

September 8, 1997

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 submit the committee's comments on OCRWM's recent *Federal Register* notice pertaining to Section 180(c) of the Nuclear Waste Policy Act. The committee consists of 18 members representing administrative agencies and the legislatures in the 12 Midwestern states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

As you are aware, the committee has closely followed the development of OCRWM's program for implementing Section 180(c). We have voiced our preferences and concerns in informal discussions with OCRWM staff as well as in formal written comments on three previous *Federal Register* notices: Notice of Inquiry (January 1995); Notice of Inquiry, Supplemental Information (July 1995); and the Proposed Policy and Procedures (May 1996). We appreciate having an opportunity to participate substantively in the development of OCRWM's Section 180(c) program. We also gratefully acknowledge the fact that OCRWM has revised its original proposal in response to many of our own comments. We offer the following comments and those attached as necessary enhancements to turn the proposal into an acceptable program for providing financial and technical assistance to the states.

In general, we find the revised proposal to be an improvement over the previous version. We agree with the concept of funding the "increment of training" needed, since it will cause states to evaluate their programs carefully to identify deficiencies. We also agree with the "tone" of the policy and procedures — namely, that focusing on safe routine transportation will make radiological emergencies very unlikely.

We are concerned, however, that the proposal as structured is too prescriptive. For example, the policy draws a distinction between base (planning) and variable (training) awards, then further subdivides the variable funding to target awareness-level training and — if sufficient funding is available — training at an advanced level. The committee does not find these distinctions to be either necessary or desirable. Such artificial divisions might help OCRWM to determine funding levels, but they have little practical value for the states in implementing Section 180(c). The committee believes the final policy and procedures should give states greater latitude in determining their needs and how best to meet them. Subdividing the available assistance and assigning different activities to each level of funding will undermine the program's flexibility.

The one glaring flaw in the proposal is one that we have called to OCRWM's attention repeatedly over the past five years. I refer, of course, to the issue of route identification. *Inform-*

ing states of the proposed routes two years after they have developed their grant proposals and one year after they have started to implement those plans does not make sense.

OCRWM must stop regarding early route selection as nothing more than an extraregulatory measure that will raise Congressional red flags during appropriation season. For years, the states have underscored the obvious relationship between route selection and Section 180(c) implementation: states need to know the routes *before* they begin planning and training, not after. OCRWM does show signs of comprehending this fact: the revised proposal contains 16 references to “along the routes” in the context of assessing training needs or conducting training.

How, we ask, does OCRWM propose that states assess their training needs without knowing the shipping routes? If OCRWM insists on awarding Section 180(c) assistance before identifying the routes, then the final policy and procedures must include detailed guidance to help states to assess their needs without information on the specific routes. Furthermore, the final policy and procedures must spell out clearly how OCRWM’s contingency plans will assist states in the event that they target their training resources to the wrong routes.

We look forward to the publication of the final policy and procedures, and ultimately to the timely implementation of Section 180(c). If you have any questions about our comments, please direct them to Lisa R. Sattler at 630-810-0210.

Sincerely,

David J. Crose, Director
Technological Hazards, Indiana State
Emergency Management Agency, 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 for
Implementing Section 180(c) of the Nuclear Waste Policy Act*

General

OCRWM should clearly define the authorities and responsibilities of the different Federal agencies and how they will interface with the state governments. We assume that this information will be part of OCRWM's transportation plan for the Civilian Radioactive Waste Management System. The committee believes, though, that disseminating this information well in advance of shipments will assist states as they implement Section 180(c) and will help to prevent the redundancy and confusion that often plague programs involving many different agencies.

We are concerned that the proposal does not give any indication of how much a "typical" award might be. We recognize the difficulty of defining "typical" in the context of this program, but we believe such an estimate would be helpful to both OCRWM and the states. The lower bound would presumably be the base grant amount of \$75,000, but what would be the upper bound? Training all emergency responders to the awareness level, for example, will be a very costly undertaking. In a 1996 letter to Secretary O'Leary, Governor E. Benjamin Nelson estimated training-related startup costs for the State of Nebraska to be \$982,000, plus annual operating costs of \$732,000. The committee requests that OCRWM provide at least a range of possible or likely award levels — one that is a little more narrow than \$75,000-\$732,000.

The committee requests a copy of the summary or transcript of comments OCRWM received at the July 1996 TEC/WG meeting.

