Approved: 1-26-93
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on January 20, 1993 in Room 423-S of the Capitol.

All members were present :

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Don Hayward, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

The Chairman called the meeting to order shortly after 8 a.m.

The chairman requested committee members to furnish the committee secretary with their name and permanent address as well as the name and address of their guest if they planned to take the tour to Wolf Creek.

Bill requests were deferred until January 21, 1993 in order that staff could brief the committee on the status of the Low-Level Radioactive Waste situation.

Staff went through the Memorandum on Low-Level Radioactive Waste with the committee highlighting the history and present status of the Low-Level Radioactive Waste Compact. Attachment 1

It was pointed out that there appeared to be a difference of opinion as to the criteria necessary to establish community consent.

Staff told the committee that Nebraska has sought to modify the compact language, specifically dealing with issues such as shared liability, an extra vote on the commission by the host state and adoption of the changes to their compact language, leaving Kansas as the lone state not making the changes as requested by Nebraska. Copies of HB-2042 introduced before the House Energy Committee were distributed to committee members who were advised this is the same bill as last year's SB-430 with minor changes which were covered in the Attachment 1. Kansas is the only state within the compact which has not made the requested changes.

Committee members had numerous questions which will be dealt with at the time it deals with the bill.

The chairman announced that a change, not previously noted, in the wild life bill, SB-20, was to change from 2 percent to 5 percent on the amount of permits.

The meeting adjourned at 8:59 a.m. and will meet at 8:00 a.m. January 21, 1993.

GUEST LIST

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

DATE 1-20-93

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
John C. Bottenberg	Ks Ethanol Assoc
ED SCHAOB	Western Resources Inc.
Whitney Damron	Pete McGill & Associates
STEVE KEARNEY	WASTE MANAGEMENT
Rich McKee	KS Livestock Assoc.
Charles Jones	KDHE

MEMORANDUM

Kansas Legislative Research Department

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January 19, 1993

From: Raney Gilliland, Principal Analyst

Re: Low-Level Radioactive Waste

Background

Low-level radioactive waste is generally defined by federal law as radioactive material that is not high-level radioactive waste or spent nuclear fuel. Low-level wastes are produced in a variety of forms including contaminated paper towels, plastic gloves and clothes, machinery parts, medical treatment materials, animal carcasses, organic and aqueous liquids and sludge. Historically, disposal of low-level radioactive waste from all sources has been tightly regulated by the federal government and the states which have been host to commercial low-level radioactive waste disposal facilities.

Over the last fifteen years, the subject of low-level radioactive waste has been a significant topic of discussion for the Kansas Legislature. In fact, the process of implementing the language that constitutes the Kansas version of the Central Interstate Low-Level Radioactive Waste Compact (CILLRWC) was one that took a great deal of the Legislature's time and attention in the 1980s. Several legislative actions took place as a result of the issues surrounding low-level radioactive waste. Two of these legislative enactments include the adoption of the Compact language in 1982 (K.S.A. 65-34a01 *et seq.*) and the adoption of a statute in 1987 that prohibits the below-ground burial of low-level radioactive waste. As a result of this latter enactment, the burial of low-level radioactive waste below the surface of the disposal site is prohibited, unless it provides greater protection to the environment and public health than above-surface disposal. This provision is contained in K.S.A. 1992 Supp. 48-1620.

In 1979, there were three commercial low-level radioactive waste disposal facilities in the United States. These facilities were located in Beatty, Nevada; Richland, Washington; and Barnwell, South Carolina. At about this same time the governors of Nevada and Washington took action which denied access to these facilities for a period of time because they were concerned about being the repository for the entire country. While Nevada and Washington temporarily closed their facilities, South Carolina only restricted the amount of waste it would accept. All three states announced that they did not intend to continue accepting all of the nation's commercial low-level radioactive waste. In response, Congress passed the Low-Level Radioactive Waste Policy Act of 1980 (P.L. 96-573), making each state responsible for disposal of commercial low-level radioactive waste generated within its borders. Congress further declared that low-level waste could be most efficiently

and safely managed on a regional basis and authorized states to enter into compacts to establish and operate regional disposal facilities. The intent of this law was not only to lead to the creation of regional compacts, but, moreover, to have low-level radioactive waste disposal facilities in operation on a regional basis by January 1, 1986.

In 1985, realizing the January 1, 1986 deadline could not and would not be met, Congress revisited the Low-Level Radioactive Waste Policy Act and amended it to reflect continued access to existing low-level disposal facilities until 1993 for states and regions which do not have low-level radioactive waste disposal sites. The Low-Level Radioactive Waste Policy Amendments Act (P.L. 99-240) established a new series of requirements for the states to meet.

