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May 17, 1995

Dr. Daniel Dreyfus, Director
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
c/o Lois Smith
TRW Environmental Safety Systems
2650 Park Tower Drive, Suite 800
Vienna, VA 22180

Dear Dr. Dreyfus:

On behalf of the Midwestern High-Level Radioactive Waste Committee, I am writing to respond to the U.S. Department of Energy's (DOE) Notice of Inquiry (NOI) on "Safe Transportation and Emergency Response Training; Technical Assistance and Funding," published in the *Federal Register* on January 3, 1995. By virtue of their central location, the Midwestern states will be affected by more shipments of commercial spent nuclear fuel than any other region except the West. As a result, the Midwest has a very large stake in the development of a policy and procedures to implement Section 180(c) of the Nuclear Waste Policy Act.

I would like to acknowledge our gratitude to DOE for extending the deadline for commenting on the NOI. The Midwestern committee, along with its counterparts in the Northeast, South, and West, requested a 45-day extension in order to afford us the opportunity to discuss Section 180(c) on April 10–12 at the first Joint Meeting of the Regional Radioactive Waste Transportation Committees. At that meeting, three of the four regional groups reached consensus on several aspects of DOE's implementation of Section 180(c).

First, the Midwestern, Southern, and Western states all urge DOE to place a high priority on developing a policy and procedures for implementing Section 180(c). With proposed legislation in Congress and the state and utility lawsuits in federal court, there is a chance that 1998 will be the starting date for shipments. The publication of the NOI is a first step in the implementation of Section 180(c). The department will have to follow through on this work at an unprecedented pace, however, if it is to begin distributing Section 180(c) funds in time for states to prepare for shipments starting in 1998. The Midwestern committee is very concerned about having DOE ship spent fuel through our region without providing the states with sufficient time to prepare adequately for monitoring and response activities.

Even if the department does not begin to accept spent fuel in 1998, there is a good possibility that shipments to a private facility will begin as early as 2002. The states' concern over private-facility shipments does not merely involve timing, but also the likelihood that assistance under Section 180(c) will not apply to such shipments.

Whether this limitation can be addressed during the rule-making process or will need to be resolved by Congress remains to be seen. Regardless of the mechanism used to decide the issue, the Midwestern states agree that — because private-facility shipments will have virtually the same impact on states as DOE shipments — Section 180(c) *must* apply to *all* large-scale shipping campaigns involving civilian spent nuclear fuel.

Lastly, the three regions agreed that Section 180(c) should be administered directly to tribes in the same manner as states. To require tribes to receive technical assistance and funds for training through state channels would not be in keeping with their status as sovereign nations.

In addition to the preceding points, the committee has specific comments on other matters with regard to Section 180(c). Those issues are discussed below.

Options for distributing funds

With regard to the options described in the NOI, the committee concluded that, from a state perspective, the least administratively burdensome and most flexible option would be to offer several alternatives for distributing funds. The committee reached this conclusion after a few states suggested "piggybacking" 180(c) funds on to FEMA CCA or DOT HMTUSA grants, others preferred to have the department enter into contracts directly with the states, and still others indicated that the cooperative-agreement groups might be the best vehicle for distributing funds. Some committee members even supported the concept of an OCRWM-grants program. None of the members, however, thought a DOE-wide grants program would be appropriate or useful.

A recurring theme in the discussion over funding mechanisms was the need to minimize the loss of funds to administration. DOE should strive to limit the layers of bureaucracy through which 180(c) funds must pass before they reach the states.

Formulas for allocating funds

The committee was unanimous in support of allowing states to retain a portion of Section 180(c) funds to cover administrative costs. The committee also concluded that the amount of funding states receive should be based primarily upon the impact of shipments on each state. To complement the impact-based allocation, a portion of the available funds should be directed to ensuring minimum funding levels in states that might require assistance beyond their impact-based share. The exact percentages for allocating funds based on impact or on minimum funding levels must ensure that all affected states and tribes receive adequate funding to protect public health and safety — regardless of the size of the response necessary.

The committee strongly urges DOE to develop allocation formulas in consultation with the states. In addition, the committee believes the department should work with the states to define a standard measure of preparedness to use in calculating minimum funding levels.

Definition of Terms

The committee recommends that DOE adopt the definition of *safe routine transportation* developed by the Transportation External Coordination Working Group (TEC/WG). The TEC/WG definition reads as follows:

> Safe routine transportation is the uneventful movement, from origin to destination, of hazardous materials in a manner that does not present an undue risk to human health or the environment and is in compliance with applicable federal, state, tribal, and local laws and regulations.