The committee strongly urges OCRWM to post on the Internet all the comments it receives on the revised proposal. Public comments on the request for proposals on privatizing waste acceptance and transportation services were available on OCRWM's website, which proved very useful to the committee. Given our experience with lengthy delays in downloading those comments, however, we suggest using a format other than bitmap to make the Section 180(c) comments more easily accessible.

We appreciate OCRWM's acknowledgment of the work the cooperative-agreement groups have put into crafting the proposed policy and procedures on Section 180(c).

As indicated in the letter accompanying these comments, we agree that preparations related to safe routine transport will reduce the likelihood of radiological emergencies. We are concerned, though, that the revised proposal places a distinct emphasis on safe routine transportation at the expense of emergency response. In previous comments, when the proposed program seemed to favor emergency response, the committee urged OCRWM to emphasize both parts of

Section 180(c) equally. We are concerned that, if the program highlights one aspect of Section 180(c) over the other, funding — and therefore state or local preparation — for the latter will necessarily suffer. We urge OCRWM to revise the proposed policy and procedures to give the states the flexibility to choose exactly how to use their Section 180(c) assistance.

Page 4

The third paragraph ends with the statement that, “If Congress does not fully appropriate the funds requested, the funding to eligible jurisdictions will be decreased accordingly.” The committee urges OCRWM to state in the final policy and procedures that it will place a high priority on meeting its obligations under Section 180(c). As part of this statement, 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.

The fourth paragraph mentions DOT regulations concerning rail inspections in the context of “safe routine transportation.” Yet OCRWM later states that “Rail inspections are not included [in the 180(c) proposed policy and procedures] because the Federal Railroad Administration (FRA) conducts inspections of rail cars and tracks used to ship radioactive materials.” The committee objects to this exclusion and, in fact, is surprised that OCRWM would try to impose such a restriction. A number of TEC/WG and cooperative-agreement group meetings have included presentations on the FRA’s States Participation Program, which allows state inspectors to assume responsibility for inspecting various aspects of rail transport through the state, including motive power and equipment and hazardous materials. Two comments that we have heard repeatedly in these presentations are 1) that the FRA has neither the budget nor the human resources to handle the anticipated volume of NWPA shipments and 2) that the States Participation Program could enable states to pick up some of the slack if there were sufficient funding to train inspectors.

We encourage OCRWM to review the attached TEC/WG update on rail transport, dated July 1, 1994. Of particular interest is the last page, which lists “actions DOE may wish to consider.” Two of the four items relate to OCRWM providing funding to states to increase their access to the FRA’s program. **We believe the final policy and procedures should allow states to use Section 180(c) assistance for training and supporting state rail inspectors.**

Also in the fourth paragraph, OCRWM might wish to revise the penultimate sentence to make it clear that both states and tribes will receive advance notice of shipments. The current wording — without an explicit reference to state prenotification — could create the impression that OCRWM intends to notify only the tribes.

The wording of the last paragraph is very awkward, to the point of obscuring its meaning. Does OCRWM intend to provide states with “access to satellite tracking information,” or simply to help states “to prepare” for this access? The committee believes OCRWM should allow states to use Section 180(c) assistance to purchase the equipment and training necessary for accessing

TRANSCOM.

Page 5

The first paragraph states that, “If an accident should occur, . . . state and tribal governments have a responsibility to respond and to protect the public health and safety and the environment in their jurisdiction.” OCRWM should rephrase this sentence to acknowledge that “state and tribal governments have the primary responsibility” for responding to accidents. This section of the proposed policy and procedures seems to indicate OCRWM’s intent to have first responders — even state radiological preparedness agencies — simply call DOE for help should an accident occur. While it is possible that states will take advantage of the “radiological emergency response assets” available from the federal government, the fact remains that states are ultimately responsible for protecting the health and safety of their citizens. They will not turn this responsibility over to DOE. As a result, the committee strongly urges OCRWM to include operations- and technician-level training for certain responders as a fundamental component of Section 180(c) assistance, rather than regard it as a special prerequisite should sufficient funding be available.

Also, this section should mention OCRWM’s intent to allow states to purchase equipment for training and for use in responding to accidents.

The committee believes OCRWM’s “Objectives” for the 180(c) program should include training for hospital personnel to treat contaminated patients.

