Mendiola, Doris

From: Sharon Irwin [sharon@westgov.org]
Sent: Tuesday, January 18, 2011 5:05 PM
To: Rulemaking Comments
Subject: Proposed Rule and Draft Guidance
Attachments: 2011hlwcomments.doc

Regarding:
Docket ID NRC-2008-0120
Docket ID NRC 2010-0340

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75 FR 67636
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Template = ADM-013

E-RIDS = ADM-03
Add = R. Clyde Raysford (rcr)

Western Interstate Energy Board/ WINB

January 18, 2011

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Attn.: Rulemakings and Adjudications Staff Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 2055-0001
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RE: Docket ID NRC-2008-0120 (Proposed Rule}
Docket ID NRC-2010-0340 (Draft Guidance)

The Western Interstate Energy Board's High-Level Radioactive Waste Committee[1] appreciates the opportunity to submit comments on the Physical Protection of Byproduct Material, published on June 15, 2010 (Federal Register, vol. 75, No. 114, pp. 33902-33947). Western states' concern with this topic dates back several years, as evidenced by Western Governors' Association Policy Resolution 08-4: "Enhancing Security During Transport of Radioactive Materials of Concern." [2] We agree with NRC that widespread use of radioactive materials by industry, medical and academic institutions involves risk of theft or diversion for malevolent use in a radioactive dispersal or exposure device. We, therefore, strongly support the purposes of NRC's proposed rule.

We also appreciate NRC's effort to "identify gaps and uncertainties in security, and (in) the effectiveness and costs of certain physical protection enhancements at various licensed facilities." (pg. 33901, col. 1) At the same time, although we support these efforts, we are concerned about the effectiveness and costs of enforcement of the proposed rule, particularly in financially-stressed Agreement States.[3] Several of our specific comments[4] envision systems and protocols that

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1 The WIEB High-Level Waste Committee consists of gubernatorial appointees from ten Western states (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming).
2 See Enhancing security during transport of radioactive materials in quantities of concern, Western Governors' Association Resolution, 08-4, 2008.
3 Agreement states in the West include Washington, Oregon, California, Arizona, New Mexico, Colorado, Utah, and Nevada.
4 Specific comments reference Section II (Discussion), Subsection D (Transportation Security), beginning on page 33917 of the proposed rule.

could make monitoring and enforcement more effective and efficient.

Transportation Security Question #3 notes that "a licensee is *not* responsible for complying with these (security) requirements when a carrier aggregates radioactive material, during transport or storage incidental to transport...." (pg. 33917, col. 3) The question who *is* responsible in such cases is unclear and should be clarified. It seems logical that responsibility should be with the carrier (the transport licensee).

Transportation Security Question #4 asks whether verification of the transferee's license (to receive category 1 or 2 quantities) is necessary. (pg. 33917, col. 3) We believe that each shipment should be made from a licensed transferer (shipment originator) using a licensed carrier to a licensed transferee (shipment recipient). We agree that the proposed license verification system is a useful (even necessary) enforcement tool. If effective, the tool could be used to verify shipments of category 2 as well as category 1 material (Specific Question # 1), and could accommodate temporary as well as permanent shipping or receiving sites (Specific Question # 2). Using the license verification system, shipment verification should be efficient and routine. If so, an annual check on licensees likely would be sufficient (Specific Question 3). The license verification system should alert a shipping licensee that the license of a carrier or receiver is in question. (Special Question #4)

A system in which licensed transferers are using licensed carriers for shipment of category 1 or category 2 quantities to licensed transferees should be able to quickly alert NRC (and its license verification system) if the license of any party is in question. Such a system should encourage better compliance, and minimize the risk of theft or diversion for use in a radioactive dispersal or exposure device.

Transportation Security Question #5 asks whether preplanning and coordination of shipments (with States, local law enforcement agencies) are necessary. (pg. 33918, col.2) We strongly agree that such preplanning and coordination are both necessary and desirable. And, we urge the NRC to encourage states to coordinate with local law enforcement agencies and tribes in this regard. Including route and schedule information in the shipment verification system can (if shared) help States monitor shipments and "no-later-than" arrival times.

Transportation Security Question #8 asks whom would the licensee notify when the shipment arrives. (pg. 22919, col. 1) We recommend that it should be the responsibility of the transferee licensee (as part of its standard "take custody" procedures) to notify NRC (and its license verification system) and the host state. Assuming efficient "take custody" procedures, this notification should reasonably occur within 2 hours after arrival, rather than the 4 hours currently indicated.

Transportation Security Question #12 asks what a (shipping or carrier) licensee should do if the shipment is revised or cancelled. We recommend that such

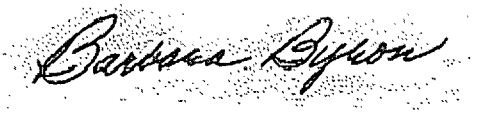
notifications be made to NRC (and the license verification system) as well as to the states affected by the change. The revisions (or cancellation) should be incorporated into the official license verification system record for the shipment. The change should be reported by the carrier company—after communication-coordination with the driver.

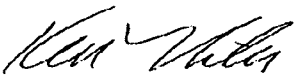
Transportation Security Question #21 asks about physical protection requirements for rail shipments of category 1 quantities, and how to prevent unauthorized access to mixed freight shipments of category 1 quantities in rail classification yards. (pg. 33921, col. 1) Lacking information on the number of such "mixed freight" shipments (current or prospective), or information on typical routing of such shipments (and the classification yards potentially affected), it is difficult to address the feasibility of the measures suggested by Specific Questions 1-3. If rail shipments are few in number and/or if the potential rail routes involve numerous rail classification yards, the feasibility (and consistent enforcement) of measures like those suggested by Specific Questions 1-3 is likely to be low. Rather than mitigate security problems in rail classification yards, it may be better to require all rail shipments to use dedicated trains.

Transportation Security Question #26 (pg. 33921, col. 3) explains what the NRC's proposed rule does *not* cover—transport by air (FAA), or water (U.S. Coast Guard), or transshipments through the U.S. from one foreign country to another (DOT and DHS). We strongly recommend consistent regulations for transshipments (and transport by water and air) regardless of the federal authority under which the regulations are promulgated. Standards for transshipments must be consistent with those for domestic shipments. We urge the NRC to provide leadership in promoting consistency, perhaps via interagency agreement. We further recommend that NRC' license verification system (licensees and shipments by and among licensees) incorporate all RAMQC shipments, regardless of the federal authority under which they are made. We also recommend that relevant information in the license verification system be appropriately shared with the state and local authorities involved in enforcement.

Thank you for the opportunity to make these comments. Please call Jim Williams (WIEB, 303-573-8910 x6) if you have questions.

Sincerely,





Barbara Byron
WIEB HLW Committee Co-Chair

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