



NEW MEXICO ENERGY, MINERALS & NATURAL RESOURCES DEPARTMENT

123
OFFICE OF THE SECRETARY
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-6950

Jennifer A. Salisbury
CABINET SECRETARY

July 30, 1998

Ms. Corinne Macaluso
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
c/o Lois Smith
TRW Environmental Safety Systems, Inc.
600 Maryland Avenue S.W., Suite 695
Washington, D.C. 20024

New Mexico
Energy, Minerals and Natural Resources Department
Office of the Secretary



Christopher J. Wentz
Coordinator/Senior Policy Analyst
NM Radioactive Waste Task Force
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Off: (505) 827-1372
Fax: (505) 827-1150
E-Mail: cwentz@state.nm.us

Attn: SECTION 180(c) COMMENTS

Dear Ms. Macaluso:

The following comments and recommendations on the U.S. Department of Energy's (DOE) *Notice of Revised Proposed Policy and Procedures (Notice)* for implementing Section 180(c) of the Nuclear Waste Policy Act are submitted on behalf of the State of New Mexico and its Radioactive Waste Consultation Task Force [Section 74-4A-6 New Mexico Statutes Annotated, 1978]. These comments supplement New Mexico's previous written submissions on Section 180(c) program development, dated May 1, 1992; May 17 and September 25, 1995; September 30, 1996; and September 15, 1997. DOE solicited comments on this latest Section 180(c) revised proposed policy and procedures through notice in the Federal Register of April 30, 1998 (63 Fed. Reg. 23753).

The State of New Mexico supports the following DOE/OCRWM policy statements and proposals contained in the above-referenced *Notice*, subject to certain exceptions as noted:

- **Establishment and Use of an OCRWM Grants Program.** "The Department [DOE] will implement Section 180(c) through an OCRWM grants program. Funding will be provided every year (subject to Congressional appropriations) beginning approximately four years prior to the first shipment through state or tribal reservation boundaries." We continue to believe that such a grants program will prove to be the most efficient, cost-effective implementation mechanism through which to provide affected states and tribes Section 180(c) assistance.
- **Needs-Based Approach to Funding through Provision of Planning Grants.** "It is OCRWM's objective to provide a one-time-only planning grant to every eligible state and tribe to aid in their determination of needs for technical assistance and funds to train public safety officials in procedures required for safe routine transportation and emergency response situations." Given the number and diversity of entities expected to participate in the Section 180(c) program, a needs-based approach to funding offers

obvious advantages over any “one-size-fits-all” formula (*e.g.*, greater flexibility, more equitable across the board). The proposed amount of the planning grant (\$150,000) seems reasonable and will likely be sufficient for most states and tribes to determine their respective needs. However, it is recommended that a contingency provision be included whereby a state or tribe could request and receive supplemental funding for the needs assessment, subject to OCRWM approval.

- **Provision of Base Grants.** “It is OCRWM’s objective to provide a base grant to every eligible state and tribe to aid in planning and coordination activities for training in a timely manner. The base grant will be available every year of eligibility once the grant application has been approved.” The concept of an annual base grant is appropriate for a program of this nature and duration. However, we take exception to the proposed amount of the annual base grant (\$75,500) and how it was determined. OCRWM states that the amount was determined by doubling the 1994 average salary of a state health physicist and adjusting it for inflation. While this amount *may* be sufficient to pay the salary of one person each for safe routine transportation and emergency response planning, it would not cover associated benefits, travel and other operating costs incurred by the individuals filling the two positions. This is a critical oversight that must be addressed.
- **Provision of Variable Grants.** “It is OCRWM’s objective to provide a two-part variable amount of funding and technical assistance depending on the amount of assistance each applicant needs to obtain the incremental training requirements resulting from the planned NWPA shipments.” While the concept of annual variable grants is appropriate for the Section 180(c) program, New Mexico believes that such grant allocations must reflect the disparate impacts of NWPA shipments on corridor states and tribes. The use of “shipment-miles” in allocating variable grant funds is one promising mechanism that would account for such impacts, taking into consideration both the number of shipments traversing a jurisdiction and the number of miles those shipments would travel within that jurisdiction. Such variable grants must also be sufficient to cover operations- and technician-level training, as well as Incident Command System (ICS) courses, if states or Indian tribes so desire.
- **Allowable Activities for Funding.** “As indicated previously, risk assessment and alternative route analysis is an allowable expense.” We commend OCRWM for expanding the scope of allowable activities to include risk assessments and alternative route analyses. These are important risk management activities that can enhance the safety of NWPA shipments.
- **Stakeholder Interactions.** “OCRWM recognizes the crucial role of communications and public acceptance in developing a workable transportation program. To this end, OCRWM will retain primary responsibility for interactions with stakeholders.” New Mexico wholeheartedly endorses this statement and applauds OCRWM for publicly acknowledging the importance of communicating and coordinating directly with its stakeholders. By doing so, it will foster an environment of mutual trust and respect in which to better resolve the myriad sensitive issues surrounding the development and implementation of a Section 180 (c) program.

