

House Study Bill 572

Conference Committee Text

PAG LIN

1 1 Section 1. Section [457B.1](#), Code 1995, is amended to read
1 2 as follows:

1 3 457B.1 LOW-LEVEL RADIOACTIVE WASTE COMPACT.

1 4 The midwest interstate low-level radioactive waste compact
1 5 is entered into and enacted into law with all jurisdictions
1 6 legally joining therein, in the form substantially as follows:

1 7 ARTICLE I – POLICY AND PURPOSE

1 8 There is created the "Midwest Interstate Low-Level
1 9 Radioactive Waste Compact".

1 10 The states party to this compact recognize that the
1 11 congress of the United States, by enacting the Low-Level
1 12 Radioactive Waste Policy Act

~~(42 U.S.C. }2021)~~

~~-, as amended by~~

1 13 the Low-Level Radioactive Waste Policy Amendments Act of 1985,

1 14 42 U.S.C. } 2021b-j, has provided for and encouraged the

1 15 development of low-level radioactive waste compacts as a tool

1 16 for

~~managing~~

~~- disposing of~~ such waste. The party states

1 17 acknowledge that the congress declared that each state is

1 18 responsible for providing for the availability of capacity

1 19 either within or outside the state for the disposal of low-

1 20 level radioactive waste generated within its borders, except

1 21 for waste generated as a result of certain defense activities

1 22 of the federal government or federal research and development

1 23 activities. The party states also recognize that the

1 24

~~management~~

~~- disposal~~ of low-level radioactive waste is handled

1 25 most efficiently on a regional basis; and that the safe and

1 26 efficient management of low-level radioactive waste generated

1 27 within the region requires that sufficient capacity to

~~manage~~

~~- dispose of~~ such waste be properly provided.

1 29 a. It is the policy of the party states to enter into a

1 30 regional low-level radioactive waste

~~management~~

~~- disposal~~

1 31 compact for the purpose of:

1 32 1. Providing the instrument and framework for a

1 33 cooperative effort;

1 34 2. Providing sufficient facilities for the proper

1 35

~~management~~

~~- disposal~~ of low-level radioactive waste generated

2 1 in the region;

2 2 3. Protecting the health and safety of the citizens of the

2 3 region;

2 4 4. Limiting the number of facilities required to
2 5 effectively and efficiently

~~manage~~

- dispose of low-level

2 6 radioactive waste generated in the region;

2 7 5. Encouraging

~~the~~

- source reduction

~~of the amounts of low-~~

~~-~~

2 8

~~level radioactive waste generated in the region~~

- and the

2 9 environmentally sound treatment of waste that is generated to

2 10 minimize the amount of waste to be disposed of;

2 11 6.

~~Distributing~~

- Ensuring that the costs,

~~benefits~~

~~-~~

2 12 expenses, liabilities, and obligations of

~~successful~~

- low-level

2 13 radioactive waste

~~management equitably among the party states~~

~~-~~

2 14

~~and among~~

- disposal are paid by generators and other persons

2 15 who use

~~regional~~

- compact facilities to

~~manage~~

- dispose of their

2 16 waste;

~~and~~

~~-~~

2 17 7. Ensuring that the obligations of low-level radioactive

2 18 waste disposal that are the responsibility of the party states

2 19 are shared equitably among them;

2 20 8. Ensuring that the party states that comply with the

2 21 terms of this compact and fulfill their obligations under it

2 22 share equitably in the benefits of the successful disposal of

2 23 low-level radioactive waste; and

2 24

~~7.~~

- 9. Ensuring the

~~ecological and~~

- environmentally sound,

2 25 economical

~~management~~

- and secure disposal of low-level

2 26 radioactive wastes.

2 27 b. Implicit in the congressional consent to this compact
2 28 is the expectation by the congress and the party states that
2 29 the appropriate federal agencies will actively assist the
2 30 compact commission and the individual party states to this
2 31 compact by:

2 32 1. Exeditious enforcement of federal rules, regulations,
2 33 and laws;

2 34 2. Imposition of sanctions against those found to be in
2 35 violation of federal rules, regulations, and laws; and

3 1 3. Timely inspection of their licensees to determine their
3 2 compliance with these rules, regulations, and laws.

3 3 ARTICLE II – DEFINITIONS

3 4 As used in this compact, unless the context clearly
3 5 requires a different construction:

3 6 a. "Care" means the continued observation of a facility
3 7 after

~~closure~~

~~closing~~ for the purposes of detecting a need for

3 8 maintenance, ensuring environmental safety, and determining
3 9 compliance with applicable licensure and regulatory
3 10 requirements and including the correction of problems which
3 11 are detected as a result of that observation.

3 12 b. "Close", "closed", or "closing" means that the compact
3 13 facility with respect to which any of those terms are used has
3 14 ceased to accept low-level radioactive waste for disposal.
3 15 "Permanently closed" means that the compact facility with
3 16 respect to which the term is used has ceased to accept low-
3 17 level radioactive waste because a compact facility has
3 18 operated for twenty years or a longer period of time as
3 19 authorized by article VI, section i, its capacity has been
3 20 reached, the commission has authorized it to close pursuant to
3 21 article III, section h, subsection 7, the host state of such
3 22 facility has withdrawn from the compact or had its membership
3 23 revoked, or this compact has been dissolved.

3 24

~~b.~~

~~c.~~ "Commission" means the midwest interstate low-level
3 25 radioactive waste commission.

3 26

~~e.~~ ~~"Decommissioning" means the measures taken at the end~~

~~-~~

3 27

~~of a facility's operating life to assure the continued~~

~~-~~

3 28

~~protection of the public from any residual radioactivity or~~

~~-~~

3 29

~~other potential hazards present at a facility.~~

~~-~~

3 30 d. "Compact facility" means a waste disposal facility that
3 31 is located within the region and that is established by a
3 32 party state pursuant to the designation of that state as a
3 33 host state by the commission.

3 34 e. "Development" includes the characterization of
3 35 potential sites for a waste disposal facility, siting of such
4 1 a facility, licensing of such a facility, and other actions
4 2 taken by a host state prior to the commencement of
4 3 construction of a facility to fulfill its obligations as a
4 4 host state.

4 5

~~d.~~

- f. "Disposal"

~~means the isolation of waste from the~~

4 6

~~biosphere in a permanent facility designed for that purpose~~

4 7 with regard to low-level radioactive waste, means the
4 8 permanent isolation of that waste in accordance with the
4 9 requirements established by the United States nuclear
4 10 regulatory commission or the licensing agreement state.
4 11

~~e. "Eligible state" means a state qualified to be a party~~

4 12

~~state to this compact as provided in article VIII.~~

4 13 g. "Disposal plan" means the plan adopted by the
4 14 commission for the disposal of low-level radioactive waste
4 15 within the region.
4 16

~~f.~~

- h. "Facility" means a parcel of land or site, together
4 17 with the structures, equipment, and improvements on or
4 18 appurtenant to the land or site, which is or has been used

~~or~~

4 19

~~is being developed~~
- for the

~~treatment, storage, or~~
- disposal of

4 20 low-level radioactive waste, which is being developed for that
4 21 purpose, or upon which the construction of improvements or
4 22 installation of equipment is occurring for that purpose.

4 23 i. "Final decision" means a final action of the commission
4 24 determining the legal rights, duties, or privileges of any
4 25 person. "Final decision" does not include preliminary,
4 26 procedural, or intermediate actions by the commission, actions
4 27 regulating the internal administration of the commission, or
4 28 actions of the commission to enter into or refrain from
4 29 entering into contracts or agreements with vendors to provide
4 30 goods or services to the commission.
4 31

~~g.~~

- j. "Generator" means a person who first produces

~~or~~

4 32

~~possesses~~

- low-level radioactive waste, including, without
4 33 limitation, any person who does so in the course of or
4 34 incident to manufacturing, power generation, processing, waste
4 35 treatment, waste storage, medical diagnosis and treatment,

5 1 research, or other industrial or commercial activity

~~and who,~~

5 2

~~to the extent required by law, is licensed by the United~~

5 3

~~States nuclear regulatory commission or a party state, to~~

5 4

~~produce or possess such waste~~

~~"Generator" does not include a~~

5 5

~~person who provides a service by arranging for the collection,~~

5 6

~~transportation, treatment, storage, or disposal of wastes~~

5 7

~~generated outside the region.~~

~~If the person who first~~

5 8 produced an item or quantity of low-level radioactive waste

5 9 cannot be identified, "generator" means the person first

5 10 possessing the low-level radioactive waste who can be

5 11 identified.

5 12

~~h.~~

~~k. "Host state" means any state which is designated by~~

5 13 ~~the commission to host a~~

~~regional~~

~~compact facility or has~~

5 14 ~~hosted a compact facility.~~

5 15 1. "Long-term care" means those activities taken by a host

5 16 state after a compact facility is permanently closed to ensure

5 17 the protection of air, land, and water resources and the

5 18 health and safety of all people who may be affected by the

5 19 compact facility.

5 20

~~i.~~

~~m. "Low-level radioactive waste" or "waste" means~~

5 21 ~~radioactive waste that is not classified as high-level~~

5 22 ~~radioactive waste~~

~~, transuranic waste, spent nuclear fuel, or~~

5 23

~~by product material as defined in section 11(e)(2) of the~~

5 24

~~Atomic Energy Act of 1954~~

~~and that is Class A, B, or C low-~~

5 25 level radioactive waste as defined in 10 C.F.R. } 61.55, as

5 26 that section existed on January 26, 1983. "Low-level
5 27 radioactive waste" or "waste" does not include any such
5 28 radioactive waste that is owned or generated by the United
5 29 States department of energy; by the United States navy as a
5 30 result of the decommissioning of its vessels; or as a result
5 31 of research, development, testing, or production of an atomic
5 32 weapon.
5 33

~~j. "Management plan" means the plan adopted by the~~

5 34

~~commission for the storage, transportation, treatment, and~~

5 35

~~disposal of waste within the region.~~

6 1 n. "Operates", "operational", or "operating" means that
6 2 the compact facility with respect to which any of those terms
6 3 is used accepts low-level radioactive waste for disposal.
6 4

~~k.~~

~~o. "Party state" means~~

~~any~~

~~an eligible state~~

~~which~~

~~that~~

6 5 enacts

~~the~~

~~this compact into law, pays any eligibility fee~~

6 6 established by the commission, and has not withdrawn from this
6 7 compact or had its membership in this compact revoked.

6 8 provided that a state that has withdrawn from this compact or

6 9 had its membership revoked becomes a party state if it is

6 10 readmitted to membership in this compact pursuant to article

6 11 VIII, section a. "Party state" includes a host state. "Party

6 12 state" also includes statutorily created administrative

6 13 departments, agencies, or instrumentalities of a party state,

6 14 but does not include municipal corporations, regional or local

6 15 units of government, or other political subdivisions of a

6 16 party state that are responsible for governmental activities

6 17 on less than a statewide basis.

6 18

~~l.~~

~~p. "Person" means any individual, corporation,~~

6 19 association, business enterprise, or other legal entity either

6 20 public or private and any legal successor, representative,

6 21 agent, or agency of that individual, corporation, association,

6 22 business enterprise, or other legal entity. "Person" also

6 23 includes the United States, states, political subdivisions of

6 24 states, and any department, agency, or instrumentality of the

6 25 United States or a state.

