

# Performance Audit UPDATE

## Central Interstate Low-Level Radioactive Waste Commission

### ARKANSAS DIVISION OF LEGISLATIVE AUDIT

MAY 14, 2004

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This report updates our original report, dated October 12, 2001, concerning the status of the Central Interstate Low-Level Radioactive Waste Commission (Commission) and low-level waste issues affecting the State of Arkansas. The Commission is the result of an interstate compact (Compact) among the states of Arkansas, Kansas, Louisiana, Nebraska and Oklahoma.

The original report was issued to provide a brief summary of the background and history of the Commission from its inception in 1983 through June 30, 2000. The report also detailed Arkansas' monetary contributions to and representation on the Commission.

#### OBJECTIVES

Our objectives in conducting this update were as follows:

- ◆ Update the amount of funds contributed by the State of Arkansas to the Commission;
- ◆ Review the status of the lawsuit filed by the five (5) major waste generators, the developer, and the Commission against the State of Nebraska;
- ◆ Update the status of the original planned site in Butte, Nebraska;
- ◆ Determine where Arkansas is currently disposing of its low-level waste and whether that amount of waste has increased or decreased since the original report.

#### SCOPE AND METHODOLOGY

This update was conducted for the time period July 1, 2000 through August 31, 2003. We reviewed the Annual Reports for the Commission for the years 2000-2001, 2001-2002, and 2002-2003 which included the annual financial statements and corresponding Independent Auditor's Reports. We communicated with and obtained information from Commission members and staff.

We used the information obtained to update the information conveyed in our original report; to evaluate the status of the lawsuit between the major generators and the State of Nebraska; and to assess whether new alternatives for waste disposal had become available during the intervening period.



The methodology used in conducting this update was developed uniquely to update the information and conclusions in our original report and, therefore, this update was more limited in scope than an audit performed in accordance with Government Auditing Standards.

## **CONCLUSIONS**

Our conclusions for this update report based on meeting the objectives stated above are as follows:

### **Arkansas' Contributions to the Commission:**

During the period July 1, 2000 through August 31, 2003 the State of Arkansas continued to contribute \$25,000 annually to the Commission's operating budget, bringing total contributions through August 31, 2003 to \$500,000.

Arkansas, as did all member states, discontinued making the annual \$75,000 contribution to the Host Community Improvement Fund in fiscal year 1999 following the Nebraska governor's signing of legislation withdrawing Nebraska from the Compact.

In total, the State of Arkansas has contributed \$1,250,000 to the Commission from fiscal year ended June 30, 1985 through August 31, 2003.

### **Pending Lawsuit Against Nebraska**

In our original report we disclosed the Commission had joined in a lawsuit with five (5) of the Compact's six (6) major generators (Entergy Arkansas, Entergy Gulf States, Entergy Louisiana, Omaha Public Power District, and Wolf Creek Nuclear Corporation of Delaware) and the developer (U.S. Ecology, Inc.) against the State of Nebraska.

The lawsuit alleged Nebraska did not act in good faith during the licensing process and allowed political interference with the licensing review, thereby illegally tainting the review.

In September 2002, Judge Richard Kopf of the U. S. District Court of Nebraska ruled in favor of the Commission and ordered Nebraska to pay \$151,408,240 to the Commission. The judge ruled Nebraska had acted in "bad faith" and that the governor's office had politically tainted the state's license review process.

The Commission had hoped the final solution would be that the Court would appoint a neutral third party to review, and hopefully approve the permit to build and oversee construction of the facility. Judge Kopf's opinion, however, did not order Nebraska to issue a license to the Commission. Instead he tried to restore the Plaintiffs to the positions they occupied when they first joined the Compact.

