

Approved: 3-9-93  
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 February 24, 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

### **SB-246** - amending the central interstate low-level radioactive waste compact

The chairman called the meeting to order stating the intent to work SB-246. Attention was called to a handout furnished by Secretary Robert C. Harder, Kansas Department of Health & Welfare. Attachment 1

Senator Sallee presented the following amendment: On page 12, by striking all in line 42 and inserting "the date upon which the appropriate authority of the state of Nebraska issues a license or permit for the operation of a low-level radioactive waste disposal facility in the state of Nebraska which is accessible to the members of the central interstate low-level radioactive waste compact, and its publication in the statute book."

Senator Vancrum made the motion to accept the amendment as presented. Senator Lawrence seconded the motion and the motion carried.

Discussion touched on Sierra Club testimony concerning New York v. United States. Charles Jones, Director of Waste Management, KDHE, noted the "take title" provision was stricken leaving the rest of the act in place. Major concern was expressed about giving Nebraska the extra vote in the compact. Also noted was the fact that the other states could go back and reconsider their vote allowing Nebraska two votes. The suggestion was made to give them one voting member and one non-voting member. It was also stated that Nebraska is not cooperating.

A member pointed out that staying with the original compact leaves vague language in place while this bill spells out the liabilities involved. The effect of not conforming with the other states could affect the present court case. It was also noted that in thirty years Kansas will be the host state and Kansas will probably be a very small generator and would want the second vote.

Senator Lee moved to amend SB-246, page 5, line 43, changing "two" to "one". Senator Martin seconded the motion. The motion failed. Division was called for. The motion failed 4 to 6. Senator Lee requested her Yes vote be recorded.

Senator Emert made the motion to pass SB-246 out favorable for passage as amended. Senator Lawrence seconded the motion and the motion carried. Division was called for with a vote of 6 to 4. A member raised the question as to the Chairman's vote and the Chair replied he voted Yea.

Senators Martin and Lee requested their No votes be recorded.

The meeting adjourned at 8:45 a.m.

The next meeting is scheduled for February 24, 1993.

GUEST LIST

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

DATE February 24, 1993

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

Robert Harder

K D HE

Bill Craven

Siena Club

Steve Waise

KS Gov. Conser Hing



**Central Interstate Low-Level Radioactive  
Waste Commission**

Greta Dicus  
Chairman

A. Eugene Crump  
Executive Director & General Counsel

February 19, 1993

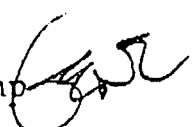
**RECEIVED**

FEB 22 1993

**SECRETARY OF  
DEPT. of HEALTH & ENVIRONMENT**

**MEMORANDUM**

TO: Commissioners

FROM: A. Eugene Crump 

RE: SE Compact Meeting Testimony

Enclosed please find a copy of proposed testimony to be given by Greta Dicus before the special meeting of the Southeast compact, Wednesday, February 24, 1993.

Please review this document and respond with any comments or suggestions to this office by Monday, February 22, 1993.

Thank you for your attention to this matter.

Senate Energy & Natural Resources  
February 24, 1993  
Attachment 1

Comments before the Import Policy Committee of the Southeast Compact  
Commission by the Central Interstate Low-Level Radioactive Waste  
Commission (the Commission)

Atlanta, Georgia

February 24, 1993

The comments that follow are in response to a request for comments by the Import Policy Committee from the Commission regarding recent events in Nebraska. We appreciate the opportunity to review progress in development of a regional facility in our Compact region.

The Commission's actions and activities:

The Commission, in recognition of its responsibility to obtain a licensed low-level radioactive waste disposal facility, selected US Ecology to achieve the Commission's goals and objectives under Federal and State laws. US Ecology screened the five states of the compact, and based upon that screening and US Ecology's recommendation, the Commission selected Nebraska as the first host state. Thereafter, US Ecology selected the technically appropriate site in Nebraska for a low-level waste disposal facility. After initial site characterization, technical analysis, and in compliance with state laws regarding community support, US Ecology submitted a license application to the appropriate regulatory agency in Nebraska in July 1990. That license application was reviewed by the State of Nebraska until December 1991, when it was deemed complete by the regulatory agency. During the time period, the Commission and the developer met the appropriate milestones as mandated by the Low-Level Radioactive Waste Policy Act.