6 26

~~m.~~

~~q. "Region" means the area of the party states.~~

6 27

~~n. "Regional facility" means a facility which is located~~

~~within the region and which is established by a party state~~

~~pursuant to designation of that state as a host state by the~~

~~commission.~~

~~o.~~

- r. "Site" means the geographic location of a facility.

~~p.~~

- s. "State" means a state of the United States, the
6 33 District of Columbia, the Commonwealth of Puerto Rico, the
6 34 Virgin Islands or

~~any~~

- other territorial possession of the
6 35 United States.

~~q.~~

- t. "Storage" means the temporary holding of low-level
7 2 radioactive waste

~~for treatment or disposal~~

~~r.~~

- u. "Treatment" means any method, technique or process,
7 4 including storage for radioactive decay, designed to change
7 5 the physical, chemical or biological characteristics or
7 6 composition of

~~any~~

- low-level radioactive waste in order to
7 7 render the low-level radioactive waste safer for transport or
7 8 management, amenable to recovery, convertible to another
7 9 usable material or reduced in volume.
7 10

~~s.~~

- v. "Waste management", "manage waste", "management of
7 11 waste", "management", or "managed" means the storage,
7 12

~~transportation,~~

- treatment, or disposal of low-level
7 13 radioactive waste.

ARTICLE III – THE COMMISSION

a. There is created the midwest interstate low-level
7 16 radioactive waste commission. The commission consists of one
7 17 voting member from each party state. The governor of each
7 18 party state shall notify the commission in writing of its
7 19 member and any alternates. An alternate may act on behalf of
7 20 the member only in that member's absence. The method for
7 21 selection and the expenses of each commission member shall be
7 22 the responsibility of the member's respective state.

b. Each commission member is entitled to one vote.

~~No~~

~~7 24 Except as otherwise specifically provided in this compact, an
7 25 action of the commission is binding~~

~~unless~~

~~if a majority of
7 26 the total membership~~

~~cast their~~

~~casts its vote in the
7 27 affirmative. A party state may direct its member or alternate
7 28 member of the commission how to vote or not vote on matters
7 29 before the commission.~~

7 30 c. The commission shall elect annually from among its
7 31 members a chairperson. The commission shall adopt and
7 32 publish, in convenient form, bylaws and policies which are not
7 33 inconsistent with this compact, including procedures for the
7 34 use of binding arbitration under article VI, section o, and
7 35 procedures which substantially conform with the provisions of
8 1 the federal Administrative Procedure Act (5 U.S.C. } } 500 to
8 2 559) in regard to notice, conduct, and recording of meetings;
8 3 access by the public to records; provision of information to
8 4 the public; conduct of adjudicatory hearings; and issuance of
8 5 decisions.

8 6 d. The commission shall meet at least once annually and
8 7 shall also meet upon the call of the chairperson or

~~a~~

~~any~~

8 8 other commission member.

8 9 e. All meetings of the commission shall be open to the
8 10 public with reasonable advance notice. The commission may, by
8 11 majority vote, close a meeting to the public for the purpose
8 12 of considering sensitive personnel or legal strategy matters.
8 13 However, all commission actions and decisions shall be made in
8 14 open meetings and appropriately recorded.

8 15 f. The commission may establish advisory committees for
8 16 the purpose of advising the commission on any matters
8 17 pertaining to waste management.

8 18 g. The office of the commission shall be in a party state.
8 19 The commission may appoint or contract for and compensate such
8 20 limited staff necessary to carry out its duties and functions.
8 21 The staff shall have the responsibilities and authority
8 22 delegated to it by the commission in its bylaws. The staff
8 23 shall serve at the commission's pleasure with the exception
8 24 that staff hired as the result of securing federal funds shall
8 25 be hired and governed under applicable federal statutes and
8 26 regulations. In selecting any staff, the commission shall
8 27 assure that the staff has adequate experience and formal
8 28 training to carry out the functions assigned to it by the
8 29 commission.

8 30 h. The commission may do any or all of the following:
8 31

~~1. Enter into an agreement with any person, state, or~~

~~8 32~~

~~group of states for the right to use regional facilities for~~

~~8 33~~

~~waste generated outside the region and for the right to use~~

~~8 34~~

~~facilities outside the region for waste generated within the~~

8 35

~~region. The right of any person to use a regional facility~~

9 1

~~for waste generated outside of the region requires an~~

9 2

~~affirmative vote of a majority of the commission, including~~

9 3

~~the affirmative vote of the member of the host state in which~~

9 4

~~any affected regional facility is located.~~

9 5

~~2. Approve the disposal of waste generated within the~~

9 6

~~region at a facility other than a regional facility.~~

9 7

~~3.~~

~~1.~~ Appear as an intervenor or party in interest before
9 8 any court of law or any federal, state, or local agency,
9 9 board, or commission in any matter related to waste
9 10 management. In order to represent its views, the commission
9 11 may arrange for any expert testimony, reports, evidence, or
9 12 other participation.

9 13

~~4.~~

~~2.~~ Review

~~the~~

~~any~~ emergency

~~closure~~

~~closing~~ of a

9 14

~~regional~~

~~compact~~ facility, determine the appropriateness of

9 15 that

~~closure~~

~~closing~~, and take whatever lawful actions are

9 16 necessary to ensure that the interests of the region are

9 17 protected.

9 18

~~5.~~

~~3.~~ Take any action which is appropriate and necessary

9 19 to perform its duties and functions as provided in this

9 20 compact.

9 21

~~6. Suspend the privileges or revoke the membership of a~~

9 22

~~party state by a two thirds vote of the membership in~~

9 23

~~accordance with article VIII.~~

9 24 4. Approve the disposal of naturally occurring and
9 25 accelerator-produced radioactive material at a compact
9 26 facility. The commission shall not approve the acceptance of
9 27 such material without first making an explicit determination
9 28 of the effect of the new low-level radioactive waste stream on
9 29 the compact facility's maximum capacity. Such approval
9 30 requires the affirmative vote of a majority of the commission,
9 31 including the affirmative vote of the member from the host
9 32 state of the compact facility that would accept the material
9 33 for disposal. Any such host state may at any time rescind its
9 34 vote granting the approval and, thereafter, additional
9 35 naturally occurring and accelerator-produced radioactive
10 1 material shall not be disposed of at a compact facility unless
10 2 the disposal is again approved. All provisions of this
10 3 compact apply to the disposal of naturally occurring and
10 4 accelerator-produced radioactive material that has been
10 5 approved for disposal at a compact waste facility pursuant to
10 6 this subsection.

10 7 5. Enter into contracts in order to perform its duties and
10 8 functions as provided in this compact.

10 9 6. When approved by the commission, with the member from
10 10 each host state in which an affected compact facility is
10 11 operating or being developed or constructed voting in the
10 12 affirmative, enter into agreements to do any of the following:

10 13 (a) Import for disposal within the region low-level
10 14 radioactive waste generated outside the region.

10 15 (b) Export for disposal outside the region low-level
10 16 radioactive waste generated inside the region.

10 17 (c) Dispose of low-level radioactive waste generated
10 18 within the region at a facility within the region that is not
10 19 a compact facility.

10 20 7. Authorize a host state to permanently close a compact
10 21 facility located within its borders earlier than otherwise
10 22 would be required by article VI, section i. Such closing
10 23 requires the affirmative vote of a majority of the commission,
10 24 including the affirmative vote of the member from the state in
10 25 which the affected compact facility is located.

10 26 i. The commission shall do all of the following:

10 27

~~1. Receive and act on the petition of a nonparty state to~~

10 28

~~become an eligible state.~~

10 29

~~2.~~

~~1. Submit an annual report to, and otherwise~~
10 30 ~~communicate with, the governors and the appropriate officers~~
10 31 ~~of the legislative bodies of the party states regarding the~~
10 32 ~~activities of the commission.~~

10 33

~~3. Hear, negotiate, and, as necessary, resolve by final~~

10 34

~~decision disputes which may arise between the party states~~

10 35

~~regarding this compact.~~

11 1

~~4.~~

- 2. Adopt and amend, by a two-thirds vote of the
11 2 membership, in accordance with the procedures and criteria
11 3 developed pursuant to article IV, a regional

~~management~~

11 4 disposal plan which designates host states for the
11 5 establishment of needed

~~regional~~

- compact facilities.

11 6

~~5.~~

- 3. Adopt an annual budget.

11 7 4. Establish and implement a procedure for determining the
11 8 capacity of a compact facility. The capacity of a compact
11 9 facility shall be established as soon as reasonably practical
11 10 after the host state of the compact facility is designated and
11 11 shall not be changed thereafter without the consent of the
11 12 host state. The capacity of a compact facility shall be based
11 13 on the projected volume, radioactive characteristics, or both,
11 14 of the low-level radioactive waste to be disposed of at the
11 15 compact facility during the period set forth in article VI,
11 16 section i.

11 17 5. Provide a host state with funds necessary to pay
11 18 reasonable development expenses incurred by the host state
11 19 after it is designated to host a compact facility.

11 20 6. Establish and implement procedures for making payments
11 21 from the remedial action fund provided for in section p.

11 22 7. Establish and implement procedures to investigate a
11 23 complaint joined in by two or more party states regarding
11 24 another party state's performance of its obligations.

11 25 8. Adopt policies promoting source reduction and the
11 26 environmentally sound treatment of low-level radioactive waste
11 27 in order to minimize the amount of low-level radioactive waste
11 28 to be disposed of at compact facilities.

11 29 9. Establish and implement procedures for obtaining
11 30 information from generators regarding the volume and
11 31 characteristics of low-level radioactive waste projected to be
11 32 disposed of at compact facilities and regarding generator
11 33 activities with respect to source reduction, recycling, and
11 34 treatment of low-level radioactive waste.

11 35 10. Prepare annual reports regarding the volume and
12 1 characteristics of low-level radioactive waste projected to be
12 2 disposed of at compact facilities.

12 3 j. Funding

~~of the budget of~~

- for the commission shall be

12 4 provided as follows:

12 5 1.

~~Each state, upon becoming a party state, shall pay~~

12 6

~~fifty thousand dollars or one thousand dollars per cubic meter~~

12 7

~~shipped from that state in 1980, whichever is lower, to the~~

12 8

~~commission which shall be used for the administrative costs of~~

12 9

~~the commission.~~

~~When no compact facility is operating, the~~

12 10 commission may assess fees to be collected from generators of

12 11 low-level radioactive waste in the region. The fees shall be

12 12 reasonable and equitable. The commission shall establish and

12 13 implement procedures for assessing and collecting the fees.

12 14 The procedures may allow the assessing of fees against less

12 15 than all generators of low-level radioactive waste in the

12 16 region; provided that if fees are assessed against less than

12 17 all generators of waste in the region, generators paying the

12 18 fees shall be reimbursed the amount of the fees, with

12 19 reasonable interest, out of the revenues of operating compact

12 20 facilities.

12 21 2. When a compact facility is operating, funding for the

12 22 commission shall be provided through a surcharge collected by

12 23 the host state as part of the fee system provided for in

12 24 article VI, section j. The surcharge to be collected by the

12 25 host state shall be determined by the commission and shall be

12 26 reasonable and equitable.

