

September 25, 1996

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

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.
- 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 radioac-

tive 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