

**A Collaborative Approach to Transportation Planning:
Federal and State Perspectives on Section 180(c) Program Development**

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ABSTRACT

The Department of Energy's Office of Civilian Radioactive Waste Management (OCRWM) committed in its November 2003 *Strategic Plan for the Safe Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste to Yucca Mountain: A Guide to Stakeholder Interactions* to develop the transportation system collaboratively with stakeholders. The *Strategic Plan* further stated that four state regional groups (SRGs) would be the "anchors" for OCRWM's collaboration with the states. The first major transportation planning activity that OCRWM initiated after publication of the *Strategic Plan* was the development of the Section 180(c) grant program. This document describes that collaboration and its outcomes from the perspective of the OCRWM participants and one of the SRGs, the Council of State Governments – Midwestern Office (CSG Midwest).

INTRODUCTION

Section 180(c) of the Nuclear Waste Policy Act (NWPA) requires the U.S. Department of Energy (DOE) to provide financial and technical assistance to state, tribal, and local governments to help them prepare communities along the transportation corridors to a repository. In 2004, the Office of Civilian Radioactive Waste Management (OCRWM) entered a collaborative effort with stakeholders to develop this assistance program. The collaboration was generally viewed by the participants as successful and productive. The OCRWM staff views the process as a demonstration of OCRWM's commitment to collaborative transportation planning. The Council of State Governments – Midwestern Office (CSG Midwest) views the process as

evidence that close federal-state cooperation on important decisions related to OCRWM's transportation program can have a positive outcome for both sides.

BACKGROUND

Section 180(c) of the NWPA requires DOE to “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 plans to transport spent nuclear fuel or high-level radioactive waste” to NWPA-authorized Federal storage and disposal facilities. Section 180(c) further provides that the training cover procedures required for safe routine transportation of these materials and for dealing with emergency response situations.

To implement this requirement, in the 1990s, OCRWM published a series of *Federal Register* Notices requesting public comment. The *Federal Register* Notices were accompanied by breakout groups with interested stakeholders at the Transportation External Coordination (TEC) Working Group¹ meetings and through conversations with the State Regional Groups at their biannual meetings. The process included a broad spectrum of professional organizations and groups representing states, tribes, and local governments. This formal review-and-comment process emphasized OCRWM as a listener and recorder of feedback with sole responsibility for writing the policy and procedures and deciding how or whether to incorporate comments. The states and other stakeholders had a passive role of providing written feedback with little opportunity for substantive, direct interaction with OCRWM or each other.

At the end of the process, OCRWM published a Notice of Revised Proposed Policy and Procedures for the Section 180(c) program in the *Federal Register* (63 FR 23753) on April 30, 1998. The draft policy and procedures were to remain in draft form until the program progressed or legislation provided definitive guidance as to when shipments would commence.

By 2004, several events made it timely to revisit the *1998 Revised Proposed Policy and Procedures*. These included the President's 2002 recommendation of Yucca Mountain, Nevada, as the nation's first repository; Congress's approval of the recommendation; changes in homeland security initiatives; and updates to DOE's transportation practices.

At the April 2004 TEC meeting, OCRWM asked participants about their preferences for proceeding with updating the Section 180(c) Policy and Procedures. The consensus was to form a Topic Group, a subgroup of TEC, to identify the issues and discuss alternatives with OCRWM personnel. OCRWM agreed and thus began the collaborative approach to developing and implementing the Section 180(c) assistance program.

THE PARTNERSHIP

The cornerstone of the effort to implement Section 180(c) has been the TEC Topic Group on Section 180(c). Although Section 180(c) has also been discussed by the Tribal Issues Topic

¹ TEC was formed in 1992 to improve coordination between the U.S. Department of Energy and external groups interested in the Department's transportation activities. TEC members represent many different national, regional, tribal, state and local governmental, labor, industry and professional groups.

Group and the State Regional Groups, the primary venue and the focus of this paper, is the Section 180(c) Topic Group.²

OCRWM formed the Topic Group after the April 2004 TEC meeting by requesting volunteers from the larger TEC membership. The volunteers represented state, local, and tribal governments and emergency response professional organizations. Other Federal agency personnel participated as needed. The group held frequent teleconferences – starting with a teleconference every two weeks and then once a month after significant progress had been made. The group also met in person three times at the biannual TEC meetings and held a two-day meeting in Washington, D.C. In the interim between calls and meetings, some groups, such as CSG Midwest, held smaller regional calls with their state representatives and with all the state regional groups.

The organizational structure of the Topic Group contributed to its productivity and progress. The following list describes the organizational decisions and structure that helped the group succeed. Occasionally, the participants would revisit these decisions if the group seemed off-course, to familiarize new members, or if the discussion was stalled over how to resolve differences.

1. The group jointly defined the purpose and goals of the Topic Group.
2. The group jointly defined the participants' roles (these roles evolved rather than were defined upfront).
3. The group jointly defined the issues that needed addressing.
4. The group agreed to write a discussion paper on each issue. Each "issue paper" defined the issue, described the relevant history, described the group's options for resolving the issues, and finally described the group's consensus recommendation or, failing a consensus, described the alternate recommendations the Topic Group was making on the issue.
5. The group agreed to try to reach consensus where possible but it was not required. If consensus was not possible, the corresponding issue paper would describe the underpinnings of each position.
6. The group occasionally worked in smaller groups, without OCRWM participation, to resolve differences before bringing their work back to the larger group.

OUTCOMES

The Topic Group had two primary outcomes: the series of issue papers the group wrote and the example that this partnership provides as OCRWM's transportation planning progresses.

