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AUTHOR: Pam Inmann

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DEDMRS
DEDR
DEDIA
AO
FSME
NSIR

AFFILIATION: CO

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**WESTERN
GOVERNORS'
ASSOCIATION**

Jon M. Huntsman, Jr.
Governor of Utah
Chairman

Brian Schweitzer
Governor of Montana
Vice Chairman

Pam O. Inmann
Executive Director

Headquarters:
1600 Broadway
Suite 1700
Denver, CO 80202

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

August 4, 2008

Dale E. Klein
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Klein:

At the Western Governors' 2008 Annual Meeting they unanimously approved policy resolutions that address areas of common interest and concern. The following resolution has been attached for your consideration:

- Enhancing Security During Transport of Radioactive Materials in Quantities of Concern

The Western Governors are committed to the safe and uneventful transportation of radioactive waste. WGA strongly supports the Nuclear Regulatory Commission's efforts to enhance the safety and security of the transportation of radioactive materials in quantities of concern (RAMQC). We would like to stress the importance of having uniform security measures for all RAMQC shipments that pass through our nation as well as a state's authority to regulate such shipments.

Thank you for your consideration of the Governors' views.

Sincerely,

Pam O. Inmann
Executive Director

Enclosure



WESTERN
GOVERNORS'
ASSOCIATION

Western Governors' Association Policy Resolution 08-4

Enhancing Security During Transport of Radioactive Materials in Quantities of Concern

A. BACKGROUND

1. The Nuclear Regulatory Commission (NRC) is proposing to enhance security requirements for the transportation of Radioactive Materials in Quantities of Concern (RAMQC) to ensure that effective security measures are in place to protect these shipments given the post-September 11, 2001 threat environment.
2. RAMQC refers to sixteen types of radioactive materials, including cobalt-60, plutonium, and cesium-137, that are commonly transported in the U.S. for medical, academic, and industrial uses that could pose a threat to people and the environment.
3. While spent nuclear fuel transportation is being handled in a separate NRC rulemaking, security measures regarding transportation of RAMQC may set precedents for similar measures regarding spent nuclear fuel and high-level radioactive waste transport.
4. Since September 11, 2001, NRC has issued advisories and orders to enhance security for RAMQC shipments. The goals are to prevent theft and diversion, to prevent malevolent use of the material, to provide prompt detection, assessment, reporting and law enforcement response in case of theft or diversion, and to confirm arrival of the shipment at its intended destination.
5. NRC's proposed rulemaking in this area applies to its licensees in the U.S., but not to shipments from foreign countries passing through the United States (called "transshipments") to another foreign country, and not to carriers.
6. NRC's authority to protect public health and safety allows states to participate in enforcing enhanced security regulations including state inspections of licensees and enforcement of enhanced safety and security requirements.
7. NRC authority to regulate transportation security is shared with the U.S. Department of Homeland Security, the U.S. Department of Transportation, and with Agreement States (regarding matters of safety, not common defense).

B. GOVERNORS' POLICY STATEMENT

1. The Western Governors' Association is committed to the safe and uneventful transportation of RAMQC and radioactive waste.

2. The Western Governors' Association supports consistent and effective rules to ensure the safety and security of RAMQC shipments, as well as shipments of spent nuclear fuel, high-level radioactive waste, and other radioactive materials of concern.
3. All shipments of RAMQC passing through the U.S. should be required to meet the same safety and security requirements, regardless of whether these shipments are domestic or foreign shipments. Consistent security and safety requirements should be required for all RAMQC shipments, including transshipments to and from foreign countries being transported through the U.S.
4. RAMQC regulations should fall under NRC's authority to promote safety and security rather than under its authority to promote common defense and security.

C. **GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Western Governors' Association (WGA) shall post this resolution to its Web site to be referred to and transmitted as necessary.
2. This policy resolution shall be specifically conveyed to the President of the United States, the Secretaries of Homeland Security, Transportation, and Energy, the chairman of the Nuclear Regulatory Commission, and the appropriate members and committees of Congress.
3. 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. WGA and WIEB are to provide the federal government and NRC licensees with assistance in the development and implementation of transportation, communications and security plans for RAMQC.