On October 30, 2002 the State of Nebraska appealed the District Court verdict that it acted in "bad faith" in reviewing the license application for the proposed waste facility. The state also challenged the award of \$151 million to the Commission and the Court's denial of the state's request for a jury trial among other issues. On February 18, 2004 a panel of the 8th U.S. Circuit Court of Appeals upheld Judge Kopf's ruling by a 2-1 decision. On March 4, 2004, the State of Nebraska asked the entire 8th U.S. Circuit of Appeals to review the panel's ruling.

The State of Nebraska has filed an additional lawsuit challenging the Commission's vote in June 2003 revoking Nebraska's membership in the Compact. The Commission also passed a resolution requiring that Nebraska take no further action to block licensing efforts for a waste facility. At this date the Commission has filed a brief in response to Nebraska's challenge. Although Nebraska's own action in 1998 to withdraw its membership would have become final in 2004, the Commission chose to revoke Nebraska's membership under Rule 23 of the Compact charter and impose sanctions against the state. Theoretically, if Nebraska is not a member of the Compact, the Commission could build a low-level radioactive waste facility anywhere within the state and prevent Nebraska from depositing its own waste there.

### **Status of Butte, Nebraska Facility Site**

At the time our original report was issued, approximately \$100 million dollars had been expended on the disposal facility project. These funds, primarily financed by the major generators, were expended for pre-licensing costs only; there had been no actual development of the proposed site. According to the Commission's Administrator, the physical status of the Butte, Nebraska site remains unchanged. U. S. Ecology continues to provide

all aspects of site maintenance including weed control measures as required, periodic site inspections, and geologic sampling. No further capitalized costs have been incurred to develop the original proposed site.

U. S. Ecology performs site maintenance and other project related tasks under "implied" contract terms; no formal contract exists between the Commission and U.S. Ecology. During the three years ended June 30, 2003, the Commission paid an average of \$18,820 per year to U.S. Ecology for site maintenance costs. The Commission also paid U. S. Ecology consulting fees of \$20,038 in 2001, \$247,034 in 2002 and \$37,229 in 2003. The spike in consulting fees for 2002 can be attributed to the extensive research and testimony required from U. S. Ecology by the Commission in its lawsuit against the State of Nebraska.

#### **Low-Level Radioactive Waste Generators**

Since July 2000 the number of major generators of low-level radioactive waste approved by the Commission to export from the region has increased from five (5) to seven (7). These include the industrial shipper Alcoa, Inc.; utility shipper Entergy - Arkansas Nuclear One; governmental shipper the National Center for Toxicological Research/FDA; and educational/medical shippers the University of Arkansas for Medical Sciences, Arkansas Children's Hospital, University of Arkansas at Fayetteville, and Central Arkansas Veterans Healthcare System.

Each year the Commission surveys its waste generator clientele on a voluntary basis in order to gain information such as the waste disposal facility they use most frequently, types and distribution of waste shipped, costs incurred in association with low-level radioactive waste, changes in their on-site storage arrangements, and comments concerning low-level radioactive waste disposal. Anonymous responses are included in each annual report.

Four (4) of seven (7) generators from Arkansas responded. Generally, respondents stated they had not changed operations because of low-level radioactive waste disposal problems; however, one stated that research protocols had changed to avoid use of radioactive materials.

All responded they incurred less than ten thousand dollars (\$10,000) in annual storage costs at this point. When asked how long the generator could store wastes on-site if unable to ship wastes, responses ranged from six (6) months to ten (10) years. Cost and disposal site availability remain topics of concern for responders.

According to a Commission representative, one of the major Arkansas utility generators has chosen to expand on-site storage capacity to a level of approximately twenty-five (25) years. This would ease immediate storage problems resulting from an inability to ship waste to a disposal site. We were unable to confirm this during our audit period and the generator in question did not participate in the current Commission survey.

#### **Low-Level Radioactive Waste Disposal**

During the five-year period 1999-2003, Arkansas' generators shipped a total of 20,881.42 cubic feet of low-level waste to disposal sites in Barnwell, South Carolina and Envirocare of Utah. The Utah site received approximately eighty-six percent (86%) of this waste with the Barnwell site receiving the remaining fourteen percent (14%). See **Exhibit I** on page 4 for a breakdown of the waste shipped by type.

