

Approved: Carl Dean Holmes
Date 3-17-93

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:30 p.m. on March 8, 1993 in Room 526-S of the Capitol.

All members were present except: All were present

Committee staff present: Raney Gilliland, Legislative Research Department
Mary Torrence, Revisor of Statutes
April Howell, Committee Secretary

Conferees appearing before the committee: Dr. Robert C. Harder, KS Dept. of Health and Environment
Charles Jones, Kansas Dept. of Health and Environment

Others attending: See attached list

Chairman Holmes called the meeting to order and requested Representative Gatlin to address the Committee on the Current Resolution (#5020), prepared by the Subcommittee, which concerns extending the effective dates for the minimum federal criteria for municipal solid waste landfills. (Attachment I) He acknowledged Representative McClure to outlined this Resolution and the good faith efforts and attempts to meet the current deadline. She stated that after discussion with the KDHE, they also concurred with said Resolution. Representative Gatlin advised the Committee he had taken the necessary steps to proceed onward with this matter and to meet requirements of the House Speaker and the Clerk of the House. Representative McClure made a motion to introduce this Resolution and recommended it favorably for passage as a Committee Resolution. The motion was seconded by Representative Gatlin. Discussion was opened. The motion carried.

Chairman Holmes opened the hearing on SB 246-Central Interstate low-level radioactive waste compact amendments. This hearing will consist of Proponents only. Robert C. Harder, Secretary of the Kansas Department of Health and Environment appeared in support of this Bill. He presented written testimony to the Committee (Attachment II) recommending passage, because it would bring Kansas into alignment with similar language already adopted by the other member of the states of the Central Interstate Compact. Kansas joined the Central Interstate Low-Level Radioactive Waste Compact in 1982. Louisiana, Arkansas, Oklahoma and Nebraska are the other member states.

The Chair opened the floor to questions by the Committee. They were directed to Charles Jones, Brian Moline, with the KCC, as well as Dr. Robert C. Harder. Dr. Harder then presented additional background information to the Committee, which went along with the line of questioning of the Committee members. (Attachment II).

The meeting was adjourned at 5:15 p.m.
The next meeting is scheduled for March 9, 1993.

Date: March 8 '93

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

[illegible]

FINAL

3 RS 1176

DRAFT

HOUSE CONCURRENT RESOLUTION NO. _____

By Committee on Energy and Natural Resources

A CONCURRENT RESOLUTION urging Congress to extend the effective dates for the minimum federal criteria for municipal solid waste landfills.

WHEREAS, The United States Environmental Protection Agency has established October 9, 1993, as the effective date for all minimum federal criteria for municipal solid waste landfills except the financial assurance criteria which are effective April 9, 1994; and

WHEREAS, The Environmental Protection Agency required seven years to adopt these criteria in response to the 1984 Hazardous and Solid Waste Amendments to the Resource and Conservation Recovery Act; and

WHEREAS, Only two years' time was allowed the states to adopt necessary rules and regulations and implement measures to comply with the criteria; and

WHEREAS, The state of Kansas and its citizens have made a good faith effort to comply with the federal requirements; and

WHEREAS, The criteria may require solid waste transfer stations and regional landfills to be established, which would cost counties between \$300,000 and \$2,000,000, more than the 1% increase in county budgets considered by the Environmental Protection Agency to be a significant economic impact that may exceed the practicable capacity of many counties; and

WHEREAS, The problems that areas having low density population face in complying with the federal requirements cannot be resolved within the time allowed for compliance: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the Legislature

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Attachment 1

urges Congress to extend the effective date of the financial assurance criteria for municipal solid waste landfills (40 CFR part 258, subpart G) to April 9, 1996, and to extend the effective date for the state to implement all other minimum federal criteria for municipal solid waste landfills (40 CFR part 258, subparts A through F) to October 9, 1995; and

Be it further resolved: That the Legislature urges Congress to take appropriate action to assure that no municipal solid waste landfill unit shall be considered an open dump under the Resource Conservation and Recovery Act by reason of failure to comply with the new minimum federal criteria for municipal solid waste landfills (40 CFR part 258) until on or after October 9, 1995, unless the landfill unit does not comply with the federal criteria which were in effect on October 8, 1991; and

Be if further resolved: That the Secretary of State be directed to send enrolled copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, all members of the congressional delegation from the State of Kansas, the Administrator of the United States Environmental Protection Agency and the Regional Administrator, Region VII, of the United States Environmental Protection Agency.



Department of Health and Environment

Robert C. Harder, Secretary Reply to:

Testimony presented to
House Energy and Natural Resources Committee

By

Kansas Department of Health and Environment

Senate Bill 246

STATEMENT OF SUPPORT FOR SENATE BILL 246

The Kansas Department of Health and Environment stands in support of Senate Bill 246. Passage of SB 246 would bring Kansas into alignment with similar language already adopted by the other member states of the Central Interstate Compact. As you are well aware, questions abound as to how this Compact and the nation as a whole will finally come to terms with disposal of low-level radioactive waste. Through these uncertainties, KDHE will base its actions on the following guiding principles:

- we must not prematurely close off any disposal options;
- we must safeguard against any hasty, imprudent, or desperate efforts to site a regional facility in Kansas;
- we must not take any action which could jeopardize access to the Barnwell facility; and
- as long as Kansas retains its membership in the Central Interstate Compact, we must conduct ourselves in a manner which reflects equity, comity, and the good-faith commitment to shared goals.

In keeping with these principles, KDHE recommends favorable action on Senate Bill 246.

CHRONOLOGY

Before discussing details of SB 246, it might be helpful to go over a brief chronology of the Central Interstate Compact.

- Congress passed the Low-Level Radioactive Waste Policy Act of

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1980 in response to protests from Washington, Nevada, and South Carolina about the continuing national reliance on disposal facilities located in those states. The central element of the Act was creation of the regional compact mechanism. It was the original intent of the federal law to have a national network of disposal facilities in place and operative by 1986. That date was eventually set back to January 1, 1993.

