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SENATE FILE **2219**
BY COMMITTEE ON NATURAL
RESOURCES, ENVIRONMENT,
AND ENERGY

(SUCCESSOR TO SSB 2100)

Passed Senate, Date 2/22/96 (p.433) Passed House, Date 3-25-96 (p.937)
Vote: Ayes 45 Nays 0 Vote: Ayes 96 Nays 0
Approved April 4, 1996

A BILL FOR

1 An Act relating to the midwest interstate compact on low-level
2 radioactive waste and establishing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2219

1 Section 1. Section 457B.1, Code 1995, is amended to read
2 as follows:

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

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

7 ARTICLE I -- POLICY AND PURPOSE

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

10 The states party to this compact recognize that the
11 congress of the United States, by enacting the Low-Level
12 Radioactive Waste Policy Act (~~42-U.S.C.-§2021~~), as amended by
13 the Low-Level Radioactive Waste Policy Amendments Act of 1985,
14 42 U.S.C. § 2021b-j, has provided for and encouraged the
15 development of low-level radioactive waste compacts as a tool
16 for managing disposing of such waste. The party states
17 acknowledge that the congress declared that each state is
18 responsible for providing for the availability of capacity
19 either within or outside the state for the disposal of low-
20 level radioactive waste generated within its borders, except
21 for waste generated as a result of certain defense activities
22 of the federal government or federal research and development
23 activities. The party states also recognize that the
24 management disposal of low-level radioactive waste is handled
25 most efficiently on a regional basis; and that the safe and
26 efficient management of low-level radioactive waste generated
27 within the region requires that sufficient capacity to manage
28 dispose of such waste be properly provided.

29 a. It is the policy of the party states to enter into a
30 regional low-level radioactive waste management disposal
31 compact for the purpose of:

32 1. Providing the instrument and framework for a
33 cooperative effort;

34 2. Providing sufficient facilities for the proper
35 management disposal of low-level radioactive waste generated

1 in the region;

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

4 4. Limiting the number of facilities required to
5 effectively and efficiently manage dispose of low-level
6 radioactive waste generated in the region;

7 5. Encouraging the source reduction of-the-amounts-of-low-
8 level-radioactive-waste-generated-in-the-region and the
9 environmentally sound treatment of waste that is generated to
10 minimize the amount of waste to be disposed of;

11 6. Distributing Ensuring that the costs, benefits
12 expenses, liabilities, and obligations of successful low-level
13 radioactive waste management-equitably-among-the-party-states
14 and-among disposal are paid by generators and other persons
15 who use regional compact facilities to manage dispose of their
16 waste; and

17 7. Ensuring that the obligations of low-level radioactive
18 waste disposal that are the responsibility of the party states
19 are shared equitably among them;

20 8. Ensuring that the party states that comply with the
21 terms of this compact and fulfill their obligations under it
22 share equitably in the benefits of the successful disposal of
23 low-level radioactive waste; and

24 7- 9. Ensuring the ecological-and environmentally sound,
25 economical management, and secure disposal of low-level
26 radioactive wastes.

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

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

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

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

3 ARTICLE II -- DEFINITIONS

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

6 a. "Care" means the continued observation of a facility
7 after ~~closure~~ closing for the purposes of detecting a need for
8 maintenance, ensuring environmental safety, and determining
9 compliance with applicable licensure and regulatory
10 requirements and including the correction of problems which
11 are detected as a result of that observation.

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

24 b. c. "Commission" means the midwest interstate low-level
25 radioactive waste commission.

26 c. ~~---"Decommissioning" means the measures taken at the end~~
27 ~~of a facility's operating life to assure the continued~~
28 ~~protection of the public from any residual radioactivity or~~
29 ~~other potential hazards present at a facility.~~

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

34 e. "Development" includes the characterization of
35 potential sites for a waste disposal facility, siting of such

1 a facility, licensing of such a facility, and other actions
2 taken by a host state prior to the commencement of
3 construction of a facility to fulfill its obligations as a
4 host state.

5 ~~d. f.~~ "Disposal" ~~means the isolation of waste from the~~
6 ~~biosphere in a permanent facility designed for that purpose~~
7 with regard to low-level radioactive waste, means the
8 permanent isolation of that waste in accordance with the
9 requirements established by the United States nuclear
10 regulatory commission or the licensing agreement state.

11 ~~e. "Eligible state" means a state qualified to be a party~~
12 ~~state to this compact as provided in article VIII.~~

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

16 ~~f. h.~~ "Facility" means a parcel of land or site, together
17 with the structures, equipment, and improvements on or
18 appurtenant to the land or site, which is or has been used or
19 is being developed for the treatment, storage, or disposal of
20 low-level radioactive waste, which is being developed for that
21 purpose, or upon which the construction of improvements or
22 installation of equipment is occurring for that purpose.

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

31 ~~g. j.~~ "Generator" means a person who first produces or
32 possesses low-level radioactive waste, including, without
33 limitation, any person who does so in the course of or
34 incident to manufacturing, power generation, processing, waste
35 treatment, waste storage, medical diagnosis and treatment,

1 research, or other industrial or commercial activity and who,
2 to the extent required by law, is licensed by the United
3 States nuclear regulatory commission or a party state, to
4 produce or possess such waste. "Generator" does not include a
5 person who provides a service by arranging for the collection,
6 transportation, treatment, storage, or disposal of wastes
7 generated outside the region. If the person who first
8 produced an item or quantity of low-level radioactive waste
9 cannot be identified, "generator" means the person first
10 possessing the low-level radioactive waste who can be
11 identified.

12 h. k. "Host state" means any state which is designated by
13 the commission to host a regional compact facility or has
14 hosted a compact facility.

15 1. "Long-term care" means those activities taken by a host
16 state after a compact facility is permanently closed to ensure
17 the protection of air, land, and water resources and the
18 health and safety of all people who may be affected by the
19 compact facility.

20 i. m. "Low-level radioactive waste" or "waste" means
21 radioactive waste that is not classified as high-level
22 radioactive waste, transuranic waste, spent nuclear fuel, or
23 by-product material as defined in section 11(e)(2) of the
24 Atomic Energy Act of 1954 and that is Class A, B, or C low-
25 level radioactive waste as defined in 10 C.F.R. § 61.55, as
26 that section existed on January 26, 1983. "Low-level
27 radioactive waste" or "waste" does not include any such
28 radioactive waste that is owned or generated by the United
29 States department of energy; by the United States navy as a
30 result of the decommissioning of its vessels; or as a result
31 of research, development, testing, or production of an atomic
32 weapon.

33 j. -- "Management plan" means the plan adopted by the
34 commission for the storage, transportation, treatment, and
35 disposal of waste within the region.

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

4 k- o. "Party state" means any an eligible state which that
5 enacts the this compact into law, pays any eligibility fee
6 established by the commission, and has not withdrawn from this
7 compact or had its membership in this compact revoked,
8 provided that a state that has withdrawn from this compact or
9 had its membership revoked becomes a party state if it is
10 readmitted to membership in this compact pursuant to article
11 VIII, section a. "Party state" includes a host state. "Party
12 state" also includes statutorily created administrative
13 departments, agencies, or instrumentalities of a party state,
14 but does not include municipal corporations, regional or local
15 units of government, or other political subdivisions of a
16 party state that are responsible for governmental activities
17 on less than a statewide basis.

18 l- p. "Person" means any individual, corporation,
19 association, business enterprise, or other legal entity either
20 public or private and any legal successor, representative,
21 agent, or agency of that individual, corporation, association,
22 business enterprise, or other legal entity. "Person" also
23 includes the United States, states, political subdivisions of
24 states, and any department, agency, or instrumentality of the
25 United States or a state.

26 m- q. "Region" means the area of the party states.

27 n--"Regional-facility"-means-a-facility-which-is-located
28 within-the-region-and-which-is-established-by-a-party-state
29 pursuant-to-designation-of-that-state-as-a-host-state-by-the
30 commission-

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

32 p- s. "State" means a state of the United States, the
33 District of Columbia, the Commonwealth of Puerto Rico, the
34 Virgin Islands or any other territorial possession of the
35 United States.

1 q- t. "Storage" means the temporary holding of low-level
2 radioactive waste for-treatment-or-disposal.

3 r- u. "Treatment" means any method, technique or process,
4 including storage for radioactive decay, designed to change
5 the physical, chemical or biological characteristics or
6 composition of any low-level radioactive waste in order to
7 render the low-level radioactive waste safer for transport or
8 management, amenable to recovery, convertible to another
9 usable material or reduced in volume.

10 s- v. "Waste management", "manage waste", "management of
11 waste", "management", or "managed" means the storage,
12 transportation, treatment, or disposal of low-level
13 radioactive waste.

14 ARTICLE III -- THE COMMISSION

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

23 b. Each commission member is entitled to one vote. No
24 Except as otherwise specifically provided in this compact, an
25 action of the commission is binding unless if a majority of
26 the total membership cast-their casts its vote in the
27 affirmative. A party state may direct its member or alternate
28 member of the commission how to vote or not vote on matters
29 before the commission.

30 c. The commission shall elect annually from among its
31 members a chairperson. The commission shall adopt and
32 publish, in convenient form, bylaws and policies which are not
33 inconsistent with this compact, including procedures for the
34 use of binding arbitration under article VI, section o, and
35 procedures which substantially conform with the provisions of

1 the federal Administrative Procedure Act (5 U.S.C. §§ 500 to
2 559) in regard to notice, conduct, and recording of meetings;
3 access by the public to records; provision of information to
4 the public; conduct of adjudicatory hearings; and issuance of
5 decisions.

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

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

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

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

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

31 ~~1.--Enter-into-an-agreement-with-any-person,-state,-or~~
32 ~~group-of-states-for-the-right-to-use-regional-facilities-for~~
33 ~~waste-generated-outside-the-region-and-for-the-right-to-use~~
34 ~~facilities-outside-the-region-for-waste-generated-within-the~~
35 ~~region.--The-right-of-any-person-to-use-a-regional-facility~~

1 for-waste-generated-outside-of-the-region-requires-an
2 affirmative-vote-of-a-majority-of-the-commission,-including
3 the-affirmative-vote-of-the-member-of-the-host-state-in-which
4 any-affected-regional-facility-is-located:

5 2:--Approve-the-disposal-of-waste-generated-within-the
6 region-at-a-facility-other-than-a-regional-facility:

7 3: 1. Appear as an intervenor or party in interest before
8 any court of law or any federal, state, or local agency,
9 board, or commission in any matter related to waste
10 management. In order to represent its views, the commission
11 may arrange for any expert testimony, reports, evidence, or
12 other participation.

13 4: 2. Review the any emergency closure closing of a
14 regional compact facility, determine the appropriateness of
15 that closure closing, and take whatever lawful actions are
16 necessary to ensure that the interests of the region are
17 protected.

18 5: 3. Take any action which is appropriate and necessary
19 to perform its duties and functions as provided in this
20 compact.

21 6:--Suspend-the-privileges-or-revoke-the-membership-of-a
22 party-state-by-a-two-thirds-vote-of-the-membership-in
23 accordance-with-article-VIII:

24 4. Approve the disposal of naturally occurring and
25 accelerator-produced radioactive material at a compact
26 facility. The commission shall not approve the acceptance of
27 such material without first making an explicit determination
28 of the effect of the new low-level radioactive waste stream on
29 the compact facility's maximum capacity. Such approval
30 requires the affirmative vote of a majority of the commission,
31 including the affirmative vote of the member from the host
32 state of the compact facility that would accept the material
33 for disposal. Any such host state may at any time rescind its
34 vote granting the approval and, thereafter, additional
35 naturally occurring and accelerator-produced radioactive

1 material shall not be disposed of at a compact facility unless
2 the disposal is again approved. All provisions of this
3 compact apply to the disposal of naturally occurring and
4 accelerator-produced radioactive material that has been
5 approved for disposal at a compact waste facility pursuant to
6 this subsection.

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

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

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

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

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

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

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

27 ~~1.--Receive and act on the petition of a nonparty state to~~
28 ~~become an eligible state.~~

29 ~~2.~~ 1. Submit an annual report to, and otherwise
30 communicate with, the governors and the appropriate officers
31 of the legislative bodies of the party states regarding the
32 activities of the commission.

