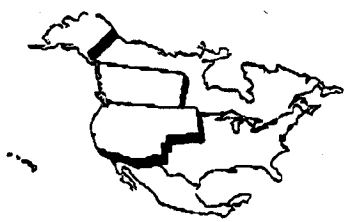


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# Western Interstate Energy Board/ WINB

July 31, 1998

Alberta  
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 Jeff Burks  
 Chairman  
  
 Douglas C. Larson  
 Executive Director

Lake Barrett, Acting Director  
 Office of Civilian Radioactive Waste Management  
 U.S. Department of Energy  
 1000 Independence Avenue, S.W.  
 Washington, DC 20585

Dear Mr. Barrett:

Enclosed are the comments of the Western Interstate Energy Board's High-Level Radioactive Waste Committee on the Department of Energy's April 30, 1998 *Notice of Revised Proposed Policy and Procedures for Safe Transportation and Emergency Response Training; Technical Assistance and Funding* for the transportation of spent nuclear fuel and high-level radioactive waste (SNF/HLW).

The Committee again appreciates the opportunity to provide input during the Department's process of developing its program for implementing assistance to states under Section 180(c) of the Nuclear Waste Policy Act (NWPA). The Committee finds the 180(c) policy outlined in the current *Notice* unacceptable because it continues to ignore key policy decisions made by Western Governors over the past five years as stated in various resolutions of the Western Governors' Association, and because it is inadequate to protect the public health and safety.

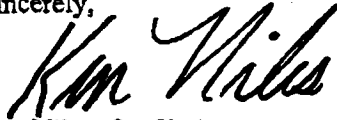
Some of the key failings of the current *Notice* include: 1) failure to provide for the development by DOE, in cooperation with states and tribes of a methodology and criteria for cooperatively identifying modes and routes to be used to transport SNF/HLW; 2) failure to guarantee that no shipments will occur unless Section 180(c) funds and assistance have been made available to states and tribes at least three years prior to the commencement of shipments; 3) failure to provide an acceptable contingency plan in the event adequate funding and assistance has not been provided to states and tribes; 4) failure to provide that Section 180(c) funds will be available regardless of whether shipments are made to a facility operated by the Department of Energy or another entity; and 5) failure to commit to establishing the Section 180(c) grant program in regulations.

DOE's treatment of the route and modal selection issue is particularly disappointing in view of the virtually unanimous advice provided by states to DOE on this subject. Through both the Routing Topic Group of DOE's Transportation External Coordination Working Group (TEC/WG) and a joint letter sent to DOE from the chairs of all of DOE's regional cooperative

agreement groups, states have sent a clear message to DOE that it must go beyond federal regulations and establish a routing methodology that will allow Section 180(c) funds to be more effectively utilized by reducing the total number of available routes. The *Notice* also appears to ignore the fact that states have been clear and unanimous in stating that the federal government, not a private contractor, must be responsible for route and mode selection.

The Committee asks that OCRWM reexamine the focus of its Section 180(c) program, and to redirect this focus towards meeting the needs of those parties which the program was intended by Congress to benefit. By acknowledging the input which states from every region of the country have provided, DOE will take a large step forward in implementing a more workable and effective Section 180(c) program.

Sincerely,



Ken Niles, Co-Chair  
High-Level Radioactive Waste Committee



Allan Turner, Co-Chair  
High-Level Radioactive Waste Committee

cc: Corinne Macaluso

**Comments of the High-Level Radioactive Waste Committee  
of the  
Western Interstate Energy Board (WIEB)  
on  
DOE's April 30, 1998 Notice of Revised Proposed Policy and Procedures for Safe  
Transportation and Emergency Response Training; Technical Assistance and Funding  
(Notice)**

Following are comments of the Western Interstate Energy Board's High-Level Radioactive Waste Committee (the Committee) concerning the Department of Energy's *Notice of Revised Proposed Policy and Procedures (Notice)* published in the Federal Register on April 30, 1998. The Notice describes the Department's plan for implementing Section 180(c) of the Nuclear Waste Policy Act (NWPA) with regard to providing funds and technical assistance to states and tribes to prepare for shipments of spent nuclear fuel and high-level radioactive waste (SNF/HLW).

The Committee's current comments build upon its previous response to DOE's July 17, 1997 *Notice of Revised Proposed Policy and Procedures* concerning the implementation of Section 180(c).