While the State of New Mexico recognizes the many improvements that have been made to the proposed Section 180(c) program over the past six years, a number of provisions remain troublesome. The problematic aspects of OCRWM's proposal include:

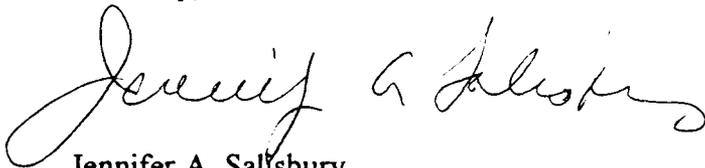
- **NWPA Shipments Must Be Contingent on Section 180(c) Assistance.** On June 30, 1998, the Western Governors' Association re-adopted a policy resolution (WGA Resolution #98-005) which demands that no shipments of spent nuclear fuel or high-level radioactive waste be made to storage facilities or a repository until Section 180(c) funds and assistance have been made available to states at least three years prior to the start of the NWPA shipping campaign. The failure of this and previous Section 180(c) proposals to adopt such a straightforward commitment to safe routine transportation and adequate emergency response preparedness persists as a serious flaw in the continuing development of this important program. New Mexico calls on OCRWM to state in no uncertain terms its intention to prohibit any NWPA shipments until Section 180(c) funding and technical assistance have been provided to affected states and Indian tribes.
- **Contingency Plan for NWPA Shipments to an Interim Storage Site.** New Mexico continues to harbor serious concerns regarding OCRWM's planning efforts for providing Section 180(c) assistance in the event Congress enacts legislation next year mandating development of an interim storage facility for commercial spent nuclear fuel. As the Department is well aware, Congress came very close to enacting such legislation earlier this year and will take up the issue again in 1999. To date, OCRWM has not devoted sufficient time or resources to addressing how to ensure that requisite safety preparations are in place prior to commencement of any NWPA shipments to an interim storage facility. Much more attention needs to be focused on developing, in close coordination with affected states and Indian tribes, a comprehensive, workable contingency plan for such interim shipments.
- **Limits on Equipment Purchases.** "Regarding equipment, a grantee would be able to budget, for TY-2 [Transport Year-2 years prior to shipment] and TY-1 [Transport Year-1 year prior to shipment], 25 percent of each year's total Section 180(c) funds to purchase appropriate (i.e., training-related) equipment and supplies. After TY-1, the applicant would be able to budget up to 10 percent of each year's Section 180(c) funds to purchase appropriate equipment and supplies." In delineating the preceding policy on equipment purchases, OCRWM notes that it has chosen not to lift the percentage cap on equipment in order to ensure the majority of funding is used for training as directed by the NWPA. We continue to believe such limits are arbitrary at best and, if incorporated into the program, perhaps illegal. It simply doesn't make sense to characterize this as a "needs-based" program and then impose artificial caps on equipment purchases. Moreover, various Indian tribes and pueblos, as well as local governments in predominantly rural areas, now have extremely limited emergency response capabilities and may therefore need to purchase equipment and supplies in amounts beyond the proposed caps. Hence, New Mexico believes the Nation's interests would be best served by removing the limits on what should be considered "general guidance" on equipment purchases; or, at a minimum, by

adopting a Section 180(c) contingency provision whereby a state or tribe can exceed the recommended percentage limitations, subject to OCRWM approval.

- **Definition of Key Terms.** “OCRWM believes that the current [proposed] definition of safe routine transportation, in combination with the policy statement on safe routine transportation, provides a sufficient measure of safety for the shipments that will be, at least, on par with the WIPP campaign.” We disagree with the preceding OCRWM statement based on our reading of the *Notice* and our participation in the WIPP program. Unlike WIPP, certain activities relating to safe routine transportation are either excluded or not specifically mentioned under the current Section 180(c) proposal. For example, it is questionable whether carrier compliance audits, development and implementation of bad weather procedures, identification of safe parking areas, and public information and outreach efforts could be funded under OCRWM’s proposed policy and procedures. As currently written, Section 180(c) funding for safe routine transportation would apparently be limited to “... vehicle, driver and package inspection and enforcement of the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations” for NWPA shipments by highway. Funding of activities relating to the safe routine transport of NWPA rail shipments is similarly limited, especially for coverage of all costs relating to state participation in the Federal Railroad Administration inspection program. In order to resolve this issue, the definition of “safe routine transportation” should be amended to explicitly include the aforementioned activities and to clarify the listing of allowable activities is not intended to be comprehensive or overly restrictive.
- **Issuance of Section 180(c) Policy and Procedures in Final Form.** The *Notice* states the following: “These policy and procedures will remain in draft form until program progress or legislation provides definitive guidance as to when shipments will commence. At that time, OCRWM may finalize these policy and procedures or will consider promulgating regulations on Section 180(c) implementation.” We strongly believe that delaying issuance of a final Section 180(c) policy and procedures is imprudent and not in the best interests of the NWPA program. The prospective participation of so many, diverse entities in the program dictates that OCRWM proceed expeditiously and with all due diligence toward finalizing a Section 180(c) policy and procedures, preferably through adoption of regulations.

Thank you for providing the State of New Mexico another opportunity to participate in the formulation of an effective Section 180(c) program.

Sincerely,



Jennifer A. Sallsbury
Cabinet Secretary and Chair
N.M. Radioactive Waste Consultation Task Force

c: Governor Gary E. Johnson
Task Force Cabinet Secretaries