COUNTY OF INYO
PLANNING DEPARTMENT

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Peter Chamberlin, Director of Planning

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March 11, 1994

California Highway Patrol
Hazardous Material Section
ATTN: Routing and Prenotification Unit
P. O. Box 942898
Sacramento, CA 94298-0001

FAXED 3-11-94

SUBJECT: INYO COUNTY'S COMMENTS ON THE NOTICE OF PROPOSED REGULATORY ACTION: DESIGNATION OF ROUTES FOR THE THROUGH TRANSPORTATION OF HIGHWAY ROUTE CONTROLLED QUANTITY SHIPMENTS OF RADIOACTIVE MATERIALS (HMS-94-01)

The Inyo County Planning Department has reviewed the referenced notice, as well as the Proposed Text of the Regulation, the Initial Statement of Reasons, and the Transportation Routing Study intended to support this proposed regulatory action.

In general we have two principal concerns regarding the proposed designation of routes. First, the use of categorical exemptions for this action is, in our view, clearly incorrect, for three reasons:

- The categorical exemptions are not appropriate
- Route designation does involve potential environmental impacts
- The California Attorney General has concluded that an environmental assessment is required

Secondly, the process used by the California Highway Patrol to select alternate preferred routes does not comply with the federal guidelines. The federal guidelines clearly intend for states to designated routes or segments of routes other than Interstate highway routes. The guidelines also specifically require comparative analysis, if Interstate highway segments are to be replaced with alternate routes, which has not been done. In addition, requirements for consultation with local jurisdictions and for informing the public have not been followed.

A detailed outline of these comments, documenting our rationale for these concerns, is attached and incorporated by reference to these comments. We recommend that the procedures as

outlined in the California Environmental Quality Act and the federal Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials be followed in the designation of routes for highway route controlled quantities of radioactive materials.

If there are any questions concerning these comments, please contact Mr. Brad Mettam at (619) 878-0380.

Sincerely,

Peter Chamberlin
Director of Planning

Brad Mettam
Yucca Mountain Project Coordinator

Outline of Inyo County Comments
to
The Department of California Highway Patrol Notice of Proposed Regulatory Action

Designation of Routes for the Through Transportation of Highway Route Controlled Quantity Shipments of Radioactive Materials (HMS-94-1)

I. Determination that the proposed regulations meet the requirements for a California Environmental Quality Act categorical exemption under Class 1, Section 15301 and Class 8, Section 15308 is inappropriate.

A. Categorical exemptions claimed are not appropriate for this action.

1. Class 1 (Section 15301) exemption applies to "the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing..."[1]. While it might be argued that the Interstate system is an existing system, the designation of specific routes expands the existing use by directing shipments to routes being considered for designation. This action will concentrate shipments onto the designate route while eliminating from consideration other, perhaps, more appropriate routes. The designation process of a statewide system goes well beyond the concept in this exemption to be construed as "minor alteration" or "negligible" expansion of t he existing use. There is no evidence that the existing Interstate System within California is a "previously existing" transportation system for nuclear waste shipments. Although the Interstate Highway System is and was used to transport nuclear waste, the current process under review is for the State of California to officially designate a route system. An ad hoc system of routing, as currently exists, does not constitute an existing system within the meaning of Section 15301.

2. Class 8 (Section 15308) exemption applies to the "actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment." The appellate court has determined that a California public agency has abused its discretion by designating or adopting projects without undertaking adequate environmental review.[2] The court cited the "State CEQA

Guidelines" which provide that "[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." There is no evidence presented by CHP that the designation process will not result in unusual circumstances (i.e. highway accidents involving the transportation of radioactive waste) as a result of the designation process.

B. The assertion by the California Highway Patrol that the proposed regulations involve no expansion of the current preferred routing system (and therefor no environmental impact) is inaccurate.

1. The California Highway Patrol has considered routes other than Interstate highways, and has even specifically restricted the through transportation of highway route controlled quantities on certain State Routes[3].

2. Routing decisions are subject to an annual review and reevaluation, which may well lead to the designation of routes not currently available for shipment[4].

3. Earlier documents specifically included reference to State Route 127 and the likelihood that the required consultation with adjacent states may lead to the selection of State Route 127 for highway route controlled quantities of radioactive materials: "If we were to perform a complete hazard assessment using the DOT methodology on US 95 from NTS south through Las Vegas to I-40 and compared it to the Map 16 route [including SR 127 from I-15 to Nevada SR 373], it is likely that the Map 16 route would ultimately prove to be the less hazardous."[5]

C. The question of the appropriate level of environmental review under CEQA for the route designation process has been established by the California Attorney General. The Attorney General states "...we conclude that the Department [of the Highway Patrol] is required to prepare an 'environmental assessment' under CEQA before adopting radioactive material transportation routes pursuant to Vehicle Code section 33000."[6] Environmental review guidance to the CHP is clearly provided in the Attorney General's opinion. The Attorney General's direction is as follows:

1. Prepare an Initial Study to determine if a Negative Declaration or Environmental Impact Report is the necessary CEQA document.