12 27

~~2.~~

~~3.~~

~~Each state hosting a regional facility shall levy~~

12 28

~~surcharges on all users of the regional facility based upon~~

12 29

~~its portion of the total volume and characteristics of wastes~~

12 30

~~managed at that facility. The~~

~~In the aggregate, the fees or~~

12 31 surcharges

~~collected at all regional facilities~~

~~, as the case~~

12 32 may be, shall be no more than is necessary to:

12 33 (a)

~~Be sufficient to cover~~

~~Cover the annual budget of the~~

12 34 commission

~~; and~~

12 35

~~(b) Represent the financial commitments of all party~~

13 1

~~states to the commission; and~~

13 2

~~(c) Be paid to the commission, provided, that each host~~

13 3

~~state collecting surcharges may retain a portion of the~~

13 4

~~collection sufficient to cover its administrative costs of~~

13 5

~~collection, and that the remainder be sufficient only to cover~~

13 6

~~the approved annual budget of the commission.~~

13 7 (b) Provide a host state with the funds necessary to pay
13 8 reasonable development expenses incurred by the host state
13 9 after it is designated to host a compact facility.

13 10 (c) Provide moneys for deposit in the remedial action fund
13 11 established pursuant to section p.

13 12 (d) Provide moneys to be added to an inadequately funded
13 13 long-term care fund as provided in article VI, section o.

13 14 k.

~~The commission shall keep accurate accounts of all~~

13 15

~~receipts and disbursements.~~

~~Financial statements of the~~

13 16 commission shall be prepared according to generally accepted
13 17 accounting principles. The commission shall contract with an
13 18 independent certified public accountant to annually audit

~~all~~

13 19

~~receipts and disbursements of commission funds,~~

~~its financial~~

13 20 statements and to submit an audit report to the commission.

13 21 The audit report shall be made a part of the annual report of
13 22 the commission required by this article.

13 23 1. The commission may accept for any of its purposes and
13 24 functions and may utilize and dispose of any donations, grants
13 25 of money, equipment, supplies, materials and services from any
13 26 state or the United States, or any subdivision or agency
13 27 thereof, or interstate agency, or from any institution,
13 28 person, firm, or corporation. The nature, amount, and
13 29 condition, if any, attendant upon any donation or grant
13 30 accepted or received by the commission together with the
13 31 identity of the donor, grantor, or lender, shall be detailed
13 32 in the annual report of the commission.

13 33

~~m. The commission is not liable for any costs associated~~

~~-~~
13 34

~~with any of the following:~~

~~-~~
13 35

~~1. The licensing and construction of any facility;~~

~~-~~
14 1

~~2. The operation of any facility;~~

~~-~~
14 2

~~3. The stabilization and closure of any facility;~~

~~-~~
14 3

~~4. The care of any facility;~~

~~-~~
14 4

~~5. The extended institutional control, after care of any~~

~~-~~
14 5

~~facility; or~~

~~-~~
14 6

~~6. The transportation of waste to any facility.~~

~~-~~
14 7

~~n. 1.~~

~~m. The commission is a legal entity separate and
14 8 distinct from the party states~~

~~and is liable for its actions~~

~~-~~
14 9

~~as a separate and distinct legal entity~~

~~Liabilities of the~~

~~-~~
14 10

~~commission are not liabilities of the party states~~

~~Members~~

14 11 of the commission and its employees are not personally liable

14 12 for actions taken by them in their official capacity. The

14 13 commission is not liable or otherwise responsible for any

14 14 costs, expenses, or liabilities resulting from the

14 15 development, construction, operation, regulation, closing, or

14 16 long-term care of any compact facility or any noncompact

14 17 facility made available to the region by any contract or

14 18 agreement entered into by the commission under section h,

14 19 subsection 6. Nothing in this section relieves the commission

14 20 of its obligations under this article or under contracts to

14 21 which it is a party. Any liabilities of the commission are

14 22 not liabilities of the party states.

14 23

~~2. Except as provided under section m and section n,~~

14 24

~~subsection 1, nothing in this compact alters liability for any~~

14 25

~~act, omission, course of conduct, or liability resulting from~~

14 26

~~any causal or other relationships.~~

14 27

~~o. Any person aggrieved by a final decision of the~~

14 28

~~commission may obtain judicial review of such decision in any~~

14 29

~~court of jurisdiction by filing in such court a petition for~~

14 30

~~review within sixty days after the commission's final~~

14 31

~~decision.~~

14 32 n. Final decisions of the commission shall be made, and
14 33 shall be subject to judicial review, in accordance with all of
14 34 the following conditions:

14 35 1. Every final decision shall be made at an open meeting
15 1 of the commission. Before making a final decision, the
15 2 commission shall provide an opportunity for public comment on
15 3 the matter to be decided. Each final decision shall be
15 4 reduced to writing and shall set forth the commission's
15 5 reasons for making the decision.

15 6 2. Before making a final decision, the commission may
15 7 conduct an adjudicatory hearing on the proposed decision.

15 8 3. Judicial review of a final decision shall be initiated
15 9 by filing a petition in the United States district court for
15 10 the district in which the person seeking the review resides or
15 11 in which the commission's office is located not later than
15 12 sixty days after issuance of the commission's written
15 13 decision. Concurrently with filing the petition for review
15 14 with the court, the petitioner shall serve a copy of the
15 15 petition on the commission. Within five days after receiving
15 16 a copy of the petition, the commission shall mail a copy of it
15 17 to each party state and to all other persons who have notified
15 18 the commission of their desire to receive copies of such
15 19 petitions. Any failure of the commission to so mail copies of
15 20 the petition does not affect the jurisdiction of the reviewing
15 21 court. Except as otherwise provided in this subsection,
15 22 standing to obtain judicial review of final decisions of the
15 23 commission and the form and scope of the review are subject to
15 24 and governed by 5 U.S.C. } 706.

15 25 4. If a party state seeks judicial review of a final
15 26 decision of the commission that does any of the following, the
15 27 facts shall be subject to trial de novo by the reviewing court
15 28 unless trial de novo of the facts is affirmatively waived in
15 29 writing by the party state:

15 30 (a) Imposes financial penalties on a party state.

15 31 (b) Suspends the right of a party state to have waste
15 32 generated within its borders disposed of at a compact facility
15 33 or at a noncompact facility made available to the region by an
15 34 agreement entered into by the commission under section h,
15 35 subsection 6.

16 1 (c) Terminates the designation of a party state as a host
16 2 state.

16 3 (d) Revokes the membership of a party state in this
16 4 compact.

16 5 (e) Establishes the amounts of money that a party state
16 6 that has withdrawn from this compact or had its membership in
16 7 this compact revoked is required to pay under article VIII,
16 8 section e.

16 9 Any such trial de novo of the facts shall be governed by
16 10 the federal rules of civil procedure and the federal rules of
16 11 evidence.

16 12 5. Preliminary, procedural, or intermediate actions by the
16 13 commission that precede a final decision are subject to review
16 14 only in conjunction with review of the final decision.

16 15 6. Except as provided in subsection 5, actions of the
16 16 commission that are not final decisions are not subject to
16 17 judicial review.

16 18 o. Unless approved by a majority of the commission, with
16 19 the member from each host state in which an affected compact
16 20 facility is operating or is being developed or constructed
16 21 voting in the affirmative, no person shall do any of the
16 22 following:

16 23 1. Import low-level radioactive waste generated outside
16 24 the region for disposal within the region.

16 25 2. Export low-level radioactive waste generated within the
16 26 region for disposal outside the region.

16 27 3. Manage low-level radioactive waste generated outside
16 28 the region at a facility within the region.

16 29 4. Dispose of low-level radioactive waste generated within
16 30 the region at a facility within the region that is not a
16 31 compact facility.

16 32 p. The commission shall establish a remedial action fund
16 33 to pay the costs of reasonable remedial actions taken by a
16 34 party state if an event results from the development,

16 35 construction, operation, closing, or long-term care of a
17 1 compact facility that poses a threat to human health, safety,
17 2 or welfare or to the environment. The amount of the remedial
17 3 action fund shall be adequate to pay the costs of all
17 4 reasonably foreseeable remedial actions. A party state shall
17 5 notify the commission as soon as reasonably practical after
17 6 the occurrence of any event that may require the party state
17 7 to take a remedial action. The failure of a party state to
17 8 notify the commission does not limit the rights of the party
17 9 state under this section.

17 10 If the moneys in the remedial action fund are inadequate to
17 11 pay the costs of reasonable remedial actions, the amount of
17 12 the deficiency is a liability with respect to which generators
17 13 shall provide indemnification under article VII, section g.
17 14 Generators who provide the required indemnification have the
17 15 rights of contribution provided in article VII, section g.
17 16 This section applies to remedial action taken by a party state
17 17 regardless of whether the party state takes the remedial
17 18 action on its own initiative or because it is required to do
17 19 so by a court or regulatory agency of competent jurisdiction.

17 20 q. If the commission makes payment from the remedial
17 21 action fund provided for in section p, the commission is
17 22 entitled to obtain reimbursement under applicable rules of law
17 23 from any person who is responsible for the event giving rise
17 24 to the remedial action. Reimbursement may be obtained from a
17 25 party state only if the event giving rise to the remedial
17 26 action resulted from the activities of that party state as a
17 27 generator of waste.

17 28 r. If this compact is dissolved, all moneys held by the
17 29 commission shall be used first to pay for any ongoing or
17 30 reasonably anticipated remedial actions. Remaining moneys
17 31 shall be distributed in a fair and equitable manner to those
17 32 party states that have operating or closed compact facilities
17 33 within their borders and shall be added to the long-term care
17 34 funds maintained by those party states.
17 35 ARTICLE IV &endash; REGIONAL

~~MANAGEMENT~~

~~DISPOSAL PLAN~~

18 1 The commission shall adopt and periodically update a
18 2 regional

~~management~~

~~disposal plan designed to ensure the safe~~
18 3 and efficient

~~management~~

~~disposal of low-level radioactive~~
18 4 waste generated within the region. In adopting a regional
18 5 low-level radioactive waste

~~management~~

~~disposal plan, the~~
18 6 commission shall do all of the following:
18 7 a. Adopt procedures for determining, consistent with
18 8 considerations for public health and safety, the type and
18 9 number of

~~regional~~

~~compact~~ facilities which are presently
18 10 necessary and which are projected to be necessary to

~~manage~~

~~dispose of low-level radioactive waste generated within the~~
18 11 dispose of low-level radioactive waste generated within the
18 12 region;
18 13

~~b. Develop and consider policies promoting source~~

18 14

~~reduction of waste generated within the region;~~

18 15

~~c.~~

~~b.~~ Develop and adopt procedures and criteria for
18 16 identifying a party state as a host state for a

~~regional~~

~~compact~~ facility. In developing these criteria, the
18 17 compact facility. In developing these criteria, the
18 18 commission shall consider all of the following:
18 19 1. The health, safety, and welfare of the citizens of the
18 20 party states.
18 21 2. The existence of

~~regional~~

~~compact~~ facilities within
18 22 each party state.
18 23 3. The minimization of low-level radioactive waste
18 24 transportation.
18 25 4. The volumes and types of low-level radioactive wastes
18 26 projected to be generated within each party state.

