

MINUTES
(approved January 22, 2003)

CENTRAL INTERSTATE LLRW COMMISSION
SPECIAL TELEPHONE MEETING
WEDNESDAY, October 23, 2002, 1:00 P.M.

In compliance with Commission Bylaws and Rules, a meeting notice announcing the date, time, location and agenda availability was mailed to the interested parties on October 9, 2002.

An Emergency Telephone Meeting of the Central Interstate LLRW Commission was held Wednesday, October 23, 2002, for the purpose of taking action on seven export applications and Nebraska's Agreement State Status - NRC Alternative.

Participating in the meeting via telephone were: Laura Gilson, Arkansas Commissioner; Jim O'Connell, Kansas Commissioner; Ron Hammerschmidt, Kansas Alternate Commissioner; Michael Henry, Louisiana Commissioner; and Catherine Sharp, Oklahoma Commissioner and Commission Chairperson; John DeOld, US Ecology Consultant; John Etheridge, Entergy; Bill Neal and Steve Bruckner, OPPD; Warren Wood and Harry Morrill, Wolf Creek Nuclear Operating Corporation; Don Womeldorf and Steve Kowalewski, SW Compact Commission; and Kathryn Haynes, SE Compact Commission.

Present in the Commission office, 1033 'O' Street, Suite 530, Lincoln, Nebraska, were: Rita Houskie, Commission Administrator; and Terry Davis, Commission Secretary; Greg Hayden, Nebraska Commissioner; Alan Peterson, Commission Counsel; Lauren Hill, Governor's Policy Research Office; Carla Felix, NDEQ; and John Wittenborn, State Of Nebraska Counsel.

The meeting was called to order at approximately 1:00 p.m. and all Commissioners responded to the roll call. No requests by members of the public were made to speak during the general public comment period.

The Chair asked for a motion to approve the federal export application.

Motion (*Resolution 1*) by Louisiana, second by Arkansas, **to approve the Federal Application to Export Waste for the NE/Western IA HealthCare Systems, Dept. of Veterans Affairs, 2002-2003 (NE)**

Motion **passed** 4-0-1 (Nebraska abstaining).

The Chair asked for a motion to approve the five non-federal export applications.

Motion (*Resolution 2*) by Kansas, second by Louisiana, **to approve the Application to Export Waste for:**

1. **Bayer CorpScience, 2002-2003 (KS)**
2. **ChemSyn Science Laboratories, 2002-2003 (KS)**
3. **The Osler Clinic, 2002-2003 (OK)**
4. **University of Kansas Medical Center, 2002-2003 (KS)**
5. **University of Louisiana at Monroe, 2002-2003 (LA)**

Motion **passed** 5-0.

The Chair asked for a motion to approve the major generator export application.

Motion (Resolution 3) by Kansas, second by Louisiana, **to approve the Major Generator Application to Export Waste for Kerr-McGee Chemical LLC, 2002-2003 (OK)**

Motion **passed** 5-0

The Chair asked for a motion to approve the Nebraska's Agreement State Status - NRC Alternative resolution as written:

Motion (Resolution 4) by Kansas, second by Louisiana, **to approve the Nebraska's Agreement State Status - NRC Alternative resolution as written.**

RESOLUTION (amended)

Whereas, *Nebraska is an Agreement State with regard to low-level radioactive waste, pursuant to Title 42 U.S. Code section 2021; and*

Whereas, *federal law, in Title 42 U.S. Code section 2021(j) provides for termination or suspension of all or part of the Nuclear Regulatory Commission's agreement with such Agreement States, either on the initiative of the Nuclear Regulatory Commission or upon the request of the Governor of an Agreement State; and*

Whereas, *after a lengthy trial in the United States District Court for the District of Nebraska, it has been found that Nebraska has exercised its Agreement State regulatory powers with respect to a low-level waste disposal site in violation of its obligation of good faith, and particularly in making its license decision upon grounds determined politically rather than scientifically;*

IT IS HEREBY RESOLVED *that the Central Interstate Low-level Waste Commission should formally ask Nebraska to make the Request through its Governor, as permitted in Title 42 U.S. Code section 2021(j)(1), that the Nuclear Regulatory Commission terminate the Agreement with Nebraska insofar as it governs the regulation and licensing of disposal of low-level radioactive waste, including the licensing and regulation of any disposal facility located or to be located within the State of Nebraska by the Central Interstate Low-level Waste Commission pursuant to the Compact of its member states; and*

Further, *that the Chairperson of the Central Interstate Low-level Radioactive Waste Commission implement this resolution by preparing an appropriate request letter to the Governor of the State of Nebraska so requesting such voluntary agreement to cede the above described authority back to the Nuclear Regulatory Commission, and send it not later than November 1, 2002, with a copy to be sent to the United States Nuclear Regulatory Commission; and*

Further, *if such request is refused or not agreed to in writing received by the Commission at its office in Lincoln, Nebraska, by December 31, 2002 at the close of business, that the Central Interstate Low-level Waste Commission place upon its agenda for consideration at its January, 2003 meeting, the question of whether to request the Nuclear Regulatory Commission to revoke or suspend the Agreement State status of Nebraska to the degree described above, after reasonable notice and opportunity for*

hearing, pursuant to the authority of that Commission as described in Title 42 U.S. Code section 2021(j)(1). A copy of the federal laws referred to in this Resolution is attached for reference and clarity.

The Chair asked for Outside Legal Counsel to provide some background before commencing the discussion of the Resolution.

The Nebraska Commissioner offered a substitute **motion**:

Whereas, the Judge had an opportunity to consider the elaborate legal scenario recommended by the Compact Commission attorneys, and he said it made no sense, and the generators who were expected to fund the scheme agreed;

Whereas, the land for the facility is not needed;

Whereas, the Compact Commission continues to make payments for the land owned by US Ecology;

Whereas, the major generators have stated that they do not want to continue funding the process for a license in Nebraska;

Whereas, the developer, US Ecology, continues to be in miserable financial condition and fails to meet numerous required financial assurance criteria;

Whereas, there are questions about the hydrology of the site; and

Whereas, the Commission has not had an opportunity to discuss the future actions given the court decision;

Therefore let it be resolved, that the Commission not act on any resolution regarding action or policy until after discussion of alternatives at the Commission's January 2003 meeting.

Further, the discussion should specifically include: one, the sale of the land in Boyd County; two, the financial condition of American Ecology Corporation; three, the hydro-geology of the site; four, how the Commission activities are to be financed if the generators balk; five, whether a study should be completed with regard to assured storage as an alternative; six, whether the developer, US Ecology, should be replaced; seven, whether a new site selection and licensing process should be started; eight, the advantages and disadvantages of the approach suggested by Commission counsel; and, nine, whether attempts to site a facility should be shut down as has been done by other compacts.

The **motion** died for lack of a second.

The Chair asked for any public comment on the Resolution. Counsel for the State of Nebraska responded by saying that the state does not agree with the Court's finding of "bad faith" and that the state intends to appeal the Court's decision. Counsel indicated that he would be surprised if the state would act favorably on the Commission's Resolution.

Motion **passed** 4-1

Motion by Arkansas, second by Kansas, **to adjourn the meeting.**

Motion **passed** 5-0.

The meeting was adjourned at approximately 1:51 p.m.