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***Strategy for OCRWM to Provide
Training Assistance to State, Tribal, and
Local Governments***

November 1992

***U.S. Department of Energy
Office of Civilian Radioactive Waste Management***

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Strategy for OCRWM to Provide Training Assistance to State, Tribal, and Local Governments

November 1992

***U.S. Department of Energy
Office of Civilian Radioactive Waste Management
Washington, DC 20585***

MASTER

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PREFACE

The U.S. Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) has prepared this strategy to outline the process OCRWM will follow to provide funding and technical assistance to States and Indian Tribes as required by Section 180(c) of the Nuclear Waste Policy Act of 1982, as amended (NWPAA). A schedule for the various steps to be taken is included.

A draft of this strategy was issued in January 1992 and a notice of the availability was published in the Federal Register on March 6. Comments were submitted to DOE from four groups. These comments have been addressed in Appendix A and are reflected in the strategy, where appropriate. The strategy has also been revised to reflect policy decisions made since the last draft. Most significantly, the draft strategy distinguished between host and corridor jurisdictions for eligibility of Section 180(c) training assistance and stated that only corridor jurisdictions were eligible for assistance. This has been changed to reflect that any State or Tribal jurisdiction through which DOE plans to transport spent nuclear fuel or high-level radioactive waste will be eligible to receive Section 180(c) assistance in addition to any host benefits that may be provided by the NWPAA.

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1. INTRODUCTION

The U.S. Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) has prepared this strategy to outline the process OCRWM will follow to provide funding and technical assistance to States and Indian Tribes as required by Section 180(c) of the Nuclear Waste Policy Act of 1982, as amended (NWPA). A schedule for the various steps to be taken is included.

1.1 Purpose

The NWPA directs DOE to dispose of the spent nuclear fuel generated by commercial nuclear power facilities and high-level radioactive waste from defense facilities. OCRWM was established to carry out this mission. OCRWM is developing a transportation system to support shipping of spent nuclear fuel to a Monitored Retrievable Storage (MRS) facility, and spent nuclear fuel and high-level radioactive waste to a final disposal repository.

A 1987 amendment to the NWPA added Section 180(c)¹ which states that DOE:

. . . shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian Tribes through whose jurisdiction the Secretary [of Energy] plans to transport spent nuclear fuel or high-level radioactive waste Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations.

Section 180(c) committed OCRWM to provide technical assistance and funding to train public safety officials. OCRWM stated it would use a phased approach to deliver the assistance. In the 1991 Draft Mission Plan Amendment, OCRWM committed to define workable mechanisms for administering technical assistance. Assistance will initially be provided to States and/or Tribes for shipments to an MRS, if an MRS site has been identified. OCRWM will begin providing technical assistance and begin the process to provide funding for training to jurisdictions along the initial corridors from the utilities to an MRS no less than three years before shipments begin; and make adjustments and support retraining as needed. Planning and coordination with these jurisdictions will begin as soon as possible after the designation of an MRS site.

This strategy represents a five-step process to meet the requirements of Section 180(c). The steps are: (1) continue and enhance current efforts with the interested groups and potentially affected entities to identify and discuss funding and technical assistance issues;

¹ Hereafter, the term "Section 180(c)" will be used to represent Section 180(c) of the NWPA.

(2) develop a policy paper to identify possible Section 180(c) implementation options; (3) issue a policy statement identifying the option selected and the reasoning behind the selection; (4) issue a plan detailing the implementation process; and (5) initiate funding for "training assistance."² For brevity, the term "training assistance" is used to mean "technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian Tribes through whose jurisdiction the Secretary [of Energy] plans to transport spent nuclear fuel or high-level radioactive waste."

1.2 Scope

This document describes the five-step process for OCRWM to implement the requirements of Section 180(c). The introductory section includes information on the purpose of the strategy; the relevant legal requirements of the NWSA with respect to technical assistance and funding to train transportation corridor and host governments for safe routine transportation and emergency response, and the sections of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA); planning principles that address or incorporate recommendations made most often by interested parties; and a proposed schedule.

The subsequent section, Issue Identification: An Interactive Process, describes the methods and means OCRWM has employed to ensure that all interested and potentially affected parties can have an appropriate predecisional role in the development of Section 180(c) policy. The three remaining sections delineate the steps to provide training assistance.

Lists of definitions and acronyms in common usage throughout the document, general references, and a comment/response section accompany the strategy.

1.3 Legal Requirements

Section 180(c) of the NWSA requires DOE to provide training assistance to States for training of public safety officials through whose jurisdiction DOE will transport spent nuclear fuel and/or high-level radioactive waste. Section 180(c) assistance will be provided directly to Indian Tribes as sovereign Nations. Other provisions in the Act or negotiated agreements with host or affected units of governments will provide for additional training assistance.

Section 116(c) provides for financial assistance to the State of Nevada or any affected unit of local government, and Section 118(b) ensures financial assistance to an affected

²The schedule on page 5 shows a start date of 1/95; this date is derived from the assumption of a 1998 waste acceptance date.

Indian Tribe, to participate in "activities required by Sections 116 and 117 or authorized by written agreement entered into pursuant to subsection 117(c)." Section 117(c) of the NWPAA states that OCRWM will work with a State [or governing body of an affected Indian Tribe] where a repository is being constructed and with "the units of general local government in the vicinity of the repository site, in resolving the offsite concerns . . . including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel . . ." under written agreement.