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WESTERN
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**Western Governors' Association
Policy Resolution 08-6**

***Transportation of Spent Nuclear Fuel and High-Level
Radioactive Waste***

A. BACKGROUND

1. This nation must dispose of or otherwise address the significant amounts of spent nuclear fuel and high-level radioactive waste (HLW).
2. The federal government is responsible for the disposition and storage of this waste under the Nuclear Waste Policy Act (NWPA).
3. Current federal plans for addressing spent nuclear fuel and HLW place a disproportionate share of the national burden of nuclear waste transportation on Western states.
4. The Governors recognize that a transportation program developed and implemented cooperatively with Western states, such as that used for shipments to the Waste Isolation Pilot Plant (WIPP) and several other shipments, can be developed with proper planning and commitment by the federal government.
5. Litigation and proposed federal legislation have increased pressure on the federal government to accept title to private reactor spent nuclear fuel under the NWPA. Under current federal plans and timelines, the Department of Energy's (DOE) does not expect to be able to accept waste until 2020 at the earliest. Other estimates have set 2022 as the best achievable date for DOE to begin accepting waste.
6. The analysis by and experience of Western states show that adequate preparations to accommodate large scale shipments require at least three years following the designation of routes and shipping modes.

For many years, the Western Governors have consistently urged the federal government to develop a comprehensive transportation plan, including the preparation of contingency plans for events such as the early shipment of waste. DOE has not prepared a sufficiently comprehensive transportation plan that adequately explains important issues such as the schedule, mode, routes, operating practices and contingency plans for shipments.

7. On Behalf of the Department of Energy, the Department of Justice has entered into an agreement with at least one utility company whereby the government would fund temporary storage of spent fuel at commercial nuclear power plant sites until such a time as a permanent repository is available for disposal of the spent fuel. This plan, if applied to other utility companies, would compensate them for the cost of storing the waste on-site, address DOE's failure to meet its deadlines under the Nuclear Waste Policy Act of 1982, as amended, and provide much needed flexibility within the federal high-level

waste program for carrying out scientific activities and conducting required transportation planning.

B. GOVERNORS' POLICY STATEMENT

Storage and Disposal

1. The Governors strongly encourage the U.S. Department of Energy to work cooperatively with the states in implementing a policy to ensure the safe storage, transportation, disposition or disposal of spent nuclear fuel and HLW and to comply with agreements which have been negotiated and entered into by a state's Governor regarding the management, transportation and storage of spent nuclear fuel and high-level radioactive waste. Moreover, the federal government should not site such waste in a state for interim storage without written agreement from the affected state's Governor.
2. The Governors support efforts by the federal government to examine alternative waste acceptance options, including but not limited to, providing funds to utilities for expanded on-site storage and taking title to spent nuclear fuel at individual reactor sites. The search for alternatives must not be construed as lessening the need to develop a permanent solution to the management and disposition of spent nuclear fuel.

Transportation

3. The Governors' objective is the safe and uneventful transport of nuclear waste which must be paramount in all federal policies regarding nuclear waste transportation.
4. The Governors find that as a result of federal government inaction and delays, and inadequate strategic planning involving stakeholders, a national transportation system for commercial spent nuclear fuel is not presently available and would, at the earliest, be available no sooner than three years after routes have been identified and technical assistance and funds have been provided to states.
5. Early coordination and effective communications with state, tribal, and local governments are essential to the ultimate success of any nuclear waste transportation safety program. The Department of Energy needs to expand its ongoing work with regional cooperative-agreement groups to resolve remaining transportation issues.
6. In order to develop a safe and effective system for accepting commercial spent nuclear fuel and HLW at any facility, the federal government must expand its focus beyond siting, and develop, in coordination with the states and tribes, a logical and timely transportation program. This requires policy commitments from DOE and other federal agencies to:
 - a. Fix the shipping origins and destination points as early as possible;
 - b. Ensure the availability of rail and truck shipping casks;

- c. Conduct full-scale testing of casks to be used to transport spent nuclear fuel and HLW;
 - d. Prepare a comprehensive transportation plan that includes the analysis of all needed transport-safety activities in a single document;
 - e. Develop responsible criteria for selecting shipping routes;
 - f. Develop a sound methodology for evaluating optional mixes of routes and transportation modes; and
 - g. Conduct a thorough review of the risks of terrorism and sabotage against spent fuel and HLW shipments and work with state governments to assure that adequate safeguards are in place prior to shipments occurring.
7. The Governors believe that DOE or any other operator of an interim storage facility must look to the WIPP transportation and other successful shipping programs for guidance in conducting any SNF and HLW shipping campaign to any storage facility:
- a. A safety and public information program similar to that developed with Western states for shipments of transuranic waste to WIPP should be utilized for all highway route-controlled quantity (HRCQ) DOE shipping campaigns. Safety programs should be evaluated and improved as needed.
 - b. The WIPP Transportation Safety Program Implementation Guide is an excellent framework for transportation planning, and a similar document should be used as a base document for DOE's transportation programs for shipments to any storage facility.
 - c. DOE or any other interim storage facility operator should follow the WIPP example of working through its regional cooperative-agreement groups to propose a set of shipping routes to affected states and tribes for their review and comment. This process should result in the identification of a set of primary and secondary routes from each site of origin to each destination. DOE should require the use of these routes through mandatory contract provisions with any private contractors.
8. DOE or any other interim storage facility operator should operate a tracking system capable of monitoring the location and status of any active transportation vehicle and cask and provide access to this system to the states. The system should have a communications capability for notifying the vehicle operator, DOE, states and tribes of current location, potential bad weather and road conditions, and occurrence of incidents.