The third paragraph introduces the concept of base and variable grants. The committee notes that, throughout the policy, none of the references to activities eligible for “base grant” funding mentions the actual conduct of training. Rather, the language speaks only of “determining” or “conducting an assessment of” training needs. At a minimum, OCRWM should revise the policy to state that 1) states may use any part of their Section 180(c) assistance for conducting training and 2) states are free to choose what level of training to conduct, including both awareness and advanced emergency response training.

The committee agrees that it would be helpful to states — especially those that already perform training at the local level — for OCRWM to make specialized training and train-the-trainer courses readily available. The committee wonders, though, whether OCRWM will develop training courses (or perhaps a “module”) specific to NWPA shipments?

Page 6

The first paragraph mentions OCRWM’s intent to “adopt, to the extent practicable, any future Department-wide standardization of assistance to states and tribes for the Department’s radioactive materials shipments.” The committee agrees that such standardization would be beneficial. OCRWM should also commit to adopting any DOE-wide standardized policy on early route selection in consultation with the states to facilitate the implementation of Section 180(c).

It seems odd that the first mention of the grant applications (first paragraph)

would be a statement regarding what factors OCRWM will use to evaluate the applications. It would be more helpful first to indicate what information states must include in the applications, and to discuss evaluation criteria afterward.

We previously voiced our concerns pertaining to the exclusion of rail inspections (see our second comment regarding Page 4 of the proposal).

The fourth paragraph states that OCRWM “plans to provide financial and technical assistance to allow train-the-trainer classes for those states . . . that wish to provide the radioactive materials information in their existing awareness level training programs.” There are two problems with this language. First, states should not be limited to a train-the-trainer approach. Second, training should not be restricted to the awareness level.

We again object to OCRWM's apparent intent to substitute “Federal radiological emergency response capability” for state preparedness (paragraph 5). The role of federal resources is to supplement state response capabilities when necessary. OCRWM should correct any references in the notice that misrepresent the roles of and relationship between state and federal response capabilities.

Page 7

While the committee agrees with the notion of a base grant to all eligible jurisdictions and a variable grant based on an assessment of needs, the proposed policy draws an unnecessary distinction between the eligible activities under each. Such a distinction may be helpful for determining grant award amounts, but an artificial separation of eligible activities under the different grants will undermine the states' freedom to choose how best to target their funding. Similarly, subdividing the variable amount of funding into two parts — one for conducting awareness-level training and one for training beyond the awareness level — is neither necessary nor desirable, especially if funding for the latter “depend[s] on available funds.” The final policy should allow a state to include some enhanced response training in its overall assessment of training needs at whatever priority the state would assign it.

How often does OCRWM plan to adjust the base grant amount for inflation? Will OCRWM use updated CRCPD survey results to define the base grant amount?

The last paragraph on the page introduces the definition of “safe routine transportation” “for the purposes of determining eligibility or allowable activities under the Section 180(c) program.” The committee understands how the definition could help to determine allowable activities, but how does it determine whether a state is eligible to receive assistance? The committee suggests changing the sentence to match the one that refers to “technical assistance” — namely, to have both terms defined “for the purposes of the Section 180(c) program.”

Page 8

In the definition of “technical assistance,” delete “be” before “limited to” in the fifth line.

Page 9 How far in advance of shipments does OCRWM plan to notify the governors of their states' eligibility?

OCRWM states in the fourth paragraph that “awareness level training would be made available to all local public safety officials.” The committee believes that the grant application materials — and the final *Federal Register* notice — should clearly indicate that, in determining their training needs, states should calculate the cost of training all affected local public safety officials to the awareness level. Earlier references to “the appropriate increment of awareness level training” do not sufficiently convey the sense of providing this training to *all* affected local officials.

The timeline OCRWM proposes does not make sense. Four years prior to shipments, states will learn that they are eligible for assistance. Three years prior to shipments, the states will have submitted three-year plans for using Section 180(c) assistance, which will include awareness-level training for all local responders along the routes. After receiving assistance for one year, the states will then learn what routes the shipments will take.

It simply does not make sense to have states develop three-year plans that depend on routing decisions if OCRWM does not intend to announce the routes until one year after the states start implementing these plans. Will OCRWM require the states to submit revised three-year plans annually, or only every three years? Will the states have to revise their plans after the first year, once the probable routes are known? How will OCRWM determine which states are eligible for assistance if it does not know the routes? How will the states determine which local responders need awareness-level training if they do not know the routes? **The successful and efficient implementation of Section 180(c) depends absolutely on knowledge of the probable routes.** OCRWM must provide this information to the states when it notifies them of their eligibility for 180(c) assistance, not one year after they have started receiving this assistance.