**No Routes, No Assistance, No Shipments**

**The Governors insist that no shipments of spent nuclear fuel and HLW be made to storage facilities or a repository, until DOE has cooperatively identified shipping routes and Section 180 (c) funds and assistance have been made available to states at least three years prior to the start of shipments, notwithstanding... whether there are any sudden changes in DOE's shipping schedule. [WGA Resolution 98-005, June 30, 1998]**

The Committee continues to find that a critical weakness in the *Notice* lies in its failure to guarantee that no SNF/HLW shipments will occur unless Section 180(c) funds and assistance have been made available to states and tribes at least three years prior to the commencement of shipments. Instead, the *Notice* states only that the provision of funding and technical assistance will be subject to appropriations, and that "[i]f Congress does not fully appropriate the funds requested, the funding to eligible jurisdictions will be decreased proportionately." (p23754) These statements, combined with the fact that DOE has never even requested funding from Congress to support a 180(c) program, demonstrate to the Committee that DOE still fails to grasp the importance of the 180(c) program in any attempted nuclear waste shipping campaign through western states.

While the Committee understands that OCRWM's budget is subject to Congressional direction, without adequate assistance and funding NWPA shipments will unacceptably jeopardize the health and safety of citizens in corridor jurisdictions. DOE policy should reflect

this reality by including a mandate of "no shipments if no assistance" to ensure that no shipments occur unless states and tribes have first been properly prepared.

Regarding contingency planning in the event adequate funding and assistance has not been provided to states and tribes, the *Notice* points out "[t]he contingency plan has not changed significantly in this notice..." (p23764) The Committee therefore reiterates the objection it made to the department's July 17, 1997 *Notice of Revised Proposed Policy and Procedures*. The Committee believes that the contingency "plan" outlined in the *Notice* is inadequate to ensure the safety of shipments of SNF/HLW in the event that such shipments occur with less than three years of preparation. The contingency plan does not mandate any action from DOE should shipments occur with less than three years' lead time. Instead, it provides only that if asked to complete preparation activities in less than three years, a state "may" receive additional funding, and that DOE "may" use escorts "with more training and equipment than those currently used for the purpose of security until a reasonable time period for training has expired." (p23757)

The Committee supports DOE's recognition of the extra expenses which necessarily accompany a lack of systematic transportation planning in the event early shipments occur. However, the safe and uneventful transport of nuclear waste must be paramount in all federal policies affecting nuclear waste transportation. Increasing the amount of funding and technical assistance to states cannot fully compensate for inadequate preparation and planning time. Reliance on the weak and unspecific contingency "plan" espoused in the *Notice* will only further erode the public's confidence in the NWPA shipping program and, even for limited shipments, will jeopardize the safety of citizens in corridor states.

### Routing and Mode Analysis

**In order to develop a safe and effective system for accepting commercial spent nuclear fuel and high-level radioactive waste (HLW), 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 DOE policy commitments 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 high-level radioactive waste; 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; and f) develop a sound methodology for evaluating optional mixes of routes, and transportation modes.**

[WGA Resolution 98-005, June 30, 1998]

The Committee finds the treatment of routing issues in the *Notice* to be insufficient and unacceptable in addressing state concerns with regard to the NWPA shipping campaign. In the response to stakeholder comments section, the *Notice* states that "[t]he draft Request for Proposal for the Acquisition of Waste Acceptance and Transportation Services for the Office of Civilian Radioactive Waste Management issued November 24, 1997, clarifies many of the issues raised in comments regarding routing. (p23760) However, as the Committee stated in its February 12, 1998 comments on the draft RFP:

"The current RFP makes no provision for a DOE analysis of routes. Instead, the RFP calls on the RSC to prepare a Transportation Plan that 'sets forth' proposed transportation routes. The RFP provides no requirements for the methodology by which the RSC is to set forth its proposed routes. As the Committee has previously stated, a private contractor, motivated primarily by profit and cost-efficiency, will be most likely to choose routes based solely on minimizing miles traveled, time in transit, and rail tariffs. Other risk factors such as accident rates, potential property exposure, transit through environmentally and culturally sensitive areas, emergency response times, difficult to evacuate populations, dangers posed by bridges and tunnels, inclement weather, high-hazards, and time-of-day transit restrictions are not likely to be adequately addressed, if they are considered at all. Designating routes in this fashion is unacceptable to western states."