Under the 1985 Amendments Act, each state had to join a compact or indicate its intent to develop its own facility by July 1, 1986. Each compact commission was to identify a "host state" for its low-level radioactive waste disposal facility by January 1, 1988, and each host state was to have a plan for establishing the location of the facility. By January 1, 1990, each compact commission and each "go it alone" state was required to complete and file with the Nuclear Regulatory Commission an application to operate a low-level waste disposal facility or the governor of the state was required to certify that the state will manage its own waste by December 31, 1992. A January 1, 1992 deadline also was established by which it was expected that each application for a license to operate a low-level waste disposal facility would have been determined to be completed to the satisfaction of the licensing authority. In most cases the licensing authority would be the host state for the low-level radioactive waste disposal facility.

By January 1, 1993, each state of a compact region was supposed to provide for the disposal of all low-level radioactive waste generated within its borders. This was the target date to initiate the operation of facilities. Failure to meet the deadlines or make adequate provision for "going it alone" is supposed to result in the imposition of penalties and possible exclusion from access to existing disposal facilities. As of January 1, 1993, the three existing disposal facilities were authorized to refuse wastes from outside their respective compacts.

However, as of January 1, 1993, no state or compact region has completed the process of developing a new low-level radioactive waste disposal facility. In fact, only two compact regions successfully attained the January 1, 1992 deadline to have license applications completed and ready for review by the host state. Those two compacts are the Central Interstate Radioactive Waste Compact (Louisiana, Arkansas, Oklahoma, Kansas, and Nebraska) and the Southwestern Compact region (California, Arizona, North Dakota, and South Dakota). California has been chosen as the first host state for that compact region. Because no disposal facility has been constructed for the Central Interstate Compact members, the Commission has contracted with the Southeastern Compact to receive continued access for disposal on behalf of the generators of low-level waste in the central states' compact. This disposal will take place at the Barnwell, South Carolina site for the next 18 months. The Southeastern Compact will use the Barnwell site until a disposal facility is developed in North Carolina. North Carolina has been designated as the first host state for the Southeastern Compact. It is possible that the contract could be renewed at the end of the contract period. According to sources at the Compact Commission Office in Lincoln, Nebraska, the State of Nebraska does not project completion of its review of the license application until mid-1994.

In California, objections have occurred to the process for review of the license application. If those individuals and groups who are objecting are successful, then additional hearings will be held before a final decision can be made to approve the license. This could further delay the development of a low-level disposal facility in that region.

Other compact regions and "go it alone" states are not as far along in their process for disposal of low-level radioactive waste as the Central Interstate and the Southwestern Compact. An exception to this exists in the northwest part of the country where the Washington low-level site is closed to disposal from the rest of the country, but is the designated site for the Northwest Compact. The Rocky Mountain Compact has a contract to use the Northwest Compact site. Some "go it alone" states include: New York, Massachusetts, Maine, Vermont, New Hampshire, and Rhode Island. These states, when a disposal site is developed in them, may be required to take low-level radioactive waste from other states.

Central Interstate Low-Level Radioactive Waste Compact

In response to the Low-Level Radioactive Waste Policy Act of 1980, the states of Arkansas, Kansas, Louisiana, Nebraska, and Oklahoma formed the Central Interstate Low-Level Radioactive Waste Compact Commission in 1983. Each state has one voting member. The State of Kansas enacted legislation in 1982 that made the state a participant in the Compact. The Compact Commission is empowered to carry out the member states' duties and responsibilities regarding low-level radioactive waste management. Further, it is the Commission's responsibility to preserve the health, safety, and welfare of their citizens and the environment and to provide for, and encourage, the economical management of low-level radioactive wastes.

Since the adoption of the compact language and creation of the actual compact, the Commission has taken steps that are intended to lead to the construction of a low-level radioactive waste disposal facility. In fact, the Compact Commission has achieved some success in developing a low-level radioactive waste disposal facility within the region. The Commission has contracted for site exclusionary studies and management plans; issued a request for proposal for the development of a waste facility; selected US Ecology as the developer to construct, manage, and operate the facility; and selected Nebraska as the first host state. The designation of Nebraska as the host state was made in December of 1987.

