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The Council of
State Governments
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Dear Ms. Bubar:

At the June 2003 meeting of the Council of State Governments' (CSG) Midwestern Radioactive Materials Transportation Committee, you asked for the Midwestern states' input on the subject of security for the U.S. Department of Energy's (DOE) spent nuclear fuel shipments. On behalf of the committee, I am writing to respond to your request and to provide some initial feedback on your recent letter to the regions on the subject of federal escorts. The following observations and suggestions are based on the Midwestern corridor states' experiences with the West Valley, Oak Ridge, and foreign research reactor (FRR) shipping campaigns.

Consistency is key.

I cannot emphasize enough the need for DOE to adopt a consistent approach to shipment security. Inconsistency leads to confusion, which in turn can easily compromise the security of the shipment. The states are most familiar with the Nuclear Regulatory Commission's (NRC) regulations on physical protection, as well as the interim compensatory measures (ICMs) and orders. When DOE's shipments do not adhere exactly to these federal regulations, it creates confusion.

DOE asserts that the U.S. Department of Transportation (DOT) has found DOE's orders to provide an "equivalent" level of safety as the NRC regulations. That may have been the case prior to the NRC issuing the ICMs. We understand that DOE has revised its orders and is seeking a new equivalency determination. We would appreciate it if DOE would provide us with a comparison of its revised physical protection plan and the NRC regulations. Such a comparison would be

useful in helping us to understand the differences between the requirements, and perhaps even the reasons behind those differences.

We greatly appreciate your decision to have DOE's shipments follow the ICMs while DOT reviews the Department's physical protection plan. Because the states do not have ready access to — or input into — the DOE orders, we would like DOE to consider making it a policy simply to follow the NRC regulations for physical protection of its spent fuel shipments, including NRC review of the routes.

DOE needs to strike a balance between planning cooperatively and ensuring homeland security.

We have previously expressed our concern to you that DOE's revision of the West Valley transportation plan was an example of how *not* to react to the post-9/11 need for enhanced security awareness. We believe DOE should continue to provide the states with detailed plans such as the one for the FRR shipments. We also believe DOE programs can use plans such as the FRR one without compromising shipment security. Toward that end, we commend DOE's Office of Environmental Management for its decision to issue guidance to the field offices on the subject of preparing transportation plans.

The EM guidance references several pieces of information that should appear only in the security plan. We believe DOE should make the shipment security plan available to the governors' designees as well as the identified security points of contact for the shipment. It is important for all parties involved in planning to have the same information in case something happens to the shipment. When different people within a state have different information, it can lead to the governor receiving conflicting information. Clearly, if that were to happen, it would not be in anyone's best interest.

Identifying the appropriate points of contact is critical.

We have previously corresponded with DOE on the matter of communicating with the appropriate points of contact. The states feel very strongly that, because the governors have designated points of contact for receiving safeguards information, DOE should share security-related information with these individuals. It does not make sense for the Department to communicate with law enforcement personnel but keep information from the governors' designees who will, after all, receive the advance notification, which contains safeguards information.

Furthermore, we believe the advance notification should go only to the governor's designee in each corridor state. Each state has its own internal process for disseminating information to those within the state that have a need to know. Admittedly, DOE has often made additional notifications at the request of state personnel. Nevertheless, we feel it is important for DOE and the states to come to an understanding that the existing process — namely, the one established

by NRC regulations — works well. Ensuring that the information makes it down to the appropriate individuals is an internal matter that the states must address individually.

Advance notifications must follow the existing federal requirements.

When DOE provides advance notification to the governors' designees, it is important that the notification be equivalent to what the states receive for private shipments, including a description of the shipment that meets the standard of 49 CFR 172.202 and 172.203(d). In our recent experience, DOE did not fully comply with its own Transportation Practices Manual (DOE 460.2-1) with regard to advance notification. For example, West Valley faxed its notifications with as little as four days notice. Although four days notice is allowed, the notifications must be delivered by messenger in that case, not by fax.

The states feel that the practice of disseminating sensitive shipment information via fax, e-mail, or voicemail is inconsistent with federal regulations and, therefore, does not provide an "equivalent" level of safety. At the very least, if DOE must distribute information via fax, the department should call the recipient first to confirm that someone will be waiting by the fax machine to pick up the transmission. We believe DOE and its contractors should never use e-mail or voicemail messages to relay detailed shipment information.

