

September 26, 1995

Corinne Macaluso
U.S. Department of Energy
c/o Lois Smith
ATTN: Section 180(c) Comments
TRW Environmental Safety Systems, Inc.
600 Maryland Avenue, S.W., Suite 695
Washington, DC 20024

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.

Training of State versus Local Personnel

The Committee agrees that many states would prefer to "direct resources to more specialized response capabilities of regional or state hazardous materials response teams and provide first-on-scene personnel and first responders with only awareness training." Yet the exact wording of Section 180(c), with its emphasis on local government officials, would seem to preclude the use of funds to train state personnel. The Committee would strongly object to restricting the use of Section 180(c) assistance in such a manner. It would be prudent, however, for OCRWM to investigate the matter more fully to ensure that its implementation of Section 180(c) is consistent with congressional intent.

Treatment of Tribes

The Committee would like to reaffirm its position that Indian tribes should receive Section 180(c) funding directly in the same manner as the states. Although OCRWM has elsewhere indicated a commitment to funding the tribes directly (see, e.g., p. A-25 of the Implementation Plan for the MPC EIS), the very first sentence of the NOI/SI implies that the states will receive assistance “for training for public safety officials of appropriate units of local government and Indian tribes.” OCRWM should state explicitly its intentions for providing assistance to the tribes.

Definition of Terms

The Committee stands by the definition of “technical assistance” included in our letter of May 17, 1995. It should be noted that the definition attributed to the TEC/WG is still in draft form. Several members of the TEC/WG present at the July 1994 meeting, where the draft definition was first discussed, recommended deleting or revising the final sentence regarding the exclusion of direct funding or financial assistance. Also, any definition of “safe, routine transportation” that applies to the Section 180(c) policy should state that such transportation — regardless of mode — will comply with all applicable federal, state, tribal, and local regulations.

Safe Routine Transportation versus Emergency Response

The Committee believes that OCRWM should focus more attention on “procedures for safe routine transportation” than is currently the case. Inspection and enforcement activities at the state level will go a long way toward preventing the need for actual response to transportation emergencies. OCRWM’s policy and procedures, including any targeting of training funds, should emphasize both components of Section 180(c) equally.

Funding Mechanisms

We stated in our comments on the original Notice that OCRWM should consider using several alternative mechanisms for distributing Section 180(c) assistance. The “Discussion of Procedural Options,” however, clearly indicates OCRWM’s preference for the FEMA 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.

Schedule for Developing Section 180(c)

The Committee strongly urges OCRWM to accelerate the pace at which it completes the development of its program for implementing Section 180(c). The goal should be to publish the proposed policy and procedures in January 1996, with the final program in place by January 1997 and assistance beginning later that year, if necessary. The Committee fully expects OCRWM to live up to its commitment to provide Section 180(c) assistance three to five years prior to the start of shipments. An accelerated schedule for developing the Section 180(c) program would help OCRWM to meet this goal if Congress requires shipments to begin earlier than 2010.

Adequacy of Current Training

The Committee questions the statement that "current hazardous materials transportation training for safe routine and emergency response procedures is sufficient to handle any situation that may occur" during the course of the NWPA shipping campaign. If the comment refers to training courses currently available from federal and state sources, then the Committee might agree. Current capabilities at the state, tribal, and local levels, though, are far from adequate in most jurisdictions to handle the number and frequency of shipments being planned for the Civilian Radioactive Waste Management Program.

Route Selection

To say that commenters encouraged DOE "to quickly announce potential routes" is misleading in that it creates the impression that the groups and/or individuals who made this comment are more concerned with "quickly announced" routes than with properly selected ones. It also implies that the issue of route selection and its relationship to Section 180(c) implementation only recently surfaced. On the contrary, for years the Western states have urged OCRWM to begin the process of route selection in order to provide the states sufficient time to assess their needs with regard to Section 180(c). The Midwestern states recently joined the West in calling for early route selection in consultation with the states.

OCRWM has consistently dragged its feet on this issue. The agency seemed finally to be making some progress on the matter when it issued its *Strategy for Development of a Route Selection Guidance Document for DOE Unclassified HRCQ Shipments*. In July 1995, however, at the summer meeting of the Transportation External Coordination Working Group, DOE announced that it was abandoning this first effort to advance the process of route selection. In lieu of a guidance document, DOE agreed to develop a policy or set of procedures for the Department to follow in communicating with potential corridor states regarding route selection.

The Committee cannot emphasize enough the importance of selecting probable routes early on to facilitate the implementation of Section 180(c). On November 15, we will be co-sponsoring a routing workshop with the Southern States Energy Board's Advisory Committee on Radioactive Materials Transportation. The purpose of the workshop is to provide the states 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