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September 25, 1996

The Council of
State Governments
MIDWESTERN
OFFICE

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ATTN: Section 180(c) Comments

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Dear Ms. Macaluso:

On behalf of the Midwestern High-Level Radioactive Waste Committee, I am writing to provide comments on the U.S. Department of Energy's Proposed Policy and Procedures regarding Section 180(c) of the Nuclear Waste Policy Act, published in the *Federal Register* on May 16, 1996. The Committee is composed of representatives of the 12 Midwestern states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. In 1995, the Committee submitted comments on two Notices of Inquiry regarding Section 180(c) (attached). We are pleased to submit the following comments as a supplement to those earlier comments.

The Committee has eagerly awaited the publication of the proposed policy and procedures. Since its inception in 1989, the Committee has worked with DOE and other state groups to develop a plan for implementing Section 180(c) in a manner that would ensure the safety of shipments of spent nuclear fuel and high-level radioactive waste without placing an undue burden on state and local governments.

The Midwestern states, by virtue of their central location, will experience the greatest number of shipments of any region with the exception of the host region. The Committee believes that, in the Midwest, public attention to the Civilian Radioactive Waste Management System will focus on transportation more than any other aspect of the program. Making sure that state and local personnel are trained and equipped to monitor shipments and respond to emergencies will do much to calm public fears over the transport of radioactive waste through the region. For this reason, the Committee feels strongly that DOE should place a

high priority on developing its final policy and procedures and subsequently providing assistance under Section 180(c) to state and local governments.

Our comments are grouped by subject, with the subheadings corresponding to those in the *Federal Register* notice.

Section 180(c) History

It is not entirely accurate for DOE to state that “[t]he Department’s work to date on the Section 180(c) policy and procedures has been discussed primarily in Transportation Coordination Group meetings and Transportation External Coordination Working Group meetings.” First, the Transportation Coordination Group meetings were neither designed for nor conducive to “discussion” — they were primarily vehicles for DOE to update stakeholders on the status of DOE’s transportation system.

Second, the Committee takes exception to the Department emphasizing the TCG and TEC/WG while failing to acknowledge the work of the cooperative-agreement groups. The four regional groups have placed a high priority on the development of the Section 180(c) program, as the Department is well aware. As mentioned above, the Committee has been working with DOE on this issue for seven years — starting two years prior to the establishment of the TEC/WG.

Proposed Section 180(c) Policy and Procedures

Funding Mechanism

- The Midwestern states — with the exception of one state — feel that an OCRWM grants program, administered properly and with enough flexibility to accommodate state needs, would be an acceptable mechanism for providing money to the states. The Committee originally recommended a mixed bag of options as the most flexible means of distributing Section 180(c) funds.

Definitions of Key Terms

- The Committee prefers the original definition of safe, routine transportation — as developed by the TEC/WG — to the one in the proposed policy and procedures. At the very least, the definition in the proposed policy and procedures should define highway and rail transport in the same level of detail.
- The definition of technical assistance should be revised to include the calibration and maintenance of equipment purchased with Section 180(c) funds.
- DOE should clarify whether the costs related to providing representatives at public meetings would reduce the amount of money that would otherwise be available to states.

- Given the considerable differences between states relative to the adequacy of equipment already on hand, purchasing restrictions, and requirements for inspection and monitoring, the final policy and procedures should, at a minimum, include provisions for a waiver of the cap on the amount of funds available for purchasing equipment.

Eligibility and Timing of the Grants and Technical Assistance Program

- A four-year application process is too drawn out. The process should be completed in one or two years provided the states receive sufficient notice of when they will become eligible for assistance.
- The proposed policy and procedures should include a detailed description and discussion of the contingencies DOE envisions.
- While preferred routes will be identified in advance of shipments, some re-routing can be anticipated due to seasonal road-work and other reasons. The policy must be flexible enough to allow for states to train staff in new jurisdictions, as needed, due to route modifications.
- Federal emergency response escorts for shipments would be acceptable only for a very limited number of shipments. The Committee believes that any *large-scale* movement of spent fuel or high-level radioactive waste through a state should be deferred until state and local personnel have been trained and are capable of responding to transportation accidents.