- Kansas joined the Central Interstate Low-Level Radioactive Waste Compact in 1982. Louisiana, Arkansas, Oklahoma, and Nebraska are the other member states.
- US Ecology was selected to license, develop, construct, and operate the Central Interstate facility in 1987.
- The State of Nebraska was chosen as the host state in 1989. The hosting selection addressed a combination of factors including site suitability studies and conditions established by the state of Nebraska.
- US Ecology submitted an application for licensing a low-level disposal facility in Boyd County, Nebraska in 1990. That application is pending, although in recent weeks the state of Nebraska has taken two actions which put the future of the Boyd County site in question. Those actions include a court challenge as to whether the Compact has indeed attained "community consent" (one of Nebraska's siting conditions), and the announcement of Nebraska's intent-to-deny the operating license for technical reasons.
- In spite of the Congressional intent, no new disposal facilities came on line by January 1, 1993. Indeed, the Central Interstate Compact was one of only two compacts in the nation to meet the milestone of submitting license applications. Responding to on-going needs, the Barnwell disposal facility in South Carolina has agreed to continue to receive waste -- at a much higher fee of approximately \$400 per cubic foot, including transportation -- through June, 1994. It is important to note that in its contract with the Central Interstate Compact, the SE Compact stipulated that it can terminate access to Barnwell if it determines that the Central Compact is wavering on its good faith effort to develop regional disposal capacity. Upon hearing of the consent suit and intent-to-deny, the SE Compact has inquired into the good faith standing of the Central Compact. A response to that inquiry is pending.

In the meanwhile, KDHE in concert with Kansas generators, is preparing contingency storage plans to cover the interim between closure of Barnwell and opening of the Boyd County facility.

PROVISIONS OF SENATE BILL 246

In 1989, the State of Nebraska adopted and sought modifications to the compact language. Those modifications address shared liability, membership of the Compact Commission, and open meeting considerations. In deference to Nebraska's host-state status and recognizing that host states deserve certain assurances and accommodations, the legislatures of Louisiana, Oklahoma, and Arkansas adopted the requested language. Kansas is the only member state which has not adopted the Nebraska language. Under federal law, modifications to the compact -- such as those requested by Nebraska -- take effect only when adopted by all member states.

In greater detail, the modifications set out in SB 246 include:

- Several definitions are adopted or expanded. Those definitions speak to decommissioning, protective measures taken at the end of a facility's life; extended care, the post-closure measures undertaken to ensure that decommissioning has accomplished its protective goals; and institutional control, those activities undertaken after the host state becomes responsible for a facility's extended care.
- Revisions to Article 3 strengthen the host state's hand in setting user fees. Under existing language, the Commission would assess the host state's needs, then set user fees which provide sufficient revenues.

SB 246 would allow the host state to propose user fees, subject to 120 days notice during which the Commission would have the opportunity to provide comments to the host state.

Fees proposed by the host state shall be fair and reasonable, and shall provide the host state with sufficient revenue to cover all anticipated present and future costs associated with the regional facility. Those costs include, but are not limited to:

1. licensure, operation, monitoring, inspection, maintenance, decommissioning, closure, institutional control, and extended care of the regional facility;
2. response, removal, remedial action or cleanup deemed appropriate or required by the host state as a result of a release of radioactive or hazardous materials from the facility;

3. premiums for property and third party liability insurance;
4. protection of public health and safety, and the environment;
5. compensation and incentives to the host community;
6. any amount due from a judgment or settlement involving a property or third-party liability claim for medical expenses and all other damages incurred as a result of personal injury or death, and damages or losses to real or personal property or the environment; and
7. costs of defending or pursuing liability claims against any party or state.

User fees may include incentives for source and volume reduction, and may be based on the hazard of the waste.

- Additional revisions to Article 3 speak to shared liability. SB 246 provides that all party states and any other state or states whose generators use the regional facility, shall share liability for all such costs. However, there shall be no recovery from the state until all available funds, payments, or in-kind services have been exhausted, including:

1. designated low-level radioactive waste funds managed by the host state;
2. payable proceeds of insurance or surety policies applicable to the regional facility;
3. proceeds of reasonable collection efforts against the regional facility operator or operators; and
4. payments for or in-kind services by generators.

Under SB 246, reasonable collection efforts against a bankrupt facility operator are clarified; state ability to recover damages from facility operators, insurers or generators is reaffirmed; the statute of limitations is nullified; and policy is adopted which links state liability to its share of the total volume of waste received at the regional facility.

- Senate Bill 246 would alter the composition of the Compact Commission by giving the host state two voting members, and allowing a representative of the host county to serve on the Commission as a non-voting member.

Currently, each member state has one vote on the Commission. As noted earlier, changes to the compact itself requires action by all of the member states. A two-thirds majority is required to vote a member state out of the compact. All other matters are decided by a simple majority vote.

- Finally, SB 246 would have the commission operate in accordance with open meeting and open records requirements of the host state.

ANALYSIS

Having completed its analysis of SB 246, KDHE urges its support for the following reasons:

- While giving the host state a stronger hand in setting user fees, SB 246 better defines and adequately constrains the intended use of those fees. KDHE finds the proposed fee mechanism to be both responsible and sufficient. Were this site in Kansas rather than Nebraska, KDHE would demand no less assurance of adequate funding.

Before leaving the fee issue, I'd like to give a brief progress report on Commission efforts to control spiraling project costs. US Ecology's original projected cost for this project was \$30.4 million. To date, \$44 million has been expended and the projected cost has risen to \$122.3 million.

In the face of this cost escalation, the Commission has taken several steps to improve accountability and cost control.

1. KPMG-Peat-Marwick, with direction and funding from the Commission, recently completed a performance audit of the Commission, Nebraska's Departments of Environmental Quality and Health, US Ecology, and Bechtel. Implementation of the recommendations from this performance audit promise to greatly strengthen project oversight and cost containment.
2. KDHE has recommended a number of amendments to Commission by-laws. Among other things, these amendments are intended to increase commission responsibility for project oversight.
3. In keeping with performance audit recommendations, interviews have been completed and an offer will soon be tendered for an in-house technical expert who will give Commission staff much-needed insight into project elements and their related costs.