The license application of US Ecology has received two rounds of technical review by the State of Nebraska and the license review is currently ongoing.

The Commission has signed the necessary access agreement with the Southeast Compact. We have also signed the appropriate Interregional Agreements for the necessary and appropriate return of treated low-level radioactive waste to the Compact region.

The Commission feels that US Ecology will continue to use it's best technical efforts to obtain a license from the State of Nebraska for a low-level radioactive waste disposal facility that will meet the objectives of the federal law and the objectives of the Nebraska State Law calling for the proper and safe disposal of low-level radioactive waste.

#### Actions by the State of Nebraska.

- Community Consent

Prior to the selection of the first host state in our Compact region, Former Governor Kay Orr (Nebraska), through her representative, suggested ten generic conditions for adoption by the Commission that would be applicable to the eventual host state. There was some discussion and explanation regarding the ten conditions prior to the Commission adopting them in principal. ~~Discussion and ten conditions were reached.~~ At a subsequent meeting of the Commission, the State of Nebraska was selected by a 4 to 1 vote. After Nebraska was selected as the first host state by the Commission, the Nebraska Legislature codified the ten conditions in Nebraska Law

~~(Community support law is attached)~~. US Ecology, the developer, pursuant to Nebraska law, proceeded through a lengthy process of technical and community support endeavors to ultimately select the site near Butte Nebraska for the license application to the State of Nebraska for technical review. Governor Orr has stated that the Community Support provisions of the Ten Conditions was achieved by the license applicant, US Ecology.

Governor Orr's successor, Governor E. Benjamin Nelson (Nebraska) during the 1991 Legislative Session and the 1992 Legislative Session, tried to change the Community Support law to define "community" as "Boyd County" and "consent" as "a popular vote", and twice the Legislature refused to change the law to define "community" as "Boyd County" and "consent" as "a popular vote". Nonetheless, Governor Nelson, while first endorsing a scientific survey of Boyd County to measure Community Consent, ultimately settled on a public opinion poll conducted in the form of a vote. This "mock election" was conducted by the Boyd County Local Monitoring Committee to measure "community consent". At the conclusion of the "mock election", Governor Nelson sent a letter to the Commission ~~attached~~ demanding that the Central Interstate Low-Level Radioactive Waste Commission withdraw the Butte site as the site to be reviewed by the State of Nebraska. After the Commission informed the Governor that it would discuss his letter at the regularly scheduled January 26, 1993 Mid-Year meeting, the Governor of Nebraska and the Attorney General of Nebraska nevertheless filed a lawsuit based on the "mock election" held in Boyd County as a legal basis to block the licensing and construction of the proposed low-level radioactive waste

Committee Memorandum  
Page 4

disposal facility. The Governor prays in his petition to the United States District Court, for the District of Nebraska:

That this court determine that Community Consent is required before a low-level radioactive waste storage facility can be built in Nebraska; the Commission and Developer bear the burden of demonstrating to the Court that Community Consent has been obtained prior to the issuance of a license for construction of the facility; and that defendants have failed to demonstrate that community consent exists. The Governor further prays that this court enter an order permanently enjoining the defendants from licensing, construction, and operating a low-level radioactive waste disposal facility in Boyd County, Nebraska, or other site within the State of Nebraska until such time as Community Consent is demonstrated and for such further relief as may be just and equitable.

- State Ownership of the Land

In other actions, the Governor of Nebraska, contrary to NRC regulations regarding title and land ownership, has unsuccessfully attempted to repeal current Nebraska law requiring state ownership of the land upon which the disposal facility is located. He has offered no alternatives to the federal or state ownership requirements that are designed for long term health and safety considerations. Governor Nelson, pursuant to a belief that he will change the current law regarding state ownership of the land upon which the site is located, has frustrated the lease negotiation process between the

applicant, US Ecology, and the Department of Administrative Services, agent of the State.