The group wrote eleven issue papers on specific Section 180(c) topics such as Allowable Activities, Funding Allocation Method, Timing and Eligibility, and Definitions. Then the group developed an Introduction and an Executive Summary to accompany the issue papers. From these materials, DOE derived two other products: the Section 180(c) Draft Policy and Procedures

²It is important to note that the Tribal Issues Topic Group has recently begun discussing 180(c) as it relates to Tribes and these discussions will continue through 2006.

and the Draft Grant Guidance Document, which the OCRWM staff presented to management. These two documents are scheduled for publication in the *Federal Register* in early 2006. When finalized, they will be the foundation or basis of DOE's 180(c) implementation program.

The Topic Group set what the authors think of as an excellent example to the stakeholders of OCRWM's commitment to cooperative planning. It is also evidence that sound decisions affecting the transportation program can be made successfully in a collaborative fashion involving the SRGs and other stakeholders. The 2003 *Strategic Plan* committed OCRWM to a collaborative transportation planning process and the Section 180(c) implementation program is the first major planning effort to result in a positive outcome in keeping with this commitment. The authors believe OCRWM would do well to follow this example as the program makes other decisions related to the transportation of spent nuclear fuel and high-level waste under the NWPA.

Perspectives

From the perspective of the authors, this Topic Group was very successful and productive. The Topic Group contributed to the development of a robust, defensible grant program and did so in a relatively brief amount of time, considering the complexity of the program and the many years spent on the first attempt to develop 180(c) in the 1990s. In doing so, it helped both OCRWM and the state participants achieve their goals.

OCRWM met several program goals and helped the Office of National Transportation contribute to OCRWM's overall mission. The Office of National Transportation, within OCRWM, is responsible for developing and implementing the Section 180(c) program. The staff is on target for meeting this responsibility on schedule and with a high-quality product because the collaborative forum allowed for timely identification and resolution of issues and a full vetting of complex issues. In addition, the OCRWM "mission is to manage and dispose of high-level radioactive waste and spent nuclear fuel in a manner that protects health, safety and the environment; enhances national and energy security; and merits public confidence." This effort certainly is a step in the process of managing these materials in a manner that protects health, safety and the environment. And if the support of key state and local officials can help the program merit public confidence, then this process has also been successful in that regard.

For the Midwestern states, the process resulted in a proposed policy and procedures that is much more likely to meet the states' needs and expectations than the draft approach developed in the 1990s. The Midwestern states felt strongly, for example, that the program should give the states the flexibility to decide how best to allocate the financial assistance they will receive. After much discussion, the Topic Group eventually agreed on what limitations and what flexibility on spending was appropriate. Similarly, the Topic Group developed strong arguments against requiring matching funds and decided to address on a case-by-case basis whether state fees would have any impact on the allocation award. The consensus reached on these issues was possible because of the direct interaction between the states and OCRWM working to reach an outcome satisfactory to both parties.

Keys to Success

The direct interaction between OCRWM and its stakeholders contributed to the program's success. In contrast with the process followed during the 1990s, the 180(c) Topic Group afforded stakeholders such as the SRGs an opportunity to discuss issues and different positions directly with each other and with OCRWM. This made it possible for the group to reach consensus on most of the issues considered. Having the input of so many states incorporated into the policy and procedures not only increases the likelihood of a key group of stakeholders supporting the program but it also sends an important message that stakeholder opinions do matter.

Where issues could not be resolved to the participants' satisfaction, the discussion around those issues created greater understanding. In one significant area where full consensus could not be reached, the funding allocation method, the group discussed the issues in-depth in small groups and with the larger Topic Group. This led to a greater understanding of each other's concerns and perspectives even when not all those concerns could be accommodated. In some cases, this resulted in support for the final product even when the participant's opinion about a particular issue was not incorporated. Decisions that are defensible and supportable tend to have broader support from involved parties than when a decision appears (rightly or wrongly) to be capricious.

The broad range of experience among the participants was also a key factor in the group's success. Section 180(c) assistance must cover shipments by rail and highway, procedures for handling accident conditions and normal operations, assistance to state and tribal and local participants, and it must be both financial and technical assistance related to training. Each decision must be vetted for consistency with Federal financial assistance regulations. Weaving these requirements into a workable program requires broad experience and expertise. The Topic Group had members with Federal grant experience, state grant experience, emergency response experience from both the state and local perspectives, experience with radioactive materials shipments using both rail and truck modes, training experience, and public communications experience. The knowledge the members brought to the Topic Group discussions helped produce final products that are robust and defensible.

Also key to the success of the 180(c) process was the high priority OCRWM placed on this activity and the commitment from management, the staff, and the topic group members to stay on a set schedule. This effort took 17 months for the Topic Group to complete its work and another three months for the work to be reviewed within the Department and published for larger public review and comment. Policy issues of similar complexity have certainly taken longer to complete. The authors feel strongly that similarly aggressive schedules for making other transportation-related decisions are achievable and can result in high-quality work.

CONCLUSION

The process OCRWM followed to develop the 180(c) implementation program provides a model that the program should adopt when it sets out to make other decisions related to the transportation program. The process is characterized by direct, frequent interactions between OCRWM and its stakeholders; topic groups that recruit members with a broad range of experience; program staff that are willing to substantively discuss input from stakeholders; aggressive schedules; and a commitment from program management, staff, and stakeholders to

stay on track. This model indicates the approach that the transportation program committed to in the *Strategic Plan* is effective and is moving the transportation program forward.

REFERENCES

1. U.S. Department of Energy, Office of Civilian Radioactive Waste Management, *Strategic Plan for the Safe Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste to Yucca Mountain: A Guide to Stakeholder Interactions*, Washington, D.C. 2003.