete background information on the topic of state fees may be found in the "APPENDIX I – State Fees" Issue Paper.</p> <p>Option 3: Require states to show no overlap between activities funded by Section 180(c) and fees.</p> <ul style="list-style-type: none"> - This option incorporates the SRG's recommendation that DOE consult with the states on a case-by-case basis. - This option also addresses DOE General Counsel's concern overpaying twice for the same services. [14] 	<p>Yes. Substantiated grant application information should clearly indicate how state fees are assessed and appropriated for use. The application should detail if fees are used for planning and training activities in support of commercial spent nuclear fuel shipments. Documentation would have to include explaining how the requested monies for 180(c) would be handled differently than state fees.</p> <p>DOE has a legitimate interest in ensuring that federal funds aren't used to pay twice for the same activity. The WIEB agrees with the Northeast and Midwest's recommendation that state fees be explicitly mentioned as a source of state funding. Once that change is incorporated into the Notice, the language will be sufficient to prevent DOE from paying twice for the same activity.</p>

<p>6(a) How should Section 180(c) grants be adjusted to reflect other funding or technical assistance from DOE or other Federal agencies for training for safe routine transportation and emergency response procedures?</p>	<p>This topic was taken up in the "APPENDIX C - Allowable Activities/Training" Issue Paper: <i>There also are legal requirements that bound the range of allowable activities. Good grants practices require that funds be used to address only those needs caused by the shipments, often referred to as "the increment of training necessary to prepare for Nuclear Waste Policy Act (NWPA) shipments". And, in accordance with the language in Section 180(c) of the NWPA, training must cover procedures for emergency response and safe routine transportation for state, tribal, and local public safety officials. [9]</i></p>	<p>Shipments of commercial spent fuel are distinctive from other radioactive material shipments that the states routinely experience: they involve much greater radioactivity and will be transported by different modes and on many different routes. Funding requests should be based on the needs determined in the assessment and planning process.</p> <p>The criteria for evaluating applications for both assessment/ planning grant and the training grants specifically refer to training "for the increment of need specific to NWPA shipments." The applications for funding will, therefore, reflect the impact of other funding and assistance on training activities.</p>
<p>6(b) In particular, how should DOE account for TEPP and other similar programs that provide funding and/or technical assistance related to transportation of radioactive materials?</p>		<p>The WIEB HLW Committee agrees with the Midwest that <i>DOE should encourage states to make use of the resources that are currently available through TEPP. However, states should have the flexibility to decide to what extent and in what manner they will use these resources. For example, states should be encouraged to use the MERRIT modules when appropriate, but they should not be expected to have TEPP trainers conduct the training. It should also be noted that reducing 180(c) awards to states that utilize TEPP could create an incentive for states to stop using TEPP. [16]</i></p>
<p>6(c) To what extent is Section 180(c) funding necessary where funding and/or technical assistance are being or have been provided for other DOE shipping campaigns such as to DOE's Waste Isolation Pilot Plant?</p>		<p>Shipments of commercial spent fuel are distinctive from shipments of transuranic wastes to WIPP: they involve much greater radioactivity and will be transported by different modes and on many different routes. Funding requests should be based on the needs determined in the assessment and planning process. The criteria for evaluating applications for both assessment and planning grants and the training grants specifically refer to training "for the increment of need specific to NWPA shipments." The applications for funding will, therefore, reflect the impact of other funding and assistance on training activities.</p>

Comment References

[1] National Archives and Records Administration, Federal Register, *Executive Order 12372 — Intergovernmental review of Federal programs*. Source: The provisions of Executive Order 12372 of July 14, 1982, appear at 47 FR 30959, 3 CFR, 1982 Comp., p. 197, unless otherwise noted.
www.fws.gov/policy/library/rgeo12372.pdf

[2] *Memorandum of Agreement Between the OCRWM, Environmental Restoration and Waste Management, and Defense Programs, concerning the TEC/WG Involvement with DOE Radioactive Materials Transportation Activities*
http://www.tecworkinggroup.org/background/TEC%20MOA_1994.pdf

[3] US Department of Energy, *Transportation External Coordination Working Group Charter*, <http://www.tecworkinaaroup.org/tecchart.pdf>

[4] *Principles of Agreement Among States on Expectations Regarding Preparations for OCRWM Shipments, February 2005*
<http://www.westaov.ora/wieb/radioact/07,05paas.pdf>

[5] *EXECUTIVE SUMMARY, Section 180(c) Policy and Procedures*
<http://www.tecworkingaroup.org/180c/ExecSummarySRG%20staff.pdf>

[6] *INTRODUCTION & PROPOSED POLICY STATEMENT*
<http://www.tecworkingaroup.org/180clIntro SRG staff .pdf>

[7] APPENDIX A - Funding Distribution Method
<http://www.tecworkinggroup.org/180c/AppendixA SRG staff .pdf>

[8] APPENDIX B - Timing and Eligibility
<http://www.tecworkinaaroup.org/180c/AppendixBSRG Staff .pdf>

[9] APPENDIX C - Allowable Activities/Training
<http://www.tecworkinggroup.org/180c/AppendixC SRG Staff .pdf>

[10] APPENDIX D - Definitions
<http://www.tecworkinggroup.ord180c/AppendixD SRG Staff .pdf>

[11] APPENDIX F - Contingency Re-routing
[http://www.tecworkinaaroup.ord180c/AppendixF SRG\(staff\).pdf](http://www.tecworkinaaroup.ord180c/AppendixF SRG(staff).pdf)

[12] APPENDIX G - Policy or Rulemaking
[http://www.tecworkinggroup.org/180c/AppendixG SRG\(staff\).pdf](http://www.tecworkinggroup.org/180c/AppendixG SRG(staff).pdf)

[13] APPENDIX H - Funding Allocation Method
<http://www.tecworkinggroup.org/180c/AppendixH SRG staff .pdf>