



WESTERN GOVERNORS' ASSOCIATION

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April 13, 2006

The Honorable Pete V. Domenici
Chairman
Senate Committee on Energy and
Natural Resources
364 Dirksen Senate Building
Washington, DC 20510

The Honorable Jeff Bingaman
Ranking Minority Member
Senate Committee on Energy and
Natural Resources
364 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Domenici and Senator Bingaman:

I write on behalf of Western Governors to express our concern over the Nuclear Fuel Management and Disposal Act recently introduced in the Senate as S.2589. We are concerned that the portions of the bill related to transportation could seriously undermine shipment safety and public confidence, key to successful repository operation.

In a series of resolutions dating back to the 1980s, and most recently re-adopted in June 2005, the Western Governors' Association has supported permanent, deep geologic disposal as the long-term national policy for managing and disposing of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act (NWPA). The Western Governors' objective has been and remains the safe and uneventful transport of nuclear waste. For years, the Western states have worked closely with the Department of Energy (DOE) to develop plans and policies to ensure the safe transportation of spent fuel and high-level waste. These efforts parallel the work we have done with DOE to develop and successfully implement plans and policies for other non-classified radioactive material shipments, such as those to the Waste Isolation Pilot Plant in New Mexico.

S.2589 represents a fundamental departure from this successful partnership between states and the Federal government. It proposes, in fact, an unwarranted change from the way nearly two decades of non-classified DOE shipping campaigns have been planned for and conducted. We note the following concerns in particular:

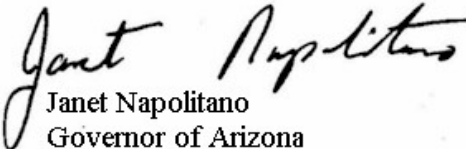
- **Exemption of Yucca Mountain shipments from existing Federal regulations** – S.2589 would allow the Secretary of Energy to exempt Yucca Mountain shipments from any or all provisions of the Hazardous Materials Transportation Authorization Act (HMTAA) and the Resource Conservation and Recovery Act (RCRA). The result of this would be to make DOE essentially self-regulated for these shipments. Bypassing these proven and widely accepted federal frameworks for transportation safety, particularly at the same time that significant shipment increases of these materials would heighten public concern, is inappropriate.

- **Preemption of state laws** – The bill also authorizes the Secretaries of Energy and Transportation to preempt any state, tribal or local law or regulation, even those permitted under the current regulatory framework. This would effectively eliminate the states’ ability to take reasonable measures to ensure the safety and confidence of our citizens, such as carrier and shipment inspections, routing restrictions in high-risk areas (such as roadways determined to be unsafe or heavily congested traffic areas), and shipment escorts. Repository shipments on this scale cannot be made in a vacuum under DOE self-regulation. They must instead be made safely as part of our existing transportation system and regulatory framework.
- **Impacts on other DOE shipping programs** – While the majority of S.2589 applies only to spent fuel and high-level waste shipments, Section 6(a) could be interpreted to exempt all DOE radioactive materials from RCRA if shipped in NRC-approved containers. This could potentially undermine the states’ ability to regulate and monitor WIPP shipments and other DOE radioactive material shipping campaigns. Given the widely acknowledged success of WIPP and other shipment programs, we cannot support making such a change.
- **Counter to NAS Recommendations** – The provisions cited above run counter to the recommendations of a recent National Academy of Sciences study which found that transportation of spent fuel could be done safely “when conducted in strict adherence to existing regulations.”

In closing, past DOE shipping campaigns have demonstrated that public acceptance of nuclear waste shipments is directly related to DOE’s cooperation with state and local governments. S.2589 takes us in the wrong direction. We urge you not to enact any legislation that diminishes the states’ role in ensuring safe transportation of these materials at the very time that the amount of shipments would dramatically increase.

Thank you for considering the important role of the Western states in these matters of national interest.

Sincerely,


Janet Napolitano
Governor of Arizona

cc: All members of the Senate Committee on Energy and Natural Resources
All members of the Western States Senate Coalition

Attachment: WGA Policy Resolution 2005-15, “*Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste.*”