

June 12, 1996

Mr. Daniel A. Dreyfus, Director
Office of Civilian Radioactive Waste Management
RW-1 Room 5A-085
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Dreyfus:

Enclosed are the comments of the Western Interstate Energy Board's High-Level Radioactive Waste Committee on OCRWM's Notice of Waste Acceptance, Storage, and Transportation Services Issued on May 28, 1996.

The Committee does not believe that the Notice provides adequate information with which to evaluate the scope of services which OCRWM intends to obtain from private parties with regard to a nuclear waste shipping campaign under the Nuclear Waste Policy Act. The Committee is fearful that this lack of information could result in the implementation of a totally unacceptable and inadequate transportation system.

It is also not clear to the Committee what step in the administrative process the Notice represents. However, despite this lack of clarity, the Committee wishes to ensure that it provides OCRWM with its views prior to any important decision being made with regard to this critical program.

Sincerely,

[signed]
Daniel Nix, Co-Chair
High-Level Radioactive Waste Committee

[signed]
Richard Moore, Co-Chair
High-Level Radioactive Waste Committee

cc: Linda Desell, Director Environmental and Operational Activities Division
Michelle Miskinis, Contracting Officer, U.S. Department of Energy
Markus Popa, Office of Civilian Radioactive Waste Management

Comments of the High-Level Radioactive Waste Committee of the Western Interstate Energy Board on the OCRWM Notice of Waste Acceptance, Storage, and Transportation Services Issued May 28, 1996

The Notice of Acceptance, Storage and Transportation Services issued by the Department of Energy's Office of Civilian Radioactive Waste Management (OCRWM) on May 28, 1996 presents inadequate information upon which to evaluate the scope of services being requested from private parties. The lack of information about OCRWM's intentions leaves open the prospect that a wholly inadequate transportation system may result. Such a system would fail to meet the objectives of western governors as outlined in numerous policy statements¹ and would be unacceptable to western states.

The entire approach taken by DOE in the Notice represents a major departure from its past approach for dealing with transportation planning and fails to build upon lessons learned from other DOE radioactive waste program activities including, most notably, DOE's Waste Isolation Pilot Plant (WIPP) transportation program. As the Committee has stated several times in the past, in order to establish a credible and effective radioactive waste transportation program, DOE cannot abdicate its responsibility for coordinating with states and tribes and for evaluating the various required transportation components.

There are six specific shortcomings that may result from the transportation system outlined in the Notice.

1. It appears that DOE's selected contractor, not the department, will be responsible for "interface with those States, Local and Tribal governments along the selected routes." It has taken DOE years to establish responsible relationships with western governors and regulators. As years of experience have shown in DOE's weapons production and subsequent cleanup activities, where DOE contractors are put in charge of interacting with state and local governments on federal programs, failure will follow. An important lesson from these experiences is that those who are ultimately responsible for implementing federal policy (i.e., DOE) must be directly accountable for actions taken to implement such policy. DOE cannot delegate this responsibility to a contractor.

Therefore, the Notice should clearly state that any selected contractor is responsible for "assisting DOE in interfacing with those State, Local and Tribal governments along the selected routes." If DOE issues contracts for services, the contracts should provide a clear system of incentives and rewards that effectively encourage the contractor to successfully work with DOE and state, local, and tribal governments.

2. It appears that DOE will rely on contractor recommendations on the routes to be used to ship spent fuel and HLW to a federal facility. It is inappropriate for DOE to delegate such a critical public policy decision to a contractor. As western governors have repeatedly stated, it is the responsibility of the Department of Energy to evaluate alternative shipping modes and routes.

