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NOT STATE OF NEBRASKA
OFFICIAL
JUN 7 1993
DEPT. OF JUSTICE

DATE: June 2, 1993

SUBJECT: Low-Level Radioactive Waste Act Rules and Regulations

REQUESTED BY: Randolph Wood, Director
Nebraska Department of Environmental Control

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have requested an Opinion from this office regarding whether a particular amendment to Title 194, Nebraska Administrative Code, would be within the agency's statutory authority. The amendment was proposed through the agency's rules and regulations established under the Administrative Procedures Act which provide for rule-making by petition. The proposed change would amend Title 194, NAC, Chapter 9, § 006 to include the words "the applicant or" and "deny." As amended, the regulation would read:

> If the applicant or a licensee fails to pay any applicable fees or surcharges, the department may deny, suspend or revoke the license or the director may issue an order.

This regulation is based on Neb. Rev. Stat. § 81-15,104(3) (1992 Cum. Supp.) which reads:

> When a licensee fails to pay the applicable fee or surcharge, the department may suspend or revoke the license or may issue an appropriate order.

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Neb. Rev. Stat. § 81-15,100 (1988) reads:

> In order to carry out the purposes of the Low-Level Radioactive Waste Disposal Act, the council shall adopt and promulgate rules and regulations for the disposal of low-level radioactive waste. In adopting such rules and regulations, the council shall consider, **but not be limited to,** requirements for licensing, including terms, conditions, amendment, suspension, or revocation thereof, performance objectives and technical requirements, financial assurance, record keeping, reporting, testing, and such other requirements established by the United States Nuclear Regulatory Commission at 10 C.F.R. Part 61.

(Emphasis added.)

Neb. Rev. Stat. § 81-15,104(1) (1992 Cum. Supp.) states that the Department of Environmental Quality shall collect the fees or surcharges which are to be established by the Environmental Quality Council. This section also sets out the services and purposes for which fees and surcharges may be established.

In determining legislative intent, it is necessary to examine the statute as a whole, in light of its objects and purposes. *See **Sorensen v. Meyer***, 220 Neb. 457, 370 N.W.2d 173 (1985); ***Adkisson v. City of Columbus***, 214 Neb. 129, 333 N.W.2d 661 (1983). The entirety of § 81-15,104 relates to fees and surcharges. Subsection one provides authority to establish and collect fees and surcharges. Subsection two provides a method of determining the amount of the fees and surcharges. Subsection three provides a method of enforcing payment of the fees and surcharges. Subsection four provides for the deposit of the money collected in a special fund and provides for investment of available funds.

Services for which a fee or surcharge may be established and collected include the costs of licensing the facility, the costs of running the Compact Commission, and all reasonable and necessary costs of the local monitoring committees until a site is selected. Clearly, these activities all occur prior to the actual granting of a license. If subsection three of the statute is read to allow enforcement only against a license holder, it would create an absurdity in that it would allow surcharges and fees to be assessed prior to and after licensing but would allow enforcement on collection of the fees and surcharges only after the license is issued. This could create a situation where the Council and Department would have no power to force collection of fees and surcharges necessary to support the activities of the Compact Commission or local monitoring committees until after a license is issued.

The Council has the authority to adopt and promulgate rules and regulations in order to carry out the purposes of the Low-Level Radioactive Waste Disposal Act (Neb. Rev. Stat § 81-12,100(1987)). The obvious legislative intent of § 81-15,104(3) is to provide a mechanism for enforcing payments of fees and surcharges assessed by the Council. The proposed change in the rules and regulations gives effect to this section. Therefore, it is our determination that the Council has the authority to make the proposed amendment to departmental rules and regulations.

Sincerely,

DON STENBERG
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28-01-14.op

APPROVED:

Attorney General