

**THE COUNCIL OF STATE GOVERNMENTS**  
**Resolution on Nuclear Fuel Management and Disposal Act**

**Resolution Summary**

Since 1989 The Council of State Governments' Midwestern Office (CSG) has been working cooperatively with the U.S. Department of Energy (DOE) to plan for the safe, secure transportation of radioactive waste. Section 7 of the recently introduced Nuclear Fuel Management and Disposal Act (S.2589) threatens not only this partnership, but also safe, secure transportation of radioactive wastes to Yucca Mountain. The proposed legislation would exempt these shipments from existing federal regulation, limit states' abilities to assist in routine transport and to maintain emergency readiness capabilities, and may undermine public confidence in the safe, secure transport of radioactive wastes to Yucca Mountain. While the entire Act merits review, this resolution covers only the section on transportation (Section 7), which is the area of cooperation between CSG, the states and DOE.

Under the Nuclear Waste Policy Act (NWPA) of 1982, the U.S. Department of Energy (DOE) has the responsibility of transporting spent nuclear fuel and high level waste from commercial nuclear reactors to a federally owned deep geologic repository for permanent disposal. In the NWPA, DOE is to take title of all commercial spent nuclear fuel and high-level waste. In 2001, Congress approved Yucca Mountain, Nevada, as the site of the repository and transportation planning began again in earnest.

In a 2003 strategic plan, DOE committed to a cooperative planning process for the Yucca Mountain campaign and identified CSG as one of four State Regional Groups (SRGs) that would act as the anchors of stakeholder interaction. Since 1989, CSG has had a cooperative agreement with DOE which allows CSG to work with the Midwestern states on issues related to DOE's transport of radioactive waste. The forum for these discussions is the Midwestern Radioactive Materials Transportation Committee, which includes representatives from both the executive and legislative branches. Since inception, the Committee has worked closely with DOE to develop policies and procedures for the safe transportation of such materials through midwestern jurisdictions and the states have been pleased with the level of cooperation shown by the federal government.

Section 7 of the recently introduced Nuclear Fuel Management and Disposal Act threatens to greatly impede, if not eliminate that cooperation. The legislation was introduced with the intention of jump starting the Yucca Mountain campaign, which of late has run into some additional delays. While the Committee supports the timely resolution of the spent fuel storage situation, we cannot support the transportation sections of this bill.

Section 7 suggests that shipments to Yucca Mountain be handled in the same manner as classified shipments of weapons grade material. States are not party to security or

planning information regarding classified shipments. Given the number of shipments estimated for the Yucca Mountain campaign and the public awareness of the campaign, state participation in transportation planning is a necessity. We believe that the cooperative relationship that has been developed between DOE and the states will contribute to, rather than detract from, the timely resolution of transportation issues and concerns, and the expeditious movement of the spent fuel.

Section 7 also threatens to limit the states' abilities to prepare for both safe routine transportation and the possibility of an emergency situation. The states have the responsibility to ensure the welfare of their citizens and take appropriate actions to do so. State and local responders have the primary responsibility to respond to radioactive materials transportation emergencies within their jurisdictions.

Of particular concern to both the safe routine transportation and emergency response is the provision concerning the exemption of shipments from existing federal regulations. If passed, DOE would have the authority to exempt Yucca Mountain shipments from any of the provisions of the Hazardous Materials Transportation Authority Act (HMTAA), thus making DOE self-regulating. The regulations included in the HMTAA have been proven effective and therefore are acceptable to the states. Exemption from HMTAA not only runs counter to states and public preference, but also conflicts with a recently released National Academies of Science recommendation which states that spent fuel transportation is safe when conducted under existing regulations.

Another area of extreme concern is the provision allowing for the preemption of state laws. This provision would allow DOE to circumvent state authority on transportation safety. Two such state programs that would be undermined are inspections and escorting. These programs allow states to ensure the safety of their citizens and thus reinforce public confidence in hazardous materials transportation. If enacted, states and their citizens would lose the level of transportation safety assured by these state activities as well as valuable avenues of recourse for transportation concerns.

### **Resolution Management Directives**

Passage of this resolution will encourage Congress to seriously consider eliminating Section 7 of the Nuclear Fuel Management and Disposal Act (S.2589). It will allow states to continue working cooperatively with the U.S. Department of Energy to establish and maintain a safe system for the transportation of spent nuclear fuel and high-level waste to a national repository. It will uphold state regulations regarding shipment inspections, escorting and other security measures, and will ensure that states retain the ability to ensure the safety of their citizens. It also bolsters the public confidence in the current federal regulatory framework and the transportation of radioactive wastes. Continuing the partnership between states and the federal government is paramount to a successful and safe repository campaign.

It is expected that this resolution will be sent to the Governors of all 50 states, the Secretary of Energy and each member of the U.S. Congress.

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Since 1989 The Council of State Governments' Midwestern Office (CSG) has been working cooperatively with the U.S. Department of Energy (DOE) toward safe, secure transportation of radioactive waste. Section 7 of the recently introduced Nuclear Fuel Management and Disposal Act (S.2589) threatens not only this partnership, but also safe, secure transportation of radioactive waste to a geologic repository at Yucca Mountain, Nevada. The proposed legislation would exempt these shipments from existing federal regulation, limit states' abilities to assist in routine transport and to maintain emergency readiness capabilities, and may undermine public confidence in the safe, secure transport of radioactive waste.

**WHEREAS,** safe, secure transportation of radioactive materials to Yucca Mountain by DOE is vital to the success of the geologic repository;

**WHEREAS,** the states are responsible for ensuring the safety of their citizens during routine radioactive material transportation and state and local responders have primary responsibility for responding to an emergency involving radioactive materials transportation;

**WHEREAS,** the current federal regulatory framework has proven effective to ensure the safety of the public during the transportation of radioactive materials;

**WHEREAS,** state inspection and escorting programs are reasonable measures for states to ensure the safety of their citizens;

**WHEREAS,** state authority to conduct inspections and escort shipments enhances transportation safety and reinforces public confidence in the safety of radioactive materials transportation and a lack of public confidence can lead to delays and impediments in shipping efforts;

**WHEREAS,** cooperative planning between CSG and DOE is essential to a successful spent nuclear fuel transportation campaign;

**WHEREAS,** the states and DOE have a long and successful history of cooperative planning for radioactive materials transportation planning;

**WHEREAS,** Section 7 of the recently introduced Nuclear Fuel Management and Disposal Act (S.2589) threatens not only the partnership between CSG and DOE, but also safe, secure transportation of radioactive wastes to Yucca Mountain by exempting these shipments from existing federal regulation, limiting states' abilities to assist in routine transport and to maintain emergency readiness capabilities at the highest level, and

possibly undermining public confidence in the safe, secure transport of radioactive wastes to Yucca Mountain;

**BE IT NOW THEREFORE RESOLVED**, that The Council of State Governments (CSG) supports the removal of Section 7 from the Nuclear Fuel Management and Disposal Act; and

**BE IT FURTHER RESOLVED**, that copies of this resolution be provided the U.S. Secretary of Energy, each member of the U.S. Congress and to Governors of each state.

Adopted this 10<sup>th</sup> Day of May, 2006 at the  
CSG Spring National Committee and Task Force Meetings  
In White Sulphur Springs, West Virginia



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Governor Jim Douglas  
2006 CSG President



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Senate President Earl Ray Tomblin  
2006 CSG Chair