

Central Interstate Low-Level Radioactive Waste Commission

Catherine Sharp
Chairman

Rita Houskie
Administrator

February 13, 2003

Mr. Paul Lohaus, Director
Office of State & Tribal Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Lohaus:

I currently serve as the chairperson of the Central Interstate Low-Level Radioactive Waste Commission. At our meeting on January 22, 2003, the Commission voted to adopt a resolution regarding the possibility of seeking a license application review for a low-level waste disposal site in Nebraska from the U.S. N.R.C. As you are of course aware, Nebraska is currently an agreement state. I enclose a copy of that resolution which was adopted by a vote of 4-1, with Kansas, Arkansas, Louisiana, and Oklahoma voting yes, and Nebraska voting no. Nebraska has given notice it will withdraw from this Compact effective in August, 2004, but the Commission does not believe it will thereby escape its first host-state obligation.

There is litigation pending between the Commission and the State of Nebraska, currently in the United States Court of Appeals for the Eighth Circuit. Briefing has been completed and it is likely that there will be argument in the case sometime this summer or possibly in the fall. If Nebraska loses that case, it may attempt to go to the United States Supreme Court with the matter. The Commission wishes to wait for a final result in this "bad faith" litigation before formally petitioning the Nuclear Regulatory Commission to consider revoking Nebraska's agreement state status with regard to licensing and regulation of the disposal of low-level radioactive waste.

But in the meantime, it would be appreciated if we could be furnished direction in terms of any and all procedures, rules, and regulations pertaining to revocation proceedings.

To be clear, the Commission is not asking that an agreement state revocation (or modification) proceeding go forth at this point, but it very likely will do so in the future once the litigation is completed. Any information relevant to this matter will be much appreciated by the Commission for planning purposes.

The Commission expects to receive public comment and comment from the principal generators of low-level radioactive waste within the Compact region at its June 2003 meeting in Lincoln, Nebraska. The input of the United States Nuclear Regulatory Commission in terms of any comments of course would be welcome at that time, but at the very least we are in need of information about relevant procedures. Thank you very much for any assistance you can give.

Very truly yours

A handwritten signature in cursive script that reads "Catherine Sharp".

Catherine Sharp
Commission Chair

C: Bill Maier, Regional State Liaison Officer w/attachment

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RESOLUTION REGARDING N.R.C.

WHEREAS, the United States District Court for the District of Nebraska has found Nebraska to have exercised its agreement state regulatory authority in bad faith towards the Central Interstate Low-Level Radioactive Waste Commission member states and the United States, in detailed opinions issued September 30, 2002, which decisions are currently on appeal; and

WHEREAS, the Central Interstate Low-Level Radioactive Waste Commission is inclined to pursue and advance the possibility of seeking a license and low-level radioactive waste disposal regulation from the United States Nuclear Regulatory Commission for the proposed disposal facility near Butte, Nebraska; and

WHEREAS, the Central Interstate Low-Level Radioactive Waste Commission desires that Nebraska continue to be bound to its 30-year responsibility to be the first host of a Central Interstate Compact disposal facility at Butte, Nebraska, if said site is licensable; and

WHEREAS, the active pursuit of the license itself needs to await finalization of the litigation appeals of the judgment entered against Nebraska, expected to take place over the next one and a half to three years;

BE IT RESOLVED that the Chairperson of the Central Interstate Low-Level Radioactive Waste Commission, with the assistance of counsel as needed, is authorized to notify the U.S. Nuclear Regulatory Commission and the State of Nebraska that the Central Interstate Low-Level Radioactive Waste Commission will seek by petition to have Nebraska's agreement state status, with respect to licensing and regulation of low-level radioactive waste disposal facilities revoked upon the initiative of the Nuclear Regulatory Commission in accordance with 42 U.S.C. §2021(j)(1); and

BE IT FURTHER RESOLVED that the NRC's procedures, policies, and similar information for such a proceeding be obtained for the use and information of the Central Interstate Commissioners; and

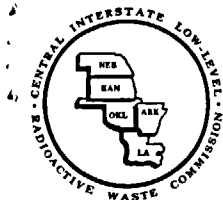
BE IT FURTHER RESOLVED that the Nuclear Regulatory Commission be advised that with regard to any such proceeding for revocation, the request is that such a procedure not be initiated formally until completion of the federal court litigation in the so-called "bad faith litigation," namely Case No. 4:98CV3411 in the United States District Court for the District of Nebraska; and

BE IT FURTHER RESOLVED that the Central Interstate's developer, the generators of low-level radioactive waste within the Central Interstate region, and consultants for the license application, as well as the public, be invited to comment upon the proposed approach to the U.S. Nuclear Regulatory Commission at the annual meeting of this Commission in or about June, 2003, either orally or in writing.

BE IT FURTHER RESOLVED that the adoption of this resolution, with respect to the NRC, does not create nor imply any commitment or obligation of any of the funds that may be recovered as a result of the bad faith lawsuit, in which Judge Kopf entered his judgment reasonable in the case.

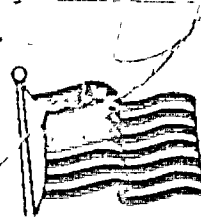
Amended (underlined text inserted)

Adopted by the Central Interstate Low-Level Radioactive Commission on January 22, 2003.

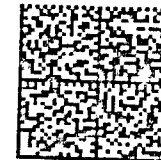


**Central Interstate
Low-Level Radioactive
Waste Commission**

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