For a State or affected Indian Tribe who will host an MRS facility, Section 149 of the NWPAA extends the same "provisions of Section 116(c) or 118(b) with respect to grants, technical assistance, and other financial assistance . . . to the State, to affected Indian Tribes and to affected units of local government . . . in the same manner as for a repository."

Section 403(d)(1) and (2) of the NWPAA authorizes assistance for an MRS or repository host State or Indian Tribe through an agreement submitted by the Nuclear Waste Negotiator to Congress which ". . . shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, unit of local government, or Indian Tribe under Sections 116(c), 117, and 118(b)."

OCRWM will provide technical assistance and funds for training under Section 180(c) to any State or Tribal jurisdiction through which DOE plans to transport spent nuclear fuel or high-level waste. Additional benefits provided under Sections 116, 117, 118, and 149 of the NWPAA will be available to an MRS or repository host State or Tribe.

The HMTUSA contains emergency response and Federal inspection provisions that have potential implications for the technical assistance and funding required by Section 180(c). Section 17 of HMTUSA authorizes Federal funding for: 1) planning grants to States to develop emergency response plans; 2) training grants to States and Indian Tribes for training official personnel in hazardous materials emergency response; 3) curriculum development by a Federal committee to develop a list of courses, recommend courses of study and minimum hours of instruction, and develop appropriate emergency response training and planning for non-Federal Government and Tribal employees under other Federal grant programs; and 4) monitoring and technical assistance through the Federal Emergency Management Agency, in coordination with four other agencies including DOE, for non-Federal Government and Tribal emergency response training and planning. HMTUSA also requires that Federal departments, agencies, and instrumentalities coordinate to minimize duplication of effort and expense in all emergency response and preparedness training programs.

Section 16 of HMTUSA directs the Secretary of Transportation (DOT) to employ 30 additional hazardous materials inspectors, including 10 of whom are to focus on promoting safety in the transportation of radioactive materials.

To ensure cooperation between DOT and DOE in implementing the relevant sections of HMTUSA, DOE is represented on the HMTUSA Interagency Coordination Group (ICG). DOE's participation in the ICG will facilitate coordination of Section 180(c) with other Federal regulatory requirements.

1.4 Planning Principles

In carrying out the requirements to provide technical assistance and funds for training, OCRWM is committed to an open dialogue with all interested parties. Interested parties have repeatedly requested that OCRWM include the following in its implementation of Section 180(c). OCRWM is committed to fulfilling these requests.

- OCRWM will strive to develop a program with enough flexibility to accommodate the wide variety of State, Tribal, and local assistance needs.
- OCRWM training assistance will be integrated into established Federal, State, and Tribal training assistance structures, where possible.
- OCRWM will integrate its Section 180(c) planning with current DOT HMTUSA planning functions and rulemakings, where possible and appropriate.
- OCRWM will seek input from the diverse and broadly representative sources using a cooperative approach.
- OCRWM recognizes that diverse interested groups can make contributions to the decision-making process. OCRWM will seek input in particular from representatives of transportation corridor jurisdictions who will be directly impacted by NWPA shipments.

1.5 Schedule

A proposed schedule for OCRWM to provide training assistance is shown in Figure 1. The Section 180(c) strategy will be flexible enough to accommodate changes in the OCRWM program schedule. Opportunities for ample interaction and predecisional input from interested parties and the public have been factored into the schedule. Current planning assumes that OCRWM will accept spent fuel for shipping to an MRS in 1998. Prior to 1994, OCRWM should be able to predict whether an MRS will be available to receive shipments, and thus initiate planning for training assistance. The schedule for implementation of this plan will depend on the location of an MRS facility and the spent fuel acceptance schedule.

