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Dear Mr. Sproat:

On behalf of the Midwestern states, we are writing to submit comments on the Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS-0250F-S1D). The comments reflect the collective input of the member states of The Council of State Governments' Midwestern Radioactive Waste Transportation Committee, which is supported by a cooperative agreement with OCRWM. The committee consists of members appointed by the governors and legislative leaders in the 12 Midwestern states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

If you have any questions about the attached comments, please contact Ms. Lisa Janairo of The Council of State Governments' Midwestern Office at 920-458-5910.

Sincerely,

Jane Beetem, Co-Chair
CSG Midwestern Radioactive
Waste Transportation Committee

Kevin Leuer, Co-Chair
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Enclosure

**The Council of State Governments
Midwestern Radioactive Materials Transportation Committee**

**Comments on OCRWM's Draft Repository
Supplemental Environmental Impact Statement (SEIS)
(DOE/EIS-0250F-S1D)**

General comments:

- 1 **Cooperative planning:** The Midwest appreciates DOE's commitment to "work with states, local government officials, federally recognized American Indian tribes, utilities, the transportation industry, and other interested parties in a cooperative manner to develop the transportation system" (p. H-2).]
- 2 **High-level radioactive waste versus spent fuel:** The Midwestern states would like DOE to clarify whether all measures that apply to spent fuel shipments would likewise apply to high-level waste shipments. The SEIS should explain any differences between the requirements or procedures DOE will follow for shipments of these different materials.]
- 3 **Naval versus other spent fuel shipments:** As with high-level radioactive waste, the states seek clarification on whether all measures that apply to commercial spent fuel shipments will also apply to Naval spent fuel. If Naval spent fuel will be subject to different requirements, then DOE needs to make that clear in the SEIS and other documents that address transportation.]
- 4 **TAD concept:** DOE sets an ambitious goal of shipping 90 percent of the spent fuel reactor sites in TADs. The sensitivity analysis considers a similarly high percentage (75%). What kind of incentive will DOE give the utilities to entice them to put so much of their spent fuel in TADs? DOE should assess the impacts of other levels of TAD utilization – such as 50% or even 10%. Also, will decommissioned sites be able to load TADs?

DOE assumes utilities will load the TADs onsite. Does loading the TADs at the power plants decrease worker exposure compared to loading them at the repository, or does it just shift the exposure to a different set of workers?]

Specific comments:

- 5 **Emergency response:** The discussion of "Unified Command" in section H.5.2 (p. H-17) should include an explicit statement that a local official would be the incident commander in most cases. The draft SEIS makes this point earlier on page H-16, but it bears repeating.

Also, in section H.8, DOE mentions the key role of emergency response capabilities in assuring shipment security: "The key elements of a secure transportation program include physical security systems, information security, materials control and accounting, personnel security, security program management, and emergency response capabilities" (H-19). Because emergency response is such an important component of shipment security, DOE must make

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sure to share detailed security-related information with appropriate emergency management points of contacts within the states.]

6 [Section H.6.2 also makes mention of the National Response Plan and "Incidents of National Significance." The Department of Homeland Security is in the process of replacing the "National Response Plan" with the "National Response Framework". The "National Response Framework" document is in a pre-decisional and deliberative draft dated July 2007. According to DHS, "This Framework, upon full implementation, supersedes the National Response Plan (NRP). The NRP was understood by many readers to suggest that deployment of Federal assistance or interagency incident management coordination would only follow declaration or an "Incident of National Significance" by the DHS Secretary of a formal emergency or disaster declaration by the President. In practice, many incidents call for an earlier and more effective start by DHS in coordinating and supporting response, either to forestall the incident from becoming worse or to surge more aggressively to contain it. This document therefore has eliminated "Incident of National Significance" declarations from the Framework's formal vocabulary and operational plan." Section H.6.2 should be updated accordingly.]