These measures both empower and require commission to exercise aggressive project and cost oversight. Through increased diligence on the part of the commission and major generators, thrift and credibility can and will be restored on this project.

- KDHE believes that the shared liability provision is supportable at two levels.

By its very nature, the compact mechanism creates a shared fate among member states. It is appropriate and perhaps even morally mandatory for member states to pledge their aid to the host state in the event that problems outstrip available resources. By establishing a cost recovery hierarchy and by allocating liability in proportion to facility use, SB 246 ensures that shared liability would be handled in prudent and equitable manner.

At the second level, we believe that SB 246 simply amplifies liabilities which are already in effect. Through the compact arrangement and by virtue of the fact that several state entities -- including KU and K-State -- will likely be disposing of waste in the Nebraska facility, it is unrealistic to think that the State of Kansas can avoid accruing direct liability at the site.

- The addition of a second voting member from the host state may have significant ramifications on a 5-member commission where a simple majority carries virtually all votes. However, we must recognize and accommodate to the fact that the host state feels it deserves an increased measure of control over commission activities. Were Kansas the host state position, we would likely demand no less control.
- The open records and meetings provisions contained in SB 246 is consistent with practices long in place in Kansas.

CONCLUSION

As noted at the outset of this testimony, KDHE continues to be guided by the following principles:

- we must not prematurely close off any disposal options;
- we must safeguard against any hasty, imprudent or desperate efforts to site a regional facility in Kansas;
- we must not take any action which could jeopardize access to the Barnwell facility; and
- as long as Kansas retains its membership in the Central Interstate Compact, we must conduct ourselves in a manner which reflects equity, comity, and the good-faith commitment to shared goals.

In keeping with these principles and after thorough legal and technical review, it is KDHE's recommendation that the committee pass Senate Bill 246 as proposed.

RECONVENING THE ADVISORY BOARD ON LOW-LEVEL WASTE

Obviously, Kansas, the compact, and the nation are facing a lot of unknowns with regard to disposal of low-level radioactive waste. KDHE will track events at all levels, and will reconvene the Low-Level Advisory Board to provide input on technical and policy matters. The Advisory Board will consist of:

- the secretary of KDHE, serving as chairperson
- the director of the division of environment
- the director of the bureau of radiation control
- a representative of the governor's office
- the chairperson of the senate committee on energy and natural resources
- a member of the senate committee on energy and natural resources, designated by the senate minority leader
- the chairperson of the house committee on energy and natural resources
- a member of the house committee on energy and natural resources, designated by the house minority leader, and
- two members appointed by the governor, who shall serve at the pleasure of the governor.
- the director of the legislative research department or a designee, and the revisor of statutes or a designee shall assist the Advisory Board.

Additionally, we will invite the chairman of the KCC, or his designee, to monitor and participate in advisory board meetings.

The advisory board will meet periodically to review events and propose any policies, legislation or technical requirements deemed necessary to ensure the prudent management and disposition of low-level radioactive waste.

Thank you, I'll be happy to answer any questions the committee may have.

Testimony presented by: Robert C. Harder
Secretary, KDHE
March 8, 1993

State of Kansas
Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Division of Environment

ADDENDUM TESTIMONY

Presented by Secretary Robert Harder
February 18, 1993

In response to questions from the Committee, KDHE offers the following addendum testimony.

WHAT PROPORTION OF LLW IS CONTRIBUTED BY KANSAS?

As noted in yesterday's testimony, liability under SB 246 accrues in proportion to waste disposed at the compact disposal facility. To give some sense of Kansas exposure, we would note the following disposal data:

State	Total Disposal (1986-1990)
Arkansas	45347 cu ft 10%
Kansas	25696 cu ft 5%
Louisiana	101816 cu ft 22%
Nebraska	82833 cu ft 18%
Oklahoma	215233 cu ft 46%
Total	470925 cu ft

Kansas has consistently been the small generator among compact member states. While all the states have taken measures to reduce generation, it is anticipated that Kansas will continue to be a minority contributor to a compact disposal facility.

WHAT IS NRC POLICY REGARDING EXTENDED ON-SITE STORAGE?

In its proposed rule, published 2 February 1993, NRC states:

"The proposed rule would establish procedures and criteria, for on-site storage of LLW, that would apply to all categories of LLW generators. On-site storage of LLW would not be permitted after January 1, 1996 (other than reasonable short-term storage necessary for decay, or for collection or consolidation for shipment off-site, in cases where the licensee has access to an operating LLW disposal facility), unless the licensee can document that it has exhausted other reasonable waste management options. The NRC's proposed regulations would require that the licensee attempt to

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contract, either directly or through the State, for the disposal of its waste. In addition, reactor licensees would have to document that on-site storage activities would be consistent with, and not compromise, the safe operation of the licensee's activities, and would not decrease the level of safety provided by applicable regulatory requirements."

When considering this issue, it is critical to maintain the clear distinction between **storage** and **disposal**. As defined in the compact language, storage refers to the holding of waste for treatment or disposal, while disposal refers to the isolation and final disposition of waste.

Storage refers to a comparatively brief time period: NRC issues on-site storage permits on a 5-year basis. Even presuming permit extensions, storage is a short to intermediate term activity.

Disposal refers to a comparatively long time period: the facility proposed for Boyd County has a design life of 500 years. These centuries of protection are required to prudently manage the long-lived radioisotopes which pose an ongoing risk to the environment.

The proposed NRC policy would increase flexibility in on-site storage at Wolf Creek. This flexibility may be very useful as we bridge between access to Barnwell and a future disposal option. However, it would be most imprudent to mistakenly conclude that increasing on-site storage resolves the long-term disposal issue. The on-site storage capacity at Wolf Creek or other Kansas generation sites, which provide for perhaps decades of safe LLW management, are simply not capable of providing for centuries of environmental assurances.

