

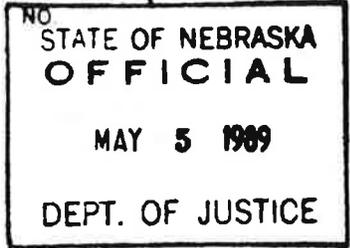
Linda Willard

**DEPARTMENT OF JUSTICE**

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

#89045



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: May 4, 1989

SUBJECT: Proposed Amendment AM 1397 to the Low-Level Radioactive Waste Act

REQUESTED BY: Senator M. L. Dierks, District No. 40  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
Linda L. Willard, Assistant Attorney General

You have inquired whether AM 1397's proposed system of seeking local approval while limiting the number of elections conflicts with provisions of the Central Interstate Low-Level Radioactive Waste Compact. It is our determination that this method of requiring a vote for approval but limiting the number of elections does not conflict with the provisions of the Compact. However, we feel compelled to note that what you have proposed may affect the state's relationship with the Compact and the developer in other ways.

Federal regulations, 42 U.S.C.A. 2021e(d)(2)(B)(iii), require that the Compact regions certify to the Nuclear Regulatory Commission by January 1, 1990, that the Compact region will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within the Compact after December 31, 1982. Subsection (C) of the same regulation sets a deadline of January 1, 1993, for a Compact region to be able to provide for the disposal of low-level waste generated within the Compact region. If all three sites currently identified as potential sites reject the facility, there is no assurance that an additional two sites will even be identified by January 1, 1990. Federal regulations are clear that the states will lose access to existing sites for the disposal of low-level radioactive waste on January 1, 1993.

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|-----------------------|-----------------------|----------------------|---------------------|----------------------|
| L. Jay Bartel         | Denise E. Frost       | Kimberly A. Klein    | Bernard L. Packett  | Mark D. Starr        |
| Elaine A. Catlin      | Yvonne E. Gates       | Charles E. Lowe      | Marie C. Pawol      | John R. Thompson     |
| Delores N. Coe-Barbee | Royce N. Harper       | Lisa D. Martin-Price | Kenneth W. Payne    | Susan M. Ugar        |
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If voters in all three of the counties with currently identified sites veto placement within their county, a delay would result while additional testing and negotiations are conducted by the developer to identify two additional sites to satisfy AM 1397. If the siting and voting process involves such additional time that federally mandated deadlines are not met, the Compact Commission or the federal government may view the delay as unreasonable and seek to impose penalties against Nebraska for the delay. Penalties imposed would undoubtedly include the cost incurred by other Compact states for disposal of their low-level waste until such time as a facility is ready to accept the waste within the Compact region.

Placing additional conditions on the developer at this time may also affect the contract between the developer and the Compact Commission. Currently the contract provides that the developer must indemnify the Compact if a deadline is not met due to the developer's fault. If compliance with AM 1347 requires additional time, the developer may arguably be excused from the indemnity clause because of conditions created by the state. Additional contract concerns may be raised by the developer if the county approving the facility does not contain the site considered by the developer to be the least threatening to the health and safety of the general population of the area, state, and Compact region.

Again, it is our opinion that AM 1397 does not violate the Compact conditions. However, there are other concerns inherent in the Compact, federal laws, and the contract with the developer which may be affected by the passage of this amendment. It is impossible at this stage to determine whether the passage of the amendment would affect the Compact agreement, the contract with the developer, or the state's obligations under federal law. We have presented some of the potential problems which might arise. We do not represent that these concerns are all inclusive of the potential problems which may arise when performance conditions are changed at this stage nor do we represent that all or any of these problems would necessarily arise if the amendment were passed. We present this only as questions to be considered by the legislators.

You have also inquired whether the State Director of Environmental Control could issue a license to the developer to site the facility notwithstanding the enactment into law of any of the local approval provisions proposed in AM 1397. It is our conclusion that, based on the conditions contained in AM 1397, the

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Director would be unable to issue a license to a developer prior to either approval by a local county or the requisite veto by five counties.

Sincerely,

ROBERT M. SPIRE  
Attorney General

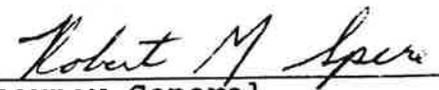


Linda L. Willard  
Assistant Attorney General

28-01-14.1

cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED:

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Attorney General