7 [Inspections: On page H-6, following a reference to the CVSA inspection procedures, the SEIS says, "Under these procedures, each state through which a shipment passed would inspect each shipment to the repository, and a shipment would not begin or continue until inspectors determined that the vehicle and its cargo were free of defects." This is wrong and needs to be corrected

In section H.4.9 (p. H-12), there is no mention of point of origin inspections to be done by the states. DOE's Radioactive Material Transportation Practices Manual specifies that shipments will be made available to the states for such inspections. For truck shipments, in fact, only a duly certified state inspector can apply the CVSA Level VI sticker. DOE's analysis should therefore assume that each shipment will be subject to a point of origin inspection conducted by a state inspector.

If DOE's analysis did not consider state inspections at the point of origin, then it is possible the worker exposure values are seriously underestimated. As DOE notes on p. 6-16, "escorts and inspectors would receive the highest estimated radiation doses." If DOE's analysis considered the exposure only to its own inspectors at the point of origin, then the department should redo the analysis to double the number of inspectors and their exposure at the point of origin.

Also on p. H-12, DOE says it will inspect rail shipments in accordance with, among other things, the FRA's Safety Compliance Oversight Plan (SCOP). The SCOP's references to pre-shipment inspections address the responsibilities of FRA or FRA-certified state inspectors. None of the inspection provisions are to be performed by the shipper. It could therefore be misleading for the SEIS to say that DOE will inspect rail shipments "in accordance with" the SCOP (p. H-12).

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Because the shipper has very little role in inspecting rail shipments, the Midwestern states urge DOE to adopt and support the development of rail inspection procedures as recommended by the Rail Topic Group of the Transportation External Coordination Working Group (TEC/WG). The states that participate in the FRA's State Safety Participation Program are gearing up to pilot test these procedures. Because of its strong interest in ensuring safe shipments of spent fuel and high-level waste, DOE should support the efforts of the states and the topic group members to institutionalize these uniform procedures.

Related to truck inspections, the reference to CVSA's "enhanced standards" should be changed to "Level VI inspection procedures" (p. H-12). Also in this section, it says that "under federal regulations states and tribes could order additional inspections when shipments entered their respective jurisdictions." A subsequent reference to "crew change locations" makes it appear that the states may only conduct en route inspections of rail shipments. DOE should clarify that en route inspections could be required for truck shipments, too. DOE should also clarify that, while it will strive to arrange en route inspections of rail shipments at crew change locations, it may not always be possible to do so. Other stops for en route inspections may therefore be necessary.]

8 [NRC regulations: The SEIS contains numerous references to NRC safeguards and security regulations (e.g., section 11.2.4.5 on p. 11-9). The document also contains multiple variations on this theme: "DOE carefully follows U.S. Department of Transportation and NRC transportation rules now and will follow or exceed any others that might be established in the future, whether by Congress, the department of transportation, or NRC" (9-7, 11-8, 11-9, 11-10, H-2, elsewhere). These statements create the impression that DOE is obligated to follow all NRC regulations on safeguards and security. While the Midwest feels strongly that DOE *should* be obligated to follow these regulations, such is unfortunately not the case. To avoid confusing readers on this issue, DOE should make it clear that the NWPA requires the department to abide by the NRC's requirement for advance notification. DOE should openly acknowledge, however, that there is no enforcement mechanism for ensuring that DOE follows all other NRC regulations on shipment safeguards and security.

Also, section H.8 on p. H-19 refers to transportation safeguards and security being "among the highest DOE priorities as it plans for shipments...to Yucca Mountain." The section goes on to say that "DOE would build the security program for the shipments on the successful security program it developed and has successfully used in past decades for shipments of spent nuclear fuel to DOE facilities from foreign and domestic reactors." Section H.10.1 on p. H-24 contains the exact same statements. What these sections fail to mention is that most of the shipments "in the past decades" were conducted before September 11, 2001. DOE needs to make sure it not only builds upon its past successes but also incorporates best practices from the post-9/11 era.