In light of these facts, we must use on-site storage flexibility to ensure the best possible interim management of LLW. At the same time, continued pursuit of disposal capacity through the compact is this state's best hope for assuring adequate storage capacity, and dissuading those who may seek to site a disposal facility in the geologically-suitable locales of Kansas.

WHAT IS THE TERM FOR HOST STATE STATUS?

Rule 5 of the Compact bylaws states:

"Any party state which becomes a host state in which a regional facility is operated shall not be required to be a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders, unless such host state requests to continue operating such facility. A state shall not be obligated to accept more than five million cubic feet of waste at a regional facility or to operate a facility for more than thirty years."

The Committee has asked for a legal opinion as to the full meaning and obligations attendant to Host State status. KDHE will seek such a legal opinion from the Kansas Attorney General and the Central Interstate Compact.

WHAT IS NRC POLICY REGARDING STORAGE OF OFF-SITE MATERIALS AT NUCLEAR REACTORS?

In a letter to licensees, dated 1 August 1985, NRC states:

"Some of the concepts for commercial storage involve using nuclear power reactor sites as commercial storage locations for LLW not generated by the utility licensee. As a matter of policy, the NRC is opposed to any activity at a nuclear reactor site which is not generally supportive of activities authorized by the operating license or construction permit and which may divert the attention of licensee management from its primary task of safe operation or construction of the power reactor..."

"In order for NRC to consider any proposal for commercial storage at a reactor site, including commercial storage in existing low-level storage facilities, the NRC must be convinced that no significant environmental impact will result and that the commercial storage activities will be consistent with and not compromise safe operation of the licensee's activities, including diverting reactor management attention from the continued safety of reactor operations..."

Clearly, the NRC would consider a state LLW management approach which could involve consolidation at Wolf Creek. It may also turn out that KDHE gives this matter further study. However, there are a number of matters which must be attended to before such a scenario could be realized:

1. willingness and ability of the utility, and the Burlington community, to take on such a role;
2. fees and liabilities applicable to off-site generators;
3. safeguards against the Interstate Commerce rule, which would disallow prohibition on the importation of out-of-state wastes; and
4. the modification of NRC and KDHE-issued licenses.

It is KDHE's position that we must maintain all options for the management and disposal of LLW. However, in order to ensure that management and disposal are practiced in a prudent manner, we must take the time to be deliberative and build consensus.

The next year will should bring some clarity to state and national LLW disposal matters. As noted in previous testimony, KDHE will reconvene the LLW Advisory Board to review and provide counsel over the course of this year. We would strongly recommend that this committee defer action, beyond passing SB 426, this session.

RECEIVED

JAN 29 1993

Richard S. Hodes, M.D.
Chairman

January 21, 1993

CENTRAL STATES COMPACT

James L. Setser
Vice-Chairman

Capt. William H. Briner
Secretary-Treasurer

Kathryn Visocki, M.P.H.
Executive Director

Ms. Greta J. Dicus, Chairman
Central Interstate LLRW Commission
Dir. of Radiation Control and
Emergency Management
Dept. of Health
4815 West Markham, Slot 30
Little Rock, AR 72205-3867

Dear Ms. Dicus:

The Import Policy Committee of the Southeast Compact Commission has asked me to express to you its concern about recent actions taken and/or actions contemplated by the Central Interstate Compact Commission's (CICC) host state, Nebraska, with respect to the siting of the Central Interstate Compact's low-level radioactive waste disposal facility. Such actions may be inconsistent with the Southeast Compact Commission's Policy for Import of LLRW to the Regional Facility for the Period January 1, 1993 - June 30, 1994 adopted as amended November 13, 1992 (and hereinafter referred to as the Import Policy). Section III.A. of the Import Policy specifies the following:

The Southeast Compact Commission may terminate access to the Regional Facility if it determines that an overt action has been taken by a compact region, **designated host state within the compact region** (emphasis added), or unaffiliated state, which the Commission determines substantially impedes the state or region's progress in fulfilling its responsibilities for providing, either by itself or in cooperation with other states, for the disposal of its low-level radioactive waste.

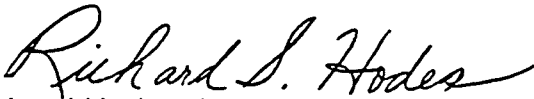
Compacts and host states which do not fulfill in good faith their responsibilities for providing for their own LLRW disposal jeopardize continued access to the Southeast Compact Regional Facility. The Import Policy Committee will be monitoring closely the actions of the Central Interstate Compact and the State of Nebraska in the days ahead and plans to present an update of the situation to the Southeast Compact Commission in the near future.

Ms. Greta J. Dicus, Chairman
January 21, 1993
Page Two

To accurately assess the potential impact of pending Nebraska actions, I respectfully request that you provide the Commission with a summary of the various actions taken or proposed by Nebraska, and your assessment of the potential impact on the Central Interstate Compact Commission's progress.

I look forward to hearing from you.

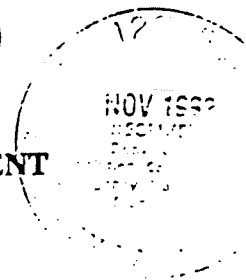
Sincerely,



Richard Hodes, M.D.
Chairman

cc: ✓ Mr. Gene Crump, Executive Director
Governor E. Benjamin Nelson
Maxine Moul, Lieutenant Governor
Senator Dennis Baack

(92-382)



INTERREGIONAL ACCESS AGREEMENT FOR WASTE MANAGEMENT

October 23, 1992

The following parties hereby enter into the following Agreement.

Article I Recitals

1.1 In 1980 Congress passed the Low-Level Radioactive Waste Policy Act, 42 U.S.C. 2021 (b). This Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 ("Policy Act"), encouraged states to enter into interstate compacts to "provide for the establishment and operation of regional disposal facilities for low-level radioactive waste."

1.2 Under the Policy Act, each state is "responsible for providing, either by itself or in cooperation with other states," for the disposal of low-level radioactive waste generated within the state.