DOE and the states should examine more secure ways to communicate safeguards information.

Our experience this past year is that it is very beneficial to hold conference calls prior to the shipments to discuss the plans. Nevertheless, we are concerned about the fact that we cannot discuss the date and time of the shipment in such a forum. On one hand, not being specific with regard to the date can lead to confusion, if everyone has a different idea of what we mean when we refer to "the date." On the other hand, providing too many hints about the shipping date increases the chances of that information being compromised.

We suggest that DOE work with the states to identify technology-based solutions to this dilemma. Although using STU III phones might be an option, it could also be both costly and cumbersome to do so. An alternative might be the use of encrypted radio or a secure website (e.g., TRANSCOM) to which the states would have access. We understand that DOE is in the process of identifying a secure method of posting the Prospective Shipments Module on the Internet. Perhaps a more detailed shipment schedule could also be made available to those with a need to know through such a secure website.

We feel it is also important for DOE to reexamine communications from an operations standpoint. We have observed that the drivers and escorts often use cell phones and CBs to communicate with one another. Unless these are special secure systems, it is inappropriate to use them during shipment to communicate information that could be deemed sensitive.

The states will continue to escort shipments of spent nuclear fuel.

The subject of escorting figured prominently in the discussion on our recent conference call regarding the spent fuel shipments. CSG-MW is surveying the Midwestern states to update our information on which states escort spent fuel shipments, why they do it, and how the costs are covered. Lisa Sattler will forward that information to you after the survey is complete.

The states provide law enforcement escorts in order to provide a physical presence, to be on the scene immediately in the event of an accident or intervention, and to provide a direct communication link to the local and state emergency response network. Some states even train their escorts in emergency response procedures. If DOE were to provide its own escort, the states would still exercise their right to escort the shipment. The states view these escorts as facilitating all the logistical planning that goes into the shipment. Because state escorts will continue to accompany DOE's shipments, the department might wish to consider identifying in its transportation plans exactly what the expectations or roles and responsibilities are for the state escorts.

On the subject of private escorts, many states in the Midwest do allow them, but the escorts are not accorded the privileges or authority of law enforcement officers.

Some states use fees to recoup the costs of escorting. In every case, however, the Midwestern states use these fees to cover more than just escorting. In other words, the state will charge the fee whether or not DOE provides a federal or private escort.

I appreciate your letter explaining the process and rationale behind DOE's use of federal couriers to escort its spent fuel shipments this year. There are a few points in your letter that warrant further discussion between the states and DOE. First, you correctly observe that, for states that charge shipments fees, DOE will not be billed for state escorts. For this year's spent fuel shipments, the corridor states with fees are Illinois, Iowa, and Nebraska. However, two states on the potential routes — Missouri and Kansas — do not charge fees. Both states would escort the spent fuel shipments, and both states would require reimbursement for the costs of escorting.

Second, it is not clear whether all states will accept the proposal that federal couriers have incident command in the event of a "threat to security." We certainly understand the need for such an arrangement when the couriers are escorting weapons shipments. For spent fuel shipments, however, it has always been the case that state or local law enforcement would respond to threats or acts of aggression against the shipment. If the physical security of the load were in jeopardy, law enforcement would take appropriate measures to secure the shipment or escort it to an appropriate location. In a case involving terrorism or criminal activity, law

enforcement would direct resources to assist the FBI or other federal agencies involved with the shipment and with the response. State and local law enforcement have played this role with previous shipments, so it is not clear why DOE is proposing a change at this time.

Third, your letter states, "the couriers will identify themselves to local law enforcement, as appropriate." I believe you mean to say "state or local law enforcement." Also, I believe it is *always* appropriate for the couriers to identify themselves.

I appreciate the opportunity to relay the states' thoughts to you. We would appreciate the chance to discuss these matters with you at our meeting on December 9-11 in Chicago. We will also have a chance to address the issue of federal escorts during our upcoming conference call on DOE's spent fuel shipments.

Please do not hesitate to contact either Ms. Sattler (920.803.9976) or me (217.786.6365) if you have any questions or comments. Thank you for your support of the committee and the Midwestern cooperative agreement.

Sincerely,



Timothy A. Runyon
Division of Nuclear Safety,
Illinois Emergency Management Agency, and
Chair, CSG Midwestern Radioactive Materials
Transportation Committee

cc: Members of the CSG Midwestern Radioactive Materials Transportation Committee
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