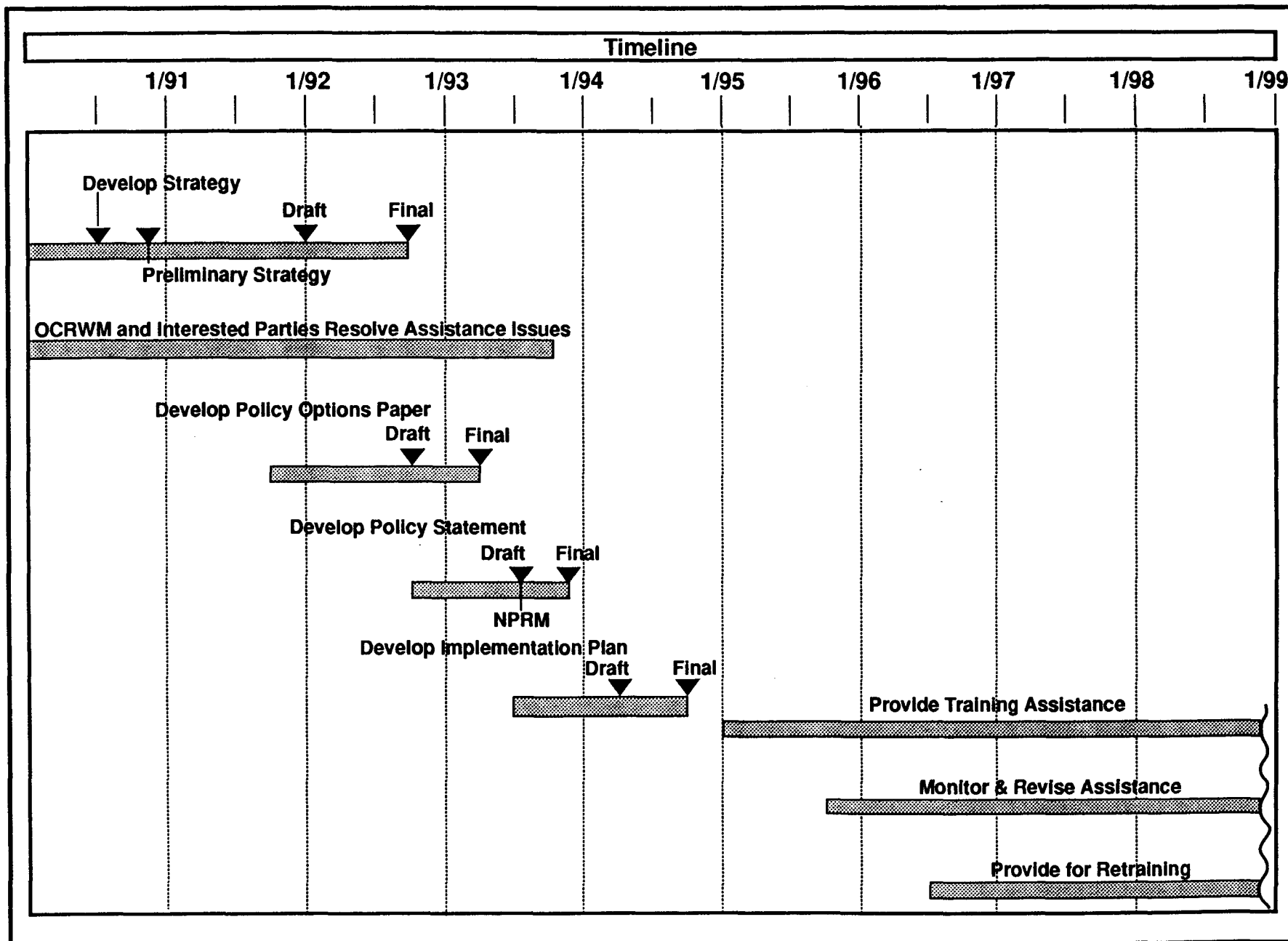


Figure 1. Schedule for the Proposed Training Assistance Process

2. ISSUE IDENTIFICATION: AN INTERACTIVE PROCESS

Section 180(c) training assistance is of particular interest to the State, Tribal, and local governments. OCRWM has utilized a cooperative approach to identify, discuss, and resolve planning issues to provide a viable training assistance program strategy.

2.1 Activities to Date

After the enactment of the NWPA in 1982, OCRWM initiated a dialogue with interested parties to identify and resolve issues related to the OCRWM transportation program. Interested parties included Federal, State, and Tribal governments; the nuclear power utilities; the transportation industry; special interest groups; the media; and the public. OCRWM was able to use these interactions to identify issues and formalize a resolution process that was published in the Transportation Institutional Plan (TIP) in 1986. The TIP identified emergency response, inspection, and enforcement issues, and provided a foundation for issue discussion and resolution processes that proved instrumental to developing this strategy document.

The process to evaluate and resolve issues comprises continued identification, coordination, research, and resolution of issues using a combination of DOE policies and studies, work with regional and national groups of States, Indian Tribes and technical organizations, and interactions with interested parties.

With the passage of Section 180(c) in 1987, the commitments OCRWM had initiated regarding emergency response, inspection, and enforcement became mandates. OCRWM began planning to provide training assistance and resolve issues discussed in the TIP. As stated above, issues regarding emergency response, inspection, enforcement, and the implementation of Section 180(c) were identified through a variety of program activities with interested parties. These issues as stated in the TIP and discussed at Transportation Coordination Group (TCG) meetings include OCRWM's need to:

- Define roles and responsibilities
- Define potential emergency situations
- Define the appropriate emergency actions to be taken by the first responders
- Develop a set of inspection criteria
- Develop a system for inspections
- Determine training needs by assessing existing training programs
- Determine the definition of assistance

- Determine eligibility for assistance
- Assess potential funding and assistance mechanisms
- Explore the desirability of a training certification or standards process
- Determine an approach to the timing of training assistance

Additional issues may be identified through the resolution process and through interactions with interested parties.

2.2 Issue Resolution Mechanisms

OCRWM and the interested parties are working together to develop an efficient plan to provide training assistance to States, Indian Tribes, and local governments. Some of the mechanisms that currently provide forums for communication, issue identification and resolution, and policy development include: OCRWM cooperative agreements with national, regional, and technical groups; the Transportation Coordination Group (TCG); the HMTUSA Interagency Coordination Group; and the Federal Radiological Preparedness Coordinating Committee.

Working groups are a significant communication mechanism. An informal working group met following a TCG meeting in July 1989, to discuss a rough outline of this strategy document. The group consisted of representatives from the Midwestern Office of the Council of State Governments, the Southern States Energy Board, the Western Interstate Energy Board, and the National Conference of State Legislatures. The outline was then reviewed at regional and national group meetings.