1.3 Nine low-level radioactive waste interstate compacts have been consented to by Congress. Some compact regions have existing disposal facilities, other compact regions are in various stages of providing for the disposal of their wastes. Additionally, some states have not joined compacts.

1.4 Each of the compacts contains a provision which allows the compact commission to exclude from that compact's region or regional facilities waste generated outside the compact region.

1.5 A series of technologies has been developed, is being developed, and will be developed to manage waste and radioactive materials prior to disposal. These technologies are beneficial: in many instances, they reduce the total volume of waste requiring disposal at low-level radioactive waste disposal facilities; they stabilize waste forms; they allow usable materials to be recovered; and they reduce the costs of disposal to consumers and generators.

1.6 Because of these benefits, the parties to this agreement desire to establish a system which will allow the compact commissions and unaffiliated states to institute efficient mechanisms to: (1) facilitate the import of waste from other compact regions and unaffiliated states for the purpose of management; (2) ensure that low-level radioactive waste and waste generated by radioactive materials imported for management can be returned to the compact region or unaffiliated state from which the waste or materials were exported.

Article II Definitions

For the purposes of this agreement:

2.1 "Agreement state" means a state that has entered into an agreement, including a limited agreement, with the Nuclear Regulatory Commission under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), and has authority to regulate the disposal of low-level radioactive waste under such agreement.

2.2 "Compact" means a compact entered into by two or more states pursuant to the Low-Level Radioactive Waste Policy Act and consented to by Congress.

2.3 "Compact commission" means the regional commission, committee, or board established in a compact to administer such compact.

2.4 "Compact region" or "region" means the area consisting of all the states that are members of a compact.

2.5 "Disposal" means the permanent isolation of low-level radioactive waste pursuant to the requirements established by the Nuclear Regulatory Commission under applicable laws, or by an agreement state if such isolation occurs in such agreement state.

2.6 "Generate" when used in relation to low-level radioactive waste, means to produce low-level radioactive waste. Waste resulting from the management of waste or radioactive materials which have been imported for management shall be deemed to have been generated in the compact region or unaffiliated state from which the waste or radioactive materials have been exported.

2.7 "Low-level radioactive waste" or "waste" means radioactive material that:

(A) is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section 11e (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014 (e) (2)), as amended); and

(B) the Nuclear Regulatory Commission has classified as low-level radioactive waste as of October 1, 1992; or

(C) is naturally-occurring or accelerator-produced radioactive material.

Low-level radioactive waste does not include:

(A) Waste owned or generated by the United States Department of Energy; and

(B) Waste owned or generated by the United States Navy as a result of decommissioning vessels of the United States Navy; and

(C) low-level radioactive waste owned or generated by the Federal Government as a result of any research, development, testing, or production of any atomic weapon.

2.8 "Management" means collection, consolidation, compaction, reduction, interim storage, decontamination, treatment, or incineration of low-level radioactive waste, but does not include disposal.

2.9 "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

2.10 "Radioactive material" means solid, liquid, or gaseous material, whether occurring naturally or produced artificially that emits ionizing radiation spontaneously.

2.11 "State" means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

2.12 "Unaffiliated state" means a state that is not a member of a compact.

Article III Compact Obligations

3.1 The compact commissions which are party to this agreement agree not to use their authority, including any authority they have to exclude waste from their compact region or regional facilities, to impede the return of waste generated within their compact region or waste generated by the management of radioactive materials which have been exported for management outside their compact region, so long as the person seeking to return the waste can document that the waste was generated within that region.

3.2 Each compact commission agrees to work cooperatively with the other compact commissions and unaffiliated states that are party to this agreement in fulfilling the objectives of this agreement. This cooperation shall include supplying, upon request of a compact commission or unaffiliated state, information relating to the origin of any waste.

Article IV Unaffiliated State Obligations

4.1 Each unaffiliated state which is a party to this agreement agrees not to impede the return of waste generated within that state or waste generated by the management of radioactive materials which have been exported for management in another compact region or unaffiliated state, so long as the person seeking to return the waste can document that the waste was generated within that state.

4.2 Nothing in this agreement shall be construed to limit an unaffiliated state's ability to exercise its police powers to protect the health and safety of its citizens.

4.3 Each unaffiliated state agrees to work cooperatively with the compact commissions and other unaffiliated states that are party to this agreement in fulfilling the objectives of this agreement. This cooperation shall include supplying, upon request of a compact commission or unaffiliated state, information relating to the origin of any waste.

Article V
Eligibility, Effective Date, and Withdrawal

5.1 All compact commissions and unaffiliated states are eligible to enter into this agreement.

5.2 This agreement shall become effective upon execution by two compact commissions. It shall be effective as to other parties upon the dates of their signing the agreement, which may be executed in counterparts.

5.3 Any compact commission or unaffiliated state which is a party to this agreement may withdraw from the agreement upon six months written notice to each other signatory to the agreement. Notwithstanding the provisions of the previous sentence, this agreement shall continue to apply after the effective date of the withdrawal to all waste generated within the withdrawing compact region or unaffiliated state from which the waste was exported for management prior to the effective date of the withdrawal and to waste generated by the management of radioactive materials which were exported for management prior to the effective date of the withdrawal. The withdrawal of any party to this agreement shall not affect the validity of the agreement as to the remaining parties.

Article VI
Enforcement

6.1 The sole remedy for a violation of this agreement shall be injunctive relief. This agreement may be enforced only by any aggrieved party to the agreement. Nothing in this agreement shall be construed to confer any third-party beneficiary rights on any nonparty to this agreement.

6.2 Nothing in this agreement shall be construed to enable a compact commission or unaffiliated state to exclude waste which it does not have the authority to exclude.

