

BILL BARRETT

30 THIRDT, NEBRASKA

1807 LONGWORTH BUILDING

WASHINGTON, DC 20515

(202) 723-6436

DISTRICT OFFICES

GRAND ISLAND OFFICE

312 WEST THIRD STREET

GRAND ISLAND, NE 68801

(308) 381-5555

SCOTT BLUFF OFFICE

1502 SECOND AVENUE

SUITE 2

SCOTT BLUFF, NE 68981

(308) 832-3333

Congress of the United States
House of Representatives
Washington, DC 20515-2703

August 23, 1991

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YOUTH, AND FAMILIES

The Honorable Ivan Selin
Chairman
US Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Dear Mr. Chairman:

The enclosed letter from the Nebraska Public Power District concerns federal requirements for ownership of land on which low-level radioactive waste storage facilities are located. I would appreciate it if the Commission could provide its opinion on this matter.

As the host state for the Central Interstate Compact, and with final deadlines for compliance with the Low Level Radioactive Policy Act of 1980 approaching, Nebraska must resolve the question of land ownership--specifically whether federal law requires that either the State or the Federal Government must hold title to the facility site. I appreciate your help with this.

Sincerely,



BILL BARRETT
Member of Congress

BB/ts

Enclosure



Nebraska Public Power District

GENERAL OFFICE
P.O. BOX 499, COLUMBUS, NEBRASKA 68602-0499
TELEPHONE (402) 564-8561
FAX (402) 563-5551

WALD W. WATKINS
President & CEO
(402) 563-5556

AIRBORNE

August 19, 1991

The Honorable William E. Barrett
U.S. House of Representatives
1607 Longworth Bldg.
Independence & N.J. Ave., SE
Washington, D.C. 20515

Re: Low Level Radioactive Waste Disposal - Requirement for State or Federal
Ownership of Land

Dear Representative Barrett:

I am requesting your assistance in clarifying whether federal law mandates that either the State of Nebraska or the federal government must own the land where the proposed low level radioactive waste disposal facility will be located.

On October 1, 1966, the State of Nebraska became an Agreement State as provided for in the Atomic Energy Act. Article V of the Agreement provides in part that:

The Commission will use its best efforts to cooperate with the State and other agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. . . . The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations in licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party therein.

Nebraska law and regulations require that the land upon which the facility is located be owned by the state or federal government. See Neb. Rev. Stat. §81-15,101(4) (1990 Cum. Supp.) and Title 194 - Rules and Regulations for the Disposal of Low Level Radioactive Waste, Chapter 5-009.01. It is our understanding that 10 CFR Part 61.59 also requires that disposal may take place only on land owned by the federal or state government.

As you may know, there has been a debate in Nebraska regarding whether the State of Nebraska or the federal government must own the land of the proposed disposal facility site. During the 1991 Nebraska legislative session, there was a proposal to remove the statutory requirement that the state own the land and we

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expect the issue to be revisited during the 1992 legislative session. The reasons for supporting the state legislative changes have varied from an analysis that there is no federal statutory authority to require state or federal ownership to a conclusion that as an Agreement State, Nebraska need not require state or federal ownership or if state ownership is required that compliance can be obtained whether or not a state statute requires such ownership.

In order to help resolve this issue, I am requesting that you contact the Nuclear Regulatory Commission and request a written opinion from the Office of General Counsel as to whether Nebraska must require state or federal ownership of the land where the proposed low level radioactive waste facility will be located. Your assistance is greatly appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. W. Watkins", with a stylized, flowing script.

R. W. Watkins
President & CEO

/jt