33 ~~3.--Hear, negotiate, and, as necessary, resolve by final~~
34 ~~decision disputes which may arise between the party states~~
35 ~~regarding this compact.~~

- 1 4- 2. Adopt and amend, by a two-thirds vote of the
2 membership, in accordance with the procedures and criteria
3 developed pursuant to article IV, a regional management
4 disposal plan which designates host states for the
5 establishment of needed regional compact facilities.
- 6 5- 3. Adopt an annual budget.
- 7 4. Establish and implement a procedure for determining the
8 capacity of a compact facility. The capacity of a compact
9 facility shall be established as soon as reasonably practical
10 after the host state of the compact facility is designated and
11 shall not be changed thereafter without the consent of the
12 host state. The capacity of a compact facility shall be based
13 on the projected volume, radioactive characteristics, or both,
14 of the low-level radioactive waste to be disposed of at the
15 compact facility during the period set forth in article VI,
16 section i.
- 17 5. Provide a host state with funds necessary to pay
18 reasonable development expenses incurred by the host state
19 after it is designated to host a compact facility.
- 20 6. Establish and implement procedures for making payments
21 from the remedial action fund provided for in section p.
- 22 7. Establish and implement procedures to investigate a
23 complaint joined in by two or more party states regarding
24 another party state's performance of its obligations.
- 25 8. Adopt policies promoting source reduction and the
26 environmentally sound treatment of low-level radioactive waste
27 in order to minimize the amount of low-level radioactive waste
28 to be disposed of at compact facilities.
- 29 9. Establish and implement procedures for obtaining
30 information from generators regarding the volume and
31 characteristics of low-level radioactive waste projected to be
32 disposed of at compact facilities and regarding generator
33 activities with respect to source reduction, recycling, and
34 treatment of low-level radioactive waste.
- 35 10. Prepare annual reports regarding the volume and

1 characteristics of low-level radioactive waste projected to be
2 disposed of at compact facilities.

3 j. ~~Funding of the budget of~~ for the commission shall be
4 provided as follows:

5 1. ~~Each state, upon becoming a party state, shall pay~~
6 ~~fifty thousand dollars or one thousand dollars per cubic meter~~
7 ~~shipped from that state in 1980, whichever is lower, to the~~
8 ~~commission which shall be used for the administrative costs of~~
9 ~~the commission.~~ When no compact facility is operating, the
10 commission may assess fees to be collected from generators of
11 low-level radioactive waste in the region. The fees shall be
12 reasonable and equitable. The commission shall establish and
13 implement procedures for assessing and collecting the fees.
14 The procedures may allow the assessing of fees against less
15 than all generators of low-level radioactive waste in the
16 region; provided that if fees are assessed against less than
17 all generators of waste in the region, generators paying the
18 fees shall be reimbursed the amount of the fees, with
19 reasonable interest, out of the revenues of operating compact
20 facilities.

21 2. When a compact facility is operating, funding for the
22 commission shall be provided through a surcharge collected by
23 the host state as part of the fee system provided for in
24 article VI, section j. The surcharge to be collected by the
25 host state shall be determined by the commission and shall be
26 reasonable and equitable.

27 ~~2. 3. Each state hosting a regional facility shall levy~~
28 ~~surcharges on all users of the regional facility based upon~~
29 ~~its portion of the total volume and characteristics of wastes~~
30 ~~managed at that facility.~~ The In the aggregate, the fees or
31 surcharges collected at all regional facilities, as the case
32 may be, shall be no more than is necessary to:

33 (a) ~~Be sufficient to cover~~ Cover the annual budget of the
34 commission; and.

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

1 ~~states to the commission; and~~

2 ~~(c) -- Be paid to the commission; provided, that each host~~
3 ~~state collecting surcharges may retain a portion of the~~
4 ~~collection sufficient to cover its administrative costs of~~
5 ~~collection; and that the remainder be sufficient only to cover~~
6 ~~the approved annual budget of the commission.~~

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

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

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

14 k. ~~The commission shall keep accurate accounts of all~~
15 ~~receipts and disbursements.~~ Financial statements of the
16 commission shall be prepared according to generally accepted
17 accounting principles. The commission shall contract with an
18 independent certified public accountant to annually audit all
19 ~~receipts and disbursements of commission funds,~~ its financial
20 statements and to submit an audit report to the commission.
21 The audit report shall be made a part of the annual report of
22 the commission required by this article.

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

33 ~~m. -- The commission is not liable for any costs associated~~
34 ~~with any of the following:~~

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

- 1 ~~2.--The-operation-of-any-facility;~~
 2 ~~3.--The-stabilization-and-closure-of-any-facility;~~
 3 ~~4.--The-care-of-any-facility;~~
 4 ~~5.--The-extended-institutional-control,-after-care-of-any~~
 5 ~~facility,-or~~
 6 ~~6.--The-transportation-of-waste-to-any-facility.~~

7 ~~n.--~~ m. The commission is a legal entity separate and
 8 distinct from the party states ~~and-is-liable-for-its-actions~~
 9 ~~as-a-separate-and-distinct-legal-entity.~~ Liabilities-of-the
 10 commission-are-not-liabilities-of-the-party-states. Members
 11 of the commission and its employees are not personally liable
 12 for actions taken by them in their official capacity. The
 13 commission is not liable or otherwise responsible for any
 14 costs, expenses, or liabilities resulting from the
 15 development, construction, operation, regulation, closing, or
 16 long-term care of any compact facility or any noncompact
 17 facility made available to the region by any contract or
 18 agreement entered into by the commission under section h,
 19 subsection 6. Nothing in this section relieves the commission
 20 of its obligations under this article or under contracts to
 21 which it is a party. Any liabilities of the commission are
 22 not liabilities of the party states.

23 ~~2.--Except-as-provided-under-section-m-and-section-n,~~
 24 ~~subsection-l,-nothing-in-this-compact-alters-liability-for-any~~
 25 ~~act,-omission,-course-of-conduct,-or-liability-resulting-from~~
 26 ~~any-causal-or-other-relationships.~~

27 ~~o.--Any-person-aggrieved-by-a-final-decision-of-the~~
 28 ~~commission-may-obtain-judicial-review-of-such-decision-in-any~~
 29 ~~court-of-jurisdiction-by-filing-in-such-court-a-petition-for~~
 30 ~~review-within-sixty-days-after-the-commission's-final~~
 31 ~~decision.~~

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

- 35 1. Every final decision shall be made at an open meeting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 p. The commission shall establish a remedial action fund
33 to pay the costs of reasonable remedial actions taken by a
34 party state if an event results from the development,
35 construction, operation, closing, or long-term care of a

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

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

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

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

35 ARTICLE IV -- REGIONAL MANAGEMENT DISPOSAL PLAN

1 The commission shall adopt and periodically update a
2 regional management disposal plan designed to ensure the safe
3 and efficient management disposal of low-level radioactive
4 waste generated within the region. In adopting a regional
5 low-level radioactive waste management disposal plan, the
6 commission shall do all of the following:

7 a. Adopt procedures for determining, consistent with
8 considerations for public health and safety, the type and
9 number of ~~regional~~ compact facilities which are presently
10 necessary and which are projected to be necessary to manage
11 dispose of low-level radioactive waste generated within the
12 region;

13 ~~b. Develop and consider policies promoting source~~
14 ~~reduction of waste generated within the region;~~

15 ~~e. b.~~ Develop and adopt procedures and criteria for
16 identifying a party state as a host state for a ~~regional~~
17 compact facility. In developing these criteria, the
18 commission shall consider all of the following:

19 1. The health, safety, and welfare of the citizens of the
20 party states.

21 2. The existence of ~~regional~~ compact facilities within
22 each party state.

23 3. The minimization of low-level radioactive waste
24 transportation.

25 4. The volumes and types of low-level radioactive wastes
26 projected to be generated within each party state.

27 5. The ~~environmental, economic, and ecological~~ impacts on
28 the air, land, and water resources of the party states.

29 6. The economic impacts on the party states.

30 ~~d. c.~~ Conduct such hearings, and obtain such reports,
31 studies, evidence, and testimony required by its approved
32 procedures prior to identifying a party state as a host state
33 for a needed ~~regional~~ compact facility;

34 ~~e. d.~~ Prepare a draft management disposal plan and any
35 update thereof, including procedures, criteria, and host

1 states, ~~including alternatives,~~ which shall be made available
2 in a convenient form to the public for comment. Upon the
3 request of a party state, the commission shall conduct a
4 public hearing in that state prior to the adoption or update
5 of the management disposal plan. The management disposal plan
6 and any update thereof shall include the commission's response
7 to public and party state comment.

8 ARTICLE V -- RIGHTS AND OBLIGATIONS OF PARTY STATES

9 a. Each party state shall act in good faith in the
10 performance of acts and courses of conduct which are intended
11 to ensure the provision of facilities for regional
12 availability and usage in a manner consistent with this
13 compact.

14 b. Each Except for low-level radioactive waste
15 attributable to radioactive material or low-level radioactive
16 waste imported into the region in order to render the material
17 or low-level radioactive waste amenable to transportation,
18 storage, disposal, or recovery, or in order to convert the
19 low-level radioactive waste or material to another usable
20 material, or to reduce it in volume or otherwise treat it,
21 each party state has the right to have all low-level
22 radioactive wastes generated within its borders managed
23 disposed of at regional compact facilities subject to the
24 payment of all fees established by the host state under
25 article VI, section j, and to the provisions contained in
26 article VI, sections l and s, article VIII, section d, article
27 IX, section sections c and d and article X. All party states
28 have an equal right of access to any facility made available
29 to the region by any an agreement entered into by the
30 commission pursuant to article III, section h, subsection 6,
31 subject to the provisions of article VI, sections l and s,
32 article VIII, sections c and d, and article X.

33 ~~c. Party-states-or-generators-may-negotiate-for-the-right~~
34 ~~of-access-to-a-facility-outside-the-region-and-may-export~~
35 ~~waste-outside-the-region-subject-to-commission-approval-under~~

1 ~~article-III-~~ If a party state's right to have waste generated
2 within its borders disposed of at compact facilities, or at
3 any noncompact facility made available to the region by an
4 agreement entered into by the commission under article III,
5 section h, subsection 6, is suspended, low-level radioactive
6 waste generated within its borders by any person shall be
7 disposed of at any such facility during the period of the
8 suspension.

9 d. To the extent permitted by federal law, each party
10 state may enforce any applicable federal and state laws,
11 regulations, and rules pertaining to the packaging and
12 transportation of waste generated within or passing through
13 its borders. Nothing in this section shall be construed to
14 require a party state to enter into any agreement with the
15 United States nuclear regulatory commission.

16 e. Each party state shall provide to the commission any
17 data and information the commission requires to implement its
18 responsibilities. Each party state shall establish the
19 capability to obtain any data and information required by the
20 commission.

21 f. If, notwithstanding the sovereign immunity provision in
22 article VII, section f, subsection 1, and the indemnification
23 provided for in article III, section p, article VI, section o,
24 and article VII, section g, a party state incurs a cost as a
25 result of an inadequate remedial action fund or an exhausted
26 long-term care fund, or incurs a liability as a result of an
27 action described in article VII, section f, subsection 1, and
28 not described in article VII, section f, subsection 2, the
29 cost or liability shall be the pro rata obligation of each
30 party state and each state that has withdrawn from this
31 compact or had its membership in this compact revoked. The
32 commission shall determine each state's pro rata obligation in
33 a fair and equitable manner based on the amount of low-level
34 radioactive waste from each such state that has been or is
35 projected to be disposed of at the compact facility with

1 respect to which the cost or liability to be shared was
2 incurred. No state shall be obligated to pay the pro rata
3 obligation of any other state.

4 The pro rata obligations provided for in this section do
5 not result in the creation of state debt. Rather, the pro
6 rata obligations are contractual obligations that shall be
7 enforced by only the commission or an affected party state.

8 g. If the party states make payment pursuant to this
9 section, the surcharge or fee provided for in article III,
10 section j, shall be used to collect the funds necessary to
11 reimburse the party states for those payments. The commission
12 shall determine the time period over which reimbursement shall
13 take place.

14 ARTICLE VI -- DEVELOPMENT, AND OPERATION, AND CLOSING
15 OF COMPACT FACILITIES

16 a. A party state may volunteer to become a host state, and
17 the commission may designate that state as a host state upon a
18 two-thirds-vote-of-its-members.

19 b. If not all regional compact facilities required by the
20 regional management disposal plan are not developed pursuant
21 to section a, ~~or-upon-notification-that-an-existing-regional~~
22 ~~facility-will-be-closed~~, the commission may designate a host
23 state.

