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GOVERNORS'
ASSOCIATION**

Benjamin J. Cayetano
Governor of Hawaii
Chairman

Dirk Kempthorne
Governor of Idaho
Vice Chairman

James M. Souby
Executive Director

Headquarters:
600 17th Street
Suite 1705 South Tower
Denver, Colorado 80202-5452

(303) 623-9378
Fax (303) 534-7309

Washington, D.C. Office:
400 N. Capitol Street, N.W.
Suite 388
Washington, D.C. 20001

(202) 624-5402
Fax (202) 624-7707

www.westgov.org

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January 6, 2000

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Annette Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

OFFICE OF
ADJUDICATION

Attn: Rulemakings and Adjudications Staff

Dear Ms. Vietti-Cook:

As the Western Governors' Association's (WGA) co-lead Governor for nuclear issues, I am writing in response to the Commission's September 13, 1999 notice of a petition for rulemaking regarding regulations governing the safety of spent nuclear fuel and high-level radioactive waste shipments against sabotage and terrorism (Docket No. PRM-73-10). WGA is an independent, non-partisan organization of Governors from 18 western states and three Pacific Islands.

In preparing the policy position on this issue, WGA consulted with the Western Interstate Energy Board (WIEB) whose membership includes nuclear waste transportation experts from western state energy, public safety, and environmental agencies. In addition, WGA drew upon its 15 years of experience working with the U.S. Department of Energy to define and implement standard protocols for the safe and uneventful transport of radioactive waste, foreign research reactor spent nuclear fuel, and cesium capsules. DOE is using these model protocols to develop a standard set of internal transportation operating protocols.

WGA supports the petition filed by the State of Nevada requesting the Nuclear Regulatory Commission reexamine the issue of potential terrorism and sabotage against spent nuclear fuel and high-level radioactive waste shipments. WGA's position is a matter of record and is contained in WGA Resolution 98-008 "Assessing the Risks of Terrorism and Sabotage Against High-Level Nuclear Waste Shipments to A Geologic Repository or Interim Storage Facility." A copy of this resolution was sent to the Chairman in August 1998 and is on file with the Office of State Programs. Specifically, the Governors' policy states:

1. *The NRC should reexamine the issue of terrorism and sabotage against spent nuclear fuel and high-level radioactive waste shipments, in order to determine the adequacy of the current physical protection regulations*

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under 10 CFR 73, and in order to assist the DOE and the affected stakeholders in the preparation of a legally sufficient environmental impact statement as part of the NRC licensing process for a geologic repository or an interim storage facility.

2. *The NRC should conduct a comprehensive assessment of the consequences of attacks that have the potential for radiological sabotage, including attacks against transportation infrastructure used by nuclear waste shipments, attacks involving capture of a nuclear waste shipment and use of high energy explosives against the cask, and direct attacks upon a nuclear waste shipping cask using antitank missiles.*
3. *The NRC should conduct the comprehensive reassessment of terrorism/sabotage consequences in a forum conducive to meaningful participation by all affected stakeholders, including the creation of a stakeholder advisory group to assist the NRC in this task, and publish a full report on all unclassified findings of its consequence reassessment.*
4. *DOE should also fully evaluate the impacts of terrorism and sabotage against spent fuel and nuclear waste shipments in the Yucca Mountain repository environmental impact statement (EIS) and in any EIS prepared for an interim storage facility.*
5. *DOE should incorporate terrorism/sabotage risk management and countermeasures in all DOE transportation plans relating to operation of a repository, interim storage facility, and/or intermodal transfer facility, including liability for costs and damages resulting from terrorism/sabotage against nuclear waste shipments."*

The Western Governors look forward to working with the NRC on these critical transportation and safety issues. If you have any questions regarding this letter or the Governors' policy, please call either me or James M. Souby, Executive Director of WGA (303-623-9378).