Consistent with recommendations made by interested parties commenting on the preliminary draft strategy, OCRWM and the Office of Environmental Restoration and Waste Management (EM) signed a memorandum of agreement (MOA) creating a joint DOE Transportation External Coordination (TEC) Working Group consisting of State, Tribal and local representatives. The MOA was effective January 7, 1992.

As one of several external coordination mechanisms planned by DOE to implement parts of the Transportation Emergency Preparedness Program (TEPP) Strategy Plan and the Civilian Radioactive Waste Management Program, the TEC Working Group presents an ideal forum for predecisional input on implementing Section 180(c). Among the programmatic advantages of forming a joint working group are the minimization of the number of different organizations with which States and Indian Tribes must interface in preparing for DOE shipments, and the opportunity to explore the option of a DOE-wide assistance program for State and Tribal governments. Through this mechanism, the TEPP and OCRWM representatives will interact with organizations at the State, Tribal, and local levels who are working cooperatively with DOE to address such issues as the

review of training and technical assistance requirements for emergency response and safe routine transportation under Section 180(c); identification of response, planning, training, and exercise needs; and development of recommendations for providing technical assistance within the overall objective of developing a consolidated, multi-year set of goals and plans of action.

In addition to representing DOE, State, Tribal, and local interests, the group is composed of industry, utility, and emergency management/emergency response organizations. Membership will remain flexible to allow for program changes and meetings will be open to all interested parties. The initial composition of the TEC Working Group is represented in Figure 2.

This working group will be an active partner in developing the Section 180(c) program. It will provide a forum for review and comment on component documents, and ultimately, on the success of the assistance administered. The working group members may be asked to contribute to sections of the implementation plan where their expertise would be helpful, particularly in balancing training needs with existing training assistance.

3. STEPS TO ASSISTANCE IMPLEMENTATION

The issue resolution process is expected to continue throughout development of the planning documents and implementation of actual training assistance as existing issues close and new ones emerge. The policy options paper will be developed, and a draft will be presented for discussion at TCG and TEC Working Group workshops. In accordance with the notice-and-comment rulemaking requirements in the Administrative Procedures Act and the Department of Energy Organization Act, OCRWM will then publish a notice of proposed rulemaking (NPRM) embodying the draft policy statement and a discussion of the proposed implementation plan. OCRWM will issue the final rule after considering comments on the NPRM. The implementation plan will delineate how OCRWM will achieve the objectives of Section 180(c), and the final step will be to implement training assistance.

3.1 Development of a Policy Options Paper

From the process of issue identification, discussion, and resolution, several implementation options are emerging. OCRWM is currently conducting research to establish a foundation for the draft policy options paper to be presented to interested parties for discussion. Workshops will be held with the TEC Working Group and national and regional groups to report on the status of the option identification process and to seek input. To ensure a thorough review of the assistance options, OCRWM will hold a TCG workshop to solicit further comments. Assistance options will be modified as needed after OCRWM reviews comments from these meetings.

FIGURE 2

DOE Transportation External Coordination (TEC) Working Group Participants³

U.S. DEPARTMENT OF ENERGY, Chair

American College of Emergency Physicians
American Trucking Associations
Association of American Railroads
Commercial Vehicle Safety Alliance
Conference of Radiation Control Program Directors
Cooperative Hazardous Materials Enforcement Development
Council of Energy Resource Tribes
Edison Electric Institute
Emergency Nurses Association
International Association of Chiefs of Police
International Association of Fire Chiefs
International Association of Fire Fighters
Midwestern Office of the Council of State Governments
National Association of Counties
National Association of Emergency Medical Technicians
National Association of Regulatory Utility Commissioners
National Conference of State Legislatures
National Congress of American Indians
National Coordinating Council on Emergency Management
National Emergency Management Association
National Governors' Association
National League of Cities
Northeastern Group
Southern States Energy Board
Western Governors' Association
Western Interstate Energy Board
Urban Energy & Transportation Corporation

³Membership will remain flexible to allow for program changes and all meetings will be open to the public.

3.2 Development of a Policy Statement

Input and recommendations on the options paper from the interested parties will aid OCRWM's development of a policy statement outlining the process for implementing Section 180(c) training assistance. A draft of the policy statement, to be presented in the NPRM, will explain the options OCRWM considered to arrive at its policy, and the preferred option including:

- the scope of the Section 180(c) assistance program,
- criteria for defining eligibility for participation,
- funding levels and distribution mechanisms, and
- training assistance mechanisms.

Jurisdictions eligible for technical assistance and funds to prepare for 1998 shipments will be determined when an MRS site is identified. The OCRWM policy will be designed to allow States and Indian Tribes the necessary flexibility to determine training requirements within their jurisdictions.

After the NPRM is issued, OCRWM will sponsor a TCG workshop and solicit comments from interested parties. OCRWM will review all comments and, where appropriate, incorporate them into the revised rule. The final rule will be published in the Federal Register and distributed to all participants involved in the review and comment process.