24 c. Each-party After a state is designated as a host state
25 by the commission, it is responsible for determining-possible
26 facility-locations-within-its-borders the timely development
27 and operation of the compact facility it is designated to
28 host. The-selection-of-a-facility-site-shall-not-conflict
29 with-applicable-federal-and-host-state-laws, regulations, and
30 rules-not-inconsistent-with-this-compact-and-shall-be-based-on
31 factors-including, but-not-limited-to, geological,
32 environmental, and-economic-viability-of-possible-facility
33 locations. The development and operation of the compact
34 facility shall not conflict with applicable federal and host
35 state laws, rules, and regulations, provided that the laws,

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

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

16 d. e. Any party state designated as a host state may
17 request the commission to relieve that state of the
18 responsibility to serve as a host state. The Except as set
19 forth in section d, the commission may relieve a party state
20 of this its responsibility only upon a showing by the
21 requesting party state that, based upon criteria established
22 by the commission that are consistent with applicable federal
23 criteria, no feasible potential regional compact facility site
24 of-the-type-it-is-designated-to-host exists within its
25 borders. A party state relieved of its host state
26 responsibility shall repay to the commission any funds
27 provided to that state by the commission for the development
28 of a compact facility, and also shall pay to the commission
29 the amount the commission determines is necessary to ensure
30 that the commission and the other party states do not incur
31 financial loss as a result of the state being relieved of its
32 host state responsibility. Any funds so paid to the
33 commission with respect to the financial loss of the other
34 party states shall be distributed forthwith by the commission
35 to the party states that would otherwise incur the loss. In

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

9 ~~e.---After-a-state-is-designated-a-host-state-by-the~~
10 ~~commission,-it-is-responsible-for-the-timely-development-and~~
11 ~~operation-of-a-regional-facility.~~

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

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

35 ~~f.~~ h. To the extent permitted by federal and state law, a

1 host state shall regulate and license any compact facility
2 within its borders and ensure the extended long-term care of
3 that compact facility.

4 ~~g.--The commission may designate a party state as a host
5 state while a regional facility is in operation if the
6 commission determines that an additional regional facility is
7 or may be required to meet the needs of the region.--The
8 commission shall make this designation following the
9 procedures established under article IV.~~

10 ~~h.--Designation of a host state is for a period of twenty
11 years or the life of the regional facility which is
12 established under that designation, whichever is longer.--Upon
13 request of a host state, the commission may modify the period
14 of its designation.~~

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

27 ~~i. j.~~ A host state may shall establish a fee system for of
28 fees to be collected from the users of any regional compact
29 facility within its borders. The fee system, and the costs
30 paid through the system, shall be reasonable and equitable.
31 The fee system shall be subject to the commission's approval.
32 ~~This~~ The fee system shall provide the host state with
33 sufficient revenue to cover any pay costs associated with the
34 compact facility, including, but not limited to the planning,
35 siting, licensure, operation, decommissioning, extended care,

1 ~~and long-term liability, associated with such facilities~~
2 ~~closing, long-term care, debt service, legal costs, local~~
3 ~~impact assistance, and local financial incentives. This fee~~
4 ~~system may also include reasonable revenue beyond the costs~~
5 ~~incurred for the host state, subject to approval by the~~
6 ~~commission. A host state shall submit an annual financial~~
7 ~~audit of the operation of the regional facility to the~~
8 ~~commission. The fee system also shall be used to collect the~~
9 ~~surcharge provided in article III, section j, subsection 2.~~

10 The fee system ~~may~~ shall include incentives for source
11 reduction and ~~may~~ shall be based on the hazard of the low-
12 level radioactive waste as well as the volume.

13 ~~j:~~ k. A host state shall ensure that a regional compact
14 facility located within its borders which that is permanently
15 closed is properly decommissioned cared for so as to ensure
16 protection of air, land, and water resources and the health
17 and safety of all people who may be affected by the facility.
18 ~~A host state shall also provide for the care of a closed or~~
19 ~~decommissioned regional facility within its borders so that~~
20 ~~the public health and safety of the state and region are~~
21 ~~ensured.~~

22 ~~k: A host state intending to close a regional facility~~
23 ~~located within its borders shall notify the commission in~~
24 ~~writing of its intention and the reasons. Notification shall~~
25 ~~be given to the commission at least five years prior to the~~
26 ~~intended date of closure.~~

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

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

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

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

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

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

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

22 3. Within fourteen years after a compact facility begins
23 operating, the state designated to host the next compact
24 facility shall have obtained a license from the responsible
25 licensing authority to construct and operate the compact
26 facility the state has been designated to host. If the
27 license is not obtained within the specified time, all low-
28 level radioactive waste generated by any person within the
29 state designated to host the next compact facility shall be
30 denied access to the then operating compact facility, and to
31 any noncompact facility made available to the region by any
32 agreement entered into by the commission pursuant to article
33 III, section h, subsection 6, until the license is obtained.
34 The state designated to host the next compact facility shall
35 have failed in its obligations as a host state and shall be

1 subject to section d, and article VIII, section d. In
2 addition, at the sole option of the host state of the then
3 operating compact facility, all low-level radioactive waste
4 generated by any person within any party state that has not
5 fully discharged its obligations under section i, shall be
6 denied access to the then operating compact facility, and to a
7 noncompact facility made available to the region by an
8 agreement entered into by the commission pursuant to article
9 III, section h, subsection 6, until the license is obtained.
10 Denial of access may be rescinded by the commission, with the
11 member from the host state of the then operating compact
12 facility voting in the affirmative.

13 4. If twenty years after a compact facility begins
14 operating, the next compact facility is not ready to begin
15 operating, the state designated to host the next compact
16 facility shall have failed in its obligation as a host state
17 and shall be subject to section d, and article VIII, section
18 d. If at the time the capacity of the then operating compact
19 facility has been reached, or twenty years after the facility
20 began operating, whichever occurs first, the next compact
21 facility is not ready to begin operating, the host state of
22 the then operating compact facility, without the consent of
23 any other party state or the commission, may continue to
24 operate the facility until a compact facility in the next host
25 state is ready to begin operating. During any such period of
26 continued operation of a compact facility, all low-level
27 radioactive waste generated by any person within the state
28 designated to host the next compact facility shall be denied
29 access to the then operating compact facility and to a
30 noncompact facility made available to the region by an
31 agreement entered into by the commission pursuant to article
32 III, section h, subsection 6. In addition, during such
33 period, at the sole option of the host state of the then
34 operating compact facility, all low-level radioactive waste
35 generated by any person within any party state that has not

1 fully discharged its obligations under section i, shall be
2 denied access to the then operating compact facility and to
3 any noncompact facility made available to the region by any
4 agreement entered into by the commission pursuant to article
5 III, section h, subsection 6. Denial of access may be
6 rescinded by the commission, with the member from the host
7 state of the then operating compact facility voting in the
8 affirmative. The provisions of this subsection shall not
9 apply if their application is inconsistent with an agreement
10 between the host state of the then operating compact facility
11 and the commission as authorized in section i, or inconsistent
12 with section p or q.

13 5. During any period that access is denied for low-level
14 radioactive waste disposal pursuant to section 1, subsection
15 2, 3, or 4, the party state designated to host the next
16 compact disposal facility shall pay to the host state of the
17 then operating compact facility an amount the commission
18 determines is reasonably necessary to ensure that the host
19 state, or an agency or political subdivision thereof, does not
20 incur financial loss as a result of the denial of access.

21 6. The commission may modify any of the requirements
22 contained in section 1, subsections 2 and 3, if it finds that
23 circumstances have changed so that the requirements are
24 unworkable or unnecessarily rigid or no longer serve to ensure
25 the timely development of a compact facility. The commission
26 may adopt such a finding by a two-thirds vote, with the member
27 from the host state of the then operating compact facility
28 voting in the affirmative.

29 m. This section compact shall not prevent an emergency
30 closing of a regional compact facility by a host state to
31 protect its air, land, and water resources and the health and
32 safety of its-citizens all people who may be affected by the
33 compact facility. However, -a A host state which that has an
34 emergency closing of a regional compact facility shall notify
35 the commission in writing within three working days of its

1 action and shall, within thirty working days of its action,
2 demonstrate justification for the closing.

3 ~~i.--If-a-regional-facility-closes-before-an-additional-or~~
4 ~~new-facility-becomes-operational,-waste-generated-within-the~~
5 ~~region-may-be-shipped-temporarily-to-any-location-agreed-on-by~~
6 ~~the-commission-until-a-regional-facility-is-operational-~~

7 ~~m.--A-party-state-which-is-designated-as-a-host-state-by~~
8 ~~the-commission-and-fails-to-fulfill-its-obligations-as-a-host~~
9 ~~state-may-have-its-privileges-under-the-compact-suspended-or~~
10 ~~membership-in-the-compact-revoked-by-the-commission-~~

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

18 o. Each host state of a compact facility shall establish a
19 long-term care fund to pay for monitoring, security,
20 maintenance, and repair of the facility after it is
21 permanently closed. The expenses of administering the long-
22 term care fund shall be paid out of the fund. The fee system
23 established by the host state that establishes a long-term
24 care fund shall be used to collect moneys in amounts that are
25 adequate to pay for all long-term care of the compact
26 facility. The moneys shall be deposited into the long-term
27 care fund. Except where the matter is resolved through
28 arbitration, the amount to be collected through the fee system
29 for deposit into the fund shall be determined through an
30 agreement between the commission and the host state
31 establishing the fund. Not less than three years, nor more
32 than five years, before the compact facility it is designated
33 to host is scheduled to begin operating, the host state shall
34 propose to the commission the amount to be collected through
35 the fee system for deposit into the fund. If, one hundred

1 eighty days after such proposal is made to the commission, the
2 host state and the commission have not agreed, either the
3 commission or the host state may require the matter to be
4 decided through binding arbitration. The method of
5 administration of the fund shall be determined by the host
6 state establishing the long-term care fund, provided that
7 moneys in the fund shall be used only for the purposes set
8 forth in this section, and shall be invested in accordance
9 with the standards applicable to trustees under the laws of
10 the host state establishing the fund. If, after a compact
11 facility is closed, the commission determines the long-term
12 care fund established with respect to that compact facility is
13 not adequate to pay for all long-term care for that compact
14 facility, the commission shall collect and pay over to the
15 host state of the closed compact facility, for deposit into
16 the long-term care fund, an amount determined by the
17 commission to be necessary to make the amount in the fund
18 adequate to pay for all long-term care of the compact
19 facility. If a long-term care fund is exhausted and long-term
20 care expenses for the compact facility with respect to which
21 the fund was created have been reasonably incurred by the host
22 state of the compact facility, those expenses are a liability
23 with respect to which generators shall provide indemnification
24 as provided in article VII, section g. Generators that
25 provide indemnification shall have contribution rights as
26 provided in article VII, section g.

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

35 g. If this compact is dissolved, the host state of any

1 then operating compact facility shall immediately and
2 permanently close the compact facility, provided that a host
3 state may continue to operate a compact facility or resume
4 operating a previously closed compact facility, as a
5 noncompact facility, subject to all of the following
6 requirements:

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

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

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

30 4. Moneys in the long-term care fund established by the
31 host state that are attributable to the operation of the
32 compact facility before this compact is dissolved, and
33 investment earnings thereon, shall be used only to pay the
34 cost of monitoring, securing, maintaining, or repairing that
35 portion of the compact facility used for the disposal of low-

1 level radioactive waste before this compact is dissolved.
2 Such moneys and investment earnings, and moneys added to the
3 long-term care fund through a distribution authorized by
4 article III, section r, also may be used to pay the cost of
5 any remedial action made necessary by an event resulting from
6 the disposal of waste at the facility before this compact is
7 dissolved.

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

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

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

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

26 3. Any liability for damages to persons, property, or the
27 environment incurred by a party state, or employee of that
28 state while acting within the scope of employment, resulting
29 from the development, construction, operation, regulation,
30 closing, or long-term care of a compact facility, or a
31 noncompact facility made available to the region by an
32 agreement entered into by the commission pursuant to article
33 III, section h, subsection 6, or other matter arising from
34 this compact. The agreement also shall require generators to
35 indemnify the party state or employee against all reasonable

1 attorney's fees and expenses incurred in defending an action
2 for such damages. This indemnification shall not extend to
3 liability based on any of the following:

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

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

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

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

1 shall not relieve a party state of the indemnification
2 obligation imposed by article VII, section g.

