

*Proceedings of the Sixteenth Meeting of the
Midwestern High-Level Radioactive Waste Committee*

The Luxor Hotel
Las Vegas, Nevada

December 9, 1997

Committee chair David Crose (Indiana) called the meeting to order at approximately 1:40 p.m.

Project Update

Lisa Sattler reported that CSG-MW had submitted proposals to both DOE's Office of Civilian Radioactive Waste Management (OCRWM) and Chicago Operations Office for continued support of the transportation project. Combined funding for the two projects in calendar year 1998 was estimated at \$102,000. The committee would hold two meetings in 1998.

As part of the statement of work for the transportation project, the staff planned to update the *Interim Storage Report* first published in 1993. An additional publication for the current fiscal year was a Transportation Progress Report summarizing DOE shipments that crossed the Midwest in 1997 and previewing upcoming shipments through the region. This document would be distributed to all legislators in the Midwestern states, as well as to other state officials.

TEC/WG Updates

The four committee representatives on the TEC/WG topic groups reported on their groups' activities.

Mechanics of Funding: David Crose mentioned that this topic group was addressing funding streams to pay for training and equipment for responders. The group was evaluating a fee-based system, but this mechanism seemed to have several outstanding issues: 1) the legal authority of tribes to charge fees; b) the difficulty of defining an adequate fee; c) the difficulty of adding or increasing fees; d) state legislative opposition to dedication of funds; and e) possible reductions in a state's funding under Section 180(c) if the state were to impose a shipment fee.

David mentioned that one of DOE's contractors had prepared a report on funding to states and tribes, and asked Lisa to provide copies to the committee. Judith Holm (DOE-AL) commented that the financial assistance report made it clear that states with DOE sites received an overwhelming share of the funding available for transportation-related emergency preparedness, while corridor states received very little. DOE sites were required to reserve 15% of their emergency preparedness funding for transportation-related emergencies. Judith noted that DOE was looking at ways to correct this apparent inequity.

Judith explained that a fee-based system might a) eliminate the middle man, b) be more equitable in that all shippers – not just DOE – would incur the fees, and c) avoid a situation in which states and DOE must rely on congressional appropriations for funds for training and equipment. Thor Strong (Michigan) asked what the revenue from these fees would pay for, and Dave responded that it would be used for training and equipment for responders. He again noted that DOE would likely reduce a state's 180(c) allocation if the state charged a shipment fee. Sen. Beverly Gard (Indiana) cautioned that relying on a fee-based system could cause inequity in that some states might deliberately set their fees so high as to induce shippers to route around them. Judith indicated that, for these reasons, DOE had brought the issue to the TEC/WG, where all states would have representation through their cooperative-agreement groups.

David summed up the discussion by noting that, at this point, the committee perceived more disadvantages to the fee-based program than advantages. He also predicted that more states would be looking at the issue of routing and fees.

Don Keskey (Michigan) suggested that DOE (OCRWM) should pay for all transportation-related costs out of the Nuclear Waste Fund rather than shift the costs to the states. Bob Owen (Ohio) responded that funding under Section 180(c) would not be adequate to cover all state costs, therefore states were looking at fees as a possible way to augment resources for training and equipment. Mike McCarthy (Minnesota) asked why Section 180(c) funding would be inadequate. Several committee members responded that the baseline level of funding (\$75,000) in OCRWM's proposed policy and procedures would only fund one full-time employee; in many states, however, multiple agencies were involved in inspecting shipments, training responders, and responding to emergencies. The proposed policy and procedures included a very nondescript variable amount of funding, which the Midwestern states were not confident would cover all their costs.

Don Flater (Iowa) noted that representatives of the State of Nevada had approached Iowa Governor Terry Branstad regarding an amendment to the NWPA that would require every governor to certify all people handling emergency response to transportation accidents involving radioactive materials. Don predicted that such a proposal, if adopted, would significantly drive up costs.

