



June 30, 2011

Timothy Frazier
Designated Federal Officer
Blue Ribbon Commission on America's Nuclear Future
c/o U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Frazier:

On behalf of the Council of State Government's Midwestern Radioactive Materials Transportation Committee, we are writing to submit comments on the BRC Transportation and Storage Subcommittee's draft "Report to the Full Commission," published on May 31. The committee includes gubernatorial and legislative appointees from the 12 Midwestern states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. Our comments reflect the input of the committee members; individual Midwestern states may provide additional comments separately.

Representatives of the committee had an opportunity to provide testimony on transportation to the Subcommittee at its meeting in Chicago on November 2, 2010. We are very pleased at the extent to which the Subcommittee's transportation-related findings and recommendations reflect the testimony provided. We offer the following additional comments on transportation as well as new comments on storage.

Comments on Transportation

1. The committee members appreciate the Subcommittee's acknowledgment of the vital role state agencies and elected officials have played in ensuring the health and safety of the public and the environment. As the subcommittee observed, the "cooperation and involvement" of states, particularly with regard to transportation, "have been a critical element of success." For that reason, we strongly agree with the finding that state and other government officials "should be fully involved in the development of storage and transportation solutions and should be the primary interface with their communities" (p. 67).
2. The Subcommittee observes that "DOE has a well-established practice of working with state regional groups and other organizations to coordinate and provide technical assistance for transportation," and goes on to say that "Future programs should build upon these proven approaches" (pp. 58-59). The committee agrees

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with these statements. These “proven approaches” have, in the past, made it possible for state officials to do just what the Subcommittee suggests – namely, “be extensively involved in transportation planning and...provided the resources necessary to conduct their vital functions” (p. 58). The states that have been engaged in shipping planning with DOE programs have the experience and the technical expertise to engage in transportation planning and shipment-related activities such as inspections and escorts. The needs of the states going forward will include sufficient funding and other resources, as well as adequate time for planning and training. It will also be important for DOE or a successor organization to commit to establishing and maintaining the type of productive working relationships that the states have had with programs such as DOE’s Carlsbad Field Office (for shipments to the Waste Isolation Pilot Plant, or WIPP) and, before it was eliminated, the former Office of Civilian Radioactive Waste Management (OCRWM).

3. The committee appreciates the Subcommittee’s acknowledgement that “5 to 9 years of transportation planning may be needed before large-scale shipments commence,” making it important for planning “to take place at the very beginning of any proposed project” (p. 62). We strongly agree with the recommendation that “planning and coordination for the transport of spent fuel and high-level waste is complex and should commence at the very start of a project to develop consolidated storage capacity” (p. vii).
4. The finding regarding “early completion of the policies and procedures” for Section 180(c) is sound (p. 68). It is important to note, however, that DOE interpreted financial and technical assistance under Section 180(c) as intended solely “for training,” not for “transportation planning purposes” as stated in the finding. The distinction is important. Financial and technical assistance for “transportation planning” calls to mind the comprehensive “transportation safety programs” Congress required for WIPP shipments in Section 16 of the WIPP Land Withdrawal Act. Indeed, this type of program is what the states consider necessary for shipments of spent fuel under the NWPA. DOE, however, declined to interpret Section 180(c) as creating an obligation to fund full-fledged “transportation safety programs.” The compromise DOE reached with the states was the recommendation by the Transportation External Coordination Working Group’s Section 180(c) Topic Group that “DOE commit to funding the same kind of transportation safety program that they support for WIPP shipments” (Section 180(c) Topic Group, Appendix J, Funding Operational Activities). Absent a change in the NWPA language, the states will need to negotiate with DOE or a successor organization to identify options for receiving assistance for activities that go beyond training (e.g., inspections and escorts).

A second limitation of Section 180(c) is that federal assistance is available only to states affected by shipments conducted under the NWPA. Since 1995, the Midwest and other regions have advocated for Section 180(c) assistance to be available in connection with *all* large-scale shipping campaigns involving civilian spent nuclear fuel, since these shipments would have virtually the same impact as shipments to a DOE repository or monitored

retrievable storage facility (see Janairo and Bailey, 2010, "Transportation Institutional Issues Involving the U.S. Department of Energy's Civilian Radioactive Waste Management Program," p. 82). It would be helpful for the Subcommittee to address this matter in its report.