3 ARTICLE VII -- OTHER LAWS AND REGULATIONS

4 a. Nothing in this compact:

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

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

11 3. Prohibits any storage generator from storing or
12 treatment-of-waste-by-the-generator treating, on its own
13 premises, low-level radioactive waste generated by it within
14 the region;

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

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

20 6. Affects the generation, treatment, storage, or disposal
21 of waste generated by the atomic energy defense activities of
22 the secretary of the United States department of energy or
23 successor agencies or federal research and development
24 activities as defined described in 42 U.S.C. § 2051 2021; or

25 7. Affects the rights and powers of any party state or its
26 political subdivisions, to the extent not inconsistent with
27 this compact, to regulate and license any facility or the
28 transportation of waste within its borders ~~or-affects-the~~
29 ~~rights-and-powers-of-any-party-state-or-its-political~~
30 ~~subdivisions-to-tax-or-impose-fees-on-the-waste-managed-at-any~~
31 ~~facility-within-its-border.~~

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

34 9. ~~Alters-or-limits-liability-of-transporters-of-waste,~~
35 ~~owners,-and-operators-of-sites-for-their-acts,-omissions,~~

1 ~~conduct, or relationships in accordance with applicable laws:~~
2 Limits, expands, or otherwise affects the authority of a state
3 to regulate low-level radioactive waste classified by any
4 agency of the United States government as below regulatory
5 concern or otherwise exempt from federal regulation.

6 b. ~~For purposes of this compact, all state laws or parts~~
7 ~~of laws in conflict~~ If a court of the United States finally
8 determines that a law of a party state conflicts with this
9 compact are hereby superseded, this compact shall prevail to
10 the extent of the conflict. The commission shall not commence
11 an action seeking such a judicial determination unless
12 commencement of the action is approved by a two-thirds vote of
13 the membership of the commission.

14 c. ~~No~~ Except as authorized by this compact, no law, rule,
15 or regulation of a party state or of any of its subdivisions
16 or instrumentalities may be applied in a manner which
17 discriminates against the generators of another party state.

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

31 e. Except as provided in 28 U.S.C. §1251(a), the district
32 courts of the United States have exclusive jurisdiction to
33 decide cases arising under this compact. This section does
34 not apply to proceedings within the jurisdiction of state or
35 federal regulatory agencies or to judicial review of

1 proceedings before state or federal regulatory agencies. This
2 section shall not be construed to diminish other laws of the
3 United States conferring jurisdiction on the courts of the
4 United States.

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

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

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

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

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

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

32 g. If in an action described in section f, subsection 1,
33 and not described in section f, subsection 2, it is determined
34 that, notwithstanding section f, subsection 1, a party state,
35 or employee of that state who acted within the scope of

1 employment, is liable for damages or has liability for other
2 matters arising under this compact as described in article VI,
3 section s, subsection 3, the generators who caused waste to be
4 placed at the compact facility with respect to which the
5 liability was incurred shall indemnify the party state or
6 employee against that liability. Those generators also shall
7 indemnify the party state or employee against all reasonable
8 attorney's fees and expenses incurred in defending against any
9 such action. The indemnification obligation of generators
10 under this section shall be joint and several, except that the
11 indemnification obligation of party states with respect to
12 their activities as generators of waste shall not be joint and
13 several, but instead shall be prorated according to the amount
14 of waste each state has disposed of at the compact facility
15 giving rise to the liability. Among generators, there shall
16 be rights of contribution based upon equitable principles, and
17 generators shall have rights of contribution against another
18 person responsible for damages under common law, statute,
19 rule, or regulation. A party state that through its own
20 activities did not generate low-level radioactive waste
21 disposed of at the compact facility giving rise to the
22 liability, an employee of a party state, and the commission
23 shall have no contribution obligation under this section.

24 This section shall not be construed as a waiver of the
25 sovereign immunity provided for in section f, subsection 1.

26 h. The sovereign immunity of a party state provided for in
27 section f, subsection 1, shall not be extended to a private
28 contractor assigned responsibilities as authorized in article
29 VI, section g.

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

33 a:--Eligible-parties-to-this-compact-are-the-states-of
34 Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland,
35 Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio,

1 ~~South-Dakota, Virginia, and Wisconsin. Eligibility terminates~~
2 ~~on July 17, 1984.~~

3 ~~b. a.~~ Any state ~~not eligible for membership in the compact~~
4 may petition the commission ~~for eligibility to be eligible for~~
5 membership in the compact. The commission may establish
6 appropriate eligibility requirements. These requirements may
7 include, but are not limited to, an eligibility fee or
8 designation as a host state. A petitioning state becomes
9 eligible for membership in the compact upon the approval of
10 the commission, including the affirmative vote of ~~all~~ the
11 member from each host states state in which a compact facility
12 is operating or being developed or constructed. Any state
13 becoming eligible upon the approval of the commission becomes
14 a member of the compact ~~in the same manner as any state~~
15 ~~eligible for membership at the time this compact enters into~~
16 force when the state enacts this compact into law and pays the
17 eligibility fee established by the commission.

18 ~~c. An eligible state becomes a party state when the state~~
19 ~~enacts the compact into law and pays the membership fee~~
20 ~~required in article III, section j, subsection 1.~~

21 ~~d. b.~~ The commission is formed upon the appointment of
22 commission members and the tender of the membership fee
23 payable to the commission by three party states. The governor
24 of the first state to enact this compact shall convene the
25 initial meeting of the commission. The commission shall cause
26 legislation to be introduced in the congress which grants the
27 consent of the congress to this compact, and shall take action
28 necessary to organize the commission and implement the
29 provisions of this compact.

30 ~~e. c.~~ Any A party state that has fully discharged its
31 obligations under article VI, section i, or has been relieved
32 under article VI, section e, of its responsibilities to serve
33 as a host state, may withdraw from this compact by repealing
34 the authorizing legislation ~~but no withdrawal may take effect~~
35 ~~until five years after the governor of the withdrawing state~~

1 ~~gives notice in writing of the withdrawal to the commission~~
2 ~~and to the governor of each party state and by receiving the~~
3 ~~unanimous consent of the commission. Withdrawal does not~~
4 ~~affect any liability already incurred by or chargeable to a~~
5 ~~party state prior to the time of such withdrawal takes effect~~
6 ~~on the date specified in the commission resolution consenting~~
7 ~~to withdrawal. Any host state which grants a disposal permit~~
8 ~~for waste generated in a withdrawing state shall void the~~
9 ~~permit when the withdrawal of that state is effective. All~~
10 ~~legal rights of the withdrawn state established under this~~
11 ~~compact, including, but not limited to, the right to have low-~~
12 ~~level radioactive waste generated within its borders disposed~~
13 ~~of at compact facilities, cease upon the effective date of~~
14 ~~withdrawal, but any legal obligations of that party state~~
15 ~~under this compact, including, but not limited to, those set~~
16 ~~forth in section e continue until they are fulfilled.~~

17 ~~f. d.~~ Any party state which ~~that~~ fails to comply with the
18 terms of this compact or fails to fulfill its obligations may
19 have ~~its privileges~~ reasonable financial penalties imposed
20 against it, may have the right to have low-level radioactive
21 waste generated within its borders disposed of at compact
22 facilities, or a noncompact facility made available to the
23 region by an agreement entered into by the commission pursuant
24 to article III, section h, subsection 6, suspended, or may
25 have its membership in the compact revoked by the commission
26 in accordance with article III, section h, subsection 6 a two-
27 thirds vote of the commission, provided that the membership of
28 the party state designated to host the next compact facility
29 shall not be revoked unless the member from the host state of
30 a then operating compact facility votes in the affirmative.
31 Revocation takes effect one year from on the date ~~the affected~~
32 ~~party state receives written notice from the commission of its~~
33 ~~action specified in the resolution revoking the party state's~~
34 ~~membership. All legal rights of the affected revoked party~~
35 ~~state established under this compact, including, but not~~

1 limited to, the right to have low-level radioactive waste
2 generated within its borders disposed of at compact
3 facilities, cease upon the effective date of revocation, but
4 any legal obligations of that party state arising-prior-to
5 revocation under this compact, including, but not limited to,
6 those set forth in section e continue until they are
7 fulfilled. The chairperson of the commission shall transmit
8 written notice of a revocation of a party state's membership
9 in the compact, suspension of a party state's low-level
10 radioactive waste disposal rights, or imposition of financial
11 penalties immediately following the vote of the commission to
12 the governor of the affected party state, all-other governors
13 of all the other party states, and the congress of the United
14 States.

15 e. A party state that withdraws from this compact or has
16 its membership in the compact revoked before it has fully
17 discharged its obligations under article VI forthwith shall
18 repay to the commission the portion of the funds provided to
19 that state by the commission for the development,
20 construction, operation, closing, or long-term care of a
21 compact facility that the commission determines is fair and
22 equitable, taking into consideration the period of time the
23 compact facility located in that host state was in operation
24 and the amount of low-level radioactive waste disposed of at
25 the compact facility. If at any time after a compact facility
26 begins operating, a party state withdraws from the compact or
27 has its membership revoked, the withdrawing or revoked party
28 state shall be obligated forthwith to pay to the commission,
29 the amount the commission determines would have been paid
30 under the fee system established by the host state of the
31 compact facility, to dispose of at the compact facility the
32 estimated volume of low-level radioactive waste generated in
33 the withdrawing or revoked party state that would have been
34 disposed of at the compact facility from the time of
35 withdrawal or revocation until the time the compact facility

1 is closed. Any funds so paid to the commission shall be
2 distributed by the commission to the persons who would have
3 been entitled to receive the funds had they originally been
4 paid to dispose of low-level radioactive waste at the
5 facility. Any person receiving funds from the commission
6 shall apply the funds to the purposes to which they would have
7 been applied had they originally been paid to dispose of low-
8 level radioactive waste at the compact facility. In addition,
9 a withdrawing or revoked party state forthwith shall pay to
10 the commission an amount the commission determines to be
11 necessary to cover all other costs and damages incurred by the
12 commission and the remaining party states as a result of the
13 withdrawal or revocation. The intention of this section is to
14 eliminate a decrease in revenue resulting from withdrawal of a
15 party state or revocation of a party state's membership, to
16 eliminate financial harm to the remaining party states, and to
17 create an incentive for party states to continue as members of
18 the compact and to fulfill their obligations. This section
19 shall be construed and applied so as to effectuate this
20 intention.

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

29 g. This compact becomes effective July-17-1983-or-at-any
30 date-subsequent-to-July-17-1983, upon enactment by at least
31 three eligible states and consent to this compact by the
32 congress. However, article-IX, section-b shall not take
33 effect until the congress has by law consented to this
34 compact.--The congress shall have an opportunity to withdraw
35 such consent every five years.--Failure of the congress to

1 ~~affirmatively withdraw its consent has the effect of renewing~~
2 ~~consent for an additional five year period.~~ The consent given
3 to this compact by the congress shall extend to any future
4 admittance of new party states ~~under sections b and c of this~~
5 ~~article~~ and to the power of the region commission to ban
6 regulate the shipment and disposal of waste ~~from the region~~
7 and disposal of naturally occurring and accelerator-produced
8 radioactive material pursuant to ~~article III~~ this compact.
9 Amendments to this compact are effective when enacted by all
10 party states and, if necessary, consented to by the congress.
11 To the extent required by the Low-Level Radioactive Waste
12 Policy Amendments Act of 1985, 42 U.S.C. § 2021(d)(4)(d),
13 every five years after this compact has taken effect, the
14 congress by law may withdraw its consent.

15 h. The withdrawal of a party state from this compact ~~under~~
16 ~~section e of this article,~~ the suspension of low-level
17 radioactive waste disposal rights, the termination of a party
18 state's designation as a host state, or the revocation of a
19 state's membership in this compact ~~under section f of this~~
20 ~~article~~ does not affect the applicability of this compact to
21 the remaining party states.

22 i. ~~A state which has been designated by the commission to~~
23 ~~be a host state has ninety days from receipt by the governor~~
24 ~~of written notice of designation to withdraw from the compact~~
25 ~~without any right to receive refund of any funds already paid~~
26 ~~pursuant to this compact, and without any further payment.~~
27 ~~Withdrawal becomes effective immediately upon notice as~~
28 ~~provided in section e.--A designated host state which~~
29 ~~withdraws from the compact after ninety days and prior to~~
30 ~~fulfilling its obligations shall be assessed a sum the~~
31 ~~commission determines to be necessary to cover the costs borne~~
32 ~~by the commission and remaining party states as a result of~~
33 ~~that withdrawal.~~ This compact may be dissolved and the
34 obligations arising under this compact may be terminated only
35 as follows:

1 1. Through unanimous agreement of all party states
2 expressed in duly enacted legislation; or
3 2. Through withdrawal of consent to this compact by the
4 Congress under article I, section 10, of the United States
5 Constitution, in which case dissolution shall take place one
6 hundred twenty days after the effective date of the withdrawal
7 of consent.