Additionally, the proposal to allow a contractor to select routes is incongruous with the schedule for efficient preparations along shipping routes. Efficient allocation of Section 180(c) resources requires advanced notice of shipping routes. Based on the work of western states, we estimate that such notice of shipping routes needs to be provided at least five years before shipments begin. According to the May 28 Notice, DOE will sign 5-10 year contracts for transportation services. However, based on western states' views of the time needed to designate routes, the contractor would not be shipping any material for at least the first five years of its contract, since its first task would be to recommend routes. The Notice's

allowance of two to three years for the selected contractor to procure transportation and storage equipment and achieve operational readiness is therefore clearly an insufficient amount of time if DOE intends to rely on carriers to select routes.

The problems associated with the carrier selecting routes are exacerbated by DOE's proposal to have up to four carriers. For the western states, this means potentially dealing with four different contractors, using four different routing analyses through the same region. Such potential inconsistency in route selection will aggravate an already difficult problem, and underscores the importance of DOE establishing routes in advance, in consultation with affected states and tribes. Although the Committee supports the use of competition as a means of minimizing program costs, it is nevertheless imperative that multiple contractors utilize uniform routes.

3. It appears from the Notice that DOE is delegating to its contractor the decision of which transportation mode(s) will be used to ship spent fuel and HLW. Will the decision of which mode to use be decided by default based on cask availability or carrier preference? What role will corridor states have in the selection of the transportation mode? What role will utilities have in the selection of the transportation mode?

The major public policy decision of which mode of shipment to use should not be delegated to a contractor, but should be the product of careful analysis of the relative safety of alternative modes and routes conducted by the accountable agency — the Department of Energy.

Furthermore, the mode selected will likely be dictated by the type of canister chosen for the transportation program. The choice of canister is yet another area where contractors under the Notice could be making decisions which should be made by DOE on the basis of a careful analysis of risks. It should be noted that when deciding upon the type of canister to use, the analysis provided by the Navy in its currently developing Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel, should be taken into account.

Also regarding the choice of canister, the Committee recommends that DOE reexamine both the scope of services requested from a potential contractor and the intention stated in the Notice to use competitive "fixed-price type" contracts. Fixed price contracts may be appropriate to competitively procure direct transportation services. However, such a contract may be inappropriate where the costs involved are less certain, as with the design and fabrication of transportation casks. The Committee recommends that DOE consider using separate contracts for such services.

4. It appears that DOE intends to give its contractor the authority to alter the order of spent-fuel acceptance to achieve efficiency of operation or to lower cost. Improving efficiency of operation and lowering cost are important. However, the exercise of such contractor discretion must not result in insufficient notice to corridor states of the shipping modes and routes to be used. Specifically, no alterations of the order of spent fuel acceptance should be permitted if such alteration would result in the use of shipping routes which have not been identified at least five years prior to shipment and on which inadequate preparations are in place.

The Standard Contract for the Disposal of Spent Fuel and/or High-Level Radioactive Waste allows the exchange of approved delivery commitment schedules with parties to other contracts with DOE for disposal, providing that DOE approves such exchanges in advance. Pursuant to the Notice, is DOE delegating this approval authority to the contractor? If not, what role will DOE have in approving changes to pickup schedules that the contractor wishes?

5. The Notice ignores the need to properly integrate waste acceptance, storage, and transportation with other key responsibilities which DOE has under the NWPA. For instance, the Notice does not provide for coordination with activities required of DOE under Section 180(c) of the Nuclear Waste Policy Act. Section 180(c) requires the Secretary of Energy to provide training for emergency responders through whose jurisdiction the Secretary plans to transport spent nuclear fuel. Conducting this transport through a privatization effort does not eliminate the need to provide such training. Therefore, any request for services by OCRWM should specifically require the contractor to factor in a schedule for the provision of training under Section 180(c).