18 27 5. The environmental

~~, economic, and ecological~~

- impacts on

18 28 the air, land, and water resources of the party states.

18 29 6. The economic impacts on the party states.

18 30

~~d.~~

- c. Conduct such hearings, and obtain such reports,

18 31 studies, evidence, and testimony required by its approved

18 32 procedures prior to identifying a party state as a host state

18 33 for a needed

~~regional~~

- compact facility;

18 34

~~e.~~

- d. Prepare a draft

~~management~~

- disposal plan and any

18 35 update thereof, including procedures, criteria, and host

19 1 states,

~~including alternatives,~~

- which shall be made available

19 2 in a convenient form to the public for comment. Upon the

19 3 request of a party state, the commission shall conduct a

19 4 public hearing in that state prior to the adoption or update

19 5 of the

~~management~~

- disposal plan. The

~~management~~

- disposal plan

19 6 and any update thereof shall include the commission's response

19 7 to public and party state comment.

19 8 ARTICLE V – RIGHTS AND OBLIGATIONS OF PARTY STATES

19 9 a. Each party state shall act in good faith in the

19 10 performance of acts and courses of conduct which are intended

19 11 to ensure the provision of facilities for regional

19 12 availability and usage in a manner consistent with this

19 13 compact.

19 14 b.

~~Each~~

- Except for low-level radioactive waste

19 15 attributable to radioactive material or low-level radioactive

19 16 waste imported into the region in order to render the material

19 17 or low-level radioactive waste amenable to transportation,

19 18 storage, disposal, or recovery, or in order to convert the

19 19 low-level radioactive waste or material to another usable

19 20 material, or to reduce it in volume or otherwise treat it,

19 21 each party state has the right to have all low-level

19 22 radioactive wastes generated within its borders

~~managed~~

- 19 23 disposed of at

~~regional~~

- compact facilities subject to the

19 24 payment of all fees established by the host state under

19 25 article VI, section j, and to the provisions contained in

19 26 article VI, sections 1 and s, article VIII, section d, article
19 27 IX,

~~section~~

- sections c and d and article X. All party states
19 28 have an equal right of access to any facility made available
19 29 to the region by

~~any~~

- an agreement entered into by the
19 30 commission pursuant to article III, section h, subsection 6,
19 31 subject to the provisions of article VI, sections 1 and s,
19 32 article VIII, sections c and d, and article X.
19 33 c.

~~Party states or generators may negotiate for the right~~

-
19 34

~~of access to a facility outside the region and may export~~

-
19 35

~~waste outside the region subject to commission approval under~~

-
20 1

~~article III.~~

- If a party state's right to have waste generated
20 2 within its borders disposed of at compact facilities, or at
20 3 any noncompact facility made available to the region by an
20 4 agreement entered into by the commission under article III,
20 5 section h, subsection 6, is suspended, low-level radioactive
20 6 waste generated within its borders by any person shall be
20 7 disposed of at any such facility during the period of the
20 8 suspension.
20 9 d. To the extent permitted by federal law, each party
20 10 state may enforce any applicable federal and state laws,
20 11 regulations, and rules pertaining to the packaging and
20 12 transportation of waste generated within or passing through
20 13 its borders. Nothing in this section shall be construed to
20 14 require a party state to enter into any agreement with the
20 15 United States nuclear regulatory commission.
20 16 e. Each party state shall provide to the commission any
20 17 data and information the commission requires to implement its
20 18 responsibilities. Each party state shall establish the
20 19 capability to obtain any data and information required by the
20 20 commission.
20 21 f. If, notwithstanding the sovereign immunity provision in
20 22 article VII, section f, subsection 1, and the indemnification
20 23 provided for in article III, section p, article VI, section o,
20 24 and article VII, section g, a party state incurs a cost as a
20 25 result of an inadequate remedial action fund or an exhausted
20 26 long-term care fund, or incurs a liability as a result of an
20 27 action described in article VII, section f, subsection 1, and
20 28 not described in article VII, section f, subsection 2, the
20 29 cost or liability shall be the pro rata obligation of each
20 30 party state and each state that has withdrawn from this
20 31 compact or had its membership in this compact revoked. The
20 32 commission shall determine each state's pro rata obligation in
20 33 a fair and equitable manner based on the amount of low-level
20 34 radioactive waste from each such state that has been or is
20 35 projected to be disposed of at the compact facility with
21 1 respect to which the cost or liability to be shared was
21 2 incurred. No state shall be obligated to pay the pro rata
21 3 obligation of any other state.
21 4 The pro rata obligations provided for in this section do

21 5 not result in the creation of state debt. Rather, the pro
21 6 rata obligations are contractual obligations that shall be
21 7 enforced by only the commission or an affected party state.
21 8 g. If the party states make payment pursuant to this
21 9 section, the surcharge or fee provided for in article III,
21 10 section j, shall be used to collect the funds necessary to
21 11 reimburse the party states for those payments. The commission
21 12 shall determine the time period over which reimbursement shall
21 13 take place.

21 14 ARTICLE VI – DEVELOPMENT,

~~AND~~

~~OPERATION, AND CLOSING~~

21 15 OF COMPACT FACILITIES

21 16 a.

~~Any~~

~~A party state may volunteer to become a host state,~~

21 17 and the commission may designate that state as a host state

21 18

~~upon a two thirds vote of its members~~

~~21 19 b. If not all~~

~~regional~~

~~compact facilities required by the~~

21 20 regional

~~management~~

~~disposal plan are~~

~~not~~

~~developed pursuant~~

21 21 to section a,

~~or upon notification that an existing regional~~

21 22

~~facility will be closed,~~

~~the commission may designate a host~~

21 23 state.

21 24 c.

~~Each party~~

~~After a state is designated~~

~~as~~

~~a host state~~

21 25 by the commission, it is responsible for

~~determining possible~~

21 26

~~facility locations within its borders~~

~~the timely development~~

21 27 and operation of the compact facility it is designated to

21 28 host.

~~The selection of a facility site shall not conflict~~

21 29

~~with applicable federal and host state laws, regulations, and~~

21 30

~~rules not inconsistent with this compact and shall be based on~~

21 31

~~factors including, but not limited to, geological,~~

21 32

~~environmental, and economic viability of possible facility~~

21 33

~~locations.~~

~~The development and operation of the compact~~

21 34 facility shall not conflict with applicable federal and host
21 35 state laws, rules, and regulations, provided that the laws,
22 1 rules, and regulations of a host state and its political
22 2 subdivisions shall not prevent, nor shall they be applied so
22 3 as to prevent, the host state's discharge of the obligation
22 4 set forth in this section. The obligation set forth in this
22 5 section is contingent upon the discharge by the commission of
22 6 its obligation set forth in article III, section i, subsection
22 7 5.

22 8 d. If a party state designated as a host state fails to
22 9 discharge the obligations imposed upon it by section c, its
22 10 host state designation may be terminated by a two-thirds vote
22 11 of the commission with the member from the host state of any
22 12 then operating compact facility voting in the affirmative. A
22 13 party state whose host state designation has been terminated
22 14 has failed to fulfill its obligations as a host state and is
22 15 subject to the provisions of article VIII, section d.
22 16

~~d.~~

~~e.~~ Any party state designated as a host state may
22 17 request the commission to relieve that state of the
22 18 responsibility to serve as a host state.

~~The~~

~~Except as set~~

22 19 forth in section d, the commission may relieve a party state
22 20 of

~~this~~

~~its~~ responsibility only upon a showing by the
22 21 requesting party state that, based upon criteria established
22 22 by the commission that are consistent with applicable federal
22 23 criteria, no feasible potential

~~regional~~

~~compact facility site~~

22 24

~~of the type it is designated to host~~

~~exists within its~~

22 25 borders. A party state relieved of its host state
22 26 responsibility shall repay to the commission any funds
22 27 provided to that state by the commission for the development
22 28 of a compact facility, and also shall pay to the commission
22 29 the amount the commission determines is necessary to ensure
22 30 that the commission and the other party states do not incur
22 31 financial loss as a result of the state being relieved of its
22 32 host state responsibility. Any funds so paid to the
22 33 commission with respect to the financial loss of the other
22 34 party states shall be distributed forthwith by the commission

22 35 to the party states that would otherwise incur the loss. In
23 1 addition, until the state relieved of its responsibility is
23 2 again designated as a host state and a compact facility
23 3 located in that state begins operating, it shall annually pay
23 4 to the commission, for deposit in the remedial action fund, an
23 5 amount the commission determines is fair and equitable in
23 6 light of the fact the state has been relieved of the
23 7 responsibility to host a compact facility, but continues to
23 8 enjoy the benefits of being a member of this compact.
23 9

~~e. After a state is designated a host state by the~~

~~23 10~~

~~commission, it is responsible for the timely development and~~

~~23 11~~

~~operation of a regional facility.~~

23 12 f. The host state shall select the technology for the
23 13 compact facility. If requested by the commission, information
23 14 regarding the technology selected by the host state shall be
23 15 submitted to the commission for its review. The commission
23 16 may require the host state to make changes in the technology
23 17 selected by the host state if the commission demonstrates that
23 18 the changes do not decrease the protection of air, land, and
23 19 water resources and the health and safety of all people who
23 20 may be affected by the compact facility. If requested by the
23 21 host state, any commission decision requiring the host state
23 22 to make changes in the technology shall be preceded by an
23 23 adjudicatory hearing in which the commission shall have the
23 24 burden of proof.

23 25 g. A host state may assign to a private contractor the
23 26 responsibility, in whole or in part, to develop, construct,
23 27 operate, close, or provide long-term care for a compact
23 28 facility. Assignment of such responsibility by a host state
23 29 to a private contractor does not relieve the host state of any
23 30 responsibility imposed upon it by this compact. A host state
23 31 may secure indemnification from the private contractor for any
23 32 costs, liabilities, and expenses incurred by the host state
23 33 resulting from the development, construction, operation,
23 34 closing, or long-term care of a compact facility.
23 35

~~f.~~

~~h. To the extent permitted by federal and state law, a~~
24 1 host state shall regulate and license any compact facility
24 2 within its borders and ensure the

~~extended~~

~~long-term care of~~
24 3 that compact facility.
24 4

~~g. The commission may designate a party state as a host~~

~~24 5~~

~~state while a regional facility is in operation if the~~

~~24 6~~

~~commission determines that an additional regional facility is~~

~~24 7~~

~~or may be required to meet the needs of the region. The~~

24 8

~~commission shall make this designation following the~~

24 9

~~procedures established under article IV.~~

24 10

~~h. Designation of a host state is for a period of twenty~~

24 11

~~years or the life of the regional facility which is~~

24 12

~~established under that designation, whichever is longer. Upon~~

24 13

~~request of a host state, the commission may modify the period~~

24 14

~~of its designation.~~

24 15 i. A host state shall accept waste for disposal for a
24 16 period of twenty years from the date the compact facility in
24 17 the host state becomes operational, or until its capacity has
24 18 been reached, whichever occurs first. At any time before the
24 19 compact facility closes, the host state and the commission may
24 20 enter into an agreement to extend the period during which the
24 21 host state is required to accept such waste or to increase the
24 22 capacity of the compact facility. Except as specifically
24 23 authorized by section 1, subsection 4, the twenty-year period
24 24 shall not be extended, and the capacity of the facility shall
24 25 not be increased, without the consent of the affected host
24 26 state and the commission.

