

August 1, 1998

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:

On behalf of the Midwestern High-Level Radioactive Waste Committee, I am writing to provide the collective comments of the Midwestern states on OCRWM's Notice of Revised Proposed Policy and Procedures regarding the implementation of Section 180(c) of the Nuclear Waste Policy Act (NWPA), published April 30 in the *Federal Register*. Our detailed comments are attached.

The committee represents the 12 Midwestern states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. The majority of our states will be traversed by shipments of commercial spent nuclear fuel headed West, should Yucca Mountain be selected for the site of the nation's permanent repository. As a result, the Midwest has traditionally been very much interested in — and, with OCRWM's support, involved in — the development of the transportation system for these shipments.

We fear that OCRWM's recent decision to terminate both the transportation program and its institutional activities involving regional groups such as the committee will jeopardize the entire Civilian Radioactive Waste Management System. We firmly believe that OCRWM should first develop and then maintain the capability to begin shipping spent nuclear fuel earlier than 2010 in the event that Congress directs the agency to do so. Key to the development of this capability is OCRWM's transportation institutional program, which is the primary vehicle by which the states provide input on policies and decisions that will affect them. As evidenced by both the quantity and quality of the comments OCRWM has received on its *Federal Register* notices pertaining to Section 180(c), these institutional activities have, indeed, been a fruitful endeavor.

We appreciate the opportunity to comment on OCRWM's plans with regard to Section 180(c) implementation. If you have any questions regarding the committee's comments, please contact Lisa R. Sattler at The Council of State Governments' Midwestern Office (630-810-0210).

Sincerely,

Donald A. Flater, Chief
Bureau of Radiological Health
Iowa Department of Public Health, and
Chair, Midwestern High-Level
Radioactive Waste Committee

**The Council of State Governments
Midwestern High-Level Radioactive Waste Committee**

**Comments on OCRWM's Revised Proposed
Policy and Procedures on Section 180(c)**

Draft versus Final Policy

OCRWM should finalize its policy and procedures on Section 180(c) so that states will be able to begin at least preliminary preparations for receiving assistance under the program. State legislatures will be reluctant to appropriate funding to begin preliminary planning if the guidance document for the program in question is labeled "draft." Finalizing the procedures would also be a necessary step in the process of promulgating rules for implementing Section 180(c) (see our comment below).

Equipment

Equipment purchases at the 25-percent level should be implemented for TY-3 through TY-1. Training for local responders should be specific to the needs of the area and designed around and conducted with or on the equipment that responders will use.

Equipment allowances may also need to be adjusted to allow health officials to purchase analytical equipment and traceable sources to allow them to perform the independent assessment necessary to insure the health and safety of the public. The 25-percent limit on equipment purchases does not reflect the needs and differences of the states that will be involved in the program. Lastly, the committee wonders whether states will be able not only to purchase equipment but also maintain and calibrate it. On page 23761, OCRWM mentions that the "base grant may . . . be used to offset the costs of equipment maintenance." OCRWM should consider raising the cap on equipment purchases to 25 percent per year of eligibility, and expand the category to include equipment purchase, maintenance, and calibration.

Federal and State Roles

The Department of Energy must be specific in describing its role in both routine and emergency procedures when dealing with radioactive waste shipments. The states must also receive information on the types of resources that are available, how they will be delivered, and the time it takes to have them in operation.

The states have the primary responsibility to respond to accidents and protect their citizens. Local awareness and quick response by state radiation protection and transportation personnel will be the critical factors in responding to an emergency situation involving radioactive materials.

Funding Allocation

The committee reiterates its earlier objection to OCRWM drawing an "artificial division" between funding for awareness-level training and, if sufficient funding is available, for technician- or operations-level training. The committee strongly recommends that the final policy and procedures give states greater latitude in determining their needs and how best to meet them.

Also, the planning grant of \$150,000 may not be sufficient for states with multiple agencies participating in the process. In administering assistance under Section 180(c), OCRWM should take into account the variety of different regulatory structures in place in the states.

Inspections

Funding should be made available in the early stages of the process to help the states develop an independent inspection capability for both health physics and transportation personnel. These funds should cover administrative, training, and equipment costs necessary to implement these programs.

Lapses in Shipments

We again suggest that OCRWM's scheme for handling lapses in shipments is confusing. If TY-3 grants are awarded three years prior to shipment, then states would be eligible to receive funding three years prior to shipment, which would be the first year of a three-year lapse. Perhaps the confusion lies in the distinction between *applying* for funding and *receiving* it. Nevertheless, the committee does not see the logic in having states *apply* for TY-3 grants "three years prior to the resumption of shipments," if those grants will actually be *awarded* in TY-2. OCRWM must clear up this confusion, the best way being to include a table or timeline showing examples of transportation years, available awards, and lapses.