Central Interstate Low-Level Radioactive Waste Commission

Name of Compact or Unaffiliated State

Orta J. Dicio
Signature of Authorized Representative

January 29, 1993
Date

Chairman
Title

Table S-1

POTENTIAL SITING AREAS (PSA)

PHASE II SITING STUDY

<u>State</u>	<u>Phase I</u> <u>Candidate Areas (sq. mi)</u>	<u>Phase II</u> <u>PSA (sq. mi)</u>	<u># of PSA Areas</u>
ARKANSAS	1,820	5	2
KANSAS	10,496	833	109
LOUISIANA	1,536	2	1
NEBRASKA	10,908	265	36
OKLAHOMA	<u>1,228</u>	<u>0</u>	<u>0</u>
TOTAL:	25,988	1,105	147

The EPA administrator praised a Florida law which requires provision of state funds to local governments to implement state-mandated programs. "It doesn't extend to all environmental programs in Florida," she explained, indicating that as EPA administrator, she might advocate similar legislation for federally mandated programs. She said EPA needs to "respect programs state regulators have taken the time to develop" and allow states which have made a commitment to the environment to play a leading role in its protection.

Browner maintained she does not "want to prejudge the outcome" of environmentalists' challenge to an East Liverpool, Ohio, hazardous waste incinerator that has drawn the interest of Vice President Al Gore and his pledge to investigate before the project moves forward. She has "not seen the EPA files" on the issue, she said, but intends to thoroughly review them. ◀

NEBRASKA INTENDS TO DENY US ECOLOGY LICENSE APPLICATION

Nebraska regulators said Jan. 22 they intend to deny US Ecology's license application to construct a LLRW disposal facility for the Central Interstate Compact in Boyd County. The directors of the departments of Environmental Quality (DEQ) and Health (DOH) based their decision on state regulations that prohibit wetlands on the site and disposal in a 100-year floodplain.

The regulations of both agencies state that any LLRW disposal facility site must not only be free of wetlands, but must also be generally well drained and free of areas of flooding or frequent ponding.

According to a press statement issued jointly by the two departments, US Ecology's license application indicates that there are wetlands on the site. DEQ director Randolph Wood and DOH director Mark Horton concluded that the site is not well drained, and contains areas that indicate frequent flooding and ponding.

Review of Application to Continue in Meantime

After taking public comment on their intent to deny a license and holding a public hearing, tentatively scheduled for March 17, the agencies will review all relevant data, respond to significant comments, and issue a final decision. Persons wishing to challenge the decision can request a contested case hearing. In the meantime, the two agencies will continue their technical review of license application.

US Ecology officials responded to the state action saying they believed the issues raised had been resolved by information submitted to the state over the past two years of the licensing review. Project Manager John DeOld said he was surprised by the state's timing in making their decision.

Nebraska Gov. Ben Nelson (D) issued a statement following the agencies action in which he pledged his cooperation with the compact, generators, US Ecology, and other groups "to resolve the issues involving disposal of LLRW. We must work to make sure that there is continued disposal and storage available for Nebraska generators."

That statement came on the heels of a lawsuit, filed by the governor and Attorney General Don Stenberg (R), challenging US Ecology's selection of the Boyd County site based on the absence of community consent (see below). "I want to continue Nebraska's involvement with the compact and I plan to take no action that jeopardizes our membership in the compact or the ability to dispose of our waste," Nelson said.

In a Jan. 22 letter to US Ecology Vice President Richard Paton, Wood and Horton cited Nebraska regulations that "set out minimum site characteristics." Based on those requirements, they said, "the site you have chosen is not licensable."

Same Issues Discussed in 1991

The state initiated correspondence on these issues outside the formal license review process in August, 1991, according to a US Ecology prepared statement. That correspondence ended three months later when the Department of Environmental Quality wrote US Ecology that the state would review and analyze the complete application before making a final licensing decision.

"The state, as part of their formal license review process, asked similar questions on these matters in their first round of comments," said DeOld. "We found no difficulty in responding to those questions. The second round of comments did not include much, if any follow-up." He added, "US Ecology remains confident that a LLRW disposal facility can be licensed for the proposed site and that doing so will not pose a threat to public health, safety or the environment."

In a Sept. 11, 1991 letter responding to the state's concern about drainage, a 100-year floodplain, and wetlands on the site, DeOld provided the developer's

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rationale and basis for compliance with Nebraska regulations:

"The argument that 'waste disposal shall not take place in a... wetland' has been satisfied since the disposal cells are at least 250 feet distant from any wetland. The wetland nearest any cell is a 'problem area' wetland, which apparently would be declassified as a wetland under newly proposed federal guidelines. US Ecology held meetings with the DEQ and the Corps of Engineers to discuss wetlands and the corps has formally agreed with our delineations and has advised that no permits would be needed."

Calling Area Floodplain Was an Error

The developer continued: "The site is not in a floodplain. A drainage way was identified... [that] is a depression running through the site which collects surface run-off. Portions of it are farmed. The drainage way is ill-defined and has no established bed or banks. It is not a stream, creek, brook or other such defined waterway, but rather a topographic swale [sic] that directs intermittent run-off to the receiving culvert northwest of the site. The total upstream drainage area for the entire site is less than one square mile."

According to the developer's analysis, "the extent and elevation of surface run-off resulting from a severe storm...clearly shows the elevation of the cells to be above the probable maximum precipitation surface water elevation." Further, "the safety analysis report will be revised by deleting references to the 100-year floodplain.We erred in calling this area a floodplain and apologize for the concerns our doing so has raised."

Developer Argues NRC Requirements Satisfied

Referring to Nuclear Regulatory Commission siting requirements in 10 CFR, part 61, the letter states NRC guidance is based on a shallow land burial system. "The concern for an above grade facility, as stated in NUREG-0902, is that there be no flood water draining across the facility after construction. Areas of flash flooding should also be avoided. These requirements have been satisfied by minimizing the upstream drainage area which minimizes any potential impact of flood caused erosion and by the facility design.

"The other concern is that natural areas of poor drainage or frequent ponding can indicate seasonally high groundwater levels. Ponding or temporary accumulation of run-off at the site occurs during intense storms. This is not in response to high groundwater levels as verified by the data collected during site characterization, but only

when the precipitation rate exceeds the surface soil infiltration rate. When this occurs, the excess water either runs off or accumulates in depressions and frequently evaporates or infiltrates. The site will be drained after construction and meets all requirements of (the Nebraska code)"

GOVERNOR SUES CENTRAL STATES OVER NEBRASKA COMMUNITY CONSENT

Nebraska Gov. Benjamin Nelson (D) and Attorney General Don Stenberg (R) filed suit against the Central Interstate Compact Commission Jan. 13 challenging the commission's selection of a site in Boyd County for a regional LLRW disposal facility.