24 27

~~i.~~

~~j. A host state~~

~~may~~

~~shall establish a~~

~~fee~~

~~system~~

~~for~~

~~of~~

24 28 fees to be collected from the users of any

~~regional~~

~~compact~~

24 29 facility within its borders. The fee system, and the costs

24 30 paid through the system, shall be reasonable and equitable.

24 31 The fee system shall be subject to the commission's approval.

24 32

~~This~~

~~The fee system shall provide the host state with~~

24 33 sufficient revenue to

~~cover any~~

~~pay costs associated with the~~

24 34 compact facility, including, but not limited to

~~the planning,~~

24 35

~~siting, licensure,~~

~~operation,~~

~~decommissioning, extended care,~~

25 1

~~and long term liability, associated with such facilities~~

25 2 closing, long-term care, debt service, legal costs, local

25 3 impact assistance, and local financial incentives.

~~This fee~~

25 4

~~system may also include reasonable revenue beyond the costs~~

25 5

~~incurred for the host state, subject to approval by the~~

25 6

~~commission. A host state shall submit an annual financial~~

25 7

~~audit of the operation of the regional facility to the~~

25 8

~~commission.~~

~~The fee system also shall be used to collect the~~

25 9 surcharge provided in article III, section j, subsection 2.

25 10 The fee system

~~may~~

~~shall include incentives for source~~

25 11 reduction and

~~may~~

~~shall be based on the hazard of the low-~~

25 12 level radioactive waste as well as the volume.

25 13

~~j.~~

~~k. A host state shall ensure that a~~

~~regional~~

~~compact~~

25 14 facility located within its borders

~~which~~

~~that is permanently~~

25 15 closed is properly

~~decommissioned~~

~~to be~~ cared for so as to ensure

25 16 protection of air, land, and water resources and the health
25 17 and safety of all people who may be affected by the facility.
25 18

~~A host state shall also provide for the care of a closed or~~

~~25 19~~

~~decommissioned regional facility within its borders so that~~

~~25 20~~

~~the public health and safety of the state and region are~~

~~25 21~~

~~ensured.~~

~~25 22~~

~~k. A host state intending to close a regional facility~~

~~25 23~~

~~located within its borders shall notify the commission in~~

~~25 24~~

~~writing of its intention and the reasons. Notification shall~~

~~25 25~~

~~be given to the commission at least five years prior to the~~

~~25 26~~

~~intended date of closure.~~

~~25 27~~ 1. The development of subsequent compact facilities shall
25 28 be as follows:

25 29 1. No compact facility shall begin operating until the
25 30 commission designates the host state of the next compact
25 31 facility.

25 32 2. The following actions shall be taken by the state
25 33 designated to host the next compact facility within the
25 34 specified number of years after the compact facility it is
25 35 intended to replace begins operation:

26 1 (a) Within three years, enact legislation providing for
26 2 the development of the next compact facility.

26 3 (b) Within seven years, initiate site characterization
26 4 investigations and tests to determine licensing suitability
26 5 for the next compact facility.

26 6 (c) Within eleven years, submit a license application for
26 7 the next compact facility that the responsible licensing
26 8 authority deems complete.

26 9 If a host state fails to take any of these actions within
26 10 the specified time, all low-level radioactive waste generated
26 11 by a person within that state shall be denied access to the
26 12 then operating compact facility, and to any noncompact
26 13 facility made available to the region by any agreement entered
26 14 into by the commission pursuant to article III, section h,
26 15 subsection 6, until the action is taken. Denial of access may
26 16 be rescinded by the commission, with the member from the host
26 17 state of the then operating compact facility voting in the
26 18 affirmative. A host state that fails to take any of these

26 19 actions within the specified time has failed to fulfill its
26 20 obligations as a host state and is subject to the provisions
26 21 of this section, and article VIII, section d.

26 22 3. Within fourteen years after a compact facility begins
26 23 operating, the state designated to host the next compact
26 24 facility shall have obtained a license from the responsible
26 25 licensing authority to construct and operate the compact
26 26 facility the state has been designated to host. If the
26 27 license is not obtained within the specified time, all low-
26 28 level radioactive waste generated by any person within the
26 29 state designated to host the next compact facility shall be
26 30 denied access to the then operating compact facility, and to
26 31 any noncompact facility made available to the region by any
26 32 agreement entered into by the commission pursuant to article
26 33 III, section h, subsection 6, until the license is obtained.
26 34 The state designated to host the next compact facility shall
26 35 have failed in its obligations as a host state and shall be
27 1 subject to section d, and article VIII, section d. In
27 2 addition, at the sole option of the host state of the then
27 3 operating compact facility, all low-level radioactive waste
27 4 generated by any person within any party state that has not
27 5 fully discharged its obligations under section i, shall be
27 6 denied access to the then operating compact facility, and to a
27 7 noncompact facility made available to the region by an
27 8 agreement entered into by the commission pursuant to article
27 9 III, section h, subsection 6, until the license is obtained.
27 10 Denial of access may be rescinded by the commission, with the
27 11 member from the host state of the then operating compact
27 12 facility voting in the affirmative.

27 13 4. If twenty years after a compact facility begins
27 14 operating, the next compact facility is not ready to begin
27 15 operating, the state designated to host the next compact
27 16 facility shall have failed in its obligation as a host state
27 17 and shall be subject to section d, and article VIII, section
27 18 d. If at the time the capacity of the then operating compact
27 19 facility has been reached, or twenty years after the facility
27 20 began operating, whichever occurs first, the next compact
27 21 facility is not ready to begin operating, the host state of
27 22 the then operating compact facility, without the consent of
27 23 any other party state or the commission, may continue to
27 24 operate the facility until a compact facility in the next host
27 25 state is ready to begin operating. During any such period of
27 26 continued operation of a compact facility, all low-level
27 27 radioactive waste generated by any person within the state
27 28 designated to host the next compact facility shall be denied
27 29 access to the then operating compact facility and to a
27 30 noncompact facility made available to the region by an
27 31 agreement entered into by the commission pursuant to article
27 32 III, section h, subsection 6. In addition, during such
27 33 period, at the sole option of the host state of the then
27 34 operating compact facility, all low-level radioactive waste
27 35 generated by any person within any party state that has not
28 1 fully discharged its obligations under section i, shall be
28 2 denied access to the then operating compact facility and to
28 3 any noncompact facility made available to the region by any
28 4 agreement entered into by the commission pursuant to article
28 5 III, section h, subsection 6. Denial of access may be
28 6 rescinded by the commission, with the member from the host
28 7 state of the then operating compact facility voting in the
28 8 affirmative. The provisions of this subsection shall not
28 9 apply if their application is inconsistent with an agreement
28 10 between the host state of the then operating compact facility
28 11 and the commission as authorized in section i, or inconsistent
28 12 with section p or q.

28 13 5. During any period that access is denied for low-level
28 14 radioactive waste disposal pursuant to section l, subsection
28 15 2, 3, or 4, the party state designated to host the next

28 16 compact disposal facility shall pay to the host state of the
28 17 then operating compact facility an amount the commission
28 18 determines is reasonably necessary to ensure that the host
28 19 state, or an agency or political subdivision thereof, does not
28 20 incur financial loss as a result of the denial of access.
28 21 6. The commission may modify any of the requirements
28 22 contained in section 1, subsections 2 and 3, if it finds that
28 23 circumstances have changed so that the requirements are
28 24 unworkable or unnecessarily rigid or no longer serve to ensure
28 25 the timely development of a compact facility. The commission
28 26 may adopt such a finding by a two-thirds vote, with the member
28 27 from the host state of the then operating compact facility
28 28 voting in the affirmative.
28 29 m. This

~~section~~

~~- compact shall not prevent an emergency~~
28 30 closing of a

~~regional~~

~~- compact facility by a host state to~~
28 31 protect

~~its~~

~~- air, land, and water resources and the health and~~
28 32 safety of

~~its citizens~~

~~- all people who may be affected by the~~
28 33 compact facility.

~~However, a~~

~~- A host state~~

~~which~~

~~- that has an~~
28 34 emergency closing of a

~~regional~~

~~- compact facility shall notify~~
28 35 the commission in writing within three working days of its
29 1 action and shall, within thirty working days of its action,
29 2 demonstrate justification for the closing.
29 3

~~1. If a regional facility closes before an additional or~~

~~29 4~~

~~new facility becomes operational, waste generated within the~~

~~29 5~~

~~region may be shipped temporarily to any location agreed on by~~

~~29 6~~

~~the commission until a regional facility is operational.~~

~~29 7~~

~~m. A party state which is designated as a host state by~~

~~29 8~~

~~the commission and fails to fulfill its obligations as a host~~

~~state may have its privileges under the compact suspended or~~

29 10

~~membership in the compact revoked by the commission.~~

29 11 n. A party state that has fully discharged its obligations
29 12 under section i shall not again be designated a host state of
29 13 a compact facility without its consent until each party state
29 14 has been designated to host a compact facility and has fully
29 15 discharged its obligations under section i, or has been
29 16 relieved under section e, of its responsibility to serve as a
29 17 host state.

29 18 o. Each host state of a compact facility shall establish a
29 19 long-term care fund to pay for monitoring, security,
29 20 maintenance, and repair of the facility after it is
29 21 permanently closed. The expenses of administering the long-
29 22 term care fund shall be paid out of the fund. The fee system
29 23 established by the host state that establishes a long-term
29 24 care fund shall be used to collect moneys in amounts that are
29 25 adequate to pay for all long-term care of the compact
29 26 facility. The moneys shall be deposited into the long-term
29 27 care fund. Except where the matter is resolved through
29 28 arbitration, the amount to be collected through the fee system
29 29 for deposit into the fund shall be determined through an
29 30 agreement between the commission and the host state
29 31 establishing the fund. Not less than three years, nor more
29 32 than five years, before the compact facility it is designated
29 33 to host is scheduled to begin operating, the host state shall
29 34 propose to the commission the amount to be collected through
29 35 the fee system for deposit into the fund. If, one hundred
30 1 eighty days after such proposal is made to the commission, the
30 2 host state and the commission have not agreed, either the
30 3 commission or the host state may require the matter to be
30 4 decided through binding arbitration. The method of
30 5 administration of the fund shall be determined by the host
30 6 state establishing the long-term care fund, provided that
30 7 moneys in the fund shall be used only for the purposes set
30 8 forth in this section, and shall be invested in accordance
30 9 with the standards applicable to trustees under the laws of
30 10 the host state establishing the fund. If, after a compact
30 11 facility is closed, the commission determines the long-term
30 12 care fund established with respect to that compact facility is
30 13 not adequate to pay for all long-term care for that compact
30 14 facility, the commission shall collect and pay over to the
30 15 host state of the closed compact facility, for deposit into
30 16 the long-term care fund, an amount determined by the
30 17 commission to be necessary to make the amount in the fund
30 18 adequate to pay for all long-term care of the compact
30 19 facility. If a long-term care fund is exhausted and long-term
30 20 care expenses for the compact facility with respect to which
30 21 the fund was created have been reasonably incurred by the host
30 22 state of the compact facility, those expenses are a liability
30 23 with respect to which generators shall provide indemnification
30 24 as provided in article VII, section g. Generators that
30 25 provide indemnification shall have contribution rights as
30 26 provided in article VII, section g.