Steve Kraft (NEI) suggested that Congress intended Section 180(c) to provide incremental funding. Judith agreed and said the intent is to provide states with funding to build on the base that was already there. Mr. Kraft asked the committee if the language in S. 104, Section 203(c), would correct some of the current deficiencies by, for instance, providing money directly to the labor unions that did the training. Don Flater noted that there were 260 small towns in Iowa within 10 miles of the interstates, which translated into 4,000 local responders. He suggested there would never be enough money to train all these individuals, therefore Iowa had chosen to work with regional hazmat response teams. Through its motor carrier division, the state had trained 182 people along the route so that they would be able to mark the 2 mi/hour zone then call the regional teams. Iowa had also decided to train local responders simply to call the regional teams for assistance.

Carol Mintz (IAFF) argued that local emergency responders needed special training because, when responding to an accident, they would rescue injured people regardless of what materials were involved. Sen. Patty Judge (Iowa) asked if DOE would *require* the states to train local responders. Judith explained that Section 180(c) mentioned state training of local responders, but DOE did not at this time have any other plans to require states to conduct training. Sen. Judge said there would be a problem if the federal government were to tell the states they must train responders using their own funds. When Ms. Holm suggested that DOE would not force the states to assume all the responsibility for funding training programs, Sen. Judge responded that she was not sure the states should be responsible for *any* of the costs.

Tim Runyon (Illinois) explained Illinois' fee law. He said that, right after Illinois established its fee in 1983, a group of utilities petitioned the U.S. Department of Transportation for an inconsistency ruling. At the time, Illinois won because DOT found the fee did not impede interstate commerce. Tim cautioned, however, that, if every state in the region were to adopt a fee, collectively their actions could impede commerce and DOE, the utilities, or other shippers might prevail if they were to seek a preemption determination.

Tim also noted that Section 180(c) assistance was not intended to cover the operational costs of running a program for inspection, response, or escorting. Illinois' fee (\$1,000 per truck cask, \$2,000 per rail cask)

covered only about half of the *operational* costs of the program (e.g., salaries, travel costs, coordination), and did not even come close to covering all the costs associated with training and equipment.

Judith disagreed with Tim's prediction that DOE would petition for a preemption determination. She said that back in the early 1980s, the Department of Justice would not support DOE's attempt to appeal DOT's decision on the Illinois law. She thought the attitudes at DOE had changed in the past 14 years. Tim said an equitable fee system under which the states could truly recover their costs could work better than the Section 180(c) grants, but he again cautioned that a widely-implemented fee-based system would result in very expensive shipping campaigns. He noted that there had not been any large campaigns since the Three Mile Island shipments, but that soon the states would see some major campaigns. He commented that the WIPP campaign would be significant and that, since Illinois considered these shipments to be high-level waste, the state would charge a fee.

Rail: Kevin Blackwell (FRA) reported on the progress of the Rail Topic Group. He noted that the group had prepared two matrices for review and comment by the full TEC/WG. The first matrix compares Commercial Vehicle Safety Alliance (CVSA) enhanced inspection standards for truck shipments to the FRA regulations and Association of American Railroads' (AAR) recommendations for rail inspections. The group had also completed a draft matrix comparing all the regulations that applied to highway and rail shipments of spent fuel. Bill Naughton (Commonwealth Edison) urged Kevin to have the Topic Group agree that the information it would present to the TEC/WG represented "the right approach." The Topic Group should then ask TEC/WG members for their approval or disapproval rather than seek comments on how to "tweak" the two matrices. He based this suggestion on the recognition that the TEC/WG members serving on the Rail Topic Group had the expertise to make such decisions or recommendations.

Don Flater expressed concern over the quality of the tracks in Iowa and their ability to handle excessive loads. Kevin said that, assuming the major rail lines were maintained to class 5 or 6, weight would not be a problem. He added that 125 tons was not considered "excessive" weight for rail transport. Kevin reminded the committee that the rail companies were required to maintain mainlines, which handled daily traffic, to a high standard. Furthermore, the FRA had a policy to inspect the tracks prior to shipment of spent nuclear fuel. Kevin also noted that the FRA issued a *Federal Register* notice in the summer of 1997 proposing to update the track class standards.

