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To: Chief, Rules and Directive Branch
U.S. Nuclear Regulatory Commission

Fax: 1-301-415-5144

From: Barbara Byron
Executive Office
California Energy Commission
916-654-4976

Date: February 7, 2008

Pages: 6 pages including this cover

Re: California's Comments on NRC's Proposed Rulemaking on Security Requirements for the Transportation of Radioactive Materials in Quantities of Concern (RAMQC) Announced in the Federal Register on January 4, 2008

Attached please find the State of California's comments. If you have any questions about these comments, please phone me at 916-654-4976. Also, please confirm receipt by e-mailing me at bbyron@energy.state.ca.us or by phoning me at the above number. Thank you very much.

Best Regards,
Barbara Byron
Nuclear Policy Advisor
California Energy Commission

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CALIFORNIA ENERGY COMMISSION

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February 6, 2008

Rules and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington D.C. 20555-0001

To Whom It May Concern:

RE: U.S. Nuclear Regulatory Commission's (NRC) proposed rulemaking on security requirements for the transportation of Radioactive Material in Quantities of Concern (RAMQC) announced in the Federal Register on January 4, 2008

On behalf of the State of California, I would like to thank the U.S. Nuclear Regulatory Commission (NRC) for the opportunity to comment on the proposed rulemaking to enhance the security of shipments of Radioactive Material in Quantities of Concern (RAMQC). We appreciate NRC's decision to hold a public hearing in Oakland, California on January 17 recognizing the significant potential impacts in our state from these shipments. We strongly support NRC's efforts to enhance the safety and security of these shipments.

The proposed rulemaking to enhance RAMQC transport security has major implications for public health and safety, as well as implications for state agencies that are responsible for regulating the safety and security of transporting radioactive materials. Please consider the following comments:

- 1) All shipments of RAMQC, including so-called "transshipments" (shipments from foreign countries passing through the U.S. to other foreign countries), should be held accountable to the same safety and security requirements. We request that NRC, together with the U.S. Department of Transportation and/or the U.S. Department of Homeland Security, develop a suitable means to ensure that transshipments in the U.S. are required to meet the same safety and security requirements and regulatory oversight as U.S. domestic shipments.
- 2) NRC's adoption of the proposed rule under its authority to protect public health and safe would greatly assist the states in their enforcement role to ensure that RAMQC shipments are being transported safely and securely.

Rules and Directives Branch

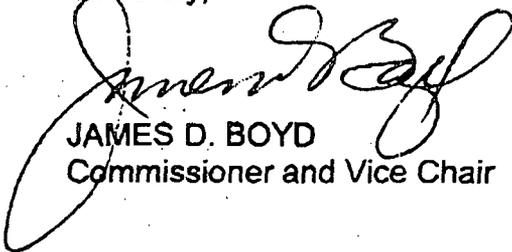
February 6, 2008

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- 3) We support NRC's consideration of security enhancements in the seven categories identified in the materials distributed at its public meetings held on January 17 and January 23. Major aspects of these security enhancements are consistent with requirements developed cooperatively by California, together with other western states and the Department of Energy, for transuranic, spent fuel, and other shipments. This comprehensive approach is likely to be more effective than a more narrowly-focused regulation.
- 4) We support NRC's efforts to reevaluate the security requirements for RAMQC shipments to ensure that protective measures are consistent with the latest intelligence on terrorist threats. We recommend that this assessment address all components of the handling and transport system for RAMQC shipments including the potential theft, sabotage or terrorist attack on a shipment.
- 5) We urge NRC to consider WGA policy resolution 07-02 when NRC develops its planned rulemaking to enhance security requirements for spent fuel and high-level waste shipments.

We look forward to our future participation in this proposed rulemaking. If you have any questions regarding these comments, please contact Barbara Byron at 916-654-4976.

