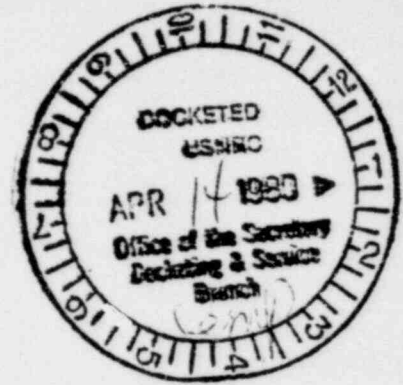


CONRAIL



April 14, 1980



JACKET NUMBER PR-73^①
PROPOSED RULE (45 FR 37399)

The Honorable
John F. Ahearne
Chairman
Nuclear Regulatory Commission
1717 H Street, N. W.
Washington, D. C. 20555

Re: Amendments to 10 CFR Part 73, Section 8166:
Physical Protection of Spent Fuel or Irradiated
Reactor Fuel in Transit

Dear Mr. Chairman:

On Monday, March 31, 1980, at its scheduled meeting, the Commission considered recommendations of its NMSS staff for changes in the interim final regulations on this matter, published by the Commission in June of 1979. At the time those interim final regulations were published, the Commission requested public comment on them, and indicated that those comments would be considered and, if appropriate, the rule would be revised. Consolidated Rail Corporation (Conrail), on behalf of itself and the Chesapeake and Ohio and Norfolk and Western Railroads, filed comments on August 17, 1979. In its comments, Conrail specifically urged the Commission to require that spent fuel or irradiated reactor fuel be carried in special train service when it traveled by rail. A copy of those comments is enclosed.

Conrail has been provided (by Commission staff) with copies of the materials distributed to the Commission on March 31, 1980, in connection with its consideration of proposed changes. One document contains a draft notice for publication, along with a discussion of the comments received on the interim final rule, and the Commission's action on each comment. That document states that "the Commission" has rejected the contention that special trains are necessary or desirable for the effective physical protection of spent fuel or irradiated reactor fuel in transit.

Conrail has also received from the Commission a transcript of the portion of the March 31 meeting which dealt with this proceeding. On page 21 of that transcript, the following colloquy takes place:

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CHAIRMAN AHEARNE: On Page 25, you note that you disagree with the contentions that special trains are needed to meet the requirements. Do the railroads agree or disagree?

MR. [L. J. BUD] EVANS [Chief, Regulatory Improvements Branch, Division of Safeguards, NMSS]: The railroads do not believe you need special trains, and in fact they have been transporting spent fuel without special trains.

CHAIRMAN AHEARNE: You know of no cases where the railroads have insisted on special trains?

MR. EVANS: I am not aware of any no sir.

Mr. Evans' responses to your questions are, in the view of Conrail as a major railroad, incorrect. Since the dawn of the nuclear age, a number of railroads, including Conrail and its predecessor companies, have disclaimed their obligation to transport spent nuclear fuel cores and similar commodities as "common carriers" under the Interstate Commerce Act. The primary motivation for this effort was the belief that these materials can be transported more safely in special trains, and that the shippers involved should bear the economic burden of the special costs associated with such trains. This motivation has been heightened by concerns that cask technology and test results do not provide adequate assurance that presently available casks can withstand the known fire, puncture and impact hazards which result from accidents, particularly those caused by sabotage of tracks and car structures.

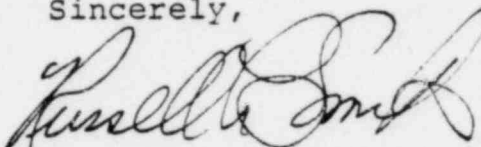
The Interstate Commerce Commission and the courts have denied the actions of railroads to restrict the carriage of nuclear wastes on the basis of risks involved, substantially because the Department of Transportation and the Nuclear Regulatory Commission have consistently failed to take into account the concerns of the railroad in regulating that carriage. The ICC has, in spite of these deficiencies, deferred to the expertise and the exclusive jurisdiction of DOT and NRC in this area. See: Radioactive Materials, Missouri-Kansas-Texas Railroad, ICC, No. 3607 (February 24, 1978); Radioactive Materials, Special Train Service, Nationwide, ICC, No. 36325 (March 8, 1978); Akron, Canton & Youngstown Railroad Co. v. ICC, U.S. Ct. of Appeals, Civ. No. 78-3425 (6 Cir., December 20, 1979).

This minimal recognition of rail industry concerns appears to be continuing, as reflected in the colloquy quoted above.

Conrail would urge you, and your fellow Commissioners, to take into account the long administrative and judicial record which establishes the fact that the railroads do, indeed, believe that special trains are necessary to the adequate safety and security of these shipments, and that the railroads have attempted, through lawful process, to insist on special trains. Their lack of success in these efforts has resulted from the cursory consideration and the inaccurate portrayal of their position which the transcript of the March 31 hearings typifies.

Conrail respectfully requests that the Commissioners give full consideration to the concerns voiced and evidence presented on behalf of special train service by the railroad industry.

Sincerely,

A handwritten signature in cursive script, appearing to read "Russell L. Smith".

Russell L. Smith
Washington Counsel

Enclosure

cc: Commissioner Victor Gilinsky
Commissioner Richard Kennedy
Commissioner Joseph Hendrie
Commissioner Peter A. Bradford
Secretary, Attention Docketing and
Service Section

CONRAIL

RICHARD B. HASSELMAN
SENIOR VICE PRESIDENT
OPERATIONS



August 17, 1979

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Sir:

Conrail submits the attached comments on the Nuclear Regulatory Commission's June 15 Interim Final Regulations entitled, "Physical Protection of Irradiated Reactor Fuel in Transit." Conrail has been authorized to submit these comments also on behalf of the Chesapeake and Ohio and Norfolk and Western Railroads.

We thank you for this opportunity to submit comment. If you have any questions concerning them please contact Mr. Jeffrey H. Teitel, Director, Regulatory Affairs at (215) 594-4168.

Sincerely,

R. B. Hasselman

DUPLICATE DOCUMENT

Entire document previously
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