8 Unless explicitly abrogated by the state legislation
9 dissolving this compact, or if dissolution results from
10 withdrawal of congressional consent, the limitations on the
11 investment and use of long-term care funds in article VI,
12 section o and section q, subsection 4, the contractual
13 obligations in article V, section f, the indemnification
14 obligations and contribution rights in article VI, sections o
15 and s, and article VII, section g, and the operation rights
16 indemnification and hold-harmless obligations in article VI,
17 section q, shall remain in force notwithstanding dissolution
18 of this compact.

19 ARTICLE IX -- PENALTIES AND ENFORCEMENT

20 a. Each party state shall prescribe and enforce penalties
21 against any person who is not an official of another state for
22 violation of any provision of this compact.

23 ~~b.--Unless otherwise authorized by the commission pursuant~~
24 ~~to article III, section h after January 1, 1986, it is a~~
25 ~~violation of this compact:~~

26 ~~1.--For any person to deposit at a regional facility waste~~
27 ~~not generated within the region;~~

28 ~~2.--For any regional facility to accept waste not generated~~
29 ~~within the region;~~

30 ~~3.--For any person to export from the region waste which is~~
31 ~~generated within the region, or~~

32 ~~4.--For any person to dispose of waste at a facility other~~
33 ~~than a regional facility.~~

34 b. The parties to this compact intend that the courts of
35 the United States shall specifically enforce the obligations,

1 including the obligations of party states and revoked or
2 withdrawn party states, established by this compact.

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

6 e- d. Each party state acknowledges that the receipt-by
7 transport into a host state of low-level radioactive waste
8 packaged or transported in violation of applicable laws,
9 rules, and regulations may result in the imposition of
10 sanctions by the host state which may include reasonable
11 financial penalties assessed against any generator,
12 transporter, or collector responsible for the violation, or
13 suspension or revocation of the-violator's-right-of access to
14 the compact facility in the host state by a generator,
15 transporter, or collector responsible for the violation.

16 d- e. Each party state has the right to seek legal
17 recourse against any a party state which acts in violation of
18 this compact.

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

26 ARTICLE X -- SEVERABILITY AND CONSTRUCTION

27 The provisions of this compact shall be severable and if
28 ~~any phrase, clause, sentence, or~~ provision of this compact is
29 declared finally determined by a court of competent
30 jurisdiction to be contrary to the constitution of any a
31 participating state or of the United States or the
32 applicability application thereof to ~~any government, agency, a~~
33 person, or circumstance is held invalid, the validity of the
34 remainder of this compact to that person or circumstance and
35 the applicability thereof of the entire compact to any

1 ~~government, agency, other~~ person, or circumstance shall not be
2 affected thereby. If any a provision of this compact shall be
3 held contrary to the constitution of any a state participating
4 therein, the compact shall remain in full force and effect as
5 to the state affected as to all severable matters. If any
6 provision of this compact imposing a financial obligation upon
7 a party state, or a state that has withdrawn from this compact
8 or had its membership in this compact revoked, is finally
9 determined by a court of competent jurisdiction to be
10 unenforceable due to the state's constitutional limitations on
11 its ability to pay the obligation, then that state shall use
12 its best efforts to obtain an appropriation to pay the
13 obligation, and, if the state is a party state, its right to
14 have low-level radioactive waste generated within its borders
15 disposed of at compact facilities, or a noncompact facility
16 made available to the region by an agreement entered into by
17 the commission pursuant to article III, section h, subsection
18 6, shall be suspended until the appropriation is obtained.

19 EXPLANATION

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

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

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

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

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

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

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

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

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

35 The bill in article VI allows the host state of the then

1 operating compact facility to unilaterally decide to continue
2 to operate its compact facility, even though the compact
3 facility has already operated for 20 years or its capacity has
4 been reached, if the next compact facility does not begin
5 operating as planned.

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

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

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

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

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

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

1 in the compact.

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

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

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

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**SENATE FILE 2219
FISCAL NOTE**

A fiscal note for Senate File 2219 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2219 amends the Midwest Interstate Compact on Low-Level Radioactive Waste. The Bill requires funds be established to cleanup accidental contamination from storage sites and provides several provisions for the removal of a state from the Compact.

ASSUMPTIONS

1. A low level radioactive waste disposal site is scheduled to be in operation in Ohio in 2005.
2. Based on the past disposal selection method and the current waste generation levels, the State of Iowa will host a site in approximately 100-120 years.

FISCAL IMPACT

The fiscal impact of this bill cannot be determined.

SOURCES

Department of Natural Resources

(LSB 3308SV, DHK)

FILED FEBRUARY 20, 1996

BY DENNIS PROUTY, FISCAL DIRECTOR

Fink
Gronstal
Lundby

Succeeded By
SF/HF 2219

SSB. 2100 NREE
Natural Resources
Environment & Energy

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
NATURAL RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the midwest interstate compact on low-level
2 radioactive waste and establishing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 457B.1, Code 1995, is amended to read
2 as follows:

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

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

7 ARTICLE I -- POLICY AND PURPOSE

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

10 The states party to this compact recognize that the
11 congress of the United States, by enacting the Low-Level
12 Radioactive Waste Policy Act (42-U.S.C.--§2021), as amended by
13 the Low-Level Radioactive Waste Policy Amendments Act of 1985,
14 42 U.S.C. § 2021b-j, has provided for and encouraged the
15 development of low-level radioactive waste compacts as a tool
16 for managing disposing of such waste. The party states
17 acknowledge that the congress declared that each state is
18 responsible for providing for the availability of capacity
19 either within or outside the state for the disposal of low-
20 level radioactive waste generated within its borders, except
21 for waste generated as a result of certain defense activities
22 of the federal government or federal research and development
23 activities. The party states also recognize that the
24 management disposal of low-level radioactive waste is handled
25 most efficiently on a regional basis; and that the safe and
26 efficient management of low-level radioactive waste generated
27 within the region requires that sufficient capacity to manage
28 dispose of such waste be properly provided.

29 a. It is the policy of the party states to enter into a
30 regional low-level radioactive waste management disposal
31 compact for the purpose of:

32 1. Providing the instrument and framework for a
33 cooperative effort;

34 2. Providing sufficient facilities for the proper
35 management disposal of low-level radioactive waste generated

1 in the region;

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

4 4. Limiting the number of facilities required to
5 effectively and efficiently manage dispose of low-level
6 radioactive waste generated in the region;

7 5. Encouraging the source reduction of the amounts of low-
8 level radioactive waste generated in the region and the
9 environmentally sound treatment of waste that is generated to
10 minimize the amount of waste to be disposed of;

11 6. ~~Distributing~~ Ensuring that the costs, benefits
12 expenses, liabilities, and obligations of ~~successful~~ low-level
13 radioactive waste ~~management-equitably-among-the-party-states~~
14 ~~and-among~~ disposal are paid by generators and other persons
15 who use ~~regional~~ compact facilities to manage dispose of their
16 waste; and

17 7. Ensuring that the obligations of low-level radioactive
18 waste disposal that are the responsibility of the party states
19 are shared equitably among them;

20 8. Ensuring that the party states that comply with the
21 terms of this compact and fulfill their obligations under it
22 share equitably in the benefits of the successful disposal of
23 low-level radioactive waste; and

24 7- 9. Ensuring the ecological-and environmentally sound,
25 economical management, and secure disposal of low-level
26 radioactive wastes.

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

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

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

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

3 ARTICLE II -- DEFINITIONS

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

6 a. "Care" means the continued observation of a facility
7 after ~~closure~~ closing for the purposes of detecting a need for
8 maintenance, ensuring environmental safety, and determining
9 compliance with applicable licensure and regulatory
10 requirements and including the correction of problems which
11 are detected as a result of that observation.

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

24 b. c. "Commission" means the midwest interstate low-level
25 radioactive waste commission.

26 ~~e. -- "Decommissioning" means the measures taken at the end~~
27 ~~of a facility's operating life to assure the continued~~
28 ~~protection of the public from any residual radioactivity or~~
29 ~~other potential hazards present at a facility.~~

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

34 e. "Development" includes the characterization of
35 potential sites for a waste disposal facility, siting of such

1 a facility, licensing of such a facility, and other actions
2 taken by a host state prior to the commencement of
3 construction of a facility to fulfill its obligations as a
4 host state.

5 ~~d. f.~~ "Disposal" ~~means the isolation of waste from the~~
6 ~~biosphere in a permanent facility designed for that purpose~~
7 with regard to low-level radioactive waste, means the
8 permanent isolation of that waste in accordance with the
9 requirements established by the United States nuclear
10 regulatory commission or the licensing agreement state.

11 ~~e. "Eligible state" means a state qualified to be a party~~
12 ~~state to this compact as provided in article VIII.~~

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

16 f. h. "Facility" means a parcel of land or site, together
17 with the structures, equipment, and improvements on or
18 appurtenant to the land or site, which is or has been used or
19 is being developed for the treatment, storage, or disposal of
20 low-level radioactive waste, which is being developed for that
21 purpose, or upon which the construction of improvements or
22 installation of equipment is occurring for that purpose.

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

31 g. j. "Generator" means a person who first produces or
32 possesses low-level radioactive waste, including, without
33 limitation, any person who does so in the course of or
34 incident to manufacturing, power generation, processing, waste
35 treatment, waste storage, medical diagnosis and treatment,

1 research, or other industrial or commercial activity and who,
2 to the extent required by law, is licensed by the United
3 States nuclear regulatory commission or a party state, to
4 produce or possess such waste. "Generator" does not include a
5 person who provides a service by arranging for the collection,
6 transportation, treatment, storage, or disposal of wastes
7 generated outside the region. If the person who first
8 produced an item or quantity of low-level radioactive waste
9 cannot be identified, "generator" means the person first
10 possessing the low-level radioactive waste who can be
11 identified.

12 h. k. "Host state" means any state which is designated by
13 the commission to host a regional compact facility or has
14 hosted a compact facility.

15 l. "Long-term care" means those activities taken by a host
16 state after a compact facility is permanently closed to ensure
17 the protection of air, land, and water resources and the
18 health and safety of all people who may be affected by the
19 compact facility.

20 i. m. "Low-level radioactive waste" or "waste" means
21 radioactive waste that is not classified as high-level
22 radioactive waste, transuranic waste, spent nuclear fuel, or
23 by-product material as defined in section 11(e)(2) of the
24 Atomic Energy Act of 1954 and that is Class A, B, or C low-
25 level radioactive waste as defined in 10 C.F.R. § 61.55, as
26 that section existed on January 26, 1983. "Low-level
27 radioactive waste" or "waste" does not include any such
28 radioactive waste that is owned or generated by the United
29 States department of energy; by the United States navy as a
30 result of the decommissioning of its vessels; or as a result
31 of research, development, testing, or production of an atomic
32 weapon.

33 j. -- "Management plan" means the plan adopted by the
34 commission for the storage, transportation, treatment, and
35 disposal of waste within the region.

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

4 k. o. "Party state" means any an eligible state which that
5 enacts the this compact into law, pays any eligibility fee
6 established by the commission, and has not withdrawn from this
7 compact or had its membership in this compact revoked,
8 provided that a state that has withdrawn from this compact or
9 had its membership revoked becomes a party state if it is
10 readmitted to membership in this compact pursuant to article
11 VIII, section a. "Party state" includes a host state. "Party
12 state" also includes statutorily created administrative
13 departments, agencies, or instrumentalities of a party state,
14 but does not include municipal corporations, regional or local
15 units of government, or other political subdivisions of a
16 party state that are responsible for governmental activities
17 on less than a statewide basis.

18 l. p. "Person" means any individual, corporation,
19 association, business enterprise, or other legal entity either
20 public or private and any legal successor, representative,
21 agent, or agency of that individual, corporation, association,
22 business enterprise, or other legal entity. "Person" also
23 includes the United States, states, political subdivisions of
24 states, and any department, agency, or instrumentality of the
25 United States or a state.

26 m. q. "Region" means the area of the party states.