Financial and Technical Assistance Responsibilities

9. The Governors believe it is the responsibility of the generators of spent nuclear fuel and HLW and the federal government, not the states and tribes, to pay for all costs associated with assuring safe transportation, responding effectively to accidents and emergencies that will inevitably occur, and otherwise assuring public health and safety. This includes costs associated with route evaluations and inspecting and escorting shipments.
10. The Governors insist that no shipments of spent nuclear fuel and HLW be made to storage facilities or a repository, until shipping routes have been cooperatively identified

and funds and assistance have been made available to states at least three years prior to the start of shipments, notwithstanding whether such facilities are publicly or privately owned or whether there are any sudden changes in DOE's shipping schedule.

11. Critical steps need to be taken to prepare states and tribes for shipments, including but not limited to:
 - a. Appropriate funds for technical assistance and training programs for states and tribes through whose jurisdictions spent nuclear fuel and HLW are to be transported;
 - b. Implement policies and procedures to assure that states are fully compensated for all training, preparedness, and response costs associated with spent nuclear fuel and HLW shipments. Assistance to states must not be based on arbitrarily established criteria, but closely linked to state-specific assessments of need;
 - c. Adopt regulations to implement a mutually acceptable program of technical assistance and training funds. Such regulations should:
 - i. Provide for the development and funding of state and tribal plans that identify the minimum elements necessary to ensure safe routine transportation and procedures for dealing with emergency response situations, the current capabilities along each corridor, the activities needed to achieve minimum elements, and performance measures to evaluate programs implemented under the plan.
 - ii. Provide annual implementation grants to states and tribes to ensure adequate funding levels and program capabilities among impacted states and tribes.
 - iii. Provide flexibility in the expenditure of funds by states and tribes pursuant to the provisions of the state or tribal plans.
 - iv. Because of the current uncertainties in the transportation system (e.g., routing, mode, intermodal transfers, schedules, security measures), DOE should refrain from finalizing 180(c) and other funding allocations for annual implementation grants. Once states and tribes have assessed their needs through planning grants provided by DOE, DOE should then consult with states and tribes to determine how to best allocate funds to states and tribes effectively, efficiently and equitably.

Privatization

12. In any Nuclear Waste Policy Act shipping campaign, the Department of Energy cannot privatize or delegate to a contractor key transportation responsibilities, including but not limited to:
 - a. Interaction with states and tribes;
 - b. Selection of transportation modes and routes;
 - c. Preparation of environmental impact statements addressing transportation concerns;
 - d. Selection of transportation casks;

- e. Working with states and tribes to develop acceptable transportation communication, training and security plans; and
- f. Decisions regarding the provision of adequate technical assistance and funding to states and tribes to prepare for shipments.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Western Governors' Association (WGA) shall post this resolution to its web site to be referenced and transmitted as necessary.
2. This policy resolution shall be specifically conveyed to the President of the United States, the Secretaries of Energy and Transportation, the chairman of the Nuclear Regulatory Commission, the Chairman of the Board and the Chief Executive Officer of Private Fuels Storage, LLC, and the appropriate members and committees of Congress.
3. 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. WIEB is directed to evaluate and report on actions necessary for the safe and uneventful transportation of spent fuel to any proposed interim storage site. WGA and WIEB are to provide the federal government and nuclear utility industry with assistance in the development and implementation of transportation, communications and security plans for spent nuclear fuel and high-level radioactive waste.

This resolution was originally adopted in 1999 as WGA Policy Resolution 99-014, readopted in 2002 as WGA Policy Resolution 02-05, and readopted again in 2005 as WGA Policy Resolution 05-15.

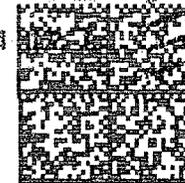
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WESTERN
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ASSOCIATION

1600 Broadway
Suite 1700
Denver, CO 80202

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08/05/2008
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Dale E. Klein
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