3.3 Development of an Implementation Plan

A discussion of the training assistance implementation plan, to be developed by OCRWM in consultation with participating States and Indian Tribes, will be included in the NPRM. This plan will be developed for participating States and Indian Tribes, and will clearly delineate the responsibilities, authority, and roles of all parties, including the Federal, State, Tribal, and local governments. The plan will include:

- A description of the process to date,
- The Section 180(c) policy statement,
- The strategy to implement Section 180(c),
- Section 180(c) program organizational structure,
- Implementation goals,

- Critical path and schedule for implementation,
- Total estimated program cost,
- Funding levels for each eligible participant,
- Required administrative and training personnel,
- Assistance protocol for eligible participants, and
- A certification policy, if appropriate.

The TEC Working Group will review the final implementation plan before it is issued for public comment, and their recommendations will be incorporated, where appropriate. When the comment period closes, the plan will be revised as needed. Implementation decisions have not been made yet, and State regional groups, Indian Tribes, and affected localities will continue to provide predecisional input. The decision-making process has been designed specifically to ensure that the public will have an opportunity for purposeful input on issues and concerns before decisions are made. Finally, the plan will be distributed to all parties who are involved in training and assistance activities.

Through interactions with the TCG, interested parties have impressed upon OCRWM the need for particular attention to rural responders in developing training assistance. The implementation process will allow States and Indian Tribes flexibility to respond to their unique jurisdictional requirements. Prior to assistance implementation, a team of State and Tribal representatives and OCRWM personnel will hold seminars for participants eligible to receive technical assistance and funds. The seminars will focus on programmatic and administrative requirements.

In order to assess the effectiveness of the implementation plan, OCRWM will conduct an appraisal of the program in which the recipients will be asked to evaluate a range of factors including ease of administration, efficiency, and DOE responsiveness.

4. IMPLEMENT TRAINING ASSISTANCE

To minimize the need to retrain, training assistance will be conducted in phases to prioritize assistance to those States and Indian Tribes scheduled for transportation through their jurisdictions. The process to implement this phased approach will be outlined in the policy statement and the implementation plan. States and Tribes eligible for receipt of Section 180(c) training assistance will be notified formally in writing.

4.1 Program Start-up

The actual assistance sequence will depend, in part, on the shipping schedule and the implementation process. OCRWM will help training assistance recipients understand all funding and administrative mechanisms described in the implementation plan.

Initially, OCRWM will begin shipping waste from a limited number of utility sites. Training assistance will be provided to jurisdictions through which those first shipments will travel. Before waste is shipped from other sites, OCRWM will provide training assistance to the corresponding jurisdictions, as needed. Ongoing communication among OCRWM, utilities, States, Indian Tribes, and local jurisdictions will ensure continued assistance coordination and planning.

4.2 Program Ramp-up

The current waste acceptance schedule limits the number of shipments to the MRS facility during the first few years of operation. The waste acceptance rate will increase after the MRS facility, and then the repository, become fully operational. As the number of shipments increases over time, the number of States and Indian Tribes eligible for training assistance will increase until the program stabilizes at the design acceptance level. This phased approach will minimize the need to retrain public safety officials.

4.3 Monitoring and Retraining

Program monitoring and allocation of resources for retraining are among the essential elements of the implementation process. OCRWM will monitor the assistance program to measure and evaluate its effectiveness and make periodic improvements if needed. This program monitoring process will be designed with input from States, Indian Tribes, and local governments.

The rapid turn-over rate of State, Tribal, and local emergency response and transportation regulatory personnel necessitates planning for retraining. The need for resources by States and Indian Tribes to retrain will be accommodated in the training assistance process.

5. CONCLUSION

This strategy spells out the steps OCRWM will take to implement assistance as required by Section 180(c) of the NWPA. In order to provide training assistance there are still issues that need to be resolved as OCRWM develops its Section 180(c) policy options paper, policy statement, and implementation plan.

The success of the Section 180(c) assistance depends on effective interaction with the interested parties. Participation by the TEC Working Group, the TCG, and others in

each phase will contribute to the development of a sound policy, clear guidance, and a workable implementation process.

SECTION 180(C) DEFINITIONS

This section proposes definitions of terms that will be used throughout the planning process. Many of these terms are presently subject to different interpretations by a diverse set of interested parties. The following definitions will be refined throughout the review process, and final definitions will be issued in the policy statement.

For purposes of discussion, OCRWM proposes the following definitions of terms used in Section 180(c):

Affected Indian Tribe is any Indian Tribe within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located or whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: Provided, that the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the Tribe, that such effects are both substantial and adverse to the Tribe.

An Emergency Response Situation is a highway, barge, or rail transportation incident⁴ or accident⁵ involving an OCRWM spent nuclear fuel or high-level radioactive waste shipment.

Indian Tribes are those defined as any Indian Tribe, band, nation, pueblo, colony, or other organized group or community which is recognized as eligible by the United States Government for the special programs and services provided by the Secretary [of Interior] to Indians because of their status as Indians and through whose reservations OCRWM shipments will traverse.

⁴A radioactive material transportation incident is an event occurring during the course of transportation (including loading, transport, unloading, and temporary storage) of radioactive materials that results in actual or suspected release of radioactive material. The incident may include fire, breakage, spillage, release or suspected release of radioactive material, excessive or suspected radiation, loss of possession, or accident conditions.