Sincerely,



Governor Kenny Guinn

State of Nevada
WGA Co-Lead Governor, Nuclear Waste Issues

Enclosure: WGA Policy Resolution 98-008

cc: Western Interstate Energy Board



Western
Governors'
Association

Policy Resolution 98 - 008

Assessing the Risks of Terrorism and Sabotage Against High-Level Nuclear Waste Shipments to A Geologic Repository or Interim Storage Facility

Adopted June 30, 1998
Girdwood, Alaska

SPONSORS: Governors Bob Miller and Mike Leavitt

A. BACKGROUND

1. The Nuclear Waste Policy Act, as amended (NWPA) provides for the siting and construction of a repository for spent nuclear fuel and high-level radioactive wastes (HLW) and for the transportation of spent fuel and HLW from over 100 generator sites around the country to the repository.
2. The NWPA directs the U.S. Department of Energy (DOE) to transport spent fuel and HLW in casks certified by the U.S. Nuclear Regulatory Commission (NRC) and to conduct transportation operations in accordance with NRC regulations.
3. Thousands of shipments of spent nuclear fuel and high-level radioactive waste will affect at least 43 states and hundreds of cities throughout the country over a 25 - 30 year period.
4. NRC contractor reports prepared in the late 1970s estimated that sabotage of a spent fuel shipment in an urban area could result in hundreds of early fatalities and thousands of latent cancer fatalities, and economic losses in the billions of dollars. The NRC in 1979 promulgated regulations (10 CFR 73) to safeguard shipments from sabotage and terrorism.
5. NRC proposed a reduction in regulatory safeguards in 1984, and solicited public comments, many of which were highly critical of the NRC's technical analysis and rulemaking proposal. With no public explanation, the NRC allowed the proposed rule to lapse in 1987.
6. The NRC's 1984 terrorism assessment is flawed because it fails to fully evaluate the consequences of the total amount of spent fuel released to the environment by a terrorist attack using explosives or to account for new weaponry and methods used by terrorists groups.
7. The NRC also has failed to consider the economic, social, and psychological impacts of a successful terrorist attack.

8. Events since 1984, especially the increasing lethality of terrorist attacks in the United States such as the World Trade Center and Oklahoma City bombings, argue for a new, more comprehensive assessment of the risk of terrorism and sabotage against repository shipments, while changes in spent nuclear fuel shipping cask designs, and improvements in the capabilities of weapons available to potential adversaries, make the NRC's 1984 terrorism assessment less meaningful.
9. A meaningful terrorism consequence assessment must employ assumptions consistent with information about the weapons currently available and likely to become available to potential adversaries and the technical and tactical expertise of potential adversaries.

B. GOVERNORS' POLICY STATEMENT

1. The NRC should reexamine the issue of terrorism and sabotage against spent nuclear fuel and high-level radioactive waste shipments, in order to determine the adequacy of the current physical protection regulations under 10 CFR 73, and in order to assist the DOE and the affected stakeholders in the preparation of a legally sufficient environmental impact statement as part of the NRC licensing process for a geologic repository or an interim storage facility.
2. The NRC should conduct a comprehensive assessment of the consequences of attacks that have the potential for radiological sabotage, including attacks against transportation infrastructure used by nuclear waste shipments, attacks involving capture of a nuclear waste shipment and use of high energy explosives against the cask, and direct attacks upon a nuclear waste shipping cask using antitank missiles.
3. The NRC should conduct the comprehensive reassessment of terrorism/sabotage consequences in a forum conducive to meaningful participation by all affected stakeholders, including the creation of a stakeholder advisory group to assist the NRC in this task, and publish a full report on all unclassified findings of its consequence reassessment.
4. DOE should also fully evaluate the impacts of terrorism and sabotage against spent fuel and nuclear waste shipments in the Yucca Mountain repository environmental impact statement (EIS) and in any EIS prepared for an interim storage facility.
5. DOE should incorporate terrorism/sabotage risk management and countermeasures in all DOE transportation plans relating to operation of a repository, interim storage facility, and/or intermodal transfer facility, including liability for costs and damages resulting from terrorism/sabotage against nuclear waste shipments.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. This resolution shall be conveyed to the Chairman of the Nuclear Regulatory Commission, the Secretaries of Energy and Transportation, appropriate members and committees of Congress.
2. The WGA staff, in cooperation with the Western Interstate Energy Board, shall monitor implementation of this resolution and inform the Governors of progress towards meeting the Governors' objectives.

Approval of a WGA resolution requires an affirmative vote of two-thirds of the Board of the Directors present at the meeting. Dissenting votes, if any, are indicated in the resolution. The Board of Directors is comprised of the governors of Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Northern Mariana Islands, Oregon, South Dakota, Texas, Utah, Washington and Wyoming.

All policy resolutions are posted on the WGA Web site (www.westgov.org) or you may request a copy by writing or calling:

Western Governors' Association
600 17th St. Suite 1705 South
Denver, CO 80202-5452
Ph: (303) 623-9378
Fax: (303) 534-7309