6. The Notice fails to specify any role for corridor states in advising DOE on appropriate elements of a future Request for Proposals or in the review of proposals. As the experience with WIPP transportation preparations has shown, there are features of carrier contracts which are important to maintaining the safety of shipments. For example, the WIPP carrier contract requires the use of drivers who have at least 100,000 miles of accident free driving experience, establishes driver screening and driver training programs that are auditable, requires carriers to provide an operating plan to corridor states, establishes safe parking areas, creates vehicle maintenance in inspection procedures, allows for state audit of contractor compliance with contract provisions, etc. Critical safety features, such as limitations on times of transit in high risk areas, and limitations on travel during seasons of severe weather, need to be incorporated into carrier contracts. Provisions for operational coordination between DOE, the carrier, and state and local officials in corridor states also need to be incorporated into the carrier contract. At a minimum, OCRWM needs to adopt the successful WIPP model in which states participated in the selection of transportation service contractors.

Finally, the WIEB High-Level Radioactive Waste Committee recommends that OCRWM clarify the process it will use from this point forward in the acquisition of transportation services. The Committee also requests that it be provided with all future notices from OCRWM associated with the acquisition of transportation services. Such notices should be sent to:

Western Interstate Energy Board
600 17th Street, Suite 1704 South
Denver, CO 80202

FAX: 303/573-9107
E-mail: ddecasare@westgov.org

FOOTNOTES

1

WGA Resolution 95-020 identifies eight necessary steps to prepare for NWPA shipments:

1. The preparation of a comprehensive transportation plan that includes the analysis of all needed transportation safety activities in a single document;
2. The development of responsible criteria for selecting shipping routes;
3. The development of a sound methodology for evaluating optional mixes of routes and transportation modes;

4. The expeditious amendment of the Nuclear Waste Policy Act to provide states and tribes with technical assistance and training funds prior to any large-scale shipment of spent fuel to a repository and/or centralized storage facilities, whether such facilities are publicly or privately owned.
5. The prohibition on an major shipping campaign to interim storage facilities until such technical assistance and training funds have been provided at least three years prior to the commencement of such shipping campaign;
6. Adoption of regulations to implement a mutually acceptable program of technical assistance and training funds, such as those recommended by the Western Governors' Association;
7. Appropriations to fund technical assistance and training monies to states and tribes through whose jurisdiction spent fuel and high-level radioactive waste are to be transported; and
8. The full-scale testing of casks to be used to transport spent nuclear fuel and high-level radioactive waste.

In WGA resolution 92-004 (readopted June 23, 1995), the governors state that:

1. The objective of the Western Governors' Association is the safe and uneventful transport of nuclear waste from current temporary storage facilities to more suitable permanent repositories. The Western Governors are committed to working with Congress and DOE to achieve this objective.
2. Early coordination and effective communications with state, tribal and local governments is essential to the ultimate success of any nuclear waste transportation program.
3. DOE should proceed expeditiously with the implementation of the initiatives identified in the TRAIN to provide uniform safety procedures and coordination with state, tribal, and local governments for route-controlled DOE shipping campaigns and shipments to DOE facilities.
4. A safety and information program similar to that developed with western states for shipments of transuranic waste to WIPP should be utilized for all route-controlled DOE shipping campaigns. Safety programs should be evaluated and improved as needed.
5. DOE should work to identify flexible funding resources and cooperative agreements between their civilian, power and defense agencies as a means for supporting WGA and DOE application of lessons learned through the WIPP safety program to other DOE shipping campaigns.

WGA Resolution 93-003 states:

1. The Western Governors' Association finds that, as a result of previous federal government inaction and delays, and a lack of strategic planning involving stakeholders, DOE cannot develop a national transportation program in time to meet the 1998 spent fuel acceptance date.
2. In order to expedite development of a system for accepting commercial spent nuclear fuel and high-level radioactive waste, the federal government must expand its focus beyond siting and development, in coordination with the states, a logical, and timely transportation program. This involves DOE policy commitments to: develop responsible routing criteria. develop a sound methodology for evaluating optional mixes of routes and transportation modes; fix the shipping origins and destinations points as early as possible; ensure the availability of rail and truck shipping casks; expeditiously evaluate and select the design for a multi-purpose cask; conduct full-scale cask testing; fulfill emergency preparedness requirements (Section 180(c) of the Nuclear Waste Policy Act Amendments) prior to shipping spent fuel.