Prior to the realignment within OCRWM, the TEC/WG had made some progress toward developing a definition of *technical assistance*. The committee reworked the draft definition prepared by the TEC/WG, and offers the following definition:

> The term 'technical assistance' as it is used in Section 180(c) of the Nuclear Waste Policy Act means a variety of activities designed to ensure that state, tribal, and local governments are trained for safe routine transportation practices as well as responding to transportation emergencies within their jurisdictions, including but not limited to planning guidance, training support, practical support, funding of pre-identified equipment, and expertise.

Working from these definitions, the committee generated a list of activities that should qualify either for funding or as technical assistance. These items and/or activities fall into roughly two categories: preliminary planning and training activities.

Preliminary planning

States will need funding and technical assistance to help them to determine exactly what their training needs are. To facilitate this determination, Section 180(c) should, at a minimum, cover:

- demographic studies of proposed routes to help states to assess risks and, thereby, to designate alternate routes;
- corridor studies to assess training capabilities and available resources;
- development and/or modification of state and local emergency response plans specific to radiological incidents;
- activities to ensure interagency coordination within the state; and
- activities to ensure coordination between the states, including the development of memoranda of understanding between neighboring states.

Training activities

Following preliminary planning, states will need to develop training curricula and begin conducting training activities. At this stage in the process, states should be able to use Section 180(c) funds and technical assistance for at least the following training activities:

Safe routine transportation

- defining course requirements and developing training curricula;
- developing and printing course materials and training manuals, including videos;
- awareness training for public officials along the routes;

- training in shipment notification procedures;
- vehicle inspector orientation and training specific to shipments of spent fuel and high-level radioactive waste;
- training of rail inspectors, specifically with regard to shipments of spent fuel and high-level radioactive waste;
- inspection of routes and vehicles (including monitoring, safety and securement of load, and safety equipment on the vehicle);
- training of shipment escorts; and
- specialty training for enforcement personnel in Title 49 regulations.

Emergency response

- defining course requirements and developing training curricula;
- developing and printing course materials and training manuals, including videos;
- training for emergency responders (law enforcement, fire, and emergency medical services personnel), including awareness and incident-notification training, orientation to federal and state plans specific to incidents involving spent fuel, basic radiation monitoring information (including the use of radiation detection equipment), and transportation hazard recognition and mitigation specific to spent fuel and high-level waste shipment accident scenarios;
- training for medical facilities emergency-room personnel;
- travel, meals, lodging, and other expenses related to training;
- developing, conducting, and evaluating emergency response exercises, including exercises involving more than one state; and
- providing 24-hour state assistance to local governments.

In preparing for both safe routine transportation and emergency response situations, states will need access to up-to-date equipment for monitoring and response. Section 180(c) funds should be available not only to purchase this equipment but also to cover the costs of maintenance and calibration. In addition, states should be free to use 180(c) funds to cover the costs of purchasing and upgrading computer software and hardware to assist with monitoring and response activities.

Along with the above items, the Midwestern states would like to see DOE ensure that states will have 24-hour access to federal technical guidance and support for incidents involving shipments of spent fuel and high-level radioactive waste.

<u>Route Selection</u>

Finally, I would like to comment on what the committee perceives as the critical activity upon which the development and implementation of Section 180(c) rests. All our discussions of training needs repeatedly brought us to the same conclusion: unless DOE gives the states an indication of the probable shipment routes, it is impossible for states to determine what they will need in terms of 180(c) assistance

and when. DOE *must* begin the process of route selection immediately if the states are to have any hope of preparing for shipments under an accelerated schedule for waste acceptance (i.e., if either Congress or the courts act to uphold the 1998 acceptance date).

If DOE were to glean one piece of information from these comments, it is my hope the department would recognize the pivotal role of route selection. The states are ready and willing to work cooperatively with the department on this issue, but it is imperative that we begin now.

As always, the Midwestern High-Level Radioactive Waste Committee appreciates the opportunity to comment on the policies and activities of the Office of Civilian Radioactive Waste Management. We look forward to working with DOE to develop further its policy and procedures for implementing Section 180(c).

If you have any questions about the committee's comments, please do not hesitate to call Lisa R. Sattler, the committee's lead staff person, at 708/810-0210.

Sincerely,

Harold R. Borchert

Harold R. Borchert
Director, Division of Radiological Health,
Nebraska Department of Health, and
Chairman, Midwestern High-Level Radioactive
Waste Committee

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