The Committee would also point out that western governors have established a clear policy regarding privatization which states that "[i]n 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...selection of transportation modes and routes..." [WGA Resolution 98-005, June 30, 1998]

Western states are not alone in their view that DOE cannot delegate its routing responsibilities to a private contractor. In a March 3, 1998 letter to Energy Secretary Federico Peña, five of DOE's regional cooperative-agreement groups<sup>1</sup> — *representing over 40 states* — stated unequivocally that DOE should not delegate to a contractor the responsibility for selecting shipping routes. This recommendation is reiterated in stakeholder recommendations from DOE's own Transportation External Coordination Working Group (TEC/WG), which stated that DOE's route selection process should be aimed at achieving three main goals, including "promoting safety and public acceptance of the selected routes by making the federal government, not a private company, accountable for route-selection."<sup>2</sup>

The *Notice* also states that "[t]he RSC(s) must abide by DOT and NRC routing regulations," and that "OCRWM believes the current NRC and DOT routing regulations are sufficient to ensure shipment safety." (p23760) This statement ignores: 1) the Committee's long-standing recommendation that strict reliance on DOT and NRC regulations will result in too many potentially viable routes to allow states and tribes to effectively focus scarce funds and training resources on those routes which are the most heavily used; 2) the fact that there currently are no routing regulations applicable to shipments conducted by rail; and 3) the recommendation

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<sup>1</sup> The five groups included: the WIEB High-Level Radioactive Waste Committee, the Council of State Governments' Northeast High-Level Radioactive Waste Transportation Task Force and Midwestern High-Level Radioactive Waste Committee, and the Southern States' Energy Board's Advisory Committee on Radioactive Materials Transportation and Transuranic Waste Transportation Working Group.

<sup>2</sup> *Routing Issues Related to U.S. Department of Energy Radioactive Materials Transportation: Discussion and Recommendations*, Prepared by the Routing Topic Group of the Transportation External Coordination Working Group, page 15 (April 1998).

of TEC/WG stakeholders, who have advised DOE that its route selection process should be aimed at achieving three main goals, including "allowing resources (inspections, emergency response, etc.) to be focused by reducing the total number of routes..."<sup>3</sup>

In addition, the *Notice* ignores the more than 40 states who stated in their March 3, 1998 letter to Secretary Peña that "[t]he sheer magnitude of DOE's planned shipping activities over the next three decades highlights the need for greater cooperation between the Department and the affected state governments. Through the year 2035, DOE shipments of high-level radioactive materials will affect a total of 45 of the contiguous states. The multiplicity of available routes, coupled with the scarcity of resources for training state and local personnel, makes it imperative that the Department adopt a more coordinated approach to selecting the routes for these shipments." The states concluded that the ideal routing approach "would permit the most efficient use of federal and state resources by reducing the total number of routes."

The Committee asks that OCRWM clarify its statement in the *Notice* that "[t]he Department is currently considering the development and adoption of Department-wide standardized route selection criteria through the Senior Transportation Forum, established within DOE to coordinate the efforts of Departmental elements involved in the transportation of radioactive materials." (p23760) Western governors support the development of a more uniform system of planning, preparedness and implementation for radiological material transportation. [WGA Resolution 98-006, June 30, 1998] However, to the Committee's knowledge, no states or regional groups have been consulted by DOE's "Senior Transportation Forum" for input on developing route selection criteria. The Committee would like to know the membership of the "Forum" and what methodology the Forum is considering for making mode and route determinations and for determining appropriate route selection criteria.

The Committee reminds OCRWM of the position of western governors that the development of routing criteria must be conducted *in coordination with the states and tribes*, and that "DOE must look to the Waste Isolation Pilot Plant (WIPP) transportation and cesium capsule return programs for guidance in conducting any large-scale radioactive waste shipping campaign... DOE 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." [WGA Resolution 98-005, June 30, 1998] In their March 3, 1998 letter to Secretary Peña, states from every region of the country echoed the governors' position on this issue, as did stakeholders working through the TEC/WG.<sup>4</sup>

As the Committee has previously stated to DOE, conducting a modal analysis is also an

