

## BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Draft Environmental Impact Statement )  
 for a Geologic Repository for the )  
 Disposal of Spent Nuclear Fuel and ) RECEIVED  
 High-Level Radioactive Waste at )  
 Yucca Mountain, Nye County, Nevada. ) JAN 28 2000

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**Comments of Alfred P. Agler, Director  
 Transportation Department, Public Utilities Commission of Ohio**

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1... On behalf of the Public Utilities Commission of Ohio, I would like to thank the Department of Energy for providing this opportunity to address the Draft Environmental Impact Statement and its potential impact upon the public and the environment in this state. At the outset of our comments, I would like to clearly state our position with respect to the Draft EIS. The Commission believes that, if these shipments are to be made, the shipments must be made as *safely* as possible.

The many uncertainties and assumptions underlie the Draft Environmental Impact Statement, assumptions which may, or may not, prove to be true. Obviously, these uncertainties and assumptions are inherent for a "Draft" EIS; however, these uncertainties make commenting on the Draft EIS, and planning for the eventual transportation, extremely difficult. For example, the timetable for transporting the radioactive wastes -- an essential component of any local or state planning efforts -- is subject to change due to many technical, legal and political factors. Further, the Draft EIS includes *potential* routes illustrating how the wastes may be moved, but the final routes are uncertain; in fact, the final decision on the mode of transportation -- whether the wastes will be moved by rail, by highway or some combination of both -- has not been made.

Nonetheless, because this is a state which lies at the crossroads of several interstate highways and numerous rail lines, we must anticipate that, once a repository site has been designated, these radioactive materials will be transported

...1 through Ohio. The goal of the Commission is to do our part to ensure that this transportation is accomplished as safely as possible and to ensure that our local communities are prepared for any problems which may occur during transportation.

In preparing for the shipments outlined by the Draft EIS, the Commission has three primary responsibilities: to ensure that the shipments are transported in compliance with the applicable Federal motor carrier, rail and hazardous material safety standards; to ensure that these shipments use routes which minimize potential risk to the public and the environment; and to provide funds and technical assistance to local communities to ensure that local emergency response personnel are properly trained for any contingencies during transportation.

2 The Public Utilities Commission regulates the safety of transportation of radioactive and other hazardous materials on the state's highways and railways. The Commission has adopted the U.S. Department of Transportation safety regulations for the transportation of radioactive and other hazardous materials<sup>i</sup> and employs hazardous materials specialists who have received extensive training from the U.S. Department of Transportation in inspecting radioactive shipments. In the event that safety rules violations are discovered during highway inspections, the Commission has the authority to assess civil penalties of up to ten thousand dollars per day per violation.<sup>ii</sup> The civil penalties collected by the Commission are used to fund grants to local communities throughout Ohio for emergency response planning and training, as well as to partially fund the Cleveland State University Center for HazMat Education.<sup>iii</sup>

3... Moreover, the Commission requires every motor carrier of radioactive and hazardous materials to register with and obtain a Uniform Permit from the Commission.<sup>iv</sup> This program helps to ensure that every carrier meets basic, minimum safety requirements before transporting radioactive or other hazardous materials in this state.

In addition, the Commission employs rail inspectors who are certified by the Federal Rail Administration in specialties affecting rail safety, such as equipment, track,

operating practices and hazardous materials. Under an agreement between the Commission and the FRA, the Commission rail inspectors will conduct inspections of rail track and equipment and forward any violations on the FRA for enforcement action.

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The Commission has been designated by the Governor as the state routing agency for the *highway* transportation of radioactive materials and other hazardous materials, but we cannot prevent the transportation of these radioactive materials through this state. Any such effort would be viewed as interfering with interstate commerce and would be clearly unconstitutional. However, if the materials are shipped by highway, the Commission does have the authority to require that such transportation take place on routes which minimize the potential radiological risk to the public and the environment.

Please note that the Commission's authority under Federal law is limited to *highway* routing of radioactive materials; the Commission has no authority to designate routes for shipment by *rail*. If the Department of Energy chooses to move these shipments by rail, the Department will bear *sole* responsibility for selecting which rail lines will be used to transport these shipments. However, the Commission will use its knowledge of the rail lines in the State of Ohio to work with the Department of Energy to select the most appropriate rail lines for these shipments. Moreover, the Commission staff will conduct inspections to monitor the safety of the track, equipment and the radioactive materials.