The Commission contracted with the environmental consulting firm of Dames & Moore to conduct site exclusionary studies. The first study was conducted to determine the general areas of each member state that were unsuitable for a shallow-land burial low-level radioactive waste disposal facility. The second study indicated the potential siting areas within the candidate areas (the areas not excluded by the first study) which optimized various site characteristics necessary to meet the U.S. Nuclear Regulatory Commission's siting criteria for licensing requirements for land disposal of radioactive waste. The first study was completed and released in June, 1985. The second study report was completed and released in August of 1987.

A regional management plan, which also was conducted by Dames & Moore, evaluated the waste source characteristics in the compact region, investigated alternative disposal technologies, developed a public involvement plan that contained guidelines for submitting a proposal to develop a regional low-level waste disposal facility, and developed procedures for states that may want to volunteer to host a site. The report was released in February, 1987, and adopted by the Commission in its final form in August of 1987.

The Commission also developed guidelines to aid potential developers in submitting proposals to develop, construct, and operate a regional low-level radioactive waste facility. The Commission met on June 29, 1987, and selected US Ecology as the contractor to develop, construct,

and operate the regional facility. As was indicated earlier, it was later in that year that the Commission selected Nebraska as the first host state.

US Ecology prepared a 4,250 page license application on the Boyd County site and submitted it to the State of Nebraska in July of 1990. The Nebraska Department of Environmental Control is currently reviewing the license application. As also indicated earlier, this review is expected to take until mid-1994.

Low-Level Radioactive Waste Generation

Producers and generators of low-level waste include commercial reactors, hospitals, research institutions, industries, and the federal government. In 1985, 26,806,594 cubic feet of low-level waste were produced in the United States; Kansas produced 1,695 cubic feet of such waste in that year.

According to a recent federal Department of Energy report, Kansas produced 3,675.08 cubic feet of low-level radioactive waste in 1991. In relation to other member-states of the CILLRWC, Kansas produces by far the least amount of such waste. The state producing the second least amount of low-level waste in the Compact, according to the report, is Louisiana. Louisiana produced 9,960.72 cubic feet in 1991. The total of the five states was 56,774.43 cubic feet for 1991.

Low-level waste, according to the report, is divided among five different source categories. Those categories are academic, government, industrial, medical, and utility. For Kansas, the largest generator by source category is the utility source. Out of the 3,675.08 cubic feet generated in 1991, 2,871.97 cubic feet (78.1 percent) were from utility sources.

Community Consent

One of the issues which has been discussed of late concerning the location of the CILLRWC site, is that of community consent. It appears there are differences of opinion in whether community consent has been acquired in regard to the proposed Boyd County, Nebraska site. In a recent opinion poll in Nebraska, residents of Boyd County voted not to have the low-level radioactive waste disposal facility constructed in their county. The implications that this vote will have are not yet known, even though this vote might lead one to believe that community consent had not been achieved.

Some believe that community consent may have been achieved in 1988, when the State of Nebraska conducted a referendum on whether the state should withdraw from the Compact. The voters of the state rejected this referendum by a vote of 414,394 to 225,174. Information available to the Kansas Legislative Research Department indicates that the voters of Boyd County were supportive of their state's participation in the Compact in this vote. In addition, it appears that local units of government have received and expended moneys from the Compact Commission. The receipt and expenditure of money is seen by some as tacit approval by the local community for the establishment of the disposal facility.

Community consent is a policy of the Commission. This may confuse some because the policy is not a part of the by-laws or the rules of the Commission. In addition, there is no federal

requirement that there be community consent. The policy of community consent was taken up in 1987, when ten generic policy conditions were approved by the Commission. The Commission believes it has lived up to these policy conditions. The issue of whether community consent has been achieved at the Nebraska site is to be taken up by the Commission at its next meeting on January 26, 1993. At this meeting, the Commission will request US Ecology to demonstrate that community consent has been achieved.

In addition, there has been an exchange of correspondence between Governor Nelson of Nebraska and the Compact Commission Executive Director since the November 1992 poll in Boyd County. In this correspondence, dated December 23, 1992, Governor Nelson contends that the Commission has not lived up to its own policy. The Governor sites several of the arguments that may be used to argue that community consent has been achieved and refutes them all. The letter asks that Boyd County be withdrawn from consideration as the final site. In the letter, the Governor stated that if the Commission did not withdraw Boyd County as the final site by January 8, 1993, at 5:00 p.m., he requested the Nebraska Attorney General to take the matter to court. The Nebraska Attorney General, on January 13, 1993, did file a suit alleging that the Commission and the site developer (US Ecology) have failed to show that community consent as been obtained. The suit asks the court to block licensure and construction anywhere in Nebraska until community consent is established.

