

Approved: 1-16-96
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on January 11, 1996 in Room 254-E- of the Capitol.

All members were present except:
Senator Phil Martin, Excused

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

Conferees appearing before the committee:
James J. O'Connell, Secretary, Kansas Department of Health and Environment

Others attending: See attached list

Chairperson Sallee called the meeting to order and opened the floor to bill requests.

Senator Sallee requested two bills be introduced as committee bills, one concerning a safety audit and the second concerning endangered species. It was pointed out that the endangered species moratorium would affect only those in Kansas and would in no way change those on the Federal list.

Senator Lawrence, with a second from Senator Hardenburger, moved to introduce both bills as committee bills. The motion carried.

The chairperson told members that Senator Clark wished to request a bill which would protect a property owner from any retroactive or alternative action in a situation where contamination had occurred, the cleanup was completed meeting the standards of that date and time. Such possible action could arise should more stringent rules and regulations be promulgated at some future date. The bill would state that if the situation was corrected under standards in force at the time of the cleanup, the contaminants had been cleaned up, then property owner would be without fault.

Senator Emert, with a second from Senator Morris, made a motion to introduce the bill requested by Senator Clark. The motion carried.

James J. O'Connell, Secretary, KS Department of Health & Environment, appeared before the committee to present a current status report on the Central Interstate Compact for Low Level Radioactive Waste (Attachment 1). The committee was advised that Kansas is presently chairing the Commission this year.

Due to the complexity of this issue and in the interest of accuracy, please consult the written testimony for further information concerning the Secretary's written presentation.

Following the Secretary's presentation, the floor was opened to questions. Discussion noted the \$300,000 per month for reimbursements to the Nebraska agency for the application review process seemed extremely costly. Secretary O'Connell stated a lot of the funding does go on to the consultants but it is a huge amount of money.

Another member asked the source of the \$300,000 per month with the Secretary stating it came from the generators who have paid in approximately \$80 million up to the present time. Each major generator has paid in about \$11 million which covers the annual disposal fee, the community improvement cash fund, the project manager's salary, etc. These costs do not include any KDHE staff time. The opinion was expressed that the project, at a minimum, will not be viable for 7 to 8 years and could possibly not be available by the time the Barnwell facility is to be closed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on January 11, 1996.

A member questioned the economic impact of the Barnwell facility on South Carolina with the approximate figures put forth of income of about \$200 million per year. These funds are being used to completely restructure the statewide school system.

In answer to a member's question the Secretary stated he was receiving a mixed message, the Nebraska Governor's office started out talking about the people in Boyd County, the homes and the zoning, as well as major generators and other interested parties saying to the Governor's office there was a need to get the project moving.

Secretary O'Connell mentioned that Arkansas has a new Commissioner who is working closely with the Governor of that state.

The Secretary stated the Compact statutes have provisions that describe for adoption of a reasonable time period is essentially handed to the host state stating this is a schedule we believe to be reasonable. There is also a provision that the Commission can act if it is shown that the host state has capriciously or arbitrarily delayed or failed to make an appropriate decision with regard to licensure. Prior to June of 1995 the application had not been completed so none of the above steps could be taken. The effect of the Commission acting to adopt a schedule, in practical terms, would appear to shift the burden of proof to the state to show why it has not acted. Until now the Commission has been left in the position where it must challenge every scheduling activity the state has had. The proof has been for the Commission to make whether it was reasonable or unreasonable. The counter argument is that the state agency has an obligation to do all that it feels it must to protect the health and welfare of the citizens of Nebraska.

In answer to questions, it was noted the estimated total cost of this project will be about \$150,000,000.

The meeting adjourned at 8:50 a.m.

The next meeting is scheduled for January 16, 1996.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

Senate Energy and Natural Resources

by

The Kansas Department of Health and Environment

Thank you for the opportunity to provide you with a current status report on the Central Interstate Compact for Low Level Radioactive Waste.

In 1980 Congress passed the Low-Level Radioactive Waste Policy Act (P.L. 96-573) making each state responsible for disposal of commercial low-level radioactive waste generated within its borders. By this act Congress also authorized states to enter into compacts to establish regional disposal facilities for safety and efficiency and required the disposal facilities to be in operation by January 1, 1986.

Congress amended the Low-Level Radioactive Waste Policy Act (P.L. 99-240) in 1985 extending the states access to the three existing radioactive waste disposal facilities (Beatty, NV - Barnwell, SC - Richland, WA) until January 1, 1993. As of January 1, 1993 each state within a compact region was to have in place provisions for disposal of the radioactive waste generated within its borders. The three existing facilities could also choose not to accept waste from outside their compact regions. As of this date Barnwell, SC is the only disposal site accepting waste from outside its region.