Sincerely,



JAMES D. BOYD
Commissioner and Vice Chair

Enclosure

cc: Barbara Byron
California Energy Commission



WESTERN
GOVERNORS'
ASSOCIATION

**Western Governors' Association
Policy Resolution 07-2**

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

A. BACKGROUND

1. The Nuclear Waste Policy Act (NWPA), as amended 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 - 40 year period.
4. In the Final EIS for Yucca Mountain, DOE acknowledged that spent fuel shipping casks are vulnerable to terrorist attack and sabotage, and determined that worst case accident cleanup costs could be up to \$10 billion. DOE has stated it intends to re-examine the consequences of acts of sabotage and terrorism in the Yucca Mountain Supplemental EIS, due to be released in late 2007.
5. 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, thousands of latent cancer fatalities and economic losses in the billions of dollars. In 1979, the NRC promulgated regulations (10 CFR 73) to safeguard shipments from sabotage and terrorism. The published NRC shipment safeguards regulations have not been significantly revised since the 1980s.
6. The increasing lethality of terrorist attacks in the United States, such as the World Trade Center and Oklahoma City bombings and the attacks in New York and Washington, DC on September 11, 2001, argue for a new, more comprehensive assessment of the risk of terrorism and sabotage against repository shipments.
7. Since September 11, 2001, the NRC has revised measures for the safe and secure transportation of spent fuel and other radioactive materials. The NRC has also conducted additional package vulnerability studies for spent fuel transportation containers. However, the results of these studies have not yet been made available to state and local governments.

8. A recent study by the National Academy of Sciences (NAS) concluded that malevolent acts against spent fuel and HLW shipments are a major concern, and that this concern is likely to grow when shipments begin. The NAS study recommended an independent examination of the security of spent fuel and HLW shipments be carried out before large quantity shipments to a repository or interim storage site begin. The study also recommended the results of the security studies should be shared with elected officials and the general public.
9. The NRC has committed to ensuring that state and local governments have sufficient information concerning these package vulnerability assessments to fulfill their obligations to plan for the safety and security of spent fuel shipments.¹ The State Regional Groups are currently working with NRC staff to identify what specific information the states need, and how that information can be shared.

B. GOVERNORS' POLICY STATEMENT

1. The Governors acknowledge the work the NRC has done since 2001 to ensure the safety and security of spent fuel shipments. The Governors encourage the NRC to continually re-evaluate the safety and security of these shipments to ensure protective measures stay consistent with the latest intelligence on terrorist threats.
2. These assessments should fully address the consequences of attacks against all components of the nuclear waste handling and transport system, to include: attacks against transportation infrastructure, the theft of a shipment, use of high energy explosives against a shipment cask, and direct attacks upon a shipment cask using antitank missiles or other armament that could cause a loss of containment. NRC should update and revise 10 CFR 73 based on the findings of these assessments and studies to ensure that the regulations assure adequate protection for spent fuel shipments from sabotage and terrorism.
3. The NAS study recognized the conflict between the open sharing of information on spent fuel and HLW shipments, and the security of transportation programs. The study noted that this conflict is impeding effective risk communication, and may reduce public acceptance of shipments. NRC should strengthen its efforts to share information with state and local governments regarding spent fuel shipment vulnerabilities and consequences. State and local governments need this information to make appropriate safety, security and emergency response preparations for spent fuel and HLW shipments. The Governors recognize this sharing of information must be conducted within the framework of preventing the release of sensitive or classified information to individuals without a need to know.

¹ August 16, 2006 letter to Mr. Robert Owen, Chair, Midwestern Radioactive Materials Transportation Committee.

4. DOE should continue to address acts of sabotage and terrorism in its NEPA documents, and should incorporate terrorism/sabotage risk management and countermeasures in all DOE transportation plans, protocols, and practices 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. DOE should share security-related information with state and local governments to the maximum extent practicable.

C. **GOVERNORS' MANAGEMENT DIRECTIVE**

1. This resolution is to be posted on the Western Governors' Association Web site and it should be referenced and used as appropriate by Governors and staff.
2. The WGA, 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.
3. The Governors' representatives, along with WGA and WIEB staff, will continue to interact with the U.S. Department of Energy and the Nuclear Regulatory Commission to interactively develop and implement the objectives of this resolution.

This resolution was originally adopted as Policy Resolution 98 - 008.

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