Routing: Lisa reported that the Routing Topic Group was preparing a discussion paper on routing issues, with the target audience being the TEC/WG, DOE program managers, and senior policy makers. She was waiting to receive a second draft prior to seeking the committee's comments. She asked whether the committee wanted the draft paper, as released for TEC/WG review, to include recommendations from the topic group. Noting that some members of the topic group were resistant to the idea, Lisa said she felt it was important for the smaller topic groups to work for the larger TEC/WG by studying an issue and recommending a course of action. She also thought seeking TEC/WG input on possible recommendations without providing a set of draft recommendations for review would only delay the release of the final paper.

Sen. Judge asked for clarification of the respective roles of the TEC/WG, the Routing Topic Group, and the Midwestern Routing Subcommittee. Lisa explained that the TEC/WG membership included all four regional cooperative-agreement groups, plus DOE program offices, industry groups, professional associations, and environmental organizations. She and Frank Moussa represented the committee on the TEC/WG Routing Topic Group, which was currently working on a course that paralleled the work of the committee's Routing Subcommittee (i.e., state involvement in the selection of routes). Bill Naughton reiterated his comment regarding the topic groups in general, namely that the smaller groups brought together those TEC/WG members with a high level of interest in and commitment to resolving particular

issues. Thor Strong, Dave Crose, and Sen. Judge agreed that recommendations should be a part of the draft paper. The rest of the committee concurred.

Judith stated that the TEC/WG had just recently become recognized within DOE as *the* stakeholder group related to transportation. She added that the group gave the states an opportunity to have input into policy decisions at DOE. She cautioned that the terms "selection" and "identification" as applied to routing had very different regulatory meanings. She preferred the use of "identification" to connote the decision-making process that would ultimately lead to a set of shipping routes.

Mike McCarthy interrupted to warn the committee that OCRWM's shipping schedule would likely change in the next 60-90 days as the January 1998 deadline for starting to accept spent fuel approached. He insisted the committee should have a sense of urgency about impending OCRWM shipments. He commented that the committee's role seemed to be to provide input to "help to move the waste" and questioned the utility of discussing input to other DOE products that cite 1999 and beyond as the time frame for starting shipments. Lisa noted that, rather than focusing solely on OCRWM shipments, the committee's scope included all major movements of DOE radioactive materials, such as foreign and domestic spent fuel, high-level waste, and TRU waste.

Don Keskey added that, with 35 states and 46 public agencies involved in the acceptance lawsuits, it would be inconsistent for any state representative to take a position other than enforcing the 1998 date. Sen. Judge asked Mr. Keskey what the states would do once DOE failed to start picking up the waste at the end of January, which she predicted would be the case. Several people noted that the states would likely file a third suit against the department.

John Kerr reminded the meeting participants that, in 1994, the committee had passed a resolution in support of the 1998 acceptance date. He noted that the committee lacked any enforcement authority and was not able to enter into lawsuits, but that the committee had nevertheless been following the issue of interim storage for several years and had not taken a position inconsistent with the 1998 date.

Carlisle Smith (Public Utilities Commission of Ohio) said that the states would like to see DOE move the waste, but the committee's job was to make sure the department did so as safely as possible. He questioned what an expedited schedule would do to the states' ability to protect their constituents. He and Bob Owen argued that, without a mode or even a destination, there was little that could be done in the way of transportation planning. Bill Naughton acknowledged that, because of DOE's failure to make any real decisions regarding transportation planning, the committee had decided to take the lead for the Midwestern states and was currently working on a regional route plan. He admitted that finalizing the plan would be difficult until DOE announced the destination for shipments.

Tim asked Judith about the number of certified casks under DOE's control. Judith said DOE had a few, but that in the world there were only 12 certified casks for moving spent fuel. Most of these, she said, were fully engaged in DOE's program for accepting foreign research reactor spent fuel.

Thor summed up the discussion by saying that there appeared to be a lack of communication between the Nuclear Waste Strategy Coalition, whose goal was to move waste by January 1998, and the committee, who was committed to ensuring safe transport. He said the committee might want to consider the points raised during the discussion. Kevin suggested that the four regions might want to produce a unified document or statement of position. Judith cautioned that, if the committees chose to do so, they must be careful to avoid any language that could violate the groups' lobbying restrictions.