Currently there are no new facilities available and only two compacts have a facility license review in process: the Southwestern Compact region, comprised of California, Arizona, South Dakota and North Dakota and the Central Interstate Compact region, comprised of Nebraska, Kansas, Oklahoma, Louisiana and Arkansas.

Kansas became a part of the Central Interstate Low-Level Radioactive Waste Compact in 1982 when legislation was enacted (K.S.A. 65-34a01). During the 1993 Session of the Legislature, Senate Bill 246 was adopted amending the Kansas version of the compact language to coincide with the other compact states with one significant difference. The Kansas law will not become effective until the host state issues a license for the facility. This is a key provision because it avoids treating any Compact member state in a preferential manner regarding Commission representation until that state actually becomes a host state.

In 1987, US Ecology was awarded the contract to design and construct the facility and Nebraska was selected as the host state. US Ecology submitted the license application for the Boyd County site to the Nebraska Department of Environmental Quality in July of 1990 and it is still under review. The total expenditure to date on the project is approximately \$80 million dollars.

During the period from 1990 to June, 1995 the contractor has responded to requests for additional studies and information and completed its final submission in June, 1995. The current "management plan" issued by the Nebraska Department of Environmental Quality called for the Department to issue its Draft Safety Evaluation Report and Draft Environmental Analysis Summary on July 28, 1996. The Nebraska Department of Environmental Quality denies that its management plan is a schedule and reserves the prerogative of unilaterally modifying the management plan. A modified version was to be issued in December, 1995, but this has not yet occurred. According to the latest issued plan, a license decision is projected for May, 1998. A major factor in this nearly three year process is the provision in Nebraska regulations adopted about one year ago for the low level radioactive waste license application review. These regulations call for a separate public notice, comment and hearing process for a draft license, in addition to this process for the two Draft reports scheduled to be issued July, 1998. The current management plan provides approximately 12 months for each public notice, comment and hearing process to be completed. Article V, §e.2. of the Compact statute imposes a duty on the Commission to "require the appropriate state...to process all applications for permits and licenses...within a reasonable period from the time that a completed application is submitted." Since the final submittal was made by the contractor in June, 1995, Commission staff were asked to develop a proposed schedule for consideration by the Commission's Facility Review Committee in November, 1995. That schedule was recommended by the Committee and is on the Commission agenda for its meeting this month (January 18, 1996). In the interim, Nebraska Governor Nelson's Chief of Staff has initiated discussions with me as Chairman of the Commission toward development by the Nebraska agency and Commission staff of a mutually agreed upon license application review schedule in lieu of the Facility

Review Committee schedule. Though I am not particularly optimistic because the Nebraska Department of Environmental Quality is resistant to adoption of a schedule to which the agency is bound, these discussions continue and are supported by all the Commissioners.

Two lawsuits were filed against the Commission by the Governor of Nebraska in early 1995. One of these suits was decided in early October in favor of the Commission. That suit alleged that the Commission breached a contractual obligation incurred when they apparently verbally agreed to consider seating additional voting and non-voting Commissioners from Nebraska as host state. When this matter came to a vote in late 1994, the Commissioners declined to seat the two additional Commissioners because the effective date of the Kansas Compact statute providing for two additional host state Commissioners is not effective until the host state issues a license for the disposal facility. The judge ruled that the Commissioners are governed by the Compact statutes of the member states and could not have acted in contravention of the Kansas statutes even if they had wished to do so.

The second lawsuit is still pending in the U.S. District Court for the District of Nebraska. It alleges that the rebate funds received from the U. S. Department of Energy by the Compact must be automatically transferred to Nebraska on demand. At issue is the Compact's insistence on a full accounting for expenditures of funds previously transferred to Nebraska and the Compact's authority to base transfers on a budget request by Nebraska as host state. Competing summary judgment motions are expected to be before the court this month.

A special committee that includes the Arkansas Commissioner, representatives of the major generators and the small generators and myself has been appointed for the purpose of examining the operating costs of the Compact's administrative functions, including staffing, and for the purpose of developing a revised fee schedule to be based on historic volumes of waste generated and transferred. A report from this committee is due to be presented to the Commission in March.

Other concerns relate to funds made available under Nebraska statutes and regulations to the Local Monitoring Committee. The Nebraska State Auditor has raised questions about the appropriateness of certain expenditures made by that Committee. Since these funds, like most of the costs of the license application and review process are paid through the Commission by the power companies in the Compact states, the Commission is pursuing the concerns raised by the State Auditor.