Price-Anderson Act Coverage

OCRWM states that ". . . compensation available under the Price-Anderson system provides very broad financial protection to compensate for 'all reasonable additional costs incurred by a state or political subdivision of a state in the course of responding to a nuclear incident or a precautionary evacuation.'" What exactly constitutes a "precautionary evacuation?" What is included in "all reasonable additional costs?" OCRWM should provide more information (including specific examples) on the Price-Anderson system as it affects the states.

Private Facility Shipments

The committee once again urges OCRWM to make Section 180(c) assistance available to states that will be on the corridors for shipments to a private spent fuel storage facility. That such shipments are even a possibility is a direct result of OCRWM's failure to abide by its obligation to accept and transport spent fuel from utilities starting in January 1998. Furthermore, to state and local personnel responsible for inspecting these shipments and potentially responding to accidents, a shipment to a private facility will appear no different than one to a federal facility.

Route Identification

We commend OCRWM for finally acknowledging the need to select routes early in the planning process to ensure that Section 180(c) assistance can be carefully targeted to the likely corridor states. We strongly urge OCRWM to adopt the DOE-wide protocol on routing currently under development by the Senior Executive Transportation Forum. Failure to do so would signal a lack of cooperation on OCRWM's part to achieve a consensus on routing issues — a position that would be unacceptable for a program whose transportation system is likely

have the greatest impact on most states.

Rulemaking

To reduce the likelihood of inconsistencies in the administration of the program, the committee strongly supports the idea of promulgating regulations on Section 180(c) implementation.

TRANSCOM

The committee believes OCRWM should commit to working with other program offices within DOE to improve the TRANSCOM system so that it will operate in a reliable, consistent, and useful manner.

Also, the committee believes OCRWM should work closely with the NRC to resolve in a timely manner the issue of whether state access to TRANSCOM conflicts with NRC safeguards regulations. Largely due to statements made by OCRWM, many states regard access to TRANSCOM as a fundamental part of the transportation system — one that will ensure their ability to obtain information on shipments heading their way or passing through their jurisdictions.

Transportation Planning

OCRWM acknowledges that “the large majority of commenters emphasized that they believe that additional change is still needed in key areas, primarily more cooperative route selection and a more cooperative transportation planning process.” The *Federal Register* notice also states that several groups “recommended the Waste Isolation Pilot Plant’s (WIPP) transportation planning process as a good example of cooperative planning.” The committee agrees that the WIPP transportation program should serve as a model for all of DOE’s high visibility shipping campaigns — particularly that of the Civilian Radioactive Waste Management System. We also note that OCRWM cites the comments of this “large majority,” but does not respond to them in the revised proposed policy and procedures.

Corrections

The revised proposed policy and procedures contains several incorrect statements with regard to comments previously submitted by the committee.

p. 23758, column 2: OCRWM states that the committee suggested “OCRWM should commit to funding the Section 180(c) program regardless of congressional appropriations.” We are shocked that OCRWM could interpret our comment in such a facile manner. Our original comment was that OCRWM should “state in the final policy and procedures that it will place a high priority on meeting its obligations under Section 180(c).” Further, we stated that “OCRWM should commit to *requesting sufficient funding* and, more importantly, to *adhere to the requested level* in the face of a reduced overall appropriation *unless specifically directed by Congress to do otherwise*” (emphasis added). The differences between our intent and OCRWM’s interpretation are subtle but, we believe, important. We stand by our original comment.

p. 23761, column 2: In our comments on the previous *Federal Register* notice, we asked OCRWM to make it clear in its initial mailing to the states that the federal government’s intention is for states “to train *all* local public safety officials to the awareness level.” Our concern

was that OCRWM would not make this point clear, thereby leading states to significantly underestimate their costs under the program. In the most recent proposed policy and procedures, OCRWM implies that the committee *supports* the approach of training all local public safety officials to the awareness level, which we do not. Indeed, our position all along has been exactly what OCRWM endorses (at least in part), namely that the decision of whom to train and to what level should be left to “the discretion of the state or tribe conducting the training.”

p. 23763, column 2: In response to our comment that OCRWM should not *require* states to follow CVSA enhanced inspection procedures, OCRWM notes that a) Illinois participates in CVSA and b) Illinois Department of Nuclear Safety staff had “received training in the enhanced standards during November 1997.” The first statement is true; the second is not. Illinois State Police officers received CVSA training, not IDNS personnel.