

TRANSPORTATION ISSUES AND THE  
NUCLEAR WASTE POLICY ACT

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ABSTRACT

The transportation of nuclear waste to a repository will impact more states than any other aspect of the implementation of the Nuclear Waste Policy Act (NWPA). There are four transportation topics of great concern to the states regarding the high-level waste repository. They are routing, inspection and enforcement, emergency response, and liability vis-à-vis the Price-Anderson Act.

INTRODUCTION

There are 7,461 state legislators. They all have an interest in the nuclear waste program insofar as they may some day be affected by the Price-Anderson Act. Several hundred legislators are personally currently interested in the program because their states are being considered as potential hosts for a repository. This paper will review four of the issues that are of great concern to legislators.

ROUTING

As you all no doubt know, the U.S. Department of Transportation's routing rule, HM-164, now codified in 49CFR 177.825, specifies that radioactive materials shipments such as spent fuel must use the interstate highway system unless the state that it is traveling through has specified an alternate route. If the state has designated another route, it must be able to prove the route provides equal or greater safety compared to the interstate highway and without shifting the danger from one community to another. Obviously it is safer for New York for spent fuel to go through Connecticut rather than New York City, and obviously it is also safer for Connecticut to have shipments to go through New York City. That, however, is not the point from the federal perspective. The routing rule is seeking greater safety in broad terms, for the country as a whole.

But the New York City-Connecticut conflict does foreshadow the difficulty that may come in trying to assure that the safest highway routes will be utilized if there is in fact any highway transportation of spent fuel. The Department of Energy has stated that it is bound by the DOT rule and will travel on the interstate highways unless given other directives.

The ball seems to be in the states' court. If an interstate route has local hazardous conditions and a better alternative exists, all a state has to do is designate the alternative as the route to be used. Federal regulation requires that then be the route.

The federal government is interested in greater safety and makes no pretense about being omniscient concerning local conditions. The problem is that the federal government may be leaving some states to do what politically cannot be done. There is no formal

mechanism to resolve conflicts of self-interest within the states, and it may be that there can be none and should be none.

The mayor of a city in a northeastern state offered a real life example of a dilemma. He discovered that shipments of spent fuel were going through his jurisdiction. There was indeed a better and safer alternative. He appealed to the state to designate the alternative. In the examination of the options, it came to the attention of some of the members of the legislature that the best option went through their respective districts. They put pressure on to maintain the application of the federal rule, i.e., the interstate highway as the preferred route.

The obvious question is then, would states prefer to have the federal government dictate all the routes for spent fuel shipments. The answer is easy. No. The first obvious question gets followed by another obvious question. How do we get out of the impasse? The answer to that one is not so easy.

It is simple to say that if states want rights, they must exercise responsibility. And possibly in the issue of routing, many states will not have problems simply because the number of alternatives is limited in terms of appropriate highways. And of course if the Department of Energy adheres to its plan to ship as much spent fuel as possible by train, the possibility of conflict is further diminished.

There are two sections of the NWPA that offer a possible resolution. In Section 117(c)(11), Congress endorses negotiation and arbitration as an appropriate procedure for handling state and/or tribal objections regarding the development of a facility in the state. In its own Mission Plan of June 1985, the Department of Energy calls for formal procedures for conflict resolution regarding consultation and cooperation (C & C) agreements.

In Section 302(d)(4) of the NWPA, regarding the Nuclear Waste Fund, the Department of Energy Secretary is permitted to make expenditures from the Waste Fund for activities under Titles I and II to include "any costs that may be incurred ... in connection with transportation." Neither Title I or II addresses the needs of corridor states involved in transportation. But perhaps the principle is there. If an impasse

occurs in a state, the Department of Energy might somewhere find a construction of the Act that would allow the funding of negotiation, arbitration, or a consensus building process that would permit the state to at least deal with the issue of the safest alternative route in a politically acceptable fashion.

#### INSPECTION AND ENFORCEMENT

A second issue important for the states is that of inspection of shipments and enforcement of federal regulations. Inspection costs vary. Illinois charges \$1,000/highway cask and \$2,000/rail cask to inspect and monitor the shipment of spent fuel. The cost for the Illinois Department of Nuclear Safety is close to \$1,000 for trucks, and that does not include the expense of other involved state personnel. Illinois has estimated that no more than five percent of the spent fuel shipments are inspected enroute (Supplemental Comments by Illinois Department of Nuclear Safety re WEPCO petition for an inconsistency ruling).

The issues that need to be resolved are:

(1) Should spent fuel shipments by train or truck be inspected enroute? (2) If so, at what point--every 1,000 miles, every state border? (3) How can the inspections be funded? (4) Would an organization such as the Commercial Vehicle Safety Alliance (CVSA) be able to provide the minimum standards and, through state participation, the trained personnel to conduct inspections? If shipments go from the East to the West, point of origin and point of arrival inspections are likely to be unsatisfactory to the states in the middle. But in the East, inspection at every state border might be overkill.

#### EMERGENCY RESPONSE

A third issue is that of emergency response to a spent fuel transportation accident. The engineers' answer to the issue is usually, "So? We'd get a crane and pick it up." And this is probably what would happen. But there is quite a large number of people who have never heard of the law of universe-square. They do know that the federal standards for permissible exposure to hazardous materials in general tend to be revised toward lower limits, not upper. They worry about any exposure at any distance.

These same people may also truly believe that spent fuel isn't going to blow up like a bomb. The problem is that in their "what if" scenarios, they remember bridges and buildings that have collapsed after passing inspection. The inarticulated fear is this: if all the engineers are wrong, how wrong can they be. This may be the layman's version of the worst case accident hypothesis.

The problem is in part one of perception. The fact that the federal government has response teams ready to move, which can be anywhere in a few short hours, is not reassuring to the highway patrolman or fireman who has gotten to the accident scene in a few

minutes and then finds he really doesn't know what to do or what to tell people. The state and local personnel need to be assured that some responsible party can arrive quickly (not in hours) to make an accurate assessment of the situation.

The engineers, who just want to get on with the job, will find their job easier if they will spend some time in finding a way to communicate with the non-engineers. It may be that money has to be spent for precautions that are technically unnecessary. It may be that some people will have to be trained to respond to the accident that will never happen. Non-engineers do not think of accident probabilities the way engineers do. They just know that in the world at large, in spite of checks and safeguards, accidents do happen.

#### LIABILITY

The last major issue to be addressed in this paper is liability for an accident. The National Conference of State Legislatures has formed a legislative high-level waste working group, and part of that group met recently in Nevada. After a great deal of "in the hall" discussion, it appeared that a number of people were using different words to describe the same concept. The phrases usually used are "total liability", "complete liability", and "unlimited liability." At the risk of oversimplifying, it appears that at least one key issue is to find a mechanism that will ensure no one suffers real losses or damages if an accident's claims exceed x dollars, and if Congress chooses not to act or acts slowly.

The pros and cons of the various aspects of the Price-Anderson Act get to be rather esoteric to many. Hundreds of millions of dollars don't register with most people. The bottom line for most is this: "Are there any conceivable circumstances that involve a spent fuel accident and the Price-Anderson Act that would mean I would not be able to recover for real damages." The answer at present is yes.

State officials are elected to protect the health and welfare of their constituents; and for many of them, it is this reliance on Congress to cover excess damages that seems to be a fatal flaw.

This is not to gloss over the other concerns. But many have the following line of reasoning:

- o the repository program is a federal program;
- o the federal government says it is safe;
- o the federal government ought to put its money where its mouth is and be willing to guarantee it will insure all of its citizens against all real losses if it is proven to be wrong.