2. If a Negative Declaration is used for this project, it must state why there will be no significant impacts and therefore preclude the preparation of an Environmental Impact Report. The probabilities of transportation accidents involving hazardous radioactive materials must be taken into account in determining whether a Negative Declaration or Environmental Impact Report is to be prepared for the project.

3 According to the Attorney General "It is clear that an accident with regard to such transportation may cause 'potentially substantial, adverse changes in physical conditions which exist within the area." A potentially significant environmental effect resulting from this project requires the preparation of an Environmental Impact Report.

II. The process used by the California Highway Patrol to select alternate preferred routes does not comply with the federal guidelines[7].

A. It is clear that the intent of the federal routing requirements, in making provision for state designated alternate routes, was to allow states to designated routes other than an Interstate highway. "...DOT is strongly encouraging the States to examine their own highway network and designate 'preferred routes' to supplement the Federally-prescribed Interstate highway system, or provide suitable alternatives to portions of the Interstate system."[8]. The use of the federal guidelines to select a subset of the Interstate highway system does not fulfill that intent.

B. The routing study performed by the California Highway Patrol has not reduced the available Interstate highway routes, because it has not done the required analysis of the Interstate highway segments purportedly eliminated from use. "Interstate connecting the points being considered may be included in the analysis in cases where it is desired to remove the preferred status from a segment of the Interstate system. *Such a removal can only be done if the comparative analysis shows that there is an alternative route that results in lower overall impacts from highway route controlled quantity shipments than the available Interstate route.*" [Emphasis added][9].

C. 1. The Federal Hazardous Materials Regulations (49 CFR Parts 171-179) and the Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials both require consultation with local jurisdictions

- "Designation must have been preceded by substantive consultation with affected local jurisdictions..."[10].

- "In performing a routing analysis, States are required to solicit and consider input from other jurisdictions which are likely to be impacted by a routing decision. This will necessitate coordination with local government authorities alone the prospective routes of travel..."[11]

- The methodology [it] should facilitate participation of the public, other State agencies and local jurisdictions in the route selection process and documentation of the decision-making process."[12]

2. The California Highway Patrol not consulted with all affected local jurisdictions, or fully informed the public.

   - Inyo County had requested the opportunity to participate in the route selection process and to be advised of additional California Highway Patrol activities[13]. This request was acknowledged by the California Highway Patrol on February 25, 1993[14]. Inyo County was not informed of the single consultative meeting held in August, 1993 by the California Highway Patrol, although the California Highway Patrol described the invited attendees as including "any additional interested parties"[15].

   - In order to make comprehensive comments to the proposed regulatory action, Inyo County requested a copy of the State of California Radioactive Materials Transportation Routing Study[16]. The Patrol declined to send a copy of the Study, and instead advised the County that a copy was available for viewing in the San Bernardino District Office of the California Highway Patrol (approximately 210 miles away). Fortunately, the County was able to receive a copy from Clark County, Nevada in order to complete the review of this proposed regulatory action.

   - No public hearings on this proposed regulatory action have been held, and none are scheduled[17].

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[1] State of California, California Environmental Quality Act, as amended January 1. 1993, Section 15301

[2] Dunn-Edwards Corporation v. Bay Area Air Quality Management District (1st Dist. 1992) 9 Cal.App.4th 644.

[3] California Highway Patrol, State of California Radioactive Materials Transportation Routing Study, January 1994, "Additional Routing Considerations", page 2-2; and Annex D.

[4] Ibid., "Through Route Analysis Documentation", Section 3.1 "Summary"; page 3.1.

[5] California Highway Patrol, Routing analysis and Environmental Assessments for Transportation of Radioactive Materials on California's Highways, December 1989, Draft, page 35.
[6] Attorney General Opinion No. 83-502-December 15, 1983.
[7] Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials, August 1992, U. S. Department of Transportation.
[8] Ibid., "Introduction", page 1.
[9] Ibid., Section 3.1 "Identifying Alternative Routes", page 14.
[10] U.S. Department of Transportation, 49 CFR Section 171.8.
[11] U. S. Department of Transportation, Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials, August 1992, page 3.
[12] Ibid., page 12.
[13] Correspondence, Brad Mettam, Inyo County to Officer Kevin Livingston, California Highway Patrol, dated February 8, 1993.
[14] Correspondence, Sergeant J. H. Wells, California Highway Patrol to Brad Mettam, Inyo County, dated February 25, 1993.
[15] California Highway Patrol, Initial Statement of Reasons, HMS-94-01, January, 1994.
[16] Correspondence, Brad Mettam, Inyo County to California Highway Patrol, dated February 9, 1994.
[17] California Highway Patrol, Notice of Proposed Regulatory Action, HMS-94-01, January, 1994.