30 27 p. A host state that withdraws from the compact or has its
30 28 membership revoked shall immediately and permanently close any
30 29 compact facility located within its borders, except that the
30 30 commission and a host state may enter into an agreement under
30 31 which the host state may continue to operate, as a noncompact
30 32 facility, a facility within its borders that, before the host
30 33 state withdrew or had its membership revoked, was a compact
30 34 facility.

30 35 g. If this compact is dissolved, the host state of any
31 1 then operating compact facility shall immediately and
31 2 permanently close the compact facility, provided that a host
31 3 state may continue to operate a compact facility or resume
31 4 operating a previously closed compact facility, as a
31 5 noncompact facility, subject to all of the following
31 6 requirements:

31 7 1. The host state shall pay to the other party states the
31 8 portion of the funds provided to that state by the commission
31 9 for the development, construction, operation, closing, or
31 10 long-term care of a compact facility that is fair and
31 11 equitable, taking into consideration the period of time the
31 12 compact facility located in that state was in operation and
31 13 the amount of waste disposed of at the compact facility,
31 14 provided that a host state that has fully discharged its
31 15 obligations under section i, shall not be required to make
31 16 such payment.

31 17 2. The host state shall physically segregate low-level
31 18 radioactive waste disposed of at the compact facility after
31 19 this compact is dissolved from low-level radioactive waste
31 20 disposed of at the compact facility before this compact is
31 21 dissolved.

31 22 3. The host state shall indemnify and hold harmless the
31 23 other party states from all costs, liabilities, and expenses,
31 24 including reasonable attorneys' fees and expenses, caused by
31 25 operating the compact facility after this compact is
31 26 dissolved, provided that this indemnification and hold
31 27 harmless obligation shall not apply to costs, liabilities, and
31 28 expenses resulting from the activities of a host state as a
31 29 generator of waste.

31 30 4. Moneys in the long-term care fund established by the
31 31 host state that are attributable to the operation of the
31 32 compact facility before this compact is dissolved, and
31 33 investment earnings thereon, shall be used only to pay the
31 34 cost of monitoring, securing, maintaining, or repairing that
31 35 portion of the compact facility used for the disposal of low-
32 1 level radioactive waste before this compact is dissolved.
32 2 Such moneys and investment earnings, and moneys added to the
32 3 long-term care fund through a distribution authorized by
32 4 article III, section r, also may be used to pay the cost of
32 5 any remedial action made necessary by an event resulting from
32 6 the disposal of waste at the facility before this compact is
32 7 dissolved.

32 8 r. Financial statements of a compact facility shall be
32 9 prepared according to generally accepted accounting
32 10 principles. The commission may require the financial
32 11 statements to be audited on an annual basis by a firm of
32 12 certified public accountants selected and paid by the
32 13 commission.

32 14 s. Low-level radioactive waste may be accepted for
32 15 disposal at a compact facility only if the generator of the
32 16 low-level radioactive waste has signed, and there is on file
32 17 with the commission, an agreement to provide indemnification
32 18 to a party state, or employee of that state, for all of the
32 19 following:

32 20 1. Any cost of a remedial action described in article III,
32 21 section p, that, due to inadequacy of the remedial action
32 22 fund, is not paid as set forth in that provision.

32 23 2. Any expense for long-term care described in section o
32 24 that, due to exhaustion of the long-term care fund, is not
32 25 paid as set forth in that provision.

32 26 3. Any liability for damages to persons, property, or the
32 27 environment incurred by a party state, or employee of that
32 28 state while acting within the scope of employment, resulting
32 29 from the development, construction, operation, regulation,
32 30 closing, or long-term care of a compact facility, or a
32 31 noncompact facility made available to the region by an

32 32 agreement entered into by the commission pursuant to article
32 33 III, section h, subsection 6, or other matter arising from
32 34 this compact. The agreement also shall require generators to
32 35 indemnify the party state or employee against all reasonable
33 1 attorney's fees and expenses incurred in defending an action
33 2 for such damages. This indemnification shall not extend to
33 3 liability based on any of the following:

33 4 (a) The activities of the party states as generators of
33 5 waste.

33 6 (b) The obligations of the party states to each other and
33 7 the commission imposed by this compact or other contracts
33 8 related to the disposal of low-level radioactive waste under
33 9 this compact.

33 10 (c) Activities of a host state or employees thereof that
33 11 are grossly negligent or willful and wanton.

33 12 The agreement shall provide that the indemnification
33 13 obligation of generators shall be joint and several, except
33 14 that the indemnification obligation of the party states with
33 15 respect to their activities as generators of low-level
33 16 radioactive waste shall not be joint and several, but instead
33 17 shall be prorated according to the amount of waste that each
33 18 state had disposed of at the compact facility giving rise to
33 19 the liability. Such proration shall be calculated as of the
33 20 date of the event giving rise to the liability. The agreement
33 21 shall be in a form approved by the commission with the member
33 22 from the host state of any then operating compact facility
33 23 voting in the affirmative. Among generators there shall be
33 24 rights of contribution based on equitable principles, and
33 25 generators shall have rights of contribution against another
33 26 person responsible for such damages under common law, statute,
33 27 rule, or regulation, provided that a party state that through
33 28 its own activities did not generate any low-level radioactive
33 29 waste disposed of at the compact facility giving rise to the
33 30 liability, an employee of such a party state, and the
33 31 commission shall not have a contribution obligation. The
33 32 commission may waive the requirement that the party state sign
33 33 and file such an indemnification agreement as a condition to
33 34 being able to dispose of low-level radioactive waste generated
33 35 as a result of the party state's activities. Such a waiver
34 1 shall not relieve a party state of the indemnification
34 2 obligation imposed by article VII, section g.

34 3 ARTICLE VII – OTHER LAWS AND REGULATIONS

34 4 a. Nothing in this compact:

34 5 1. Abrogates or limits the applicability of any act of
34 6 congress or diminishes or otherwise impairs the jurisdiction
34 7 of any federal agency expressly conferred thereon by the
34 8 congress;

34 9 2. Prevents the enforcement of any other law of a party
34 10 state which is not inconsistent with this compact;

34 11 3. Prohibits any

~~storage~~

~~generator from storing or~~
34 12

~~treatment of waste by the generator~~

~~treating, on its own~~

34 13 premises, low-level radioactive waste generated by it within
34 14 the region;

34 15 4. Affects any administrative or judicial proceeding
34 16 pending on the effective date of this compact;

34 17 5. Alters the relations between and the respective
34 18 internal responsibility of the government of a party state and
34 19 its subdivisions;

34 20 6. Affects the generation, treatment, storage, or disposal
34 21 of waste generated by the atomic energy defense activities of
34 22 the secretary of the United States department of energy or

34 23 successor agencies or federal research and development
34 24 activities as

~~defined~~
~~described~~ in 42 U.S.C. } 2021;

~~or~~

34 25 7. Affects the rights and powers of any party state or its
34 26 political subdivisions, to the extent not inconsistent with
34 27 this compact, to regulate and license any facility or the
34 28 transportation of waste within its borders

~~or affects the~~

34 29

~~rights and powers of any party state or its political~~

34 30

~~subdivisions to tax or impose fees on the waste managed at any~~

34 31

~~facility within its border~~

34 32 8. Requires a party state to enter into any agreement with
34 33 the United States nuclear regulatory commission.

34 34 9.

~~Alters or limits liability of transporters of waste,~~

34 35

~~owners, and operators of sites for their acts, omissions,~~

35 1

~~conduct, or relationships in accordance with applicable laws.~~

35 2 Limits, expands, or otherwise affects the authority of a state

35 3 to regulate low-level radioactive waste classified by any

35 4 agency of the United States government as below regulatory

35 5 concern or otherwise exempt from federal regulation.

35 6 b.

~~For purposes of this compact, all state laws or parts~~

35 7

~~of laws in conflict~~

~~If a court of the United States finally~~

35 8 determines that a law of a party state conflicts with this

35 9 compact

~~are hereby superseded~~

~~, this compact shall prevail to~~

35 10 the extent of the conflict. The commission shall not commence

35 11 an action seeking such a judicial determination unless

35 12 commencement of the action is approved by a two-thirds vote of

35 13 the membership of the commission.

35 14 c.

~~No~~

~~Except as authorized by this compact, no law, rule,~~

35 15 or regulation of a party state or of any of its subdivisions

35 16 or instrumentalities may be applied in a manner which
35 17 discriminates against the generators of another party state.

35 18 d. Except as provided in article III, section m, and
35 19 section f of this article, no provision of this compact shall
35 20 be construed to eliminate or reduce in any way the liability
35 21 or responsibility, whether arising under common law, statute,
35 22 rule, or regulation, of any person for penalties, fines, or
35 23 damages to persons, property, or the environment resulting
35 24 from the development, construction, operation, closing, or
35 25 long-term care of a compact facility, or a noncompact facility
35 26 made available to the region by an agreement entered into by
35 27 the commission pursuant to article III, section h, subsection
35 28 6, or other matter arising from this compact. The provisions
35 29 of this compact shall not alter otherwise applicable laws
35 30 relating to compensation of employees for workplace injuries.

35 31 e. Except as provided in 28 U.S.C. }1251(a), the district
35 32 courts of the United States have exclusive jurisdiction to
35 33 decide cases arising under this compact. This section does
35 34 not apply to proceedings within the jurisdiction of state or
35 35 federal regulatory agencies or to judicial review of
36 1 proceedings before state or federal regulatory agencies. This
36 2 section shall not be construed to diminish other laws of the
36 3 United States conferring jurisdiction on the courts of the
36 4 United States.

36 5 f. For the purposes of activities pursuant to this
36 6 compact, the sovereign immunity of party states and employees
36 7 of party states shall be as follows:

36 8 1. A party state or employee thereof, while acting within
36 9 the scope of employment, shall not be subject to suit or held
36 10 liable for damages to persons, property, or the environment
36 11 resulting from the development, construction, operation,
36 12 regulation, closing, or long-term care of a compact facility,
36 13 or any noncompact facility made available to the region by any
36 14 agreement entered into by the commission pursuant to article
36 15 III, section h, subsection 6. This applies whether the
36 16 claimed liability of the party state or employee is based on
36 17 common law, statute, rule, or regulation.

36 18 2. The sovereign immunity granted in subsection 1 does not
36 19 apply to any of the following:

36 20 (a) Actions based upon the activities of the party states
36 21 as generators of low-level radioactive waste. With regard to
36 22 those actions, the sovereign immunity of the party states
36 23 shall not be affected by this compact.

36 24 (b) Actions based on the obligations of the party states
36 25 to each other and the commission imposed by this compact, or
36 26 other contracts related to the disposal of low-level
36 27 radioactive waste under this compact. With regard to those
36 28 actions, the party states shall have no sovereign immunity.

36 29 (c) Actions against a host state, or employee thereof,
36 30 when the host state or employee acted in a grossly negligent
36 31 or willful and wanton manner.