Legislative Action on Potential Changes to the Compact

In 1989, the State of Nebraska began to seek some modifications to the Compact language. These changes dealt with issues such as shared liability, an extra vote on the Commission by the host state, and adoption of the open meetings law of the host state as the rule for the Compact Commission. Other states in the Compact have made similar changes to their compact language.

The first Kansas consideration of the potential changes to the Compact language came in 1991. S.B. 430 was introduced by the Senate Ways and Means Committee on April 2, 1991. The bill was referred to the Senate Energy and Natural Resources Committee where it received approval during the 1992 Session. The Senate Committee of the Whole recommended S.B. 430 retain a place on the Calendar. However, on March 9, 1992, the Senate struck S.B. 430 from the Calendar.

S.B. 430 would have amended the Kansas version of the low-level compact language. Major provisions of the bill are summarized below.

1. Changes would have been made in regard to a fee assessed against users of the waste disposal facilities and the liability of party states of the Compact for compensation to the state where the regional facility is being developed or located (host state).

    a. Under current law, in addition to other rates charged to users of the facility, a host state may establish fees which must be charged to any user of a regional facility. The bill would have required that these fees be subject to a 120-day prior notice to the Commission with an opportunity to provide comments to the host state. (The Commission is comprised of representatives of member states.) The fees could have included incentives for source and volume reduction and

could be based on the levels of hazards of the wastes. In addition, the fees would have had to provide the host state with sufficient revenue to cover all anticipated present and future costs associated with the facility and a reasonable reserve for future contingencies that are not covered by other user fees. (Current law only provides that these fees be reasonable and provide the host state with sufficient revenue to cover all costs associated with the facility.)

b. Items to be included in the user fee assessment were specified by the bill. The fees would have to include, but would not be limited to:

   i. licensure, operation, monitoring, inspection, maintenance, decommissioning, closure, institutional control (activities carried out by the host state to physically control access to the disposal site for not less than 100 years following transfer of the license to the owner of the disposal site), and extended care of a regional facility;

   ii. response, removal, remedial action, or cleanup deemed appropriate and required by the host state as a result of a release of radioactive or hazardous materials from the regional facility;

   iii. premiums for property and third party liability insurance;

   iv. protection of public health and safety and the environment;

   v. compensation and incentives to the community where the regional facility is being developed or located;

   vi. 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 for losses to real or personal property or the environment; and

   vii. cost of defending or pursuing liability claims against any party or state.

All party states of the Compact and any other state or states whose generators use the regional facility would have been required, regardless of any provisions of the Compact, state constitutions, regulations, or laws, to share liability for all of these costs and for any costs associated with the regional facility if revenues from fees are insufficient to pay for costs of the facility. (Current law provides that only party states of the Compact share in such costs, in a manner

determined by the Commission, if such fees have been reviewed and approved by the Commission.)

Recovery from states for the costs of the facility would not have occurred until all available funds, payments, or in-kind services had been exhausted, including:

a. designated low-level radioactive waste funds managed by the host state;

b. payable proceeds of insurance or surety policies applicable to a regional facility;

c. proceeds of reasonable collection efforts against the regional facility operator or operators; and

d. payments from or in-kind services by generators.

In the event any regional facility operator files or has filed against it a bankruptcy proceeding, the filing of such proceedings if not dismissed within 60 days of filing would have been considered exhaustion of reasonable collection efforts with respect to such party. All costs or liabilities shared by a state would have been shared proportionately by comparing the volume of the waste received at a regional facility from the generators of each state with the total volume of the waste received at a regional facility from all generators. States would not be precluded from further recovery of their costs from a facility operator, insurer, or generator. During the period of time that such reasonable collection efforts or exhaustion of available funds, payments, or in-kind services occurred, any applicable statutes of limitation would be suspended with respect to claims against any other parties or states.

2. The number of voting members of the host state would have been increased from one to two. In addition, one nonvoting member for the host state would be added to the Commission. (Under current law, each of the party states of the Compact has one voting member.) Under the bill, the voting members of the host state and two other party states would still need to agree before any action by the Commission would be binding. However, if the host state did not agree, it would take an agreement by four rather than three voting members of the current five party states before action by the Commission would be binding.

3. Language would have been added to provide that all files, records, and data of the Commission would be open to public inspection except for those items that would be excluded by the public records law of the host state. The Commission would have to adopt bylaws relating to the availability of the files, records, and data. In addition, except for those meetings excluded from the public meeting laws of the host state, all meetings of the Commission would be open to the public and could be held following reasonable advance published notice.