5. The Midwestern states agree with the NAS's finding that there are "no fundamental technical barriers" to safe transportation. The states, in fact, help to ensure "strict compliance with applicable regulations" through their role as co-regulators of transportation along with the NRC and the U.S. Department of Transportation (DOT). Nevertheless, it is important to point out that DOE is not an NRC licensee. As a result, the only NRC regulations that would apply to NWPA shipments are advanced notification and the use of NRC-certified transportation casks. Other NRC requirements would not apply, including such important steps as route approval and – assuming the proposed changes to Part 73 remain intact – pre-planning and coordination with the affected states. It would be useful for the findings to articulate the Subcommittee's position on whether shipments to a consolidated storage facility should be subject to full NRC regulation or to limited regulation as currently required by the NWPA.
6. As noted in testimony by Illinois committee member Tim Runyon (Illinois Emergency Management Agency) on November 2, an important component of any shipment is an independent inspection of the drivers, vehicle, and cask by qualified state inspectors. The Commercial Vehicle Safety Alliance (CVSA) has developed a rigorous, time-tested, reciprocal inspection program for shipments by truck, but a similarly robust program has yet to be established for shipments by train. The Midwestern states would like to see DOT partner with the NRC to develop a reciprocal rail inspection program similar to CVSA's Level VI inspection program for truck shipments. Such a program would contribute directly to the safety of shipments while also contributing to security by reducing the need to stop shipments for en route inspections. It would also go a long way toward increasing public acceptance of shipments.
7. The Subcommittee observes that putting "stranded" spent fuel first in line for receipt at a consolidated storage facility will require DOE or its successor to negotiate changes to the established shipping queue. The Midwestern states appreciate that the report acknowledges that modifying the shipping queue would also benefit the transportation system by making it possible to increase efficiency (e.g., by shipping fully loaded casks or emptying out a site in one campaign rather than making multiple stops at the site annually). The Midwest has called attention to the transportation-related problems created by the Standard Contract, including the provision that allows purchasers to make "exchange requests" up to six months prior to shipping (see Janairo and Bailey, pp. 18-21). The states would like to see the transportation-related impacts of the Standard Contract, and the need for a remedy, addressed specifically in the transportation findings in the Subcommittee's report.

8. The committee agrees that “an integrated strategy” will require one organization to have “responsibility for consolidated storage, permanent disposal, and associated transportation needs” (p. 51). As the Subcommittee notes earlier in the report, it will be necessary “to ensure that storage and disposal development programs do not have to compete for limited funding” (p. 37). The committee suggests including the transportation system in this statement, given the past experience with transportation funding being the first cut made when OCRWM faced funding constraints. The Midwest has documented the negative impact of OCRWM’s decisions to stop and restart transportation program development in the 1990s and 2000s (see Janairo and Bailey, pp. 5-6). It will be important to maintain a high priority on all program elements and to fund each accordingly.
9. It would be helpful to clarify the meaning of the finding on the “the safety record for past spent fuel shipments” (p. 62). The statement that “the reasons for [the safety record]...need to be more widely understood” could be interpreted as meaning there is a need to determine what the reasons are. It would appear that the Subcommittee’s intent might have been to suggest that DOE or another organization needs to do more to get information out to the public regarding the safety record and the reasons behind it.

Comments on Storage

1. The committee agrees that “there are compelling reasons to move forward with establishing one or more consolidated interim storage facilities on a regional or national basis while progress is made toward implementing final disposition” (p. 26). The states appreciate the Subcommittee’s acknowledgement that “the continued presence of stranded fuel prevents [shutdown] sites from being reclaimed for other uses that would benefit the surrounding communities, and makes those communities the *unmasked and unwilling hosts of long-term spent fuel storage facilities without any of the rights of participation or benefits* that would be provided under the NWPA to the host of a federal storage facility” (emphasis added) (ibid.).
2. It is important for the parties conducting research on long-term storage to engage stakeholders like the Midwestern Radioactive Materials Transportation Committee. Any process to identify a suitable, acceptable storage site will require state agencies and elected officials to be well informed.
3. The suggestion to have the National Academies update the 2006 study on safety and security of spent fuel storage is an excellent one (p. 21).
4. The committee agrees that “it would be useful to explore the feasibility and utility of enhancing instrumentation in dry storage systems at existing dispersed sites to provide insights on the evolution of these systems as they age” (p. 23). Information on the condition of the stored spent fuel would be important for states that either have or will have spent fuel in long-term, at-reactor storage, as well as states that might consider hosting a consolidated storage facility.

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We appreciate the opportunity to comment on the Subcommittee's draft report. We look forward to reviewing the BRC's draft recommendations to be released on July 29. If you have any questions about our comments, please contact Lisa Janairo at 920.458.5910.

Sincerely,



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Materials Transportation Committee



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