Page H-2 contains this statement: "NRC rules do not require notification of local authorities, which is the responsibility of the individual state governments." This quote makes it sound like the states are supposed to notify local government officials, which is not the case. The sentence

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should be revised to say "NRC rules do not require notification of local authorities, which is left to the discretion of the individual state governments." Also, on p. H-4, the SEIS states, "As required by Section 180 of the NWPA, all shipments to a repository would comply with NRC regulations on advance notification of state and local governments." It would be a good idea to clarify that, despite the wording used in the NWPA, the NRC does not require notification of local governments.

In section H.4.8 on p. H-12, the SEIS says, "The NRC requires advance notice, en route status, and other pertinent shipping information on DOE shipments." This sentence is confusing. DOE needs to elaborate on this thought to indicate of whom the NRC requires such information, and who the intended recipients are.]

9 [Rail transport: Why is DOE limiting rail shipments of commercial spent fuel to three cars per train, whereas DOE spent fuel and high-level waste will travel in trains containing five cars (p. G-35)? Also, it appears from the analysis that each train will consist of casks from only one site – is that truly DOE's plan? Or is DOE using this configuration in its analysis to bound the potential impacts? If DOE is, indeed, planning to limit its trains to three or five casks per train, what is the reason? If it is possible or practical to ship more than three casks per train, then DOE should consider doing so to further reduce the total number of shipments and, thereby, the impacts of the transportation program. If DOE does plan to combine casks from different sites on one train, where will the marshalling yards be?]

10 [Routing: The Midwestern states were very concerned to see that, as with the 2002 FEIS, the draft SEIS fails to address regional equity and instead would have the vast majority of shipments from Southern reactors passing through the Midwest – principally through Illinois and Missouri. The SEIS explains the constraints DOE used when generating the routes in TRAGIS. The states would like to know what specific constraint causes TRAGIS to "select" these Midwestern-bound routes instead of heading straight west. We doubt there is any efficiency to be gained, for example, by having shipments from the South head due north for hundreds of miles into Ohio, only to wind up heading south again to get to Yucca Mountain.

While it is understandable for DOE to want to "give priority to the use of rail lines that ... are the best maintained and have the highest quality track," can there be any contribution to safety or security by giving "priority to originating railroads" (p. 6-4)? If not, then DOE should refrain from following this practice. Also, did DOE give any consideration of reducing worker exposure by choosing routes that would minimize en route inspections? Do the estimated impacts even consider the worker exposure in states like Illinois that require en route inspections of all shipments? Do these required inspections have any impact on the transit times and, therefore, the selection of particular routes? Also, the SEIS indicates that TRAGIS attempts to "identify the shortest" route (p. G-5) – shortest by what measure? Does that mean distance or time? If time, does it consider the stop in Illinois and other states for en route inspections?

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With regard to truck routes, on p. G-6, the SEIS explains that, in TRAGIS, the "default rules yield highway routes that commercial motor carriers of freight would be expected to use." What exactly does this mean?

In section H.4.2, the SEIS says "DOE is performing and would perform the [route identification] work through a Topic Group of the Transportation External Coordination Working Group, which would seek broader public input and collect comments on routing criteria and the process for development of a set of routes" (H-10). It is not the Topic Group's plan or its responsibility to seek public input. DOE should correct this statement.]

11 [Section 180(c): The draft SEIS includes some inaccurate statements and errors that should be corrected. For example, on p. 9-7, Section 9.3.1 states that "Section 180(c) of the NWPA allows DOE to provide technical assistance and funds to states for training local government and American Indian tribal public safety officials" (emphasis added). First, the NWPA requires DOE to provide this assistance. Second, DOE must provide this assistance and funding to both states and tribes for training local officials – that is, the states will not be training the tribal officials. In addition, on pages H-18 and H-33, there are references to "safe routing transportation" instead of "safe, routine transportation." DOE should correct these references and any other instances where this language appears.