Lisa ended the discussion of the TEC/WG Routing Topic Group by stating that she would try to move the group toward including recommendations in the draft discussion paper. She said she would consult with the Routing Subcommittee regarding what those recommendations should be.

Routing Subcommittee Report

Frank Moussa briefed the committee on the routing subcommittee's activities. He reminded the committee of its discussion at the June 1997 meeting regarding state authority for designating alternative highway routes. He said the routing subcommittee had asked Sen. Gard to develop model legislation that would help the Midwestern states achieve the goal espoused in the committee's routing resolution, namely that the states should put in place a system for designating alternative routes for shipments of spent fuel. A section of Minnesota's statutes served as the basis for this legislation. Sen. Gard provided this model legislation, which the subcommittee then distributed along with the resolution to approximately 75 state legislators, governors, and agency heads.

Frank noted that, in response to the committee's charge, the subcommittee had decided to focus first on the selection of highway routes in the Midwest. The State of Kansas, though, was continuing to develop a planning checklist as part of its own transportation planning activities. He hoped the Kansas checklist would serve as a model for the eventual development of a regional planning checklist to assist Midwestern states as they prepare for DOE shipments.

Frank said the subcommittee hoped to accomplish several tasks in 1998. First, the subcommittee would monitor the progress of the model legislation in the Midwestern states and would consider submitting it for inclusion in the Council of State Governments' annual publication, *Suggested State Legislation*. The subcommittee and the staff would be happy to assist the states that chose to designate alternative routes in whatever manner possible. The subcommittee would begin to address rail routing in the coming year, and would try to identify possible routes from Midwestern reactors to possible storage and disposal facilities. Frank and Lisa would continue to represent the committee on the TEC/WG Routing Topic Group.

Roundtable of Midwestern State Activities

Dave Crose asked the Midwestern states to report on recent activities related to radioactive waste transportation.

Kansas: Frank reported that the Chief Legal Counsel of the Adjutant General's Department was reviewing the model legislation. Frank's agency had requested funding for local planning and training positions along the major corridors in the state, with the intention of providing training beyond the 29 CFR 1910.120 standards to include issues pertaining to high-level radioactive waste transportation. The original funding request was denied, but the agency appealed the decision and was waiting for the result of that appeal. Rep. Joann Freeborn said she had spoken with the governor's office regarding the model legislation and was disappointed that the legislation was not receiving strong support.

Illinois: Tim reported that he had received inquiries from many people regarding Illinois's fee law and inspection procedures. He noted that Illinois had a good radiological emergency response program because of all the nuclear plants in the state. He acknowledged, though, that the per-cask fees the state charged had not been changed since they were established in 1983, and that inflation had approximately doubled the cost to the state. He also cautioned that programs in other states that were just starting to develop their radiological emergency response capabilities might incur higher costs.

At this point, Tim suggested that Sen. Gard change her model legislation to remove Section 11(c)(2) waste from the definition of high-level radioactive waste. Tim's comment opened up a discussion of Sen. Gard's bill. Sen. Gard agreed to remove the reference to 11(c)(2) waste. She also agreed with Ms. Mintz's suggestion that the Fire Marshall be included in the list of contacts for coordination of state emergency response planning. Ms. Mintz also suggested that the legislation should have the state measure background radiation along the routes to help to determine when an accident or incident had been sufficiently cleaned up. Don Flater and Tim Runyon disagreed with Ms. Mintz's suggestion. Tim also suggested that Sen. Gard amend Section 4 of her bill to require that notification comply with 10 CFR 71.97.

Michigan: Thor Strong reported that the Palisades plant had experienced some problems with the VSC-24 casks it was using to store spent fuel. The NRC had informed the utility (Consumers Power) that it could not load any more casks until it could assure a safe and effective weld. Michigan's Big Rock Point plant (also owned by Consumers Power) shut down in August and was on the fast track to decommissioning. The utility's goal was to return the site to greenfield status in five years, but such an ambitious plan would rely on dry storage for the plant's spent fuel.