27 n. --"Regional-facility"-means-a-facility-which-is-located
28 within-the-region-and-which-is-established-by-a-party-state
29 pursuant-to-designation-of-that-state-as-a-host-state-by-the
30 commission.

31 o. r. "Site" means the geographic location of a facility.

32 p. s. "State" means a state of the United States, the
33 District of Columbia, the Commonwealth of Puerto Rico, the
34 Virgin Islands or any other territorial possession of the
35 United States.

1 ~~q. t.~~ "Storage" means the temporary holding of low-level
2 radioactive waste for-treatment-or-disposal.

3 ~~r. u.~~ "Treatment" means any method, technique or process,
4 including storage for radioactive decay, designed to change
5 the physical, chemical or biological characteristics or
6 composition of any low-level radioactive waste in order to
7 render the low-level radioactive waste safer for transport or
8 management, amenable to recovery, convertible to another
9 usable material or reduced in volume.

10 ~~s. v.~~ "Waste management", "manage waste", "management of
11 waste", "management", or "managed" means the storage,
12 transportation, treatment, or disposal of low-level
13 radioactive waste.

14 ARTICLE III -- THE COMMISSION

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

23 b. Each commission member is entitled to one vote. ~~No~~
24 Except as otherwise specifically provided in this compact, an
25 action of the commission is binding unless if a majority of
26 the total membership ~~cast-their~~ casts its vote in the
27 affirmative. A party state may direct its member or alternate
28 member of the commission how to vote or not vote on matters
29 before the commission.

30 c. The commission shall elect annually from among its
31 members a chairperson. The commission shall adopt and
32 publish, in convenient form, bylaws and policies which are not
33 inconsistent with this compact, including procedures for the
34 use of binding arbitration under article VI, section o, and
35 procedures which substantially conform with the provisions of

1 the federal Administrative Procedure Act (5 U.S.C. §§ 500 to
2 559) in regard to notice, conduct, and recording of meetings;
3 access by the public to records; provision of information to
4 the public; conduct of adjudicatory hearings; and issuance of
5 decisions.

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

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

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

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

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

31 ~~1. Enter into an agreement with any person, state or~~
32 ~~group of states for the right to use regional facilities for~~
33 ~~waste generated outside the region and for the right to use~~
34 ~~facilities outside the region for waste generated within the~~
35 ~~region. The right of any person to use a regional facility~~

~~1 for-waste-generated-outside-of-the-region-requires-an
2 affirmative-vote-of-a-majority-of-the-commission, including
3 the-affirmative-vote-of-the-member-of-the-host-state-in-which
4 any-affected-regional-facility-is-located.~~

~~5 2.--Approve-the-disposal-of-waste-generated-within-the
6 region-at-a-facility-other-than-a-regional-facility.~~

7 3- 1. Appear as an intervenor or party in interest before
8 any court of law or any federal, state, or local agency,
9 board, or commission in any matter related to waste
10 management. In order to represent its views, the commission
11 may arrange for any expert testimony, reports, evidence, or
12 other participation.

13 4- 2. Review the any emergency closure closing of a
14 regional compact facility, determine the appropriateness of
15 that closure closing, and take whatever lawful actions are
16 necessary to ensure that the interests of the region are
17 protected.

18 5- 3. Take any action which is appropriate and necessary
19 to perform its duties and functions as provided in this
20 compact.

~~21 6.--Suspend-the-privileges-or-revoke-the-membership-of-a
22 party-state-by-a-two-thirds-vote-of-the-membership-in
23 accordance-with-article-VIII.~~

24 4. Approve the disposal of naturally occurring and
25 accelerator-produced radioactive material at a compact
26 facility. The commission shall not approve the acceptance of
27 such material without first making an explicit determination
28 of the effect of the new low-level radioactive waste stream on
29 the compact facility's maximum capacity. Such approval
30 requires the affirmative vote of a majority of the commission,
31 including the affirmative vote of the member from the host
32 state of the compact facility that would accept the material
33 for disposal. Any such host state may at any time rescind its
34 vote granting the approval and, thereafter, additional
35 naturally occurring and accelerator-produced radioactive

1 material shall not be disposed of at a compact facility unless
2 the disposal is again approved. All provisions of this
3 compact apply to the disposal of naturally occurring and
4 accelerator-produced radioactive material that has been
5 approved for disposal at a compact waste facility pursuant to
6 this subsection.

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

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

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

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

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

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

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

27 ~~1. Receive and act on the petition of a nonparty state to~~
28 ~~become an eligible state.~~

29 ~~2. 1.~~ 1. Submit an annual report to, and otherwise
30 communicate with, the governors and the appropriate officers
31 of the legislative bodies of the party states regarding the
32 activities of the commission.

33 ~~3. Hear, negotiate, and, as necessary, resolve by final~~
34 ~~decision disputes which may arise between the party states~~
35 ~~regarding this compact.~~

1 ~~4~~ 2. Adopt and amend, by a two-thirds vote of the
2 membership, in accordance with the procedures and criteria
3 developed pursuant to article IV, a regional management
4 disposal plan which designates host states for the
5 establishment of needed regional compact facilities.

6 ~~5~~ 3. Adopt an annual budget.

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

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

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

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

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

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

35 10. Prepare annual reports regarding the volume and

1 characteristics of low-level radioactive waste projected to be
2 disposed of at compact facilities.

3 j. ~~Funding of the budget of~~ for the commission shall be
4 provided as follows:

5 1. ~~Each state, upon becoming a party state, shall pay~~
6 ~~fifty thousand dollars or one thousand dollars per cubic meter~~
7 ~~shipped from that state in 1980, whichever is lower, to the~~
8 ~~commission which shall be used for the administrative costs of~~
9 ~~the commission.~~ When no compact facility is operating, the
10 commission may assess fees to be collected from generators of
11 low-level radioactive waste in the region. The fees shall be
12 reasonable and equitable. The commission shall establish and
13 implement procedures for assessing and collecting the fees.
14 The procedures may allow the assessing of fees against less
15 than all generators of low-level radioactive waste in the
16 region; provided that if fees are assessed against less than
17 all generators of waste in the region, generators paying the
18 fees shall be reimbursed the amount of the fees, with
19 reasonable interest, out of the revenues of operating compact
20 facilities.

21 2. When a compact facility is operating, funding for the
22 commission shall be provided through a surcharge collected by
23 the host state as part of the fee system provided for in
24 article VI, section j. The surcharge to be collected by the
25 host state shall be determined by the commission and shall be
26 reasonable and equitable.

27 ~~2. 3. Each state hosting a regional facility shall levy~~
28 ~~surcharges on all users of the regional facility based upon~~
29 ~~its portion of the total volume and characteristics of wastes~~
30 ~~managed at that facility.~~ The In the aggregate, the fees or
31 surcharges collected at all regional facilities, as the case
32 may be, shall be no more than is necessary to:

33 (a) ~~Be sufficient to cover~~ Cover the annual budget of the
34 ~~commission, and.~~

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

1 states-to-the-commission;-and

2 (c)--Be-paid-to-the-commission;-provided;-that-each-host
3 state-collecting-surcharges-may-retain-a-portion-of-the
4 collection-sufficient-to-cover-its-administrative-costs-of
5 collection;-and-that-the-remainder-be-sufficient-only-to-cover
6 the-approved-annual-budget-of-the-commission-.

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

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

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

14 k. ~~The-commission-shall-keep-accurate-accounts-of-all~~
15 ~~receipts-and-disbursements-.~~ Financial statements of the
16 commission shall be prepared according to generally accepted
17 accounting principles. The commission shall contract with an
18 independent certified public accountant to annually audit all
19 ~~receipts-and-disbursements-of-commission-funds;~~ its financial
20 statements and to submit an audit report to the commission.
21 The audit report shall be made a part of the annual report of
22 the commission required by this article.

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

33 m.--~~The-commission-is-not-liable-for-any-costs-associated~~
34 ~~with-any-of-the-following:~~

35 i.--~~The-licensing-and-construction-of-any-facility;~~

1 ~~2---The-operation-of-any-facility;~~
 2 ~~3---The-stabilization-and-closure-of-any-facility;~~
 3 ~~4---The-care-of-any-facility;~~
 4 ~~5---The-extended-institutional-control,-after-care-of-any~~
 5 ~~facility;-or~~

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

7 ~~n-1: m.~~ The commission is a legal entity separate and
 8 distinct from the party states and ~~is liable for its actions~~
 9 ~~as a separate and distinct legal entity. Liabilities of the~~
 10 ~~commission are not liabilities of the party states. Members~~
 11 ~~of the commission and its employees are not personally liable~~
 12 ~~for actions taken by them in their official capacity. The~~
 13 ~~commission is not liable or otherwise responsible for any~~
 14 ~~costs, expenses, or liabilities resulting from the~~
 15 ~~development, construction, operation, regulation, closing, or~~
 16 ~~long-term care of any compact facility or any noncompact~~
 17 ~~facility made available to the region by any contract or~~
 18 ~~agreement entered into by the commission under section h,~~
 19 ~~subsection 6. Nothing in this section relieves the commission~~
 20 ~~of its obligations under this article or under contracts to~~
 21 ~~which it is a party. Any liabilities of the commission are~~
 22 ~~not liabilities of the party states.~~

23 ~~2---Except-as-provided-under-section-m-and-section-n7~~
 24 ~~subsection-17-nothing-in-this-compact-alters-liability-for-any~~
 25 ~~act,-omission,-course-of-conduct,-or-liability-resulting-from~~
 26 ~~any-causal-or-other-relationships-~~

27 ~~o---Any-person-aggrieved-by-a-final-decision-of-the~~
 28 ~~commission-may-obtain-judicial-review-of-such-decision-in-any~~
 29 ~~court-of-jurisdiction-by-filing-in-such-court-a-petition-for~~
 30 ~~review-within-sixty-days-after-the-commission's-final~~
 31 ~~decision-~~

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

35 1. Every final decision shall be made at an open meeting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 p. The commission shall establish a remedial action fund
33 to pay the costs of reasonable remedial actions taken by a
34 party state if an event results from the development,
35 construction, operation, closing, or long-term care of a

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

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

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

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

35 ARTICLE IV -- REGIONAL MANAGEMENT DISPOSAL PLAN

1 The commission shall adopt and periodically update a
2 regional management disposal plan designed to ensure the safe
3 and efficient management disposal of low-level radioactive
4 waste generated within the region. In adopting a regional
5 low-level radioactive waste management disposal plan, the
6 commission shall do all of the following:

7 a. Adopt procedures for determining, consistent with
8 considerations for public health and safety, the type and
9 number of ~~regional~~ compact facilities which are presently
10 necessary and which are projected to be necessary to manage
11 dispose of low-level radioactive waste generated within the
12 region;

13 ~~b.---Develop-and-consider-policies-promoting-source~~
14 ~~reduction-of-waste-generated-within-the-region;~~

15 ~~c.~~ b. Develop and adopt procedures and criteria for
16 identifying a party state as a host state for a ~~regional~~
17 compact facility. In developing these criteria, the
18 commission shall consider all of the following:

19 1. The health, safety, and welfare of the citizens of the
20 party states.

21 2. The existence of ~~regional~~ compact facilities within
22 each party state.

23 3. The minimization of low-level radioactive waste
24 transportation.

25 4. The volumes and types of low-level radioactive wastes
26 projected to be generated within each party state.

27 5. The environmental, ~~economic,~~ ~~and-ecological~~ impacts on
28 the air, land, and water resources of the party states.

29 6. The economic impacts on the party states.

30 ~~d.~~ c. Conduct such hearings, and obtain such reports,
31 studies, evidence, and testimony required by its approved
32 procedures prior to identifying a party state as a host state
33 for a needed ~~regional~~ compact facility;

34 ~~e.~~ d. Prepare a draft management disposal plan and any
35 update thereof, including procedures, criteria, and host

1 states, ~~including-alternatives~~, which shall be made available
2 in a convenient form to the public for comment. Upon the
3 request of a party state, the commission shall conduct a
4 public hearing in that state prior to the adoption or update
5 of the management disposal plan. The management disposal plan
6 and any update thereof shall include the commission's response
7 to public and party state comment.

8 ARTICLE V -- RIGHTS AND OBLIGATIONS OF PARTY STATES

9 a. Each party state shall act in good faith in the
10 performance of acts and courses of conduct which are intended
11 to ensure the provision of facilities for regional
12 availability and usage in a manner consistent with this
13 compact.