How does a jurisdiction qualify for variable funding? Page 5 (“Objectives”) makes it sound like all jurisdictions will receive a variable amount of funding, with the level of funding depending on need. Page 9, however, seems to indicate that all states will receive the base amount but only some will receive variable funding. If OCRWM intends to make funding available at different levels, then it must identify the eligibility criteria for each level.

Page 10 The descriptions of assistance for TY-2 and TY-1 mention “a variable amount of financial assistance *for those jurisdictions that qualify*” (emphasis added). “Transportation Year grants (base plus variable),” however, simply “will be made available.” Does the restriction “for those jurisdictions that qualify” apply to Transportation Year grants?

There seems to be some confusion over what happens during a lapse in shipments. The first paragraph states that, “If there is a lapse of NWPA shipments for three or more years, the state or tribe would receive no funds for those

years and would regain eligibility three years prior to another NWPA shipment through its jurisdiction. Three years prior to the resumption of shipments through its borders, a state or tribe may again apply for TY-3 grants.” We believe the restriction is intended to apply to lapses of *four* or more years, since a three-year lapse would make states eligible for TY-3 funding in the first year of the lapse. As an example, if shipments are scheduled for 2002 and 2006, there would be a three-year lapse from 2003-2005. The state, though, would be eligible for TY-3 funding in 2003, so it would still receive assistance. OCRWM should revise this paragraph to correct the description of its policy for handling lapses in shipments.

The first sentence of the second paragraph might well cause a state to be very reluctant to apply for assistance for the purpose of hiring an employee (or defraying the salary of an existing employee) to coordinate Section 180(c) activities. States will be disinclined to accept federal funding for employing personnel unless there is some assurance that the assistance will be available for at least a minimum time period. The language in this section should make it clear that Section 180(c) funding will be provided for a minimum of three years.

Is there a difference between TY-2, TY-1, and TY grants? If so, what? Would the difference result solely from the states' assessments of their needs?

The second paragraph states that “an evaluation may be conducted by OCRWM to determine if some adjustment to the base amount needs to be made because the need for planning and coordination activities associated with NWPA shipments will be reduced.” The committee believes OCRWM should also evaluate periodically whether the base amount should be adjusted to account for inflation.

The third paragraph describes OCRWM's contingency plan for a situation in which “the route for a shipment is definitized too close to the start of the shipment to allow for Section 180(c) implementation.” The committee reiterates its position that two years' notice of the routes is “too close” to the start of shipments to allow states to implement Section 180(c). Also, is “definitized” a word?

The fifth paragraph refers to “grantees” consulting with “the local governments and first responders along the routes” prior to submitting their three-year plans. How can states consult with governments “along the routes” without prior knowledge of the routes?

Page 11

The first paragraph describes OCRWM's plan to allow states to spend up to 25 percent of their Section 180(c) funding on equipment in TY-2 and TY-1, then only 10 percent after TY-1. Would the 25-percent cap apply if, due to a lapse in shipments, a state loses eligibility and then reapplies for assistance?

The committee is pleased that OCRWM dropped its proposed restriction on funding drills and exercises. It is still not clear, though, whether states will be

permitted to use their Section 180(c) assistance to pay for the actual costs of planning and conducting drills and exercises. The revised proposal merely states that “the variable amount of funding may be used to pay for *travel and tuition costs* for those receiving training, including exercises and drills” (emphasis added). OCRWM should revise the proposal to state that all costs associated with drills and exercises will be allowable expenses under Section 180(c).

As with previous references, the third paragraph mentions states consulting “with the local governments and first responders along the route.” The states cannot consult with these governments until they know what routes OCRWM plans to use.

Page 14

The first paragraph states that, by allowing states to determine their own needs, and basing the level of assistance on those needs, the revised policy and procedures will “take into account the varied preparedness levels of applicants.” Does this mean that a “well-prepared” state would not be eligible for assistance beyond the base amount? Or will relatively prepared states receive assistance based on the likelihood of a great number of shipments and, therefore, a significant increase in the demands on, for example, state inspectors?

