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November 2, 2005

Joseph H. Boardman
Administrator
Federal Railroad Administration
U.S. Department of Transportation
1120 Vermont Avenue NW
Washington, DC 20590

Dear Mr. Boardman:

We understand that the Federal Railroad Administration will soon begin the process of updating its *Safety Compliance Oversight Plan (SCOP) for Rail Transportation of High-Level Radioactive Waste and Spent Nuclear Fuel*. The Western and Midwestern States have been and continue to be strong supporters of the SCOP, and we look forward to an updated version.

The Western and Midwestern states have worked together in recent months to identify their collective recommendations on how the SCOP should be revised and updated. These comments are attached, and we request that they be incorporated into the revised SCOP. We look forward to the opportunity to review the draft revised SCOP when it is available.

Our two regions feels strongly that the procedures in the SCOP should apply to *all* shipments of high-level radioactive waste and spent nuclear fuel, including shipments to a repository or to any interim storage facility, whether publicly or privately owned.

If you have any questions about the states' recommendations for the SCOP, please contact one of us.

Joseph H. Boardman

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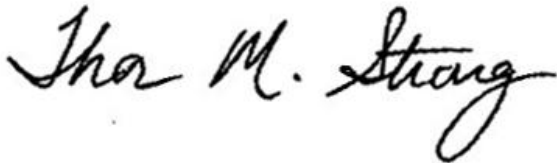
Sincerely,



Joseph Strolin
Nevada Agency for Nuclear Projects and
Co-Chair, WIEB High-Level Radioactive
Waste Committee



Ken Niles
Oregon Office of Energy and Co-Chair,
WIEB High-Level Radioactive Waste
Committee



Thor Strong
Michigan Department of Environmental
Quality and Chair, CSG Midwestern
Radioactive Materials Transportation
Committee

Enclosure

cc: Kevin Blackwell, FRA
Robert Fronczak, AAR
Judith Holm, DOE
John Parkyn, PFS

**States' Comments on the Federal Railroad Administration's (FRA)
Safety Compliance Oversight Plan (SCOP) for Rail Transportation of
High-Level Radioactive Waste and Spent Nuclear Fuel.**

General Comments:

The States have been and continue to be strong supporters of the SCOP, and look forward to an updated version. We recognize that the SCOP was originally written to address smaller Spent Nuclear Fuel/High-Level Waste (SNF/HLW) shipping campaigns, such as the Foreign Research Reactor Fuel program. However, the number of shipments to a repository will constitute by far the largest, longest and most sustained SNF/HLW shipping campaign in this country's history, totaling more than 10,000 shipments over two to three decades or more. More SNF and HLW will be shipped in a single year than in the past 40 years combined. It is imperative that portions of the SCOP be revised to effectively address larger shipping campaigns, such as the Nuclear Waste Policy Act (NWPA) transportation system.

The States further realize that full implementation of the SCOP would likely exceed FRA's current resources. However, rather than lowering the SCOP's provisions to bring it more in line with FRA's capabilities, the States believe that FRA's capabilities must be increased to allow it to fully implement a SCOP that is robust and safety-focused. We look forward to discussing with FRA what additional resources they feel will be necessary to meet this objective, and the States support using the Nuclear Waste Fund to meet those needs.

The SCOP currently states "FRA may apply the basic principles and major elements of the SCOP to other existing and future rail shipments involving HLRW and SNF, as necessary and appropriate." The States firmly believe that the SCOP must govern all shipments of SNF/HLW, to include shipments to a repository or to any interim storage facility, whether publicly or privately owned.

Purpose:

The current document says "The primary purpose of this SCOP is to address stakeholders' concerns in regard to rail shipments of foreign research reactor fuel...relative to the rail mode of transportation." While addressing stakeholder concerns may be one goal of the SCOP, the States believe that promoting shipment safety should be the primary purpose of the document. The specific reference to the FRR shipments should also be revised to incorporate all SNF/HLW shipments, as discussed above.

Implementation:

The current SCOP primarily focuses on low-frequency shipping campaigns such as the Foreign Research Reactor Fuel program. In order to effectively address more frequent, recurrent

shipments, the updated version should clearly differentiate between the following actions for low- and high-frequency shipping campaigns:

- Actions required prior to a first shipment along a route (or suite of routes),
- Actions required prior to each individual shipment,
- Actions required at regular intervals for recurring shipments along that route or routes, and
- Actions required when re-starting shipments along a route or routes after a long (>180 days) lapse in shipments.