The action comes on the heels of the Butte Village Board of Trustee's Jan. 12 monthly meeting at which the board passed a resolution expressing its "continued support from the people living in and near Butte" for construction of an LLRW disposal facility two and one-half miles west of the village boundary.

State Officials Seek Permanent Injunction

The suit seeks a permanent injunction barring the licensing or construction of an LLRW disposal facility in Boyd County. The two officials who, reportedly, usually disagree on almost every issue, also requested a declaration that community consent is a "necessary prerequisite to construction" of such a facility in Nebraska but has not been obtained. Nor, they maintain, has the compact commission made every effort to obtain or determine the community's support.

In filing the suit, Nelson followed through on an ultimatum he gave the commission -- withdraw the site or face court action (*Exchange*, Vol. 12 No. 1). He had asked it to reconsider the site selection by Jan. 8, but the commission will not take up the issue until its regular meeting Jan. 26.

The governor and the commission disagree on which community must give its consent: Boyd County, 93 percent of whose voters rejected the facility in a December 1992 straw poll, or Butte, whose village board passed the supportive resolution.

The compact approved a community consent condition established by former Gov. Kay Orr (R) in 1987, but it was never codified in state law, nor was "community" defined. In January 1989, Boyd County passed a resolution

tion withdrawing the county from consideration as an LLRW disposal facility host.

According to the recent Butte resolution, the village "has supported construction of the LLRW disposal facility continuously since a letter of interest (invitation) was sent to US Ecology in August 1988." Further, "well over 70 percent of the residents of the village of Butte support the construction of the facility as is evident from the high percentage of residents in the village and surrounding area who refused to participate in the unauthorized poll conducted Dec. 8."

The board resolution asks state agencies involved in the proposed facility's development and the compact commission to continue that development using protection of public health and safety as their main criteria and to "listen to the opinions and concerns of the residents of the village of Butte and other people who are the closest to the site when evaluating the social and economic impact of the waste disposal facility."

Monitoring Committee Not an 'Objective Entity'

The compact and state should "recognize that the Local Monitoring Committee (which initiated the straw poll) is no longer an objective entity and now fails to carry out its duties and fails to provide significant input concerning the need and resources of the village of Butte, which is the local community in relation to the waste storage facility and the host community."

The resolution also requests a reconstruction of the local monitoring concept "by more clearly defining the activities of the local monitoring entity so that it must remain objective and cannot actively promote or oppose the development" of the facility.

Along with the resolution, board chairman Ron Schroetlin transmitted a letter to commission chairman Greta Dicus Jan. 13, praising facility developer US Ecology for its role in the process. According to Schroetlin:

In the four years since US Ecology came to Butte, they have worked cooperatively with us and given us ample means to stay informed about their activities and the findings of their site studies. In addition, US Ecology has shown a real interest in our community by opening an office here and participating in many civic activities. In all respects, US Ecology has become a part of our community and we are pleased to have them here.

He also asked the commission to "continue to look for ways to improve understanding and develop better relations with other Boyd County communities by working directly with community and business leaders."

Schroetlin closed with thanks: "I want to convey my appreciation to the commission for sticking to your principles and putting public health and safety ahead of political expediency in siting this facility. Our village's support for the project has always been based on the requirement that safety of public health and the environment come first. No other factors can be allowed to take precedence." ◀

CALIFORNIA LAND SALE STALLED PENDING RESOLUTION OF LAWSUITS

Two lawsuits have stalled the direct sale of federal land near Needles, Calif., to the state Department of Health Services (DHS) for development of an LLRW disposal facility, just as Interior Secretary Manuel Lujan acted to initiate the sale.

Lujan acted at the Jan. 5 request of California Governor Pete Wilson, who said he wanted to "preserve the opportunity to site an LLRW facility [at the proposed Ward Valley site] if the outcome of all past, present, and future siting reviews determines that this is the most appropriate location."

A federal district court is expected to rule Jan. 25, when a temporary restraining order prohibiting the sale expires, on whether the action would violate the Endangered Species Act. At issue is whether the land title could revert to the federal government if the site is found to constitute critical habitat for the endangered desert tortoise.

Other Federal Laws at Issue in Second Suit

A second lawsuit was filed Jan. 19 alleging that Lujan's proposal to sell the Ward Valley site violates provisions of the National Environmental Policy Act and the Federal Land Policy Management Act.

Judge Patel of the federal district court for the district of Northern California granted a temporary restraining order Jan. 9 prohibiting the sale. A coalition of environmental groups allege the land should remain protected as critical habitat for the desert tortoise. The Interior Department's Bureau of Land Management (BLM) received a biological opinion from the Fish and Wildlife

Nelson: State won't be pushed into 'unsafe site'

By Marc Krasnowsky
of The Lincoln Star

Nebraska will not be pressured or threatened into approving an "unsafe" low-level nuclear waste site, Gov. Ben Nelson said in a Wednesday afternoon press conference.

And despite attempts by the Central Interstate Compact commission "to put a squeeze on us, we're not going to be stampeded in this process," the governor declared.

Nelson's comments came about three hours after an Atlanta session in which Nebraska state officials and representatives of the Central Interstate compact commission and its contractor, US Ecology, met with the Southeast Compact commission's import policy committee.

The committee is weighing whether to recommend cutting off low-level waste generators in Nebraska and other Central compact states from access to the only existing national low-level waste site, located in Barnwell, S.C.

Recent actions by Nebraska, including a lawsuit claiming "community consent" has not been obtained for the proposed Boyd County site and the issuance of an "intent" to deny US Ecology's license application because of wetlands on the site, have caught the interest — and raised the ire — of Southeast commissioners.