⁵A radioactive material transportation accident is an event in which the vehicle transporting a radioactive material package is involved in an accident. Accidents are classified as subsets of incidents and can vary in severity from minor mishaps to the very severe.

Local Governments are units of government such as a borough, city, county, parish, town, township, village, or any other general purpose political subdivision of a State through whose jurisdictions OCRWM shipments will traverse.

Public Safety Officials are any officials at the State, Tribal, or local level of government, including fire fighters, law enforcement officers, emergency medical personnel, and State or Tribal Hazardous Materials (HAZMAT) responders, who are involved with and support the transportation of spent nuclear fuel and high-level radioactive waste through their jurisdictions.

Safe Routine Transportation is the condition of incident free transportation. It involves the inspection and enforcement of shipments through State, Tribal, and local jurisdictions. Safe routine highway transportation is characterized by adequate vehicle, driver, and package inspection, and enforcement of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. Rail and barge transportation regulations include Federal Railroad Administration and Coast Guard regulations. Compliance with Nuclear Regulatory Commission requirements for prenotification and physical protection also contributes to safe routine transportation.

States are those defined in the NWPA and in the context of the Section 180(c) as political subdivisions of the United States that will receive technical assistance and funds for training for public safety officials through whose jurisdictions the Secretary of Energy plans to transport spent nuclear fuel or high-level radioactive waste under Section 180(c).

Technical Assistance is assistance that the Secretary of Energy can provide that is unique to the Department to aid training that will cover procedures for the safe routine transportation and emergency situations during the transport of spent nuclear fuel and high-level radioactive waste. If a definition of technical assistance is provided in the implementation of Section 17 of HMTUSA, OCRWM will use that definition for future planning regarding emergency situations.

Training is course curriculum and materials for public officials who respond to emergencies or are responsible for maintaining safe routine transportation. This includes fire fighters, law enforcement officers, medical technicians, and State or Tribal HAZMAT responders. The definition of training should be consistent with, and supplemental to, the HMTUSA for transportation emergency response training and the Motor Carrier Safety Assistance Program for routine transportation inspection and enforcement.

LIST OF ACRONYMS

DOE	Department of Energy
DOT	Department of Transportation
HAZMAT	Hazardous Materials
HMTUSA	Hazardous Materials Transportation Uniform Safety Act of 1990
ICG	(HMTUSA) Interagency Coordination Group
MOA	Memorandum of Agreement
MRS	Monitored Retrievable Storage Facility
NPRM	Notice of Proposed Rulemaking
NWPA	Nuclear Waste Policy Act of 1982, as amended
OCRWM	Office of Civilian Radioactive Waste Management
TCG	Transportation Coordination Group
TEC	DOE Transportation External Coordination (TEC) Working Group
TEPP	Transportation Emergency Preparedness Program
TIP	Transportation Institutional Plan

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APPENDIX A

Comments and Responses on the Draft Strategy for OCRWM to Provide Training Assistance to State, Tribal, and Local Governments

A notice of availability of the draft strategy was announced in the Federal Register on March 6, 1992. A 60-day comment period was provided. Comments were submitted to DOE from the following groups: Western Interstate Energy Board (WIEB), Inyo County, CA, the State of New Mexico, and Edison Electric Institute (EEI). This appendix addresses twelve issue categories. Nine major issue areas have been summarized to facilitate a single response for each. The remaining three categories include: miscellaneous comments, definitions, and editorial comments. DOE has carefully considered all the comments that were received and has revised the strategy where appropriate.

Issue: Rulemaking for Policy Statement and Implementation Plan

EEI stated it would be far less effective for OCRWM to incorporate its final policy statement and implementation plan in a binding agency rule than in a general policy statement that could be tailored to meet the needs of each jurisdiction requiring assistance. EEI suggested that DOE publish notice of the availability of documents such as its policy options paper, policy statement, and implementation plan in the Federal Register and provide an opportunity for public comment, as it has done with the draft strategy.

Response

Only the Section 180(c) policy statement will be issued as a final agency rule. It will include the scope of the assistance program, eligibility criteria, funding levels, distribution and training mechanisms, and an outline of the implementation plan.

The implementation plan will be not be issued as a final agency rule. The plan will provide an implementation process that is flexible for responding to States' and Indian Tribes' unique jurisdictional requirements and needs.

The TCG and TEC meetings will provide forums for discussion and predecisional input on the options paper, policy statement, and the implementation plan. DOE will publish a notice of proposed rulemaking (NPRM) of the draft policy statement. The final rule will be issued after comments have been received and considered. Notice of the

availability of the implementation plan will be published in the Federal Register. Each notification process provides an opportunity for public comment.

Issue: Timing of Training Assistance

Both EEI and New Mexico noted that the draft strategy lists two different starting times for initiating training. The text on page 1 of the draft strategy indicates that training assistance will commence between 1993 and 1995 to jurisdictions along the initial routes from utilities to an MRS, with retraining provided in 1995. The schedule on page 6 of the draft strategy indicates that training assistance will commence in 1995, with retraining beginning in mid-1996. DOE must address this discrepancy.

EEI expressed concern that providing training assistance prior to the 1996 time frame may be too early. EEI stated that the optimum time to administer training assistance is only one to two years in advance of the commencement of shipments, because this amount of time allows for adequate advance preparation and also ensures that training of public officials is current. EEI suggests that DOE ensure that providing training assistance does not become a critical path item such that DOE's failure to have provided training assistance could delay the initiation of shipments.