In addition, section 9.3.1 mentions a "specific management action to mitigate impacts" in connection with the Section 180(c) training assistance, namely, "DOE could provide such training." While that may be true, the current plan is for DOE to provide assistance to states and tribes, with the latter parties being responsible for training. Rather than duplicate these efforts, a better "management action to mitigate impacts" would be to fund the development of transportation safety programs within the states and tribes, similar to what the DOE Carlsbad Field Office has done to promote the safety of WIPP shipments. The states have unanimously requested that DOE work with them to develop an approach for funding this type of activity separate from Section 180(c). DOE's draft SEIS misses the opportunity to take impact mitigation one step further by assisting in the creation or maintenance of such state- and tribal-level programs.

In section H.7 (H-18 and H-19), the draft SEIS mentions that the evaluation of Section 180(c) policy "considered programs the Department of Homeland Security and the Federal Emergency Management Agency developed and relevant DOE funding and emergency response training efforts such as the Waste Isolation Pilot Plant and Foreign Research Reactor transportation programs." The text should also mention the DOT Hazardous Materials Emergency Preparedness grant program, since this program is the basis for the recommended allocation formula in DOE's most recent *Federal Register* notice on Section 180(c).]

12 [Security: The SEIS needs more information on state escorts. Also, in section H.6.2 on p. H-17, the SEIS states that "[w]hile spent nuclear fuel and high-level radioactive waste shipments are in transit, state, local, and tribal governments could provide security for a radiological transportation incident that occurred on public lands." What does this statement mean? Will

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state and law enforcement officers be denied access to rail accidents that occur on privately owned tracks? DOE needs to clarify this statement.]

- 13 [Shipment numbers: Is it valid to assume that each train leaving a site will carry three fully loaded casks (G-34)? Although the states support this type of configuration as a way to reduce the total number of shipments and increase the efficiency of DOE's transportation system, it will be necessary for DOE to successfully renegotiate its contracts with the utilities in order to make this possible. The SEIS should assess the impacts of a more realistic system that is constrained by the requirements of the existing standard contracts and shipping queues. While it may be realistic to assume that utilities will fill each cask, the limitations of the current queuing system make it unrealistic to assume they will fill three casks in a given year.

With regard to Cook nuclear plant in Michigan, changing the mode from rail to truck triples the number of shipments that will affect the state (p. G-96). What is the reason for the change?

While the draft SEIS contains much information on the inventories of spent fuel and high-level waste, the total numbers of casks, shipments numbers, and potential state-specific impacts, it does so in a manner that is incomplete and confusing. Stakeholders need to be able to review the raw data that DOE used to derive its estimate of the impacts. For example, the Midwest would like to have tables showing the impacted population within each state, or to have an idea of which routes are attributable to which plants. Appendix G is supposed to contain the information to support DOE's estimates of the impacts, but this information is not presented in a way that makes it clear how DOE used the information to reach its conclusions.]

- 14 [Transportation operational contingencies: In section H.4.6, as in others that address topics in the DOE Transportation Practices Manual, DOE should reiterate its intent to follow the manual and make sure the text matches what is in the manual. I.e., for weather checks, the SEIS should either cite or paraphrase from the manual.

In this same section, the SEIS says the states and tribes would provide input on weather through TRANSCOM. This is not practical, therefore DOE should identify a different method (e.g., phone calls). This section also mentions that, "[i]f the shipment encountered unanticipated severe weather, the operators would contact this [transportation operations] center to coordinate routing to a safe stopping area if it became necessary to delay the shipment until conditions improved" (p. H-11). This section should mention state involvement in deciding to move a shipment into safe parking (again, consistent with the DOE manual).]

- 15 [Transportation planning: On page H-9, the SEIS says, "DOE is preparing a comprehensive national spent fuel transportation plan that accommodates stakeholder concerns to the extent practicable." Later in Section H.4.3, however, the SEIS mentions a "Transportation Operations Plan" and "individual site plans." What is the relationship, if any, between these three plans (or types of plans)?]