The Barnwell site, which will close to non-Atlantic Compact generators at the end of 2008, is currently the only waste disposal site that accepts all three classes of radioactive waste produced by Arkansas generators: Class A (lowest level of radioactivity), Class B (next level of radioactivity), and Class C (highest level of radioactivity).

In the past two years Envirocare has attempted to have its Utah license changed in order to accept Class B and Class C waste. Public outcry as well as congressional action encouraged Envirocare to withdraw its license change request.

Therefore, when the Barnwell facility closes to non-Atlantic Compact generators after 2008, Arkansas very likely will not have access to a disposal facility that accepts Class B or C level radioactive waste. Although a majority of the

waste generated in Arkansas is Class A, as shown in **Exhibit I** below, Arkansas did dispose of approximately 1,500 cubic feet of Class B and C level waste during the five-year period ending June 30, 2003.

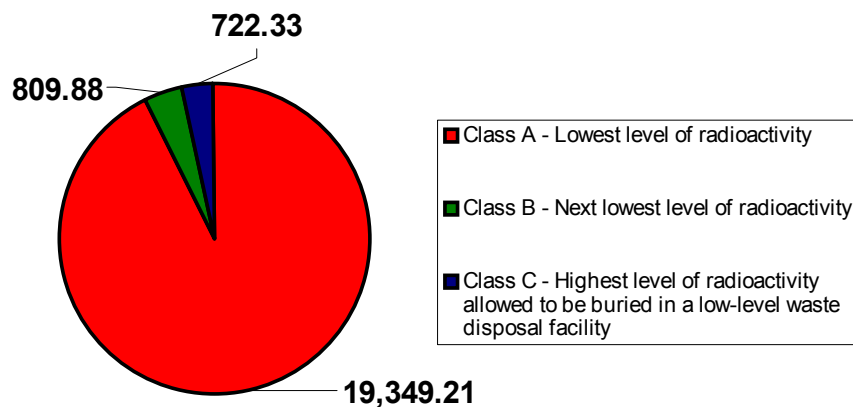
The initial audit included information from a report issued in September 1999 by the United States General Accounting Office (GAO). The report, GAO/RCED-99-238 States' Disposal of Low-Level Wastes, addressed the issue of states not developing low-level radioactive waste disposal facilities. As of the date of their report, the GAO found that states, acting alone or within various interstate compacts, had collectively spent approximately \$600 million over the last eighteen (18) years attempting to locate and develop about ten (10) sites for disposing of commercially generated low-level radioactive wastes. **None had been successful.**

The GAO report also discussed alternative approaches for managing low-level radioactive waste. Among the disposal alternatives mentioned in the report are:

- Retaining the compact approach;
- Repealing of the Low-Level Radioactive Waste Policy Act of 1980 to remove the various interstate compacts' authority to impose restrictions on the import and export of low-level radioactive wastes within their regions; and
- Making the U. S. Department of Energy responsible for disposing of both its own and commercially generated low-level wastes.

The report also notes that states have exhibited an unwillingness to cooperate in finding a solution to the low-level radioactive waste disposal issue, especially when selected as the host state for such a facility and Congress must re-examine the waste disposal issues and clarify the roles and liabilities for each party in the disposal process. It is further noted that Congress should also closely monitor the progress of waste disposal policy as a whole to ensure that interagency differences are resolved.

**Exhibit I**  
**Low-Level Radioactive Wastes (Cubic Feet) Sent By Arkansas Waste Generators to Disposal Facilities at Barnwell, South Carolina and Envirocare of Utah, Inc. By Type (Total 20,881.42 Cubic Feet) For the Years Ended December 31, 1999-2003**



**Source:** U.S. Department of Energy's Manifest Information Management System (MIMS) web site (<http://mims.apps.em.doe.gov/>).