THE COMMITTEE made no decisions Wednesday. But committee chairman James Setser of Georgia's Environmental Protection Division said that the governor's representative Steve Moeller and state Department of Environmental Quality director Randy Wood failed to provide "satisfactory answers" to several questions.

Setser was concerned specifically with why Nebraska "chose to make an issue of community consent when there is no definition of community consent any place? Why did they choose to bring a lawsuit?"

And he wondered why DEQ and the state Health Department decided to disqualify the site on the wetlands issue several years and several million dollars after the license application was submitted, when that appli-

cation "clearly delineated there were wetlands?"

He pointed out an apparent contradiction between Nebraska's opposition to having wetlands on its proposed site and its desire to send wastes to Barnwell, where wetlands

"If not this site, what site? What assurances are there that you will meet these responsibilities under the law."

— James Setser

have always been.

Setser clearly was unconvinced by Moeller's argument, contained in two pages of "talking points" released by the governor's office, that raising the community-consent and wetlands issues now "is in the best interests of all parties involved."

Nelson repeated and embellished upon most of those points during his press conference.

Nelson said a Southeast Compact decision to cut off access would not deter him from "doing it right. It will be the right site or no site."

Setser said the Southeast commissioners were not interested "in getting into the fray" of wetlands, community consent and other technical or legal issues.

"We're focusing on what proactive plan the Central States Compact has in place, and that goes for Nebraska as host state," Setser said. "If not this site, what site? What assurances are there that you will meet these responsibilities under the law?"

THE ATTITUDE of the Central compact toward an access cutoff remained open to interpretation. Neither commission executive director Gene Crump of Lincoln nor commission chairwoman Greta Dicus of Arkansas could be reached following the meeting, though the commission's Lincoln office released a text of Dicus' remarks.

In her printed statement, Dicus expressed confidence that the community-consent lawsuit would be defeated and that US Ecology eventually would prevail on the wetlands issue. There was no direct reference to cutting off access.

SETSER DID NOT recall Dicus or Crump asking the committee not to cut off access, but "at no time did they say, 'cut off access' or 'teach them a lesson.' I think they were making the case that Nebraska is the problem, not the rest of the compact."

The southeast compact, he said, is dealing with the entire Central compact region: Nebraska, Kansas, Oklahoma, Arkansas and Louisiana.

"All the generators are in jeopardy," he warned.

Setser said committee members will sift through the oral and written

testimony, "sort the facts from the rhetoric," and make a recommendation prior to the full commission meeting set for April 14. An earlier, special commission meeting could be called if the committee finishes its work ahead of schedule, he said.

Nelson says nuke 'squeeze' is on

ASSOCIATED PRESS
and Journal Writers

Gov. Ben Nelson said Wednesday that the state will not be "stampeded" into making any hasty decisions on a proposed low-level radioactive waste storehouse in Boyd County.

Nelson commented on a meeting of the Southeast Compact Commission in Atlanta Wednesday. The commission has threatened to exclude Nebraska from using its Barnwell, S.C. facility.

One member of a committee set up by the Southeast Compact Commission to study the issue warned Wednesday that the commission could cancel waste service to Nebraska with as little as 60 days notice.

"We still have some unresolved concerns," said James Setser, the Southeast Compact's representative from Georgia. "We have an obligation to the people in the Southeast to reduce the amount of waste we handle here. We're tired of being the nuclear waste dump for the nation."

Nelson said the Central Interstate Low-Level Radioactive Waste Compact is trying to put the squeeze on Nebraska, just like Boyd County site developer US Ecology is trying to do.

"We won't be stampeded or trampled into doing something we don't want to do," said Nelson, who commented at a press conference at the Governor's Mansion Wednesday afternoon.

While he hopes that federal regula-

Nuke monitoring panel will be financed quarterly

NORFOLK (AP) — A citizens committee set up by Nebraska law to monitor a proposed low-level radioactive waste facility will be financed in quarterly installments, the state said.

In a letter to Jim Selle, chairman of the Boyd County Low-Level Monitoring Committee, the state Department of Environmental Quality said that US Ecology Inc., the developer, will provide \$100,000 for committee activities in 1993.

Selle said he was pleased that financing for 1993 has been approved and concerns settled.

In the letter, department director Randy Wood said that the \$100,000 will be paid in quarterly installments of \$25,000 after the committee has outlined proposed ex-

penditures for each quarter and detailed expenditures of the previous three months.

US Ecology had objected to the monitoring committee's request that the entire amount be paid in one lump sum because it did not conform to state law.

Wood told the Boyd County committee that concerns raised by a state audit of the committee's records have been resolved.

Those concerns included: payments made in January 1991 that may not have been approved by the committee; payment of legal expenses connected to a grand jury investigation; payments not supported by original invoices; and expense reimbursements not in compliance with the committee's guidelines.

tions will change to reduce the number of disposal sites needed nationwide. "I'm going to do what's right for the people of Nebraska," Nelson said.

Regional compact commissions are required by federal law to build facilities for their states' radioactive

waste. Currently the Barnwell, S.C., facility the only one that accepts waste generated nationwide. It will stop accepting outside waste in June 1994.

Under its rules, the eight-state Southeast Compact can exclude out-

side waste before June 1994 if an out-of-region state is not making progress on building its own facility.

Nebraska, as the host state for the Central Interstate Compact, was supposed to open a facility in Boyd County by 1995.

That project now appears to be stalled, Setser said. Nelson has sued the compact, saying it neglected to get community consent for the landfill, and state officials recently announced their intentions to deny the compact's license application, citing potential damage to wetlands.

Wednesday, Central Interstate Compact Chairwoman Greta Dicus, Compact Executive Director Gene Crump and Nelson aide Steve Moeller contended that despite the drawbacks, Nebraska is working steadily toward its landfill deadline.

However, Nelson said Moeller characterized Dicus' presentation as "neutral to hostile."

The Southeast Compact committee said it would study the case.

If it reaches a decision before the compact's April meeting, it will call a special session of the entire commission to vote on excluding Nebraska. Otherwise, the compact will vote on the issue on April 14 in Jackson, Miss.