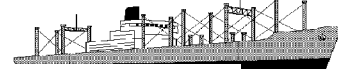




Rollin' On



A Facsimile Newsletter for the Transportation Industry

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NUCLEAR WASTE: *Always on your mind*

One of those thoughts that go through our minds each evening as we ready ourselves for our nightly slumber obviously concerns the status of nuclear waste. I mean, a day doesn't go by without substantial reflection on that topic. Well, we need not worry about it as our beloved federal government is on top of it. And we all know we can rest well when we are in the feds' hands.

By way of background, the disposition of nuclear waste was the subject of the Nuclear Waste Policy Act of 1982. The idea was for the Department of Energy (DOE) to develop a disposal site with monies collected through a surtax power generated by nuclear plants. So far about 15 **billion** dollars has been put into the fund. But there have been delays in figuring out the disposal issues.

Meanwhile, the power plants have zillions of dollars in storage claims as the feds were supposed to take temporary storage of the waste. DOE might settle with the power plants by taking legal possession of the waste, even though it has nowhere to put it, and pay for storage pending final disposition of the whole mess.

There is legislation proposed in something called the Nuclear Waste Policy Act of 1999, which would require DOE to open temporary storage at the Nevada Test Site by 2003. But due to environmental issues, as well as local opposition, the legislation is facing considerable resistance. There is speculation that the storage site will never be built.

But someday there could be a

The Obligatory Disclaimer

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considerable need for transportation of this highly toxic stuff which has been piling up in temporary storage facilities, or "cooling ponds", adjacent to power plants and defense installations in some 34 states. The long haul portion would probably go by rail to an intermodal facility, then by truck, due to both cost and safety reasons, not to mention the public's unwillingness to have the waste bebopping down the public thoroughfares.

Owner-Operators v. Carriers w/o Prior Agency Action

The Eighth Circuit Court of Appeals (federal) recently handed down a decision (those judges like to sit up high) holding that owner-operators are not required to first go to the FHWA if they want to sue their carriers. The particular case involved owner-operators suing their carriers over leasing violations, specifically rental-purchase contracts, reserve funds and security deposits. The carriers, with the backing of the American Trucking Association, argued that the o/os had to first proceed before the FHWA before going to court. The Eighth Circuit held otherwise, citing legislative history which indicated that "DOT should not allocate scarce resources to resolve private disputes". Imagine that.

Garbage, Recycling & Metro

Lawsuits are currently pending in federal court in Portland questioning Metro's authority to regulate the movement of garbage ("flow control")

as well as the constitutionality of the franchise system, whereby cities and counties give haulers exclusive areas for service of drop box and compactor customers. The latter lawsuit involves the question of what is property, and whether the transportation of recyclables and solid waste is governed by federal law.

Civil War Game Tickets

The Transportation Association of Portland has once again obtained a block of tickets for the U of O/OSU game, this year on November 20 in Eugene. Last year TAP acquired a block of tickets and the Union Pacific RR furnished its plush board of directors train for the travel to Corvallis. This year we'll go by bus but a "tailgate" party is arranged and other amenities are scheduled to take the edge off the bus ride.

There are still some tickets remaining. Net proceeds go to the Special Olympics. Also, this year's game might mean more than bragging rights. The game is not only sold out, it has been oversold (I don't know how the university, which sounds like an airline in this instance, deals with that one; do you instead get seats for the game two years away?). Last year's group seemed to be equally divided between Duck and Beaver fans, including divided couples. It's a great time to meet your transportation brethren, so if you are interested just let me or a TAP officer know as any extra tickets will soon be made available to the nontransportation-related public, probably an unseemly group at best.

That's all for now. To shippers, carriers, agents and other third parties, keep the cargo rollin'!!

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 20 years and emphasizing transportation law, business law and related litigation.