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

integral part of the routing analysis which DOE must prepare for NWSA shipments. The Committee's position is echoed in the Department of Transportation's recently released *Identification of Factors for Selecting Modes and Routes for Shipping High-Level Radioactive Waste and Spent Nuclear Fuel*, (Mode and Route Study). In attempting to develop a comprehensive list of factors to be used when selecting modes and routes, the DOT study found that routing and modal issues were intertwined and that "[f]or most factors, it was difficult to separate mode from route considerations."<sup>5</sup> The DOT study also found that "[t]he factors had to be considered within the context of the mode and route combination (including intermodal)," and that "...when comparing the safety of highway and rail between common origin and destination points, more than one route will usually be possible by either mode (especially for longer shipments). In addition, intermodal combinations with different routing and interchange points are possible. The risk for one rail route may be lower than the risk of a highway route, yet the corresponding risk for another rail route may be higher. Thus, it cannot be concluded that one mode is safer than another without considering the specific route."<sup>6</sup>

The Committee therefore continues to insist that OCRWM meet the demand of western governors for DOE policy commitments to: develop responsible routing criteria; develop a sound methodology for evaluating optional mixes of routes and transportation modes; and fix the shipping origins and destinations points as early as possible. States and tribes cannot properly determine assistance needs for Section 180(c) funding until DOE has identified the modes of transportation and the routes to be used in transporting radioactive waste to a repository or interim storage facility.

### **Critique of Funding Mechanism**

The Committee recognizes that OCRWM has made further positive progress in developing a funding mechanism for its 180(c) program. The Committee appreciates OCRWM's recognition of the fact that states and tribes must be provided with the necessary funding to prepare the grant applications called for in the *Notice*. The \$150,000 planning grants provided by the *Notice* match the minimum funding level deemed necessary to identify critical transportation needs in the 1994 Section 180(c) Strawman Regulations prepared by the Committee in conjunction with the Western Governors' Association.

The Committee continues to believe that DOE is correct in attempting to ensure a yearly base level of funding for states and tribes in the *Notice*. However, the Committee recognizes that the process DOE used for computing the base funding level (\$75,500) currently provided for in the *Notice* was relatively arbitrary and based on unproven assumptions. With regard to the variable funding level, the Committee continues to insist that the amounts allocated to states and

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<sup>5</sup> *Identification of Factors for Selecting Modes and Routes for Shipping High-Level Radioactive Waste and Spent Nuclear Fuel*, U.S. Department of Transportation, Research and Special Programs Administration, (April 1998), page 4-4.

<sup>6</sup> *Id.*

tribes take into account the disparity of impacts of NWPA shipments. DOE should therefore combine the individual state and tribal grant applications and allocate twenty-five percent of this total amount to ensure minimum funding levels and program capability levels in each NWPA shipment corridor state or tribe. Seventy-five percent of the combined grant applications should then be allocated to states and tribes based on the proportional number of projected shipment-miles in each jurisdiction as compared to the total number of shipment-miles. [WGA Resolution 98-005, June 30, 1998]

The Committee disagrees with OCRWM's explanation for failing to allocate 180(c) funds according to shipment miles. The *Notice* states that OCRWM will not allocate funds based on shipment miles because "once emergency responders are trained, they are trained without regard to the number of shipments. In addition, shipment miles as an allocation method will skew funding towards those places with longer routes, but not necessarily more population along the routes." (p23762) The Committee reiterates the position of western governors that "it is the responsibility of the generators of spent fuel and HLW and the federal government, not the states, 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...The Governors believe implementing policies and procedures for Section 180 (c) of the NWPA must assure that states are fully compensated for all training, preparedness, and response costs associated with spent fuel and HLW shipments within their borders." [WGA Resolution 96-019, June 24, 1996] The Committee believes that DOE must ensure funding is available to allow states and tribes to be properly prepared to respond to incidents and accidents at any point along a given route. Allocating funds based on shipment-miles reflects the reality that preparing adequately for shipments covering larger distances is necessarily more difficult and costly than preparing for shipments covering shorter distances.

Also, allocating funds based on shipment-miles guarantees that the number of shipments through a jurisdiction plays a role in determining the amount of funds and assistance each jurisdiction receives to properly prepare and respond to any accidents which may occur. As the Committee stated in its comments on the July 17, 1997 *Notice*, increased preparation is especially necessary for states which experience large numbers of shipments because the greater the shipment numbers, the greater the probability that a transportation accident will occur within that jurisdiction.

