



CALIFORNIA HIGHWAY PATROL
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July 2, 2003

Ms. Jessie H. Roberson
Assistant Secretary
U.S. Department of Energy
Office of Environmental Management
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Ms. Roberson:

Thank you for your reply to our letter of June 13 and subsequent discussions regarding California's concerns over the U.S. Department of Energy (DOE) diversion of increasing numbers and types of nuclear waste shipments on California State Route 127 and the potential precedent for future shipments to Yucca Mountain Repository. Although recent discussion led California representatives to believe that an acceptable resolution to these issues could be reached, we are disappointed that your July 1 letter falls far short of these expectations and reiterates your intention to begin shipments from the Nevada Test Site (NTS) to the Waste Isolation Pilot Plant (WIPP) over this route on July 10. DOE has not yet demonstrated that there is any urgency to these shipments and, as such, we urge you to postpone them until outstanding routing issues can be resolved with affected states.

DOE's plan to begin these shipments from NTS on July 10 through California to WIPP, without concurrence from the State of California, represents a serious departure from past DOE policies and could jeopardize the cooperative relationship that DOE has developed with Western Governors' Association (WGA) over the past 15 years in the WIPP Transport Safety Program. Proceeding with these shipments without California's concurrence would be the first time that DOE has overridden a state's objection to using a WIPP route. We are concerned that this could undermine the credibility of the program as well as states' confidence in DOE's commitment to following established WIPP transport protocols. Our more detailed comments follow below:

1. DOE is Diverting Increasing Numbers and Types of Nuclear Waste Shipments on California State Route 127 Although There Are Shorter and Better Alternatives.

California State Route 127 was formerly an old wagon wheel road to the Death Valley area that was paved over and is the primary access route to the Death Valley National Park used by approximately 1.25 million visitors annually. This remote, two-lane road was not engineered for large numbers of heavy trucks and has an extremely remote and limited emergency response capability. There is a better, more direct alternate route available – Nevada State Route 160 – which is shorter by 108 miles, has long stretches of four-lane roadway with shoulders for emergency pullovers, and has more timely emergency response capability in comparison with State Route 127.

In 2002, 390 shipments of low-level waste used California Hwy SR-127 and 572 shipments used the Nevada Hwy 160 route to the NTS. Therefore, historically DOE has been using both routes routinely for low-level waste shipments with some preference for using SR-160.

2. DOE Has Provided No Assurances that Its Increased Use of SR 127 Will Not Be Used as Justification for Its Use for Yucca Shipment Route Selection Nor Has DOE Provided Information on DOE's Planned Route Selection Process for Yucca Shipments.

California is concerned that steadily increasing use of State Route 127 for thousands of nuclear waste shipments and higher hazard shipments will increase the likelihood that DOE will use this route for other shipments to and from Nevada, including spent fuel shipments to Yucca. Although California has requested assurances from DOE that this increased use of State Route 127 will not be used to justify future Yucca shipments, DOE has declined to provide them.

Similarly, DOE has provided no information, in spite of requests from California and other states, on how DOE plans to select routes for shipments to Yucca Mountain except to say that DOE will work with states and tribes. This does little to alleviate California's concerns. DOE must commit to states that they will: (1) develop and use an equitable route selection process for shipments to Yucca that provides for meaningful state, tribal, and local input, (2) evaluate routes based on health and safety criteria and information, including information provided by states, and (3) follow established and agreed upon routing protocols.

3. DOE's Plan to Use an Alternate WIPP Route Over a State's Objections Is a Significant Departure from Past DOE Policies and Violates Past WGA/DOE Agreements.

The use of State Route 127 for WIPP shipments, without California's concurrence would be in direct violation of the WGA/DOE WIPP Transport Safety Program's routing protocols. These protocols include DOE's commitment to following the U.S. Department of Transportation's (DOT) Highway Route Controlled Quantity (HRCQ) Guidelines which call for using the Interstate Highways, a state designated route, or a route with which a state has concurred. California State Route 127 is not an approved HRCQ route.

Title 49, Code of Federal Regulations Section 397.101 (c) allows for deviation from an approved route if the following conditions are met:

(1) The deviation from the preferred route is necessary to pick up or deliver a highway route controlled quantity of Class 7 (radioactive) materials, to make necessary rest, fuel or motor vehicle repair stops, or because emergency conditions make continued use of the preferred route unsafe or impossible;

(2) For pickup and delivery not over preferred routes, the route selected must be the shortest-distance route from the pickup location to the nearest preferred route entry location, and the shortest-distance route to the delivery location from the nearest preferred route exit location. Deviation from the shortest-distance pickup or delivery route is authorized if such deviation:

(i) Is based upon the criteria in paragraph (a) of this section to minimize the radiological risk; and

(ii) Does not exceed the shortest-distance pickup or delivery route by more than 25 miles and does not exceed 5 times the length of the shortest-distance pickup or delivery route.