36 32 g. If in an action described in section f, subsection 1,
36 33 and not described in section f, subsection 2, it is determined
36 34 that, notwithstanding section f, subsection 1, a party state,
36 35 or employee of that state who acted within the scope of
37 1 employment, is liable for damages or has liability for other
37 2 matters arising under this compact as described in article VI,
37 3 section s, subsection 3, the generators who caused waste to be
37 4 placed at the compact facility with respect to which the
37 5 liability was incurred shall indemnify the party state or
37 6 employee against that liability. Those generators also shall
37 7 indemnify the party state or employee against all reasonable
37 8 attorney's fees and expenses incurred in defending against any
37 9 such action. The indemnification obligation of generators
37 10 under this section shall be joint and several, except that the
37 11 indemnification obligation of party states with respect to
37 12 their activities as generators of waste shall not be joint and

37 13 several, but instead shall be prorated according to the amount
37 14 of waste each state has disposed of at the compact facility
37 15 giving rise to the liability. Among generators, there shall
37 16 be rights of contribution based upon equitable principles, and
37 17 generators shall have rights of contribution against another
37 18 person responsible for damages under common law, statute,
37 19 rule, or regulation. A party state that through its own
37 20 activities did not generate low-level radioactive waste
37 21 disposed of at the compact facility giving rise to the
37 22 liability, an employee of a party state, and the commission
37 23 shall have no contribution obligation under this section.
37 24 This section shall not be construed as a waiver of the
37 25 sovereign immunity provided for in section f, subsection 1.
37 26 h. The sovereign immunity of a party state provided for in
37 27 section f, subsection 1, shall not be extended to a private
37 28 contractor assigned responsibilities as authorized in article
37 29 VI, section g.

37 30 ARTICLE VIII – ELIGIBLE PARTIES, WITHDRAWAL,
37 31 REVOCATION, SUSPENSION OF ACCESS, ENTRY INTO FORCE, AND
37 32 TERMINATION
37 33

~~a. Eligible parties to this compact are the states of~~

37 34

~~Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland,~~

37 35

~~Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio,~~

38 1

~~South Dakota, Virginia, and Wisconsin. Eligibility terminates~~

38 2

~~on July 1, 1984.~~

38 3

~~b.~~

~~a. Any state~~

~~not eligible for membership in the compact~~

38 4 may petition the commission

~~for eligibility~~

~~to be eligible for~~

38 5 membership in the compact. The commission may establish
38 6 appropriate eligibility requirements. These requirements may
38 7 include, but are not limited to, an eligibility fee or
38 8 designation as a host state. A petitioning state becomes
38 9 eligible for membership in the compact upon the approval of
38 10 the commission, including the affirmative vote of

~~all~~

~~the~~

38 11 member from each host

~~states~~

~~state in which a compact facility~~

38 12 is operating or being developed or constructed. Any state
38 13 becoming eligible upon the approval of the commission becomes
38 14 a member of the compact

~~in the same manner as any state~~

38 15

~~eligible for membership at the time this compact enters into~~

38 16

~~force~~

~~when the state enacts this compact into law and pays the~~

38 17 eligibility fee established by the commission.

38 18

~~c. An eligible state becomes a party state when the state~~

38 19

~~enacts the compact into law and pays the membership fee~~

38 20

~~required in article III, section j, subsection 1.~~

38 21

~~d.~~

~~b.~~ The commission is formed upon the appointment of

38 22 commission members and the tender of the membership fee

38 23 payable to the commission by three party states. The governor

38 24 of the first state to enact this compact shall convene the

38 25 initial meeting of the commission. The commission shall cause

38 26 legislation to be introduced in the congress which grants the

38 27 consent of the congress to this compact, and shall take action

38 28 necessary to organize the commission and implement the

38 29 provisions of this compact.

38 30

~~e.~~

~~c.~~

~~Any~~

~~A party state that has fully discharged its~~

38 31 obligations under article VI, section i, or has been relieved

38 32 under article VI, section e, of its responsibilities to serve

38 33 as a host state. may withdraw from this compact by repealing

38 34 the authorizing legislation

~~but no withdrawal may take effect~~

38 35

~~until five years after the governor of the withdrawing state~~

39 1

~~gives notice in writing of the withdrawal to the commission~~

39 2

~~and to the governor of each party state~~

~~and by receiving the~~

39 3 unanimous consent of the commission. Withdrawal

~~does not~~

39 4

~~action~~

~~specified in the resolution revoking the party state's membership.~~ All legal rights of the

~~affected~~

~~revoked party~~

39 35 state established under this compact, including, but not
40 1 limited to, the right to have low-level radioactive waste
40 2 generated within its borders disposed of at compact
40 3 facilities, cease upon the effective date of revocation, but
40 4 any legal obligations of that party state

~~arising prior to~~

40 5

~~revocation~~

~~under this compact, including, but not limited to,~~

40 6 those set forth in section e continue until they are
40 7 fulfilled. The chairperson of the commission shall transmit
40 8 written notice of a revocation of a party state's membership
40 9 in the compact, suspension of a party state's low-level
40 10 radioactive waste disposal rights, or imposition of financial
40 11 penalties immediately following the vote of the commission to
40 12 the governor of the affected party state,

~~all other~~

~~governors~~

40 13 of all the other party states, and the congress of the United
40 14 States.

40 15 e. A party state that withdraws from this compact or has
40 16 its membership in the compact revoked before it has fully
40 17 discharged its obligations under article VI forthwith shall
40 18 repay to the commission the portion of the funds provided to
40 19 that state by the commission for the development,
40 20 construction, operation, closing, or long-term care of a
40 21 compact facility that the commission determines is fair and
40 22 equitable, taking into consideration the period of time the
40 23 compact facility located in that host state was in operation
40 24 and the amount of low-level radioactive waste disposed of at
40 25 the compact facility. If at any time after a compact facility
40 26 begins operating, a party state withdraws from the compact or
40 27 has its membership revoked, the withdrawing or revoked party
40 28 state shall be obligated forthwith to pay to the commission,
40 29 the amount the commission determines would have been paid
40 30 under the fee system established by the host state of the
40 31 compact facility, to dispose of at the compact facility the
40 32 estimated volume of low-level radioactive waste generated in
40 33 the withdrawing or revoked party state that would have been
40 34 disposed of at the compact facility from the time of
40 35 withdrawal or revocation until the time the compact facility
41 1 is closed. Any funds so paid to the commission shall be
41 2 distributed by the commission to the persons who would have
41 3 been entitled to receive the funds had they originally been
41 4 paid to dispose of low-level radioactive waste at the
41 5 facility. Any person receiving funds from the commission
41 6 shall apply the funds to the purposes to which they would have
41 7 been applied had they originally been paid to dispose of low-
41 8 level radioactive waste at the compact facility. In addition,
41 9 a withdrawing or revoked party state forthwith shall pay to
41 10 the commission an amount the commission determines to be
41 11 necessary to cover all other costs and damages incurred by the
41 12 commission and the remaining party states as a result of the
41 13 withdrawal or revocation. The intention of this section is to
41 14 eliminate a decrease in revenue resulting from withdrawal of a

41 15 party state or revocation of a party state's membership, to
41 16 eliminate financial harm to the remaining party states, and to
41 17 create an incentive for party states to continue as members of
41 18 the compact and to fulfill their obligations. This section
41 19 shall be construed and applied so as to effectuate this
41 20 intention.

41 21 f. Any party state whose right to have low-level
41 22 radioactive waste generated within its borders disposed of at
41 23 compact facilities is suspended by the commission, shall pay
41 24 to the host state of the compact facility to which access has
41 25 been suspended the amount the commission determines is
41 26 reasonably necessary to ensure that the host state, or any
41 27 political subdivision thereof, does not incur financial loss
41 28 as a result of the suspension of access.

41 29 g. This compact becomes effective

~~July 1, 1983, or at any~~

41 30

~~date subsequent to July 1, 1983,~~

~~upon enactment by at least~~

41 31 three eligible states and consent to this compact by the

41 32 congress.

~~However, article IX, section b shall not take~~

41 33

~~effect until the congress has by law consented to this~~

41 34

~~compact. The congress shall have an opportunity to withdraw~~

41 35

~~such consent every five years. Failure of the congress to~~

42 1

~~affirmatively withdraw its consent has the effect of renewing~~

42 2

~~consent for an additional five year period.~~

~~The consent given~~

42 3 to this compact by the congress shall extend to any future

42 4 admittance of new party states

~~under sections b and c of this~~

42 5

~~article~~

~~and to the power of the~~

~~region~~

~~commission to~~

~~ban~~

42 6 regulate the shipment and disposal of waste

~~from the region~~

42 7 and disposal of naturally occurring and accelerator-produced

42 8 radioactive material pursuant to

~~article III~~

~~this compact.~~

42 9 Amendments to this compact are effective when enacted by all
42 10 party states and, if necessary, consented to by the congress.

42 11 To the extent required by the Low-Level Radioactive Waste

42 12 Policy Amendments Act of 1985, 42 U.S.C. } 2021(d)(4)(d),

42 13 every five years after this compact has taken effect, the

42 14 congress by law may withdraw its consent.

42 15 h. The withdrawal of a party state from this compact

~~under~~

42 16

~~section e of this article~~

~~, the suspension of low-level~~

42 17 radioactive waste disposal rights, the termination of a party

42 18 state's designation as a host state, or the revocation of a

42 19 state's membership in this compact

~~under section f of this~~

42 20

~~article~~

~~does not affect the applicability of this compact to~~

42 21 the remaining party states.

42 22 i.

~~A state which has been designated by the commission to~~

42 23

~~be a host state has ninety days from receipt by the governor~~

42 24

~~of written notice of designation to withdraw from the compact~~

42 25

~~without any right to receive refund of any funds already paid~~

42 26

~~pursuant to this compact, and without any further payment.~~

42 27

~~Withdrawal becomes effective immediately upon notice as~~

42 28

~~provided in section e. A designated host state which~~

42 29

~~withdraws from the compact after ninety days and prior to~~

42 30

~~fulfilling its obligations shall be assessed a sum the~~

42 31

~~commission determines to be necessary to cover the costs borne~~

42 32

~~by the commission and remaining party states as a result of~~

42 33

~~that withdrawal.~~

~~This compact may be dissolved and the~~

42 34 obligations arising under this compact may be terminated only

42 35 as follows:

43 1 1. Through unanimous agreement of all party states

43 2 expressed in duly enacted legislation; or

43 3 2. Through withdrawal of consent to this compact by the

43 4 Congress under article I, section 10, of the United States

43 5 Constitution, in which case dissolution shall take place one

43 6 hundred twenty days after the effective date of the withdrawal

43 7 of consent.

43 8 Unless explicitly abrogated by the state legislation

43 9 dissolving this compact, or if dissolution results from

43 10 withdrawal of congressional consent, the limitations on the

43 11 investment and use of long-term care funds in article VI,

43 12 section o and section q, subsection 4, the contractual

43 13 obligations in article V, section f, the indemnification

43 14 obligations and contribution rights in article VI, sections o

43 15 and s, and article VII, section q, and the operation rights

43 16 indemnification and hold-harmless obligations in article VI,

43 17 section q, shall remain in force notwithstanding dissolution

43 18 of this compact.

43 19 ARTICLE IX – PENALTIES AND ENFORCEMENT

43 20 a. Each party state shall prescribe and enforce penalties

43 21 against any person who is not an official of another state for

43 22 violation of any provision of this compact.