EEI also suggested that in order to gauge the timing of training, the DOE should draw on the experience of training States and Indian Tribes in preparation for shipments to the WIPP.

Response

We have changed the text to read as follows: "OCRWM will begin providing technical assistance and begin the process to provide funding for training to jurisdictions along the initial corridors from the utilities to an MRS no less than three years before shipments begin; and make adjustments and support retraining as needed."

OCRWM will begin providing technical assistance and begin the process to provide funding to jurisdictions along the initial routes no less than three years before shipments begin, if an MRS has been identified. To minimize the need to retrain, and because of the limited number of initial shipments, assistance will begin with those States or Indian Tribes that must be prepared to meet safe routine transportation and emergency response demands in 1998. In addition, OCRWM will use lessons learned from the WIPP shipments as it plans timing of training.

In response to EEI's comment on critical path, OCRWM has built enough flexibility into the schedule so that OCRWM can provide timely training assistance without delaying the initiation of shipments.

WIEB stressed the importance of selecting routes before training begins.

Response

Potential routes must be identified in order to identify eligible participants. The designation of these routes is contingent upon designation of an MRS or a repository site.

Issue: Retraining Issues

EEI interpreted the draft strategy to imply that the DOE itself will provide any necessary retraining. A strategy that places primary reliance on DOE for the provision of retraining assistance would not be the most efficient nor cost effective. It would be far more effective if there were qualified trainers available either within a State or a regional organization that can provide retraining when necessary.

EEI also proposed that to deal with the retraining issue, DOE should make it a priority to incorporate a train-the-trainer course into the Section 180(c) implementation plan.

Response

OCRWM will not be providing retraining; rather, OCRWM will provide assistance to the States and Indian Tribes for retraining. The Section 180(c) implementation plan will address how to apply and account for the funds. State and Indian Tribes will have flexibility in how to cost-effectively retrain its officials.

Issue: Participation in Section 180(c) Development through the TEC Working Group

Several comments addressed membership issues for Transportation External Coordination (TEC) Working Group. EEI suggested that DOE include all federal agencies that have responsibilities for emergency preparedness and response training in the TEC Working Group.

Inyo, WIEB, and New Mexico commented that OCRWM needed to make additional efforts to ensure that all potentially affected entities are involved in the Section 180(c) decision-making process and are represented at TEC. WIEB also commented that provisions should be made to include local jurisdictions and organizations that do not have the funds to attain national organizational status in the development and in the TEC Working Group.

Inyo County commented that organizations listed on the TEC Working Group under local organizations did not adequately represent rural communities, and because

shipments are usually routed away from populated areas, the largest number of impacted jurisdictions could be seriously under represented. New Mexico suggested that TEC membership include organizations such as the American College of Emergency Physicians, the Emergency Nurses Association, and one or more organizations that could effectively represent local government jurisdictions.

WIEB stressed the importance of early and active State participation in Section 180(c) development and wanted OCRWM to ensure that States' concerns with Section 180(c), and the statutory mandates under the 1987 NWPAs would not be diluted as part of DOE's broad TEPP initiative and the TEC Working Group.

Response

The TEC group was established by DOE to implement parts of the Transportation Emergency Preparedness Program (TEPP) and the OCRWM Program. It serves as a mechanism for continuing and improved coordination between appropriate DOE elements and State, Tribal, and local levels of government. This group was established for stakeholders to provide input into the DOE decision-making process. OCRWM then coordinates emergency preparedness planning with other Federal agencies through such mechanisms as the HMTUSA Interagency Coordination Group, the National Response Team, and the Federal Radiological Preparedness Coordinating Committee.

TEC meetings are open to all who wish to attend. OCRWM will seek the participation of those groups that may better represent local jurisdictions and rural communities, and examine which mechanisms could be used to fund the participation of those parties not having the necessary means to attend the TEC meetings. In addition, OCRWM will continue to address State and Tribal concerns with the Section 180(c) process through cooperative agreements and through other forums such as the TCG. Once routes have been selected for NWPAs shipments, OCRWM will directly involve and seek input from those States, Tribes, and local jurisdictions.

Issue: Determining the Use of Section 180(c) Funds

WIEB expressed an overall concern with the funding issue and questioned how OCRWM would determine funding levels and the use of funds for equipment.

Inyo County wants OCRWM to indicate the direction in which it wants to go regarding funding for equipment acquisitions by State, Tribal and local governments, and whether technical assistance will encompass an R&D effort to enhance radiological detection equipment. Inyo County stated that it is unreasonable and ineffective to train responders to use equipment they do not have, or require agencies to purchase equipment they would not normally require. There is an urgent need for the development of a rugged

radiological detection device that does not require high levels of technical training to maintain or use.

EEI stated it would not be appropriate for DOE to use Nuclear Waste Fund monies to fund a research and development project for radiation monitoring devices. DOE should focus its efforts on ensuring that responsible State, Tribal, and local personnel have necessary equipment and know how to use and maintain it as opposed to funding an effort to develop new equipment.