(iii) Deviations from preferred routes, or pickup or delivery routes other than preferred routes, which are necessary for rest, fuel, or

motor vehicle repair stops or because of emergency conditions, shall be made in accordance with the criteria in paragraph (a) of this section to minimize radiological risk, unless due to emergency conditions, time does not permit use of those criteria.

Clearly with mileages of State Route 127 at 342.26 miles from NTS to Needles and the Nevada State Route 160 route of only 234.14 miles, the conditions set forth in (c)(2)(ii) above have not been met.

Again, since California has not designated State Route 127 as an HRCQ route nor does California concur with DOE's proposed use of State Route 127 via Barstow for WIPP shipments, DOE's use of this route for WIPP shipments would violate the WGA/DOE WIPP Transport Safety routing protocols.

DOE's plan to use an alternate route in California for the planned NTS shipments to WIPP, without California's concurrence, is a significant deviation from the WIPP Transport Safety Program protocols. The WIPP Transport Safety Program and these protocols were reaffirmed in Memoranda of Agreement (MOA) signed by the Western Governors' Association and the Secretary of Energy in 1995 and again in 2003. These protocols are the cornerstone of the WIPP Transport Safety Program, and States and DOE are expected to comply fully with these procedures and protocols. DOE's failure to abide by these routing protocols would be a serious violation of the WGA/DOE agreement and could seriously weaken states' confidence in DOE's ability to follow through with their commitments.

4. DOE's Use of Past Shipment Data to Justify Increasing Numbers and Hazard Levels for Shipments On A Given Route Is Invalid.

As demonstrated by your July 1 letter, DOE justifies using a particular route for future shipments, based on the past shipping record for this route. This is not a valid or acceptable method for evaluating alternate routes, since past use, in itself, does not justify future use. Your letter points out the numbers of low-level waste shipments to NTS on State Route 127, while omitting the numbers of shipments on the alternate State Route 160, to demonstrate the reasonableness of using State Route 127 for WIPP shipments. It is precisely this rationale, using past shipments on a particular route to justify more and greater hazard shipments on this same route, that has given rise to concerns that WIPP shipments on SR 127 will set an undesirable precedent for using this route for future Yucca shipments.

5. WIPP Emergency Response Training Was Done in California in Preparation for Other Shipments and as a Contingency in the Event That Shipments Along the Contested Route Begin.

Your letter of July 1 uses the past emergency response training along the DOE's proposed California route to justify WIPP shipments along that route. California appreciates the WIPP emergency response training that has been provided to date in California. However, most of this training was to prepare emergency responders in San Bernardino County which will be impacted by large numbers of WIPP shipments from DOE sites in California, primarily the Lawrence Livermore National Laboratory. California accepted the training that DOE provided in Inyo County as a contingency in the event that DOE failed to follow the WGA/DOE WIPP Transport routing protocols and began shipments over State Route 127. Inyo County has only a very small group of emergency responders consisting of a few volunteer fire department and law enforcement personnel. Providing WIPP emergency response training to Inyo County personnel was not a relatively costly endeavor and will be useful in the event of a low-level

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waste shipment accident on State Route 127. Training provided recently in Needles for 23 people and the training planned for Barstow are included as part of the preparation for shipments from LLNL.

In conclusion, DOE has long been aware of California's concerns about DOE's increasing use of SR-127 for nuclear waste shipments and the potential precedent this could set for future spent fuel shipments to Yucca Mountain. Over the past several years, we have discussed our concerns with DOE and have sought a fair and equitable resolution of this routing issue. Your letter indicates that these negotiations began in 1994; however, since 1994, DOE has focused only on the State Route 127 routing option and recently added the link to Barstow. With the increasing low-level waste shipments to NTS, now estimated at over 2,000 shipments, combined with the planned Yucca shipments, these proposed routes have become increasingly controversial. We have been disappointed in DOE's response to date to California's concerns regarding NTS WIPP shipment routes. Unlike past agreements to develop fair compromises in routing low-level waste shipments to NTS over the same routes in question, DOE has decided unilaterally to initiate WIPP shipments on State Route 127 and ignore equity concerns.

DOE and states share a common interest in maintaining the integrity of the WIPP Transport Safety Program and the spirit of cooperation that DOE-Carlsbad and western states have developed over the past fifteen years. We offer to continue to work with DOE and the affected states toward resolving these important issues and request that these NTS to WIPP shipments be postponed until these routing issues can be resolved. To force shipments over a route, without that state's concurrence and in violation of WIPP transport safety protocols, could seriously jeopardize this cooperative program.

Sincerely,

JAMES D. BOYD, Commissioner and
California Representative on the WIPP Technical Advisory Group
California Energy Commission

D.O. HELMICK, Commissioner
California Highway Patrol

cc: The Honorable Dianne Feinstein
The Honorable Barbara Boxer
The Honorable Jerry Lewis
The Honorable Sam Farr
Patrice Bubar, DOE-HQ
Dr. Inez Triay, Casey Gadbury, Ralph Smith, DOE-CBFO
WGA WIPP Transport Advisory Group