

ORAL STATEMENT OF GEORGE W. TENLEY, JR.
ACTING CHIEF COUNSEL
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
BEFORE THE SUBCOMMITTEE ON COMMERCE,
TRANSPORTATION AND TOURISM
OF THE HOUSE COMMITTEE ON ENERGY AND COMMERCE

AUGUST 1, 1985

THANK YOU MR. CHAIRMAN FOR THE OPPORTUNITY TO APPEAR BEFORE THE SUBCOMMITTEE TODAY TO DISCUSS AN ISSUE WHICH HAS OCCUPIED A SUBSTANTIAL AMOUNT OF MY TIME AND INTEREST OVER THE LAST 8 YEARS. THE TRANSPORTATION OF RADIOACTIVE MATERIAL, PARTICULARLY SPENT NUCLEAR FUEL, IS AN ISSUE THAT GROWS DAILY AS MORE NUCLEAR POWER PLANTS GO ON LINE MORE SPENT FUEL IS REPROCESSED, AND AS THE PUBLIC'S CONCERN OVER ALL PHASES OF NUCLEAR SAFETY INCREASES.

IN THE TESTIMONY THAT I HAVE SUBMITTED FOR THE RECORD, I HAVE PROVIDED A RATHER DETAILED DISCUSSION OF PERHAPS THE MOST IMPORTANT ASPECT OF TRANSPORTATION SAFETY - AT LEAST THE ASPECT WHICH SEEMS TO COMMAND THE MOST ATTENTION - THE ROUTING OF SPENT NUCLEAR FUEL. I WILL NOT ADD ANYTHING TO THAT DISCUSSION IN THESE REMARKS, BUT I WOULD LIKE TO MENTION BRIEFLY THE DEPARTMENT'S VIEW OF HOW BEST TO DISCHARGE THE IMPORTANT RESPONSIBILITIES ASSIGNED TO IT, PRIMARILY BY THE HAZARDOUS MATERIALS TRANSPORTATION ACT.

WE BELIEVE THAT THE ACT, IN CONJUNCTION WITH THE REGULATIONS ADOPTED UNDER IT, IN THIS CASE HM-164, PROVIDES A SOUND FRAMEWORK FOR ASSURING A ROUTING SCHEME THAT IS SAFE AND THAT MAKES POSSIBLE INTERSTATE COMMERCE IN SPENT FUEL. ALTHOUGH CONGRESS EXPRESSED ITS BELIEF THAT A STRONG FEDERAL PRESENCE WAS NECESSARY IN THE REALM OF HAZARDOUS MATERIALS TRANSPORTATION, AND THAT THE DEPARTMENT OF TRANSPORTATION SHOULD HAVE BROAD REGULATORY AND ENFORCEMENT POWERS TO ASSURE THE EFFECTIVE MANIFESTATION OF THAT PRESENCE, CONGRESS ALSO RECOGNIZED THAT STATES AND LOCAL JURISDICTIONS HAD A NECESSARY ROLE TO PLAY. THE INCLUSION IN HM-164 OF THE STATES' ROLE IN ALTERNATE ROUTE DESIGNATION IS A CLEAR INDICATION OF OUR BELIEF THAT THE STATES CAN AND SHOULD BE ACTIVE IN DETERMINING SAFE ROUTES.

THE HAZARDOUS MATERIALS TRANSPORTATION ACT ASSIGNS TO THE DEPARTMENT THE IMPORTANT ROLE OF RECONCILING STATE AND LOCAL REQUIREMENTS WITH THEIR FEDERAL COUNTERPARTS. WE HISTORICALLY HAVE PERFORMED THAT ROLE THROUGH OUR ADMINISTRATIVE PROCEEDINGS FOR DETERMINING INCONSISTENCY AND WAIVERS OF PREEMPTION. HOWEVER, WE HAVE SEEN INCREASINGLY THAT IT IS INCUMBENT UPON THE DEPARTMENT TO PURSUE THE COMPATIBILITY OF ALL ASPECTS OF THE NATION'S REGULATORY FABRIC THROUGH COOPERATIVE EFFORTS THAT DO NOT INVOLVE ADVERSARIAL PROCEEDINGS. UNDER THE LEADERSHIP OF SECRETARY DOLE AND AT THE