43 23

~~b. Unless otherwise authorized by the commission pursuant~~

43 24

~~to article III, section h after January 1, 1986, it is a~~

43 25

~~violation of this compact:~~

43 26

~~1. For any person to deposit at a regional facility waste~~

43 27

~~not generated within the region;~~

43 28

~~2. For any regional facility to accept waste not generated~~

43 29

~~within the region;~~

43 30

~~3. For any person to export from the region waste which is~~

43 31

~~generated within the region; or~~

43 32

~~4. For any person to dispose of waste at a facility other~~

43 33

~~than a regional facility.~~

43 34 b. The parties to this compact intend that the courts of
43 35 the United States shall specifically enforce the obligations,
44 1 including the obligations of party states and revoked or
44 2 withdrawn party states, established by this compact.

44 3 c. The commission, an affected party state, or both may
44 4 obtain injunctive relief, recover damages, or both to prevent
44 5 or remedy violations of this compact.

44 6

~~e.~~

~~d. Each party state acknowledges that the~~

~~receipt by~~

44 7 transport into a host state of low-level radioactive waste
44 8 packaged or transported in violation of applicable laws,
44 9 rules, and regulations may result in the imposition of
44 10 sanctions by the host state which may include reasonable
44 11 financial penalties assessed against any generator,
44 12 transporter, or collector responsible for the violation, or
44 13 suspension or revocation of

~~the violator's right of~~

~~access to~~

44 14 the compact facility in the host state by a generator,
44 15 transporter, or collector responsible for the violation.
44 16

~~d.~~

~~e. Each party state has the right to seek legal~~

44 17 recourse against

~~any~~

~~a party state which acts in violation of~~

44 18 this compact.

44 19 f. This compact shall not be construed to create a cause
44 20 of action for a person other than a party state or the
44 21 commission. Nothing in this section shall limit the right of
44 22 judicial review set forth in article III, section n,
44 23 subsection 3, or the rights of contribution set forth in
44 24 article III, section p, article VI, sections o and s, and
44 25 article VII, section g.

44 26 ARTICLE X – SEVERABILITY AND CONSTRUCTION

44 27 The provisions of this compact shall be severable and if
44 28 any

~~phrase, clause, sentence, or~~

~~provision of this compact is~~

44 29

~~declared~~

~~finally determined by a court of competent~~

44 30 jurisdiction to be contrary to the constitution of

~~any~~

~~a~~

44 31 participating state or of the United States or the
44 32

~~applicability~~

- application thereof to

~~any government, agency,~~

- a
44 33 person

- or circumstance is held invalid, the validity of the
44 34 remainder of this compact to that person or circumstance and
44 35 the applicability

~~thereof~~

- of the entire compact to any
45 1

~~government, agency,~~

- other person

- or circumstance shall not be
45 2 affected thereby. If

~~any~~

- a provision of this compact shall be
45 3 held contrary to the constitution of

~~any~~

- a state participating
45 4 therein, the compact shall remain in full force and effect as
45 5 to the state affected as to all severable matters. If any
45 6 provision of this compact imposing a financial obligation upon
45 7 a party state, or a state that has withdrawn from this compact
45 8 or had its membership in this compact revoked, is finally
45 9 determined by a court of competent jurisdiction to be
45 10 unenforceable due to the state's constitutional limitations on
45 11 its ability to pay the obligation, then that state shall use
45 12 its best efforts to obtain an appropriation to pay the
45 13 obligation, and, if the state is a party state, its right to
45 14 have low-level radioactive waste generated within its borders
45 15 disposed of at compact facilities, or a noncompact facility
45 16 made available to the region by an agreement entered into by
45 17 the commission pursuant to article III, section h, subsection
45 18 6, shall be suspended until the appropriation is obtained.

EXPLANATION

45 20 This amended compact relates to the disposal of low-level
45 21 radioactive waste. The compact contains 10 articles. This
45 22 explanation contains the major changes made by the bill to the
45 23 compact.

45 24 The bill in article III contains provisions about the
45 25 compact's commission. The bill requires commission actions to
45 26 receive either a two-thirds vote of the member states or an
45 27 affirmative vote of an affected host state.

45 28 The bill in article III reflects that a compact facility
45 29 may be permanently closed before it reaches capacity and
45 30 before the expiration of its 20-year period by the affirmative
45 31 vote of a majority of the commission, including the
45 32 affirmative vote of the commission member of the state in
45 33 which the compact facility to be closed is located. "Compact
45 34 facility" is a radioactive waste disposal facility. "Compact
45 35 facility" is a new term that replaces "regional facility".

46 1 The bill in article III contains the funding mechanism of
46 2 the commission. Under ordinary circumstances, a compact
46 3 facility operates and the commission's funding comes from a

46 4 surcharge. During the period before the first compact
46 5 facility begins operating, the commission's funding comes from
46 6 fees paid by generators. The bill in article III establishes
46 7 a remedial action fund to provide the party states with
46 8 additional assurance that users of compact facilities pay all
46 9 expenses associated with the regional disposal of low-level
46 10 radioactive waste.

46 11 The bill in article IV requires the commission to include
46 12 the economic impacts on the party states in developing and
46 13 adopting procedures and criteria for selecting host states.

46 14 The bill in article V provides that the compact uses
46 15 sovereign immunity and generator indemnification to prevent
46 16 party states from incurring liability.

46 17 The bill in article VI reflects that each party state takes
46 18 its turn hosting compact facilities. The bill in article VI
46 19 states that if a host state fails to discharge its obligation
46 20 to develop and operate a compact facility on a timely basis,
46 21 the commission may decide to terminate the party state's
46 22 designation as a host state.

46 23 The bill in article VI provides that a facility shall
46 24 accept waste for disposal for a 20-year period or until its
46 25 capacity is reached. However, before a compact facility is
46 26 closed, a host state and the commission may enter into an
46 27 agreement to lengthen the time period during which the compact
46 28 facility accepts waste for disposal or to increase the
46 29 capacity of the facility.

46 30 The bill in article VI establishes the process by which
46 31 subsequent compact facilities are developed. A state that
46 32 develops a compact facility cannot begin to operate its
46 33 facility until the host state for the next compact disposal
46 34 facility is designated.

46 35 The bill in article VI allows the host state of the then
47 1 operating compact facility to unilaterally decide to continue
47 2 to operate its compact facility, even though the compact
47 3 facility has already operated for 20 years or its capacity has
47 4 been reached, if the next compact facility does not begin
47 5 operating as planned.

47 6 The bill in article VI allows a host state to make an
47 7 emergency closing of the compact facility in its state in
47 8 order to protect air, land, and water resources and the health
47 9 and safety of people who are affected by the compact facility.

47 10 The bill in article VI reflects that a host state is not
47 11 permitted to develop a compact facility intended for the
47 12 entire region, and then have the compact facility all to
47 13 itself if it leaves the compact. Thus, a state that leaves
47 14 the compact is required to close any compact facility located
47 15 within its borders.

47 16 The bill in article VI requires that as a condition of
47 17 waste acceptance at a compact facility, generators must sign
47 18 and file with the commission an agreement providing for
47 19 indemnification.

47 20 The bill in article VII provides that only a federal court
47 21 may make the final determination that a state law conflicts
47 22 with and is, therefore, subordinate to the compact. The bill
47 23 in article VII reflects that, except in cases between states
47 24 that are within the original jurisdiction of the U.S. Supreme
47 25 Court, the federal district courts have exclusive jurisdiction
47 26 over cases arising under this compact.

47 27 The bill in article VII provides that the party states and
47 28 their agencies, and the employees of both, are protected
47 29 against liability and the costs of litigation seeking to
47 30 recover damages resulting from the development, construction,
47 31 operation, closing, or long-term care of a compact facility.

47 32 The bill in article VIII makes it more difficult for a
47 33 party state to withdraw from the compact. The bill in article
47 34 VIII allows the commission to impose reasonable financial
47 35 penalties, suspend waste disposal rights, or revoke membership

48 1 in the compact.

48 2 The bill in article VIII provides that a party state whose
48 3 right is suspended to have waste generated within its borders
48 4 disposed of at a compact facility, pays to the host state of
48 5 the compact facility an amount necessary to ensure that the
48 6 host state does not incur financial hardship.

48 7 The bill in article VIII provides that dissolution of the
48 8 compact may take place only through the unanimous agreement of
48 9 all party states or withdrawal of congressional consent to the
48 10 compact. If the U.S. Congress withdraws its consent,
48 11 dissolution takes places 120 days after the effective date of
48 12 the withdrawal of consent. The bill in article VIII reflects
48 13 that the obligations undertaken by the party states are
48 14 specifically enforceable in federal court.

48 15 The bill in article IX allows the commission or an affected
48 16 party state to seek injunctive relief or recover damages to
48 17 prevent or remedy a violation of the compact.

48 18 BACKGROUND STATEMENT
48 19 SUBMITTED BY THE AGENCY

48 20 Iowa joined the Midwest Interstate Low-Level Radioactive
48 21 Waste Compact ("the compact") in 1983 with the states of
48 22 Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin to
48 23 work cooperatively for the safe and proper disposal of
48 24 commercial low-level radioactive waste generated within the
48 25 borders of this region. The U.S. Congress ratified the
48 26 compact in 1985. The provisions of the compact can be found
48 27 in chapter 457B of the Code of Iowa.

48 28 Michigan was selected in 1987 to be the host state for the
48 29 compact and proceeded to enact various legislative and
48 30 administrative provisions necessary to site the region's first
48 31 radioactive waste disposal facility. Negotiations on
48 32 amendments to the compact began in 1989 between Michigan and
48 33 the other party states. However, a resolution of the issues
48 34 involved in the amendments was not reached. The compact
48 35 member states voted to expel Michigan in 1991 from the compact
49 1 for failure to proceed in good faith with its obligation to
49 2 site a disposal facility.

49 3 Concurrent with Michigan's expulsion in 1991, Ohio was
49 4 selected as the new host state for the compact and
49 5 negotiations on compact amendments began anew shortly
49 6 thereafter. Primary negotiations occurred between
49 7 representatives of Ohio and the compact's executive director
49 8 and general counsel. However, all of the state commissioners
49 9 and representatives of the attorney generals' offices were
49 10 also involved in reviewing and approving any proposed changes.
49 11 In November 1993, the compact commission unanimously approved
49 12 final amendments to the compact.

49 13 Enabling legislation was introduced in the Ohio General
49 14 Assembly in November of 1994. This legislation included the
49 15 proposed compact amendments as well as the necessary steps for
49 16 Ohio to proceed with siting a regional disposal facility. As
49 17 the bill made its way through the Ohio legislative process,
49 18 some additional changes were made to the amendment language.
49 19 All of these additional changes were negotiated with
49 20 representatives of the compact. On June 9, 1995, the Ohio
49 21 legislation was signed into law. The Ohio Act became
49 22 effective September 7, 1995.

49 23 The next step in implementing the amendment process
49 24 requires the enactment of the final amendments by the
49 25 legislatures in each of the party states. Wisconsin enacted
49 26 the compact amendments during its fall 1995 legislative
49 27 session. The other four party states that make up the
49 28 compact, including Iowa, may consider the amendments in their
49 29 1996 legislative sessions.