The Committee is pleased with OCRWM's statement that "risk and route analysis is an allowable expense" for 180(c) funds. (p23761) The Committee also agrees with the statement in the *Notice* that 180(c) funds "may also be used to offset the costs of equipment maintenance and recordkeeping." (p23761) However, with regard to the use of 180(c) funds to purchase training-related equipment and supplies, the Committee continues to find the arbitrary funding limitations (25 percent of 180(c) funds in TY-2 and TY-1, 10 percent after TY-1) in the *Notice* unacceptable. In order to meet the varying needs of states and tribes, an effective Section 180(c) program must allow each jurisdiction to determine for itself how to appropriately allocate funding to prepare for nuclear waste shipments. Alternatively, the program should be structured to allow for the percentage caps to be exceeded, if such exceedances are justified. In an NWPA shipping campaign which would last approximately 30 years, states and tribes must be allowed



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the flexibility to determine equipment and supply needs on a long-term rolling basis.

### **Critique of Training Levels**

The Committee agrees with DOE that the Section 180(c) policy and procedures should provide funding and assistance "to obtain and maintain awareness-level training" for all local response jurisdictions. (p23754) However, the Committee continues to find unacceptable the provisions in the *Notice* regarding initial training and refresher training at both the operations and technician level. With regard to these levels of training, the *Notice* states that assistance will only be provided "to the extent funds are available." (p23754) Funding and assistance to provide states with sufficient operations- and technician-level emergency response capability must be guaranteed in the Section 180(c) program in order to ensure a rapid and efficient response to an NWPA transportation accident. The costs for this training should be calculated by states and tribes and included in the grant applications filed with DOE. In addition, the Committee believes that the costs for providing training to emergency medical staff along proposed routes should also be covered by the *Notice*.

### **Rail Inspections**

The Committee appreciates OCRWM's acknowledgment in the *Notice* of the need to provide training to states and tribes to conduct rail inspections for NWPA shipments. (p23755) However, the Committee does not agree with the statement in the *Notice* that "[s]ince the FRA covers the training cost to state employees in the State Participation Program, there is no direct role for Section 180(c) to fund training." (p23755) The Committee does not believe that the current number of federally certified state rail inspectors will be sufficient to account for the substantial increase in shipment numbers which will occur under an NWPA SNF/HLW shipping campaign. Furthermore, FRA is not able to guarantee that it can provide the funding needed to certify additional state inspectors for NWPA shipments. The *Notice* should therefore be amended to provide that 180(c) funds will be made available to cover the costs involved with increasing the number of federally certified state railroad inspectors to accommodate NWPA shipments.

In addition, the FRA program only provides funding to cover travel, per diem and tuition costs associated with training state inspectors under the State Participation Program. FRA does not fund costs such as salary and travel expenses associated with the performance of rail inspections after state inspectors have received their federal certification. The *Notice* should therefore provide that 180(c) funds will be available to cover the cost of federally certified state inspectors performing NWPA rail inspections.

### **Other Continuing Conflicts With the Policies of Western Governors**

Western governors have adopted clear policies on the implementation of Section 180(c) of the Nuclear Waste Policy Act in three separate Western Governors' Association (WGA) resolutions. These comments of the High-Level Radioactive Waste Committee ("Committee") amplify on the key points addressed by western governors in these resolutions and relate the

governors' policies to the contents of the proposed Section 180(c) policies and procedures.

**1. The Governors believe it is the responsibility of the generators of spent fuel and HLW and the federal government, not the states, 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. [WGA Resolution 96-019, June 24, 1996]**

The Committee disagrees with the statement in the *Notice* that "the Section 180(c) program should provide the increment of assistance needed to respond to an OCRWM radiological materials shipment, and should not provide basic emergency response capability to jurisdictions along the routes..." (p23759) Failure to properly fund states and tribes using Section 180(c) funds will result either in shipments occurring without needed preparations or a new federal unfunded mandate, the cost of which will be picked up by taxpayers along the shipping route.

The Committee finds ludicrous the statement in the *Notice* that "OCRWM does not believe that preparations for these shipments would constitute an unfunded mandate if not fully funded by the Section 180(c) program because there is no requirement under NWPA mandating states to take any particular action with regard to these shipments." (p23759) The Committee would refer OCRWM to the Unfunded Mandates Reform Act of 1995, which defines a "Federal intergovernmental mandate" as "any provision in legislation, statute, or regulation that-- '(I) would impose an enforceable duty upon State, local, or tribal governments.'"<sup>7</sup> The Committee would further refer OCRWM to its own statement in the *Notice* that "[i]f an accident should occur, with or without a release, states and tribal governments have primary responsibility to respond and to protect the public health and safety in their jurisdiction." (p23754) It is clear to the Committee, and apparently to OCRWM itself, that states and tribes have a duty to respond to SNF/HLW accidents within their jurisdictions. It is therefore equally clear that failure to provide funding to fully cover the costs of preparing for SNF/HLW shipments would result in an unfunded federal mandate as defined by law.