The second paragraph refers to OCRWM intending “to provide public information to jurisdictions along the routes.” Presumably, OCRWM will wait until two years prior to shipments to start these activities, since that is when it will identify the routes. The committee believes such short lead time is not sufficient for educating either the public or state and local officials. For the past few years, opponents of the nuclear industry have very publicly questioned the safety of radioactive waste shipments in their attempts to derail interim storage legislation in Congress. These groups have succeeded in capturing the attention of the media, with news coverage such as the attached *Newsday* article being the result. OCRWM should place more emphasis on the early and substantive public outreach that will be necessary to make the transportation program successful.

The committee maintains its position that OCRWM should not ship spent fuel or high-level radioactive waste until it has implemented Section 180(c) and states have had sufficient time to prepare for shipments. Nevertheless, we recognize that activities in Congress and the courts may make large-scale fuel shipments a reality well ahead of OCRWM's official schedule. Both OCRWM and the affected states, therefore, must be prepared to implement Section 180(c) in much less time than the prescribed four-year process. We are somewhat encouraged by OCRWM's statement that it will “work with jurisdictions on a case-by-case basis to meet the intent of Section 180(c) prior to any shipments through a jurisdiction that occur on a contingency basis.”

The fourth paragraph states that OCRWM's “proposal allows sufficient flexibility for states and tribes to conduct route and risk assessments if they choose.” On page 15, however, in the discussion of “Safe Routine Transportation,” the revised proposal states that “[s]ome requested activities, such as alternate route analysis . . . , are outside the realm of training for safe transport

of NWPA shipments, and therefore not included in the definition.” OCRWM needs to clarify its policy on using Section 180(c) assistance to conduct route and risk assessments in support of alternate route designation. The committee strongly urges OCRWM to consider these activities to be allowable under Section 180(c).

Pages 18-20 Notwithstanding the value of uniform, reciprocal inspection procedures in general or the CVSA procedures in particular, the committee would object to any attempt to *require* states to use the Commercial Vehicle Safety Alliance’s enhanced North American Standard inspection procedures. One of our states — Illinois — has perhaps the most widely respected nuclear safety program in the nation. The state inspects every single shipment of spent fuel that crosses the state line, and has done so since 1983. It would be unreasonable to require the State of Illinois to abandon its own rigorous (and well-tested) inspection procedures to adopt the CVSA standard.

Moreover, although limiting the number of inspections would likely “increase the transportation program’s efficiency,” OCRWM must realize that states will reserve the right to inspect any shipments that cross their borders. It would be politically untenable for a state agency to agree not to inspect shipments simply because another state has already pronounced them to be safe. Such an agreement might work in practice for the majority of shipments. In many cases, though, states will choose to reinspect shipments. Under Illinois law, for instance, the Illinois Department of Nuclear Safety and other cooperating agencies inspect and escort every shipment that passes through the state. For Illinois state inspectors to adhere to a reciprocal agreement would require legislative action, which at this point is not likely.

Page 20 The third paragraph refers to a pilot test of a DOE TEPP module, “Radiation Materials Emergency Response: Awareness Level.” Is this the correct title?

Also, if Section 180(c) assistance is intended to provide the “increment of training necessary to prepare for NWPA shipments,” then OCRWM should develop an NWPA-specific training module rather than use a generic “radiation materials” one. It is especially important that awareness-level training be specific to NWPA shipments given OCRWM’s reliance on packaging and regulatory safeguards to make the shipments low risk.

Page 22 In the first paragraph, OCRWM notes that the Southern States Energy Board “pointed out that the contingency plan [in the proposed policy and procedures] only deals with emergency response procedures and not safe routine transportation procedures.” OCRWM does not respond directly to this comment except to say that “OCRWM has tried to correct the lack of safe routine transportation contingency plans by allowing grant recipients to determine the number of inspectors to train.” How does this action “correct the lack” of adequate contingency plans?

The third paragraph refers to cases in which “a route constitutes the border between two jurisdictions.” Identifying situations in which a route constitutes

a border would first require the identification of the routes. States will not be able to plan for training in such situations until the routes are identified.

The committee agrees that “it is the role of the state governor to determine what agency is responsible for the Section 180(c) program.”

Page 23

It may be the case that two-year advance notice leaves “ample time to consider alternate routes and interact with the private transportation contractors.” It does not, however, leave ample time to consider alternate routes, officially designate them, assess training needs, apply for funding, and train emergency responders along the new alternate routes.