DIRECTION OF ADMINISTRATOR DOUGLASS, WE HAVE TAKEN STEPS TO INCREASE OUR COOPERATIVE EFFORTS. IN FACT, ADMINISTRATOR DOUGLASS' ABSENCE TODAY IS DUE TO HER INVOLVEMENT IN A 3-DAY SEMINAR IN CHICAGO THAT IS EXAMINING ISSUES INVOLVED IN SPENT FUEL TRANSPORTATION. WITH REPRESENTATION FROM 49 STATES AND 10 TRIBAL NATIONS, , THE SEMINAR WILL PROVIDE AN EFFECTIVE FORUM FOR BOTH EDUCATING KEY STATE PERSONNEL ON HM-164 AND THE FEDERAL PROGRAM, BUT PERHAPS, MORE IMPORTANTLY, IT WILL PROVIDE FOR AN EXCHANGE OF VIEWS AMONG THE STATES. HOPEFULLY, SUCH AN EXCHANGE WILL ENHANCE THE WILLINGNESS AND ABILITY OF STATES TO WORK AMONG THEMSELVES IN EXERCISING THE IMPORTANT ROLE THEY CAN PLAY IN ROUTE DESIGNATION. WE KNOW THAT WHEN STATES WORK TOGETHER ROUTING IS GREATLY ENHANCED. AN EXAMPLE OF THIS CAN BE SEEN IN THE DESIGNATION BY DELAWARE, MARYLAND, AND VIRGINIA OF ROUTE 301 AS AN ACCEPTABLE ALTERNATIVE ROUTE TO INTERSTATE 95.

TAKING THE CONCEPT OF THIS SEMINAR ONE STEP FURTHER, ADMINISTRATOR DOUGLASS HAS STATED THAT SHE WOULD LIKE TO ARRANGE FOR REGIONAL SEMINARS TO NARROW THE ISSUES WITHIN VARIOUS SECTIONS OF THE COUNTRY AND TO PROVIDE GREATER EXPOSURE TO THE VIEWS OF LOCAL JURISDICTIONS.

IT IS IMPORTANT TO NOTE THAT THE SEMINAR IS AN EXAMPLE OF OUR CLOSE WORKING RELATIONSHIP WITH THE NUCLEAR REGULATORY COMMISSION. OPERATING IN CONJUNCTION WITH ONE ANOTHER UNDER A MEMORANDUM OF UNDERSTANDING, THE TWO AGENCIES HAVE BROUGHT

THEIR EXPERTISE TO BEAR ON THE TRANSPORTATION OF SPENT NUCLEAR FUEL THROUGH THE INTERRELATIONSHIP OF OUR REGULATIONS, OUR JOINT COMPLIANCE EFFORTS, AND OUR DAY-TO-DAY CONSULTATION AT THE STAFF LEVEL.

FINALLY, I WOULD LIKE TO NOTE ONE ADDITIONAL MEASURE THAT WE HAVE RECENTLY TAKEN THAT WE BELIEVE WILL ENHANCE OUR ABILITY TO WORK WITH STATE AND LOCAL GOVERNMENTS. AS PART OF THE RECENTLY ANNOUNCED REORGANIZATION WITHIN THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, ALL HAZARDOUS MATERIALS FUNCTIONS HAVE BEEN UNITED IN ONE OFFICE REPORTING DIRECTLY TO THE ADMINISTRATOR. WITHIN THAT OFFICE, WE HAVE ESTABLISHED A UNIT THAT WILL BE DEDICATED TO COOPERATIVE AND EDUCATIONAL INITIATIVES DESIGNED TO GIVE STATE AND LOCAL JURISDICTIONS A SINGLE POINT OF CONTACT WITHIN THE DEPARTMENT FOR DISCUSSION AND RESOLUTION OF CONCERNS WITHOUT RESORT TO MORE FORMAL PROCESSES.

IN CONCLUSION, I BELIEVE THAT THIS HEARING IS VERY TIMELY AND SHOULD SERVE TO HEIGHTEN THE AWARENESS AND KNOWLEDGE OF THE PUBLIC ON THE ISSUES INVOLVED IN TRANSPORTING SPENT NUCLEAR FUEL. ALTHOUGH THE SAFETY RECORD OF SUCH TRANSPORTATION IS UNBLEMISHED WITH NO DEATHS OR INJURIES HAVING OCCURRED, NEITHER THE RELEVANT FEDERAL AGENCIES NOR STATE AND LOCAL GOVERNMENTS CAN REST ON THAT RECORD. FORTUNATELY, THERE IS IN PLACE A STATUTORY AND REGULATORY FRAMEWORK THAT IS WELL SUITED TO MEET THE ISSUES THAT ARE BEING DISCUSSED TODAY.

THANK YOU