The Committee remains highly concerned that the magnitude of these unfunded costs, coupled with DOE's decision not to issue regulations to guide the implementation of Section 180(c), is an effort to avoid complying with Executive Orders 12866 and 12875. Regardless of DOE's characterization of the *Notice* as "policies and procedures," the Committee believes the content of the *Notice* requires that Executive Orders 12866 and 12875 apply.

Executive Order 12866 defines "regulation" as "...an agency statement of general applicability and future affect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency." The Committee believes that the action contained in the current *Notice*, which is designed to implement a DOE policy with regard to providing assistance

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<sup>7</sup> Public Law 104-4, Section 101(a).

to states and tribes, clearly meets this definition. DOE is therefore subject to the requirements of both Order 12866 and Order 12875.

According to the mandate of Order 12875:

"...no executive department or agency shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless: (1) funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the federal government; or (2) the agency, prior to the formal promulgation of regulations contained in the proposed mandate, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications submitted to the agency by such units of government, and the agency's position supporting the need to issue the regulation concerning the mandate."

The Committee believes that the policies and procedures outlined in the *Notice* violate the President's clearly stated regulatory objectives. To wit, the provisions of the current *Notice* may not provide the funding necessary to pay all of the direct costs which will be incurred by state and tribal governments to protect the welfare and safety of their citizens in the face of a federally mandated nuclear waste shipping campaign. Furthermore, to the Committee's knowledge, DOE has not provided the Office of Management and Budget with the required report.

Taken together, it is hard to avoid the conclusion that the effect of the *Notice* is to shift many of the costs involved in preparing for spent fuel and HLW shipments from those who will benefit from the shipments to local taxpayers in corridor states and tribes. As currently written, the *Notice* therefore violates the governors' tenet that the beneficiaries of the transportation of spent fuel and HLW, not local taxpayers, should pay for all the costs associated with such shipments.

**2. The Governors strongly recommend that Section 180(c) regulations should apply to all shipments to a Monitored Retrievable Storage facility and repository regardless of whether such facility is operated by the Department of Energy or another entity. [WGA Resolution 97-015, June 24, 1997]**

The *Notice* should provide that Section 180(c) funds will be provided regardless of whether shipments are made to a facility operated by the Department of Energy. Western states and tribes must be assured that assistance will be provided with respect to any SNF/HLW shipments through their jurisdictions. The Committee believes that the definition in the *Notice* of "safe routine transportation" should be expanded to clearly include shipments of SNF/HLW to a repository, interim storage facility, or any other facility that may be developed for storage or disposal, regardless of whether such facility is developed by the federal government or by private entities.

**3. The Governors believe that DOE must adopt regulations to implement Section 180(c). [WGA Resolution 96-019, June 24, 1996]**

As the Committee has previously stated on several occasions, it is necessary for OCRWM to establish its Section 180(c) grant program in regulations. The implementation of Section 180(c) through regulations is needed to ensure program stability through changes of leadership at the Department. Such stability is essential for the successful implementation of a program which will cover 30 or more years and innumerable jurisdictions in more than 40 states. The Committee believes that DOE's enabling act (42 USCA §7191) and the Administrative Procedure Act both permit expeditious rulemaking that would not delay assistance under Section 180(c).

The Committee disagrees with the statement in the *Notice* that "since the program's current planning basis is to begin shipping in 2010, it is premature to codify the policy in regulations this far in advance of shipments." (p23765) The Committee reminds OCRWM that legislation has been proposed in Congress each of the last two years which would force the interim storage of SNF/HLW far in advance of the 2010 date. In addition, litigation continues against DOE seeking to force the agency to pay large amounts of damages for continued delays in accepting SNF/HLW. The Committee believes that it represents extremely shortsighted judgement for OCRWM to ignore the possibility that influences outside the department could force early shipments to occur. The Committee can find no logical reason why OCRWM should not institute rulemaking as soon as possible to account for the possibility of forced early shipments.

**4. The Committee repeats the recommendation of western governors that, in order to provide states with a means of coordinating their approach to developing state and tribal plans, DOE should "[e]stablish Regional Training Advisory Teams of states and tribes to review and coordinate plans along shipment corridors and a National Training Advisory Committee to report to the Department of Energy on progress and needed additional actions." [WGA Resolution 98-005, June 30, 1998]**