Response

OCRWM will take these concerns under consideration as it develops its policy on the use of Section 180(c) funding. OCRWM will outline its position on equipment in the draft policy statement. The final policy statement will establish guidance concerning the use of funds for equipment and whether technical assistance will include a research and development effort for new radiological detection equipment.

Issue: Types of Training to be Provided under Section 180(c)

EEI stated that State and Tribal training should focus on NWPA shipments as opposed to non-NWPA shipments such as for the WIPP or general hazardous materials shipments.

Response

The NWPA requires DOE to provide technical assistance and funds to States for training public safety officials of jurisdictions through which it plans to transport spent nuclear fuel or high-level waste. Training for NWPA shipments will cover procedures required for safe routine transportation, as well as procedures for dealing with emergency response situations. OCRWM will provide the funds directly to States and Indian Tribes. The States and Tribes will have the ultimate responsibility for determining what training is needed to support NWPA shipments. OCRWM will monitor the effectiveness of its assistance program and make periodic improvements if needed.

Issue: Approach to Addressing Emergency Response Funding and Training Needs

WIEB stressed the importance of State flexibility in determining training needs and eligible Section 180(c) activities.

Acknowledging that DOE has been working on the development of the draft strategy with individual States and Tribes, EEI feels that DOE should explore with affected jurisdictions the development of cooperative agreements among States, Tribes, and local governments and the provision of funding and assistance through such a cooperative

approach. The benefits that could result from such cooperative agreements include: standardization of equipment and training, optimization of joint resources, shared expenses, and the coordination of activities across state borders in the event of an accident. Another benefit from working with groups of affected jurisdictions instead of each individual jurisdiction is that DOE could reduce the amount of time that is necessary to provide the required training.

Response

OCRWM is committed to working directly with affected States, Tribes, and local jurisdictions in determining training needs under Section 180(c). Once routes are selected, we will be able to determine which States, Tribes, and local governments will be affected by NWPA shipments and work closely with them to determine their specific training needs and the most appropriate means to provide assistance and funding to them. Both the Section 180(c) policy statement and the implementation plan will discuss the appropriate mechanisms for providing this assistance.

Issue: Issuance of Final Section 180(c) Strategy

WIEB recommended that DOE should either make an official designation of the second draft strategy as the final or produce a separate final strategy.

New Mexico strongly recommended that OCRWM formally complete the comment solicitation and response process, either by finalizing the strategy document or by providing commentors and other interested parties a clear understanding of how identified issues/concerns will be resolved within the proposed program structure.

Response

The strategy has been issued as a final document. Comments received on the document have been incorporated as appropriate, and a comment/response section is included as an appendix.

Issue: Rationale for Selecting Policy Options

New Mexico suggested revising the language on page 2 to read, "issue a policy statement identifying the option selected and the reasoning behind the selection."

Response

This suggestion has been incorporated into the text.

Miscellaneous Comments

On page 1, last paragraph of the draft strategy: New Mexico suggested revising the language under "(1)" to read: "(1) continue and enhance current efforts with interested groups and potentially affected entities to identify and discuss funding and technical assistance issues."

Response

This comment has been incorporated into the text. OCRWM is committed to active and increased involvement and participation by all potentially affected and interested parties.

New Mexico suggested Figure 1 should indicate the tentative dates for issuance in the Federal Register of both the advanced notice of proposed rulemaking (ANPR) and the notice of proposed rulemaking (NPRM).

Response

There will only be a notice of proposed rulemaking (NPRM) and Figure 1 has been changed to indicate the anticipated NPRM issuance date.

Definitions

New Mexico requested definitions for both "incident" and "accident" as used in the definition section. Also, New Mexico asked for clarification whether OCRWM intends "An Emergency Situation" and "An Emergency Response Situation" to have identical meanings.

Response

The terms "incident" and "accident" have been defined as requested. The term "emergency response situation" has been substituted for "emergency situation."

New Mexico suggested, in the proposed definition of "Public Official," substitute "emergency medical personnel" for "medical technicians." New Mexico also asked for clarification whether "Public Official" and "Public Safety Official" have the same meaning.

Response

The term "emergency medical personnel" has been substituted for "medical technicians." The term "Public Safety Official" has been substituted for the term "Public Official."

New Mexico recommended that the definition of "Safe Routine Transportation" be expanded to include other activities such as: route designation, establishment of protocols for adverse driving conditions, shipment tracking, and public awareness and participation.

Response

A general discussion of the scope of the Section 180(c) assistance program--including the types of safe routine transportation assistance provisions OCRWM is considering funding--will be presented in the policy options paper. OCRWM will seek comments on this issue and the options to be presented in the policy options paper as it develops its position on this issue.

Editorial Comments

New Mexico - Page 2 of the draft strategy, last paragraph: In the last sentence, the word through is misspelled Also in that sentence, substitute "and/or" for "and."

Response

The referenced text has been removed as a result of updating the draft strategy.

New Mexico - Page 3, first paragraph of the draft strategy: After "offsite concerns . . ." insert "including, but not limited to, questions of State liability".

New Mexico - Page 4, third bullet of the draft strategy: Insert "and appropriate" after "possible."

New Mexico - Figure 2: The name of WGA should be "Western Governors' Association." and the name of CERT is the "Council of Energy Resource Tribes."

Response

Editorial comments are reflected in the text.

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