Allowable Activities for Funding

- The Committee strongly and unanimously opposes the prohibition on the expenditure of Section 180(c) funds to cover the cost of state and local drills and exercises. Planning, training, drills, and exercises are all preparedness activities and, therefore, should be covered. The Committee notes that the authors of the proposed policy and procedures appear to be of two minds with regard to this restriction — on one page, flatly refusing to cover drills and exercises, on another stating that Section 180(c) funds could be used to attend federally-sponsored drills and exercises, and in a third instance seeming to say that Section 180(c) funds could be used to pay for state and local drills and exercises, but that money would not be provided specifically for that activity.

The proposed policy and procedures should state clearly (preferably in one location) DOE's position on this issue. As the Department formulates one cohesive position, it should take into consideration the fact that federally-developed and conducted drills and exercises are generally more costly and less effective than those carried out by state and local governments.

DOE must also be fully aware that — with numerous commitments and limited (and uncertain) funding — there is no guarantee that the Department will be able to conduct any drills and exercises, let alone an adequate number of them. State and local governments, on

the other hand, will place a high priority on planning and conducting drills and exercises on a regular basis.

Rather than prohibiting the use of Section 180(c) funds for drills and exercises, the proposed policy and procedures should establish a percentage cap on the amount of money that can be used for this activity. An alternative would be to fund a set number of state and local exercises annually that are wholly supportive of the transport of spent fuel and high-level radioactive waste.

Discussion of Comments Received on the NOIs

Eligibility Criteria

- The Committee maintains its position that Section 180(c) should apply to all shipments of commercial spent fuel and high-level radioactive waste that are destined ultimately for disposal in the federal repository. Shipments of such material to a private storage facility (if they occur) will be necessary only if DOE fails to meet its obligation to accept spent fuel and high-level radioactive waste in 1998.

Funding Allocation Formula

- The states have experienced wide fluctuations in the levels of funding available through HMTA. The Committee cannot overstate the importance of maintaining relatively constant funding levels from year to year.

Appendix: Basis for Cost of Program

- The Committee feels strongly that states should be allowed to determine their own training needs and request the amount of money necessary to accommodate those needs. The proposed policy and procedures would provide the same base number of trainers for all states — a provision which apparently overlooks the vastly different needs of, for example, the large corridor states (e.g., Indiana, Nebraska, and Missouri) compared to small reactor states (e.g., Maine and Vermont). The proposed policy and procedures do contain vague provisions for “additional” trainers, but it is unlikely that any “one-size-fits-all” formula will adequately meet the needs of every state. The number of personnel eligible for training and the number of trainers needed should be negotiated with the states based on their self-described needs.
- The policy ought to allow for training of additional staff as needed, not limit extra training to “emergency response” personnel.
- The appendix refers to the use of some undetermined percentage of a state health physicist salary as a base grant amount. That provides some idea of an upper bound (i.e., 100 percent), but no idea of the possible lower bound. It would be helpful to know what percentage of that health physicist’s salary will be available.

Ms. Corinne Macaluso

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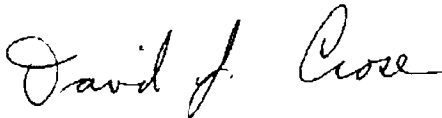
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- DOE should clarify whether its "time restrictions on the funding" are intended to restrict expenditures or to help the Department estimate what those expenditures will be.
- DOE should provide documentation for its annual funding projections in the application materials it sends to the governors.

The Committee restates its position that the early selection of routes, in consultation with the states, is crucial to the success of the Section 180(c) program and, indeed, the entire transportation system. The Midwestern states are in the process of developing a regional routing plan that will identify the states' preferences for routes for transporting spent fuel and high-level radioactive waste. Our hope is that such a plan will assist both DOE and the states in assessing state needs with regard to Section 180(c). We look forward to working with DOE to finalize that plan, and we encourage the Department to work with the other regions to develop similar plans.

As always, the Committee appreciates the opportunity to comment on the activities of the Office of Civilian Radioactive Waste Management. If you have any questions about these comments, please contact Lisa Sattler, the Committee's lead staff person, at 630/810-0210.

Sincerely,



David J. Crose
Director, Technological Hazards,
Indiana State Emergency Management Agency and
Chairman, Midwestern High-Level Radioactive
Waste Committee

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enclosures



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September 26, 1995

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*Mr. Mac's prior
comments to
180(c) Notices*

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Dear Ms. Macaluso:

On behalf of the Midwestern High-Level Radioactive Waste Committee, I am writing to respond to OCRWM's Notice of Inquiry; Supplemental Information (NOI/SI) published in the *Federal Register* on July 18, 1995. Our comments in this letter supplement those we submitted on May 17, 1995, in response to OCRWM's original Notice of Inquiry published on January 3, 1995.

