

OCT 29 1989

MEMORANDUM FOR: Vandy L. Miller, Assistant Director  
for State Agreements Program  
State, Local and Indian Tribe Programs

FROM: Richard L. Bangart, Director  
Division of Low-Level Waste Management  
and Decommissioning

SUBJECT: LLWM STAFF REVIEW OF THE NEBRASKA MOU  
AND LOW-LEVEL WASTE LICENSE APPLICATION  
REVIEW PLAN

Per your request to me dated September 29, 1989, my staff has reviewed the Memorandum of Understanding (MOU) between the Nebraska Department of Environmental Conservation (NDEC) and the Nebraska Department of Health (NDOH) related to their mutual responsibilities for licensing and regulating a low-level radioactive waste (LLW) disposal facility in Nebraska. As part of our review we have also evaluated the proposed low-level waste application review plan and enabling legislation.

Based on our review, we have serious concerns about the ability of the two agencies to co-regulate a low-level waste disposal facility using the MOU as a basis and the low-level waste application review plan as an implementation document. The MOU expresses and the review plan reaffirms a co-leadership in regulatory responsibility between the two agencies with no clear demarcation of each agency's respective responsibilities.

The Agreement with Nebraska is based on a State radiation control program established under the 1963 Radiation Control Act. Under that Act and this Agreement, NDOH is the agency with the authority to regulate the use of radioactive materials, implicitly including the management and disposal of LLW. NDOH has clear statutory authority under the Nebraska Radiation Control Act to regulate the use of radioactive material and the necessary mechanisms to enforce its regulatory authority. Under the Nebraska Low-Level Radioactive Waste Disposal Act, however, NDEC is responsible for licensing and regulating a commercial low-level waste disposal facility in the State of Nebraska.

The proposed licensing review plan, which appears to be the "Regulatory Matrix" referred to in the MOU, does little to clarify the working relationship between the two primary regulatory agencies under their separate statutes. In fact, the matrix presents a cumbersome array of conflicting authorities. For many tasks under the review plan, both agencies have "lead approval" authority. In at least one case, both NDOH and NDEC share primary approval authority with yet a third state agency. In these instances, it is unclear which State agency

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will have the final approval authority. This uncertainty in turn raises questions as to which agency will in reality have the ultimate authority to issue the license, inspect against it, or enforce it. The MOU appears to sanction this uncertainty by requiring, for example, that both NDOH and NDEC conduct their own on-site inspections. This complex system of intermingled authorities for approval and enforcement does not appear to lend itself to efficient low-level waste facility licensing or regulation.

Since the comments expressed herein represent generic concerns rather than specific comments, we will be pleased to meet with you to discuss the specific instances in the MOU and review plan that led to the conclusions expressed herein.

(SIGNED) RICHARD L. BANGART

Richard L. Bangart, Director  
Division of Low-Level Waste Management  
and Decommissioning

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SUBJECT ABSTRACT: REVIEW OF NEBRASKA MOU AND LLW LICENSE APPLICATION  
REVIEW PLAN

\* See Previous Concurrence

DFC	:LLOB*	:LLOB*	:LLOB*	:LLWM*	:LLWM*	:	:
NAME	:JShaffner/jl	:RMacDougall	:PLohaus	:JGreeves	:RLBangart	:	:
DATE	:10/17/89	:10/17/89	:10/17/89	:10/19/89	:10/23/89	:10/ /89	:10/ /89

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NRC's Agreement with Nebraska currently does not recognize any authorities other than the 1963 Radiation Control Act. NRC authority to provide oversight and technical assistance to the State of Nebraska currently appears to be limited to NDOH by the Agreement. In order for NRC effectively to administer its responsibilities as they apply to technical assistance and oversight of all LLW regulatory activities in Nebraska, it would seem that either the MOU would have to reflect the fact that NDOH retains overall responsibility for the State's radiation control program under the Agreement, or the Agreement itself would have to be amended to recognize NDEC authorities under the Disposal Act.

Since the comments expressed herein represent generic concerns rather than specific comments, we will be pleased to meet with you to discuss the specific instances in the MOU and review plan that led to the conclusions expressed herein.

Richard L. Bangart, Director  
Division of Low-Level Waste Management  
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