The offeror should, on a weekly basis, provide the FRA with a shipping schedule detailing shipments eight weeks out; this schedule must also be provided to affected states and tribes. The schedule must be an accurate predictor of upcoming shipments to enable the FRA, the carrier(s) and the states and tribes to adequately prepare for the shipments. At a minimum, the schedule should include:

- point-of-origin
- point-of-destination
- carrier(s)
- route
- shipment timeline
- anticipated crew change and/or interchange locations, if applicable
- any other pertinent information.

The current document states that route-specific tasks will be concentrated on primary routes, not alternate routes, but provides no details. The new version should state clearly what tasks will or will not be applied to alternate routes, particularly in situations where the alternate route involves lower grade track than the primary route. Additionally, the implications of DOE's decision to use suites of routes, rather than one primary and one alternate route, must be assessed and addressed in the new version.

While the current SCOP does a good job of identifying responsibilities of the offeror and the FRA, it does little to identify the responsibilities of the rail carrier. The revised version should go further in specifying what FRA expects/requires from the carriers. Similarly, the SCOP should detail what FRA expects from the corridor states. Where there are FRA responsibilities that may be carried out by FRA-certified state inspectors, the text should make that clear.

Operational Integrity:

The current requirement for Motive, Power and Equipment and Hazardous Materials inspections of each shipment prior to departure must be maintained. In addition, the States recommend that FRA develop, perhaps in consultation with the Association of American Railroads (AAR), a set of inspection standards specifically for SNF/HLW shipments. These standards should be comparable to the Commercial Vehicle Safety Alliance Level-VI standard for truck shipments and encompass all relevant AAR technical standards.

The SCOP should include provisions for independent oversight and review of carrier plans and operations, in a similar manner to that used for truck shipments to the Waste Isolation Pilot Plant.

In addition to track classification information and criteria, the SCOP should address other route selection factors such as distance to destination, grade, curves, load restrictions, avoidance of “dark track,” and avoidance of bridges and tunnels where feasible.

The current SCOP does not address the decision making process for bad weather shipments. While the States recognize that this decision will primarily be made by the carrier, it is important for the states to be consulted as part of the process.

The SCOP must require carriers/offerors to track SNF/HLW shipments using TRANSCOM or some comparable system. The FRA should ensure that carriers/offerors coordinate with the states and tribes to ensure they have access to that system.

OI-1 requires FRA to verify crew hazmat training records, but does not specify what requirements are being verified. The revised version should specify the hazmat training requirements for train crews, even if only by referencing appropriate regulations.

OI-5 states that FRA will coordinate with the offeror “to determine the appropriate personnel necessary, if any, who in addition to the train crew, will actually accompany...rail shipments.” But the current document does not cover what criteria might be used to determine what additional personnel may or may not be required. The new version should address this. Importantly, the SCOP should encompass NRC’s safeguards requirements for SNF and HLW shipments, including the requirement for armed escorts to accompany each shipment.

Emergency Response:

ER-2 requires FRA to review offeror and carrier emergency plans. Part of that review should be to ensure that these plans cover allowing access to railroad property for state inspectors, escorts, responders and other personnel as appropriate. One way to address this could be to encourage or require the rail carriers to develop Memoranda of Understanding (MOUs) with the states through which they’ll be shipping. In addition to aiding coordination, MOUs could address how and when states will be notified of incidents, and how the Incident Command System would be organized in response to an accident.

Route Infrastructure Integrity:

The requirements for track inspections should be augmented. The FRA should be able to explain how it will determine the appropriate interval for follow up inspections, and the criteria for requiring additional inspections.

Highway-Rail Grade Crossing Safety:

GC-1 requires FRA to provide grade-crossing information to states, but treats it as a one-time, one-way event. The requirement should be reworded to ensure FRA follows-up with the states to ensure their concerns are addressed.

Security:

S-1 should include DOE in the example list of law enforcement agencies that FRA will coordinate with on security issues.

S-2 should discuss offeror, FRA, carrier, and state/tribal responsibilities for ensuring security requirements at safe havens are met.

Miscellaneous:

MIS-1 should emphasize and encourage a primary role for FRA-certified state inspectors, where available. FRA-certified state inspectors should be used to carry out SCOP tasks whenever possible, rather than just observing and assisting FRA personnel as they perform the tasks.

MS-3 provides for the creation of a “SCOP Team” including representatives from FRA, the offeror, and the railroads, to coordinate shipment activities. This team should include state and tribal representation as well, to ensure that states and tribes remain in the information loop. While it may not be feasible to have each corridor state and tribe represented on the SCOP Team, representation could probably be coordinated through the State Regional Groups and similar entities.