14 b. Each Except for low-level radioactive waste
15 attributable to radioactive material or low-level radioactive
16 waste imported into the region in order to render the material
17 or low-level radioactive waste amenable to transportation,
18 storage, disposal, or recovery, or in order to convert the
19 low-level radioactive waste or material to another usable
20 material, or to reduce it in volume or otherwise treat it,
21 each party state has the right to have all low-level
22 radioactive wastes generated within its borders managed
23 disposed of at regional compact facilities subject to the
24 payment of all fees established by the host state under
25 article VI, section j, and to the provisions contained in
26 article VI, sections l and s, article VIII, section d, article
27 IX, section sections c and d and article X. All party states
28 have an equal right of access to any facility made available
29 to the region by any an agreement entered into by the
30 commission pursuant to article III, section h, subsection 6,
31 subject to the provisions of article VI, sections l and s,
32 article VIII, sections c and d, and article X.

33 ~~c. Party-states-or-generators-may-negotiate-for-the-right~~
34 ~~of-access-to-a-facility-outside-the-region-and-may-export~~
35 ~~waste-outside-the-region-subject-to-commission-approval-under~~

1 ~~article-III-~~ If a party state's right to have waste generated
2 within its borders disposed of at compact facilities, or at
3 any noncompact facility made available to the region by an
4 agreement entered into by the commission under article III,
5 section h, subsection 6, is suspended, low-level radioactive
6 waste generated within its borders by any person shall be
7 disposed of at any such facility during the period of the
8 suspension.

9 d. To the extent permitted by federal law, each party
10 state may enforce any applicable federal and state laws,
11 regulations, and rules pertaining to the packaging and
12 transportation of waste generated within or passing through
13 its borders. Nothing in this section shall be construed to
14 require a party state to enter into any agreement with the
15 United States nuclear regulatory commission.

16 e. Each party state shall provide to the commission any
17 data and information the commission requires to implement its
18 responsibilities. Each party state shall establish the
19 capability to obtain any data and information required by the
20 commission.

21 f. If, notwithstanding the sovereign immunity provision in
22 article VII, section f, subsection 1, and the indemnification
23 provided for in article III, section p, article VI, section o,
24 and article VII, section g, a party state incurs a cost as a
25 result of an inadequate remedial action fund or an exhausted
26 long-term care fund, or incurs a liability as a result of an
27 action described in article VII, section f, subsection 1, and
28 not described in article VII, section f, subsection 2, the
29 cost or liability shall be the pro rata obligation of each
30 party state and each state that has withdrawn from this
31 compact or had its membership in this compact revoked. The
32 commission shall determine each state's pro rata obligation in
33 a fair and equitable manner based on the amount of low-level
34 radioactive waste from each such state that has been or is
35 projected to be disposed of at the compact facility with

1 respect to which the cost or liability to be shared was
2 incurred. No state shall be obligated to pay the pro rata
3 obligation of any other state.

4 The pro rata obligations provided for in this section do
5 not result in the creation of state debt. Rather, the pro
6 rata obligations are contractual obligations that shall be
7 enforced by only the commission or an affected party state.

8 g. If the party states make payment pursuant to this
9 section, the surcharge or fee provided for in article III,
10 section j, shall be used to collect the funds necessary to
11 reimburse the party states for those payments. The commission
12 shall determine the time period over which reimbursement shall
13 take place.

14 ARTICLE VI -- DEVELOPMENT, AND OPERATION, AND CLOSING
15 OF COMPACT FACILITIES

16 a. Any A party state may volunteer to become a host state,
17 and the commission may designate that state as a host state
18 upon-a-two-thirds-vote-of-its-members.

19 b. If not all regional compact facilities required by the
20 regional management disposal plan are not developed pursuant
21 to section a, or-upon-notification-that-an-existing-regional
22 facility-will-be-closed, the commission may designate a host
23 state.

24 c. Each-party After a state is designated as a host state
25 by the commission, it is responsible for determining-possible
26 facility-locations-within-its-borders the timely development
27 and operation of the compact facility it is designated to
28 host. The-selection-of-a-facility-site-shall-not-conflict
29 with-applicable-federal-and-host-state-laws, regulations, and
30 rules-not-inconsistent-with-this-compact-and-shall-be-based-on
31 factors-including, but-not-limited-to, geological,
32 environmental, and-economic-viability-of-possible-facility
33 locations. The development and operation of the compact
34 facility shall not conflict with applicable federal and host
35 state laws, rules, and regulations, provided that the laws,

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

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

16 d. e. Any party state designated as a host state may
17 request the commission to relieve that state of the
18 responsibility to serve as a host state. The Except as set
19 forth in section d, the commission may relieve a party state
20 of this its responsibility only upon a showing by the
21 requesting party state that, based upon criteria established
22 by the commission that are consistent with applicable federal
23 criteria, no feasible potential regional compact facility site
24 of-the-type-it-is-designated-to-host exists within its
25 borders. A party state relieved of its host state
26 responsibility shall repay to the commission any funds
27 provided to that state by the commission for the development
28 of a compact facility, and also shall pay to the commission
29 the amount the commission determines is necessary to ensure
30 that the commission and the other party states do not incur
31 financial loss as a result of the state being relieved of its
32 host state responsibility. Any funds so paid to the
33 commission with respect to the financial loss of the other
34 party states shall be distributed forthwith by the commission
35 to the party states that would otherwise incur the loss. In

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

9 ~~e.---After-a-state-is-designated-a-host-state-by-the~~
10 ~~commission,-it-is-responsible-for-the-timely-development-and~~
11 ~~operation-of-a-regional-facility-~~

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

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

35 f- h. To the extent permitted by federal and state law, a

1 host state shall regulate and license any compact facility
2 within its borders and ensure the extended long-term care of
3 that compact facility.

4 ~~g.--The commission may designate a party state as a host~~
5 ~~state while a regional facility is in operation if the~~
6 ~~commission determines that an additional regional facility is~~
7 ~~or may be required to meet the needs of the region.--The~~
8 ~~commission shall make this designation following the~~
9 ~~procedures established under article IV.~~

10 ~~h.--Designation of a host state is for a period of twenty~~
11 ~~years or the life of the regional facility which is~~
12 ~~established under that designation, whichever is longer.--Upon~~
13 ~~request of a host state, the commission may modify the period~~
14 ~~of its designation.~~

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

27 ~~i:~~ j. A host state may shall establish a fee system for of
28 fees to be collected from the users of any regional compact
29 facility within its borders. The fee system, and the costs
30 paid through the system, shall be reasonable and equitable.
31 The fee system shall be subject to the commission's approval.
32 ~~This~~ The fee system shall provide the host state with
33 sufficient revenue to cover any pay costs associated with the
34 compact facility, including, but not limited to the planning,
35 siting, licensure, operation, decommissioning, extended care,

1 ~~and long-term liability, associated with such facilities~~
2 closing, long-term care, debt service, legal costs, local
3 impact assistance, and local financial incentives. This fee
4 ~~system may also include reasonable revenue beyond the costs~~
5 ~~incurred for the host state, subject to approval by the~~
6 ~~commission. A host state shall submit an annual financial~~
7 ~~audit of the operation of the regional facility to the~~
8 ~~commission.~~ The fee system also shall be used to collect the
9 surcharge provided in article III, section j, subsection 2.
10 The fee system may shall include incentives for source
11 reduction and may shall be based on the hazard of the low-
12 level radioactive waste as well as the volume.

13 ~~j. k.~~ A host state shall ensure that a regional compact
14 facility located within its borders which that is permanently
15 closed is properly decommissioned cared for so as to ensure
16 protection of air, land, and water resources and the health
17 and safety of all people who may be affected by the facility.
18 ~~A host state shall also provide for the care of a closed or~~
19 ~~decommissioned regional facility within its borders so that~~
20 ~~the public health and safety of the state and region are~~
21 ~~ensured.~~

22 ~~k. A host state intending to close a regional facility~~
23 ~~located within its borders shall notify the commission in~~
24 ~~writing of its intention and the reasons. Notification shall~~
25 ~~be given to the commission at least five years prior to the~~
26 ~~intended date of closure.~~

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

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

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

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

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

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

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

22 3. Within fourteen years after a compact facility begins
23 operating, the state designated to host the next compact
24 facility shall have obtained a license from the responsible
25 licensing authority to construct and operate the compact
26 facility the state has been designated to host. If the
27 license is not obtained within the specified time, all low-
28 level radioactive waste generated by any person within the
29 state designated to host the next compact facility shall be
30 denied access to the then operating compact facility, and to
31 any noncompact facility made available to the region by any
32 agreement entered into by the commission pursuant to article
33 III, section h, subsection 6, until the license is obtained.
34 The state designated to host the next compact facility shall
35 have failed in its obligations as a host state and shall be

1 subject to section d, and article VIII, section d. In
2 addition, at the sole option of the host state of the then
3 operating compact facility, all low-level radioactive waste
4 generated by any person within any party state that has not
5 fully discharged its obligations under section i, shall be
6 denied access to the then operating compact facility, and to a
7 noncompact facility made available to the region by an
8 agreement entered into by the commission pursuant to article
9 III, section h, subsection 6, until the license is obtained.
10 Denial of access may be rescinded by the commission, with the
11 member from the host state of the then operating compact
12 facility voting in the affirmative.

13 4. If twenty years after a compact facility begins
14 operating, the next compact facility is not ready to begin
15 operating, the state designated to host the next compact
16 facility shall have failed in its obligation as a host state
17 and shall be subject to section d, and article VIII, section
18 d. If at the time the capacity of the then operating compact
19 facility has been reached, or twenty years after the facility
20 began operating, whichever occurs first, the next compact
21 facility is not ready to begin operating, the host state of
22 the then operating compact facility, without the consent of
23 any other party state or the commission, may continue to
24 operate the facility until a compact facility in the next host
25 state is ready to begin operating. During any such period of
26 continued operation of a compact facility, all low-level
27 radioactive waste generated by any person within the state
28 designated to host the next compact facility shall be denied
29 access to the then operating compact facility and to a
30 noncompact facility made available to the region by an
31 agreement entered into by the commission pursuant to article
32 III, section h, subsection 6. In addition, during such
33 period, at the sole option of the host state of the then
34 operating compact facility, all low-level radioactive waste
35 generated by any person within any party state that has not

1 fully discharged its obligations under section i, shall be
2 denied access to the then operating compact facility and to
3 any noncompact facility made available to the region by any
4 agreement entered into by the commission pursuant to article
5 III, section h, subsection 6. Denial of access may be
6 rescinded by the commission, with the member from the host
7 state of the then operating compact facility voting in the
8 affirmative. The provisions of this subsection shall not
9 apply if their application is inconsistent with an agreement
10 between the host state of the then operating compact facility
11 and the commission as authorized in section i, or inconsistent
12 with section p or q.

13 5. During any period that access is denied for low-level
14 radioactive waste disposal pursuant to section 1, subsection
15 2, 3, or 4, the party state designated to host the next
16 compact disposal facility shall pay to the host state of the
17 then operating compact facility an amount the commission
18 determines is reasonably necessary to ensure that the host
19 state, or an agency or political subdivision thereof, does not
20 incur financial loss as a result of the denial of access.

21 6. The commission may modify any of the requirements
22 contained in section 1, subsections 2 and 3, if it finds that
23 circumstances have changed so that the requirements are
24 unworkable or unnecessarily rigid or no longer serve to ensure
25 the timely development of a compact facility. The commission
26 may adopt such a finding by a two-thirds vote, with the member
27 from the host state of the then operating compact facility
28 voting in the affirmative.

29 m. This section compact shall not prevent an emergency
30 closing of a regional compact facility by a host state to
31 protect its air, land, and water resources and the health and
32 safety of its-citizens all people who may be affected by the
33 compact facility. However, a A host state which that has an
34 emergency closing of a regional compact facility shall notify
35 the commission in writing within three working days of its

1 action and shall, within thirty working days of its action,
2 demonstrate justification for the closing.