State Discretion versus Federal Mandate

The Committee strongly urges OCRWM to avoid issuing mandates with regard to the use of Section 180(c) funding. As stated in the NOI/SI, "Congress intended for the Department to provide direct funding to States and *they, rather than the Department, would determine how best to allocate the funds*" (emphasis added). Although OCRWM makes several statements in support of state discretion, occasional references — such as the suggestion that Department training courses "may be required" — would seem to leave open the possibility of federal mandates.

OCRWM's program for implementing Section 180(c) should give the states freedom to choose how best to use the assistance they receive. Such freedom must include the discretion to decide on the timing of funding, designating assistance for specific areas of training (e.g., mode-specific), and the use of assistance for travel and equipment. OCRWM can help the states to make these decisions by providing them with a long-term schedule of planned shipments that includes complete, accurate information on probable routes, frequencies, mode (including type of shipping container), and quantities of spent fuel and high-level radioactive waste to be transported.

Comprehensive Cooperative Agreement (CCA) program as "a possible mechanism through which Section 180(c) assistance could be administered" (in contrast, the other existing federal programs are considered merely for their "applicability to training," "as a possible avenue to provide training," or "as possible sources of training"). The Committee strongly cautions against settling on any one funding mechanism without consulting at length with the states and tribes that will be on the receiving end.

The Committee has several concerns regarding the prospect of OCRWM relying solely on the FEMA CCA program to administer Section 180(c). First, as we noted in our letter of May 17, although some Midwestern states would prefer to use the CCA process, others were opposed to the idea. OCRWM's implementation of Section 180(c) should strive to accommodate the needs of as many states and tribes as possible.

Second, FEMA's proposal touts the 14-year-old CCA program as a "time-tested" program. No such claim can be made, however, for the new Performance Partnership Agreements, which — largely at the states' urging — will replace the CCA program beginning in FY 1996. The PPA program differs substantially from the CCA program in terms of administration, planning objectives, and reporting requirements. To help OCRWM weigh the merits of the various funding mechanisms for Section 180(c), FEMA should provide evidence to support its assertion that "the improved process for financial assistance delivery system (sic) of the Performance Partnership Agreement should only ease the burden upon grantees and translate into greater administrative efficiencies at both the Federal and State levels of government."

The greatest of our concerns regarding FEMA's proposal to administer Section 180(c) relates to the agency's strong emphasis on emergency management (including mitigation, preparedness, response, and recovery) as opposed to safe routine transportation. While "procedures for emergency response" are an important component of Section 180(c), they must be paired with procedures for "safe routine transportation" (e.g., inspection and enforcement) to ensure the safety of shipments of spent fuel and high-level radioactive waste. FEMA's proposal does not seem to recognize this relationship. Emergency management is the dominant theme of FEMA's proposal, with only casual references to activities related to safe routine transportation. The agency's lack of sensitivity with regard to safe routine transportation is perhaps best demonstrated by its statement that "[u]ltimately, it will be the emergency management professionals at the State and local level who play the largest part in the NWPA Section 180(c) program."

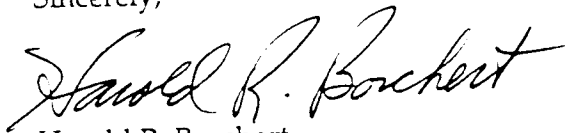
The Committee is not convinced that an agency whose mission focuses exclusively on emergency management can adequately administer and oversee a program that involves a substantial commitment of resources to inspection and enforcement. OCRWM needs to investigate thoroughly all options for administering Section 180(c), including the possibility of channeling assistance for specific training areas through different federal agencies. Such an examination should take place in close consultation with the states.

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with the information they need to begin the process of alternative-route designation in anticipation of NWPA shipments. We invite OCRWM to attend this workshop and to discuss with the states the Department's activities regarding the promised policy or procedures on route selection.

As always, the Committee appreciates the opportunity to comment on OCRWM's development of its program for implementing Section 180(c) of the Nuclear Waste Policy Act. If you have any questions about the Committee's comments, please contact Lisa Sattler at 708/810-0210.

Sincerely,



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

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.



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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;

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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
Director, Division of Radiological Health,
Nebraska Department of Health, and
Chairman, Midwestern High-Level Radioactive
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