In 1998, the University of Michigan planned to ship spent research reactor fuel to DOE's Savannah River Site in South Carolina. The Michigan Department of Transportation and Attorney General were examining the committee's model legislation and trying to determine whether the state should consider such legislation. At this point, the Department of Transportation felt Michigan state agencies already had sufficiently clear authority to designate alternative routes.

Minnesota: John Kerr reminded the committee that, in 1994, the Minnesota Legislature had a rather rancorous battle over interim storage of spent fuel at Northern States Power's Prairie Island Nuclear Plant. On December 6, 1997, NSP announced that it would not ask for permission to use casks beyond what the legislature approved in 1994. The Prairie Island plant would apparently operate through 2007 rather than 2014. Mike McCarthy explained that the reason NSP would not need additional storage casks was that the utility believed it could use pool space that was previously reserved for decommissioning. He did not have information on why the NRC would allow the use of this space at the current time but not in 1994.

John added that Indiana's proposed legislation corrected some of the deficiencies in Minnesota's statute, specifically the dedication of revenue from fees to a nuclear response fund.

Iowa: Don Flater said the Iowa Emergency Management Agency had prepared draft legislation based on Sen. Gard's bill. Sen. Judge indicated that she had not yet seen the draft bill. Don also mentioned that the state had prepared a map showing regional hazardous materials response teams. The state intended to list contacts on the back of the map, then distribute laminated copies to all local emergency responders in the state.

Indiana: Dave Crose said his office was conducting a statewide survey on instrumentation and training needs throughout the state. He said the state planned to train and equip 37 regional hazmat response teams. First responders would be trained to use the DOT Emergency Response Guide and to secure the scene of an accident and call the nearest hazmat team. Dave said that Indiana had decided to follow Iowa's example and start preparing people along the major routes through the state.

Sen. Gard commented that her bill had attracted the attention of an interesting coalition of groups, including several electric utilities and the Citizens Action Coalition (a consumer group). She said an investor-owned non-nuclear utility was opposed to the proposed legislation because of what it called "consumer/government-subsidized" transport of spent nuclear fuel. Mr. Kraft asked Sen. Gard what the

utility's specific objection was to the bill, and Sen. Gard indicated that it was likely related to increased competition in the electric industry.

Ohio: Bob Owen reported that the state was working on Ohio's routing plan, and that he had started to gather all the major players together. The group started working on August 15, and had held monthly meetings since then. The target date for completing the state's routing plan was June 30, 1999. Stating that the routing issue was "on the front burner now," Bob said the working group was now preparing a draft proposal for completing the plan.

South Dakota: Mike Pochop said he had met with the Department of Transportation and the highway patrol regarding the model legislation. Both agencies felt that the state had sufficient authority in place to designate alternative routes. Mike suggested the state would not designate alternative routes, though, since I-90 and I-29 were the only major through-routes.

Wisconsin: Lieutenant Tim Carnahan, attending for Capt. Robert Young, said Wisconsin's omnibus hazardous materials registration fee had been challenged by motor carriers. Wisconsin had three classes of carriers, and charged different fees for each class. The motor carriers prevailed in their challenge, just as they did in the State of Arkansas.

The state had also proposed an intelligent transportation system for hazmat/radmat shipments. The motor carriers opposed this idea, as well. The state was now looking at improving its statewide incident management plan, with an emphasis on integrating agencies with similar responsibilities.

Lt. Carnahan also reported that the Menomonee Indian Tribe had stopped a unit train carrying sulfuric acid as it attempted to cross the reservation. The tribe had taken this drastic step in order to start a dialogue with the state and with carriers about tribal rights and hazardous materials transport.

Eric Meils (Wisconsin Electric) said that Wisconsin's Point Beach plant was part of the VSC-24 cask owners group that was trying to resolve the welding problem. He hoped that the problem would be resolved by March, when all three plants that use the VSC would lose full-core reserve.

Committee Discussion

The committee briefly reviewed the discussion points for the breakout sessions on Wednesday. Having little time left to cover these issues, the committee decided that the members were sufficiently well versed in both the issues and in the Midwestern states' position on the issues to engage in a dialogue with the other regions. The committee then selected Rep. Joann Freeborn to serve as the Midwestern facilitator for one of the sessions.

The meeting adjourned at approximately 5:30 p.m.