- McCulley Township Ordinances

The Governor of Nebraska has endorsed ordinances passed by McCulley Township (~~attached~~) as a legitimate and preferable way of: a) determining Community Consent; and b) expressing a valid way to challenge the licensing, construction and operation of the low-level radioactive waste disposal facility. The McCulley Township ordinances have been challenged in The United States District Court of the District of Nebraska by the Central Interstate Low-Level Radioactive Waste Commission and the license applicant US Ecology.

- Notice of Intent to Deny license

Nebraskas Regulatory Agencies, the Department of Environmental Quality and the Department of Health, have issued to the license applicant, US Ecology, a "Notice of Intent to Deny License" pursuant to the applicable rules and regulations of both departments. The applicable provisions of each regulation is as follows:

NAC Title 194, Chapter 5, §001.01E The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain or wetland as defined in Executive Order 11988, 'Floodplain Management Guidelines'



NAC Title 180 Chapter 1, §012.25A4 The management site shall be generally well drained and free of areas of flooding or frequent ponding. Waste management shall not take place in a 100-year flood plain, meaning that area subject to a one percent or greater chance of flooding in any given year.

I am attaching pertinent correspondence between the State of Nebraska and US Ecology, which appears to resolve the then immediate concerns of the August 15, 1991 letter of Mr. Wood, Director of Nebraska's Department of Environmental Quality. Additionally, please find enclosed pertinent press releases from the Regulatory Agencies and Governor Nelson. The hearing process for the "Notice of Intent to Deny License", has been scheduled for March 17, 1993 in Naper, Nebraska. At this time the license applicant, US Ecology, will respond to the State's "Notice of Intent to Deny License" with a vigorous response addressing the technical issues in a timely and professional manner. US Ecology has requested a Contested Hearing regarding the "Notice of Intent to Deny License."

Commission observations.

The Central Interstate Low-Level Radioactive Waste Commission feels that it's lawsuit challenging the validity of the McCulley Township ordinances will be resolved in favor of the Commission. Likewise, the lawsuit filed by Governor Nelson against the Commission and US Ecology regarding Community Consent will be resolved in favor of the Commission. It is difficult to say when we anticipate receiving favorable decisions from the federal court due to the lack of docket control by the Commission, however,

Committee Memorandum  
Page 7

we are contemplating an objective and independent review of the issues by a impartial trier of fact issuing a decision, in each case, supporting the Commission's positions.

We will expect US Ecology to successfully defend it's licensing concerns that have been raised by the State of Nebraska in a professional, competent, and a technically sufficient manner. We likewise contemplate the reversal of the "Notice of Intent to Deny" by the regulatory agencies. However, should US Ecology not prevail in it's hearing with the State, they, as well as the Commission, could consider their legal remedies of appeal to a court of competent jurisdiction if that is appropriate.

The Commission contemplates working with the Department of Administrative Services and the license applicant, US Ecology, as a facilitator to commence lease negotiations consistent with NRC regulations and current Nebraska state law as soon as possible.

On Friday, February 19, 1993, the Commission conducted a Facility Review Committee meeting which took into consideration a change of workscope due to Governor Nelson's lawsuit and the "Notice of Intent to Deny License" filed against US Ecology. There have been recommendations made by the Facility Review Committee to limit the scope of work to issues regarding site suitability and necessary ongoing data collection so as not to lose valuable time and previously gathered health, safety and environmental data. The Facility Review Committee will meet March 8, 1993 in Oak Ridge, Tennessee to further consider the funding request for the second quarter. The

recommendations of the Facility Review Committee will go to m  
Commission for a decision.

I hope that I have been responsive to your request and stand prepared to  
answer any questions you have.

RECEIVED

JAN 29 1993

January 21, 1993

CENTRAL STATES COMPACT

Richard S. Hodes, M.D.  
Chairman

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 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.

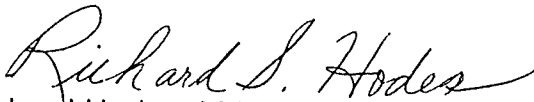
Compacts and host states which do not fulfill in good faith their responsibilities for providing for their own LLRW disposal jeopardize continued access to the Southeast Compact Regional Facility. The Import Policy Committee will be monitoring closely the actions of the Central Interstate Compact and 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