3 ~~l. If a regional facility closes before an additional or~~
4 ~~new facility becomes operational, waste generated within the~~
5 ~~region may be shipped temporarily to any location agreed on by~~
6 ~~the commission until a regional facility is operational.~~

7 ~~m. A party state which is designated as a host state by~~
8 ~~the commission and fails to fulfill its obligations as a host~~
9 ~~state may have its privileges under the compact suspended or~~
10 ~~membership in the compact revoked by the commission.~~

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

18 o. Each host state of a compact facility shall establish a
19 long-term care fund to pay for monitoring, security,
20 maintenance, and repair of the facility after it is
21 permanently closed. The expenses of administering the long-
22 term care fund shall be paid out of the fund. The fee system
23 established by the host state that establishes a long-term
24 care fund shall be used to collect moneys in amounts that are
25 adequate to pay for all long-term care of the compact
26 facility. The moneys shall be deposited into the long-term
27 care fund. Except where the matter is resolved through
28 arbitration, the amount to be collected through the fee system
29 for deposit into the fund shall be determined through an
30 agreement between the commission and the host state
31 establishing the fund. Not less than three years, nor more
32 than five years, before the compact facility it is designated
33 to host is scheduled to begin operating, the host state shall
34 propose to the commission the amount to be collected through
35 the fee system for deposit into the fund. If, one hundred

1 eighty days after such proposal is made to the commission, the
2 host state and the commission have not agreed, either the
3 commission or the host state may require the matter to be
4 decided through binding arbitration. The method of
5 administration of the fund shall be determined by the host
6 state establishing the long-term care fund, provided that
7 moneys in the fund shall be used only for the purposes set
8 forth in this section, and shall be invested in accordance
9 with the standards applicable to trustees under the laws of
10 the host state establishing the fund. If, after a compact
11 facility is closed, the commission determines the long-term
12 care fund established with respect to that compact facility is
13 not adequate to pay for all long-term care for that compact
14 facility, the commission shall collect and pay over to the
15 host state of the closed compact facility, for deposit into
16 the long-term care fund, an amount determined by the
17 commission to be necessary to make the amount in the fund
18 adequate to pay for all long-term care of the compact
19 facility. If a long-term care fund is exhausted and long-term
20 care expenses for the compact facility with respect to which
21 the fund was created have been reasonably incurred by the host
22 state of the compact facility, those expenses are a liability
23 with respect to which generators shall provide indemnification
24 as provided in article VII, section g. Generators that
25 provide indemnification shall have contribution rights as
26 provided in article VII, section g.

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

35 q. If this compact is dissolved, the host state of any

1 then operating compact facility shall immediately and
2 permanently close the compact facility, provided that a host
3 state may continue to operate a compact facility or resume
4 operating a previously closed compact facility, as a
5 noncompact facility, subject to all of the following
6 requirements:

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

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

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

30 4. Moneys in the long-term care fund established by the
31 host state that are attributable to the operation of the
32 compact facility before this compact is dissolved, and
33 investment earnings thereon, shall be used only to pay the
34 cost of monitoring, securing, maintaining, or repairing that
35 portion of the compact facility used for the disposal of low-

1 level radioactive waste before this compact is dissolved.
2 Such moneys and investment earnings, and moneys added to the
3 long-term care fund through a distribution authorized by
4 article III, section r, also may be used to pay the cost of
5 any remedial action made necessary by an event resulting from
6 the disposal of waste at the facility before this compact is
7 dissolved.

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

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

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

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

26 3. Any liability for damages to persons, property, or the
27 environment incurred by a party state, or employee of that
28 state while acting within the scope of employment, resulting
29 from the development, construction, operation, regulation,
30 closing, or long-term care of a compact facility, or a
31 noncompact facility made available to the region by an
32 agreement entered into by the commission pursuant to article
33 III, section h, subsection 6, or other matter arising from
34 this compact. The agreement also shall require generators to
35 indemnify the party state or employee against all reasonable

1 attorney's fees and expenses incurred in defending an action
2 for such damages. This indemnification shall not extend to
3 liability based on any of the following:

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

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

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

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

1 shall not relieve a party state of the indemnification
2 obligation imposed by article VII, section g.

3 ARTICLE VII -- OTHER LAWS AND REGULATIONS

4 a. Nothing in this compact:

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

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

11 3. Prohibits any storage generator from storing or
12 treatment-of-waste-by-the-generator treating, on its own
13 premises, low-level radioactive waste generated by it within
14 the region;

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

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

20 6. Affects the generation, treatment, storage, or disposal
21 of waste generated by the atomic energy defense activities of
22 the secretary of the United States department of energy or
23 successor agencies or federal research and development
24 activities as defined described in 42 U.S.C. § 2021; or

25 7. Affects the rights and powers of any party state or its
26 political subdivisions, to the extent not inconsistent with
27 this compact, to regulate and license any facility or the
28 transportation of waste within its borders ~~or-affects-the~~
29 ~~rights-and-powers-of-any-party-state-or-its-political~~
30 ~~subdivisions-to-tax-or-impose-fees-on-the-waste-managed-at-any~~
31 ~~facility-within-its-border.~~

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

34 9. ~~Alters-or-limits-liability-of-transporters-of-waste,~~
35 ~~owners,-and-operators-of-sites-for-their-acts,-omissions,~~

~~1 conduct, or relationships in accordance with applicable laws.~~
2 Limits, expands, or otherwise affects the authority of a state
3 to regulate low-level radioactive waste classified by any
4 agency of the United States government as below regulatory
5 concern or otherwise exempt from federal regulation.

6 b. ~~For purposes of this compact, all state laws or parts~~
7 ~~of laws in conflict~~ If a court of the United States finally
8 determines that a law of a party state conflicts with this
9 compact are hereby superseded, this compact shall prevail to
10 the extent of the conflict. The commission shall not commence
11 an action seeking such a judicial determination unless
12 commencement of the action is approved by a two-thirds vote of
13 the membership of the commission.

14 c. ~~No~~ Except as authorized by this compact, no law, rule,
15 or regulation of a party state or of any of its subdivisions
16 or instrumentalities may be applied in a manner which
17 discriminates against the generators of another party state.

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

31 e. Except as provided in 28 U.S.C. §1251(a), the district
32 courts of the United States have exclusive jurisdiction to
33 decide cases arising under this compact. This section does
34 not apply to proceedings within the jurisdiction of state or
35 federal regulatory agencies or to judicial review of

1 proceedings before state or federal regulatory agencies. This
2 section shall not be construed to diminish other laws of the
3 United States conferring jurisdiction on the courts of the
4 United States.

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

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

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

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

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

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

32 g. If in an action described in section f, subsection 1,
33 and not described in section f, subsection 2, it is determined
34 that, notwithstanding section f, subsection 1, a party state,
35 or employee of that state who acted within the scope of

1 employment, is liable for damages or has liability for other
2 matters arising under this compact as described in article VI,
3 section s, subsection 3, the generators who caused waste to be
4 placed at the compact facility with respect to which the
5 liability was incurred shall indemnify the party state or
6 employee against that liability. Those generators also shall
7 indemnify the party state or employee against all reasonable
8 attorney's fees and expenses incurred in defending against any
9 such action. The indemnification obligation of generators
10 under this section shall be joint and several, except that the
11 indemnification obligation of party states with respect to
12 their activities as generators of waste shall not be joint and
13 several, but instead shall be prorated according to the amount
14 of waste each state has disposed of at the compact facility
15 giving rise to the liability. Among generators, there shall
16 be rights of contribution based upon equitable principles, and
17 generators shall have rights of contribution against another
18 person responsible for damages under common law, statute,
19 rule, or regulation. A party state that through its own
20 activities did not generate low-level radioactive waste
21 disposed of at the compact facility giving rise to the
22 liability, an employee of a party state, and the commission
23 shall have no contribution obligation under this section.
24 This section shall not be construed as a waiver of the
25 sovereign immunity provided for in section f, subsection 1.

26 h. The sovereign immunity of a party state provided for in
27 section f, subsection 1, shall not be extended to a private
28 contractor assigned responsibilities as authorized in article
29 VI, section g.

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

33 a.--Eligible-parties-to-this-compact-are-the-states-of
34 Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland,
35 Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio,

1 ~~South-Dakota, Virginia, and Wisconsin.~~ Eligibility terminates
2 ~~on July 1, 1984.~~

3 ~~b.~~ a. Any state ~~not eligible for membership in the compact~~
4 may petition the commission for eligibility to be eligible for
5 membership in the compact. The commission may establish
6 appropriate eligibility requirements. These requirements may
7 include, but are not limited to, an eligibility fee or
8 designation as a host state. A petitioning state becomes
9 eligible for membership in the compact upon the approval of
10 the commission, including the affirmative vote of ~~all~~ the
11 member from each host states state in which a compact facility
12 is operating or being developed or constructed. Any state
13 becoming eligible upon the approval of the commission becomes
14 a member of the compact ~~in the same manner as any state~~
15 ~~eligible for membership at the time this compact enters into~~
16 ~~force~~ when the state enacts this compact into law and pays the
17 eligibility fee established by the commission.

18 ~~c.~~ An eligible state becomes a party state when the state
19 enacts the compact into law and pays the membership fee
20 required in article III, section j, subsection 1.

21 ~~d.~~ b. The commission is formed upon the appointment of
22 commission members and the tender of the membership fee
23 payable to the commission by three party states. The governor
24 of the first state to enact this compact shall convene the
25 initial meeting of the commission. The commission shall cause
26 legislation to be introduced in the congress which grants the
27 consent of the congress to this compact, and shall take action
28 necessary to organize the commission and implement the
29 provisions of this compact.

30 ~~e.~~ c. Any A party state that has fully discharged its
31 obligations under article VI, section i, or has been relieved
32 under article VI, section e, of its responsibilities to serve
33 as a host state, may withdraw from this compact by repealing
34 the authorizing legislation ~~but no withdrawal may take effect~~
35 ~~until five years after the governor of the withdrawing state~~

1 ~~gives notice in writing of the withdrawal to the commission~~
2 ~~and to the governor of each party state~~ and by receiving the
3 unanimous consent of the commission. ~~Withdrawal does not~~
4 ~~affect any liability already incurred by or chargeable to a~~
5 ~~party state prior to the time of such withdrawal~~ takes effect
6 on the date specified in the commission resolution consenting
7 to withdrawal. ~~Any host state which grants a disposal permit~~
8 ~~for waste generated in a withdrawing state shall void the~~
9 ~~permit when the withdrawal of that state is effective.~~ All
10 legal rights of the withdrawn state established under this
11 compact, including, but not limited to, the right to have low-
12 level radioactive waste generated within its borders disposed
13 of at compact facilities, cease upon the effective date of
14 withdrawal, but any legal obligations of that party state
15 under this compact, including, but not limited to, those set
16 forth in section e continue until they are fulfilled.

17 ~~f-~~ d. Any party state which ~~that~~ fails to comply with the
18 terms of this compact or fails to fulfill its obligations may
19 have ~~its privileges~~ reasonable financial penalties imposed
20 against it, may have the right to have low-level radioactive
21 waste generated within its borders disposed of at compact
22 facilities, or a noncompact facility made available to the
23 region by an agreement entered into by the commission pursuant
24 to article III, section h, subsection 6, suspended, or may
25 have its membership in the compact revoked by the commission
26 ~~in accordance with article III, section h, subsection 6~~ a two-
27 thirds vote of the commission, provided that the membership of
28 the party state designated to host the next compact facility
29 shall not be revoked unless the member from the host state of
30 a then operating compact facility votes in the affirmative.
31 Revocation takes effect ~~one year from~~ on the date ~~the affected~~
32 ~~party state receives written notice from the commission of its~~
33 ~~action~~ specified in the resolution revoking the party state's
34 membership. All legal rights of the ~~affected~~ revoked party
35 state established under this compact, including, but not

1 limited to, the right to have low-level radioactive waste
2 generated within its borders disposed of at compact
3 facilities, cease upon the effective date of revocation, but
4 any legal obligations of that party state arising-prior-to
5 revocation under this compact, including, but not limited to,
6 those set forth in section e continue until they are
7 fulfilled. The chairperson of the commission shall transmit
8 written notice of a revocation of a party state's membership
9 in the compact, suspension of a party state's low-level
10 radioactive waste disposal rights, or imposition of financial
11 penalties immediately following the vote of the commission to
12 the governor of the affected party state, all-other governors
13 of all the other party states, and the congress of the United
14 States.

15 e. A party state that withdraws from this compact or has
16 its membership in the compact revoked before it has fully
17 discharged its obligations under article VI forthwith shall
18 repay to the commission the portion of the funds provided to
19 that state by the commission for the development,
20 construction, operation, closing, or long-term care of a
21 compact facility that the commission determines is fair and
22 equitable, taking into consideration the period of time the
23 compact facility located in that host state was in operation
24 and the amount of low-level radioactive waste disposed of at
25 the compact facility. If at any time after a compact facility
26 begins operating, a party state withdraws from the compact or
27 has its membership revoked, the withdrawing or revoked party
28 state shall be obligated forthