

January 25, 2000

The Honorable Jolene M. Molitoris  
Administrator  
Federal Railroad Administration  
1120 Vermont Ave., N.W.  
Mail Stop 50  
Washington, D.C. 20590

Dear Administrator Molitoris:

I am writing on behalf of the Midwestern High-Level Radioactive Waste Committee to inquire as to the status of the Federal Railroad Administration's statement of position on the right of states to stop and inspect rail shipments of spent nuclear fuel and other radioactive materials. The U.S. Department of Energy's Office of Civilian Radioactive Waste Management wrote to the FRA to request an opinion on this matter in June 1995, well over four years ago.

The Committee consists of state legislators and gubernatorial appointees from the following states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. I have enclosed a committee roster for your information. Since 1989, the Committee has worked with various programs at the U.S. Department of Energy to plan and prepare for the Department's shipments of radioactive material through the Midwest.

Since 1995, the Committee has awaited the FRA's opinion on whether states have the right to stop a rail shipment of radioactive material for the purpose of inspection. The FRA's position on this matter is of great interest to the Midwestern states for two reasons. First, each of the Midwestern states reserves the right to inspect radioactive materials shipments, as necessary, to protect the health and safety of the public. In fact, one of the states in the region has a state law mandating inspections of all shipments of spent nuclear fuel, high-level radioactive waste, and transuranic waste. The FRA's opinion could have significant legislative as well as fiscal impacts on the Midwestern state governments.

Second, the Department has indicated a reluctance to submit its rail shipments to inspection, particularly with the frequency of shipments set to increase dramatically once shipments of commercial spent nuclear fuel commence.

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DOE's decision whether to comply with state laws requiring inspections will be driven, we believe, largely by the FRA's opinion on the legal right of states to stop and inspect rail shipments.

In the coming year, DOE is planning to initiate rail shipments of both spent nuclear fuel and transuranic waste across the Midwest. It is critical, therefore, that the FRA deliver its memo to DOE and to the states as soon as possible. I understand the great complexity associated with producing a legal opinion on such a matter; four years, however, would seem ample time in which to complete this important task.

Thank you very much for your attention to this matter. If you have any questions, please contact Ms. Lisa Sattler with CSG-MW at 920-803-9976.

Sincerely,

Frank H. Moussa, M.S.A.  
Administrator, Technological Hazards Division  
Kansas Division of Emergency Management, and  
Chair, Midwestern High-Level Radioactive Waste Committee

FHM/lrs

Enclosure