Federal regulations require that certain "highway route controlled quantities" of radioactive materials be transported only on "preferred routes."<sup>v</sup> In the event that a state has not designated an alternative route, the "preferred routes" are considered to be Interstate highway system routes; bypasses and beltways, if available, are required to be used around densely populated urban areas.<sup>vi</sup> The state routing agency, however, can designate routes to be used in addition to, or instead of, interstate highway system as the "preferred routes."<sup>vii</sup> The Commission has not designated any such "alternative routes" at this time.

However, the Commission is examining the possibility of preferred routes for these shipments of radioactive wastes. The Commission has provided a grant of \$98,000 to The Ohio State University to research the risk factors involved in routing radioactive materials on the state's highways. This research will provide the Commission with the data necessary to determine which routes would minimize potential radiological risk to the public and the environment.

...3 Before the Commission will designate any such routes, the Commission will be guided by two principles. First, the Commission will only designate routes at the behest of, and where there is a full participation among, the local communities. The Commission strongly believes that recommendations for routing radioactive and other hazardous materials should come from the local communities affected by the transportation. The Commission should not impose routing requirements unless: there is full participation among the local communities as to the proper route; and the proposed route minimizes potential radiological risk to the public and the environment.

Secondly, the Commission will not designate routes for radioactive and other hazardous materials which serve to export the risk to other communities or states. Decisions by Federal courts and agencies make it clear that routing designations which serve to export the risk to other communities are preempted by Federal law. Therefore, local communities which are potentially affected by any routing recommendation must be part of the process which proposes the routing recommendation. Likewise, any proposed routing recommendations must not serve to export the risk to our neighboring states.

At the appropriate time, when there is greater certainty as to the timing, volume and routes of the shipments, the Commission staff will be available to provide technical assistance to local communities which desire to prepare routing recommendations. Moreover, the Commission will provide grants through the Hazardous Materials Grant Program to local communities to fund the costs of the planning and study necessary for routing recommendations.

...3 Finally, it is important to bear in mind one additional requirement under Federal law. Any radioactive materials routing designation made by the Commission on behalf of the State of Ohio, may have an impact upon, and thus, under Federal law, will require the consent of, any state affected by such a designation. The shipments discussed in the Draft Environmental Impact Statement predominately would be through shipments, shipments which neither begin in nor end in this state; therefore, any action by the Commission will require close coordination with our neighboring states of Pennsylvania, West Virginia, Kentucky, Michigan and Indiana.

4 Finally, it is the responsibility of the Commission to provide funding to local communities to ensure that local emergency response personnel are properly trained for any contingency related to the transportation of the radioactive wastes. The Commission will not be the sole funding source for such planning and training funds; it is our understanding and expectation that Federal funds will be available for local communities along the routes ultimately selected for the transportation of the radioactive wastes. However, the Commission Hazardous Materials Grant Program is available to supplement the Federal funds, and the Commission intends to ensure that no communities training needs are not met due to a lack of funding.

The Hazardous Materials Grant Program is funded by civil penalties collected for violations by motor carriers and shippers of the hazardous materials safety rules. The Ohio General Assembly has provided that four hundred thousand dollars per year in civil penalties collected by the Commission be directed into the fund. In addition, civil penalties collected are used to partially fund the Cleveland State Center for HazMat Education, which serves as a potential source of the training for local communities. The grant of \$98,000 from the Commission to The Ohio State University for risk factor analysis was an example of the use of the Grant Program. The research funded by this grant will provide the data necessary to ensure that any routing designations minimize the potential radiological risk to the public and the environment.

5... In conclusion, I would like to stress the importance of communication between the Department of Energy and the States. The DOE needs to ensure that critical

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information, such as proposed route selection, shipment timetables, availability of funding for emergency response capabilities and notices of public hearings are given to the States in a timely fashion. The States and the DOE can be partners in ensuring that the risks of these radioactive wastes to the public and the environment are minimized during transportation. Given the enormity of the task before us, we should be jointly directing our resources on behalf of the citizens of this state and every state.  

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<sup>i</sup> Ohio Admin. Code § 4901:2-5-02 (1999).

<sup>ii</sup> Ohio Rev. Code Ann. § 4905.83(A) (Baldwin's 1995).

<sup>iii</sup> Ohio Rev. Code Ann. § 4905.80(E).

<sup>iv</sup> Ohio Admin. Code § 4901:2-6-14; Ohio Rev. Code Ann. § 4905.80(B)(1).

<sup>v</sup> 49 C.F.R. § 397.101(b).

<sup>vi</sup> 49 C.F.R. § 397.101(b)(2).

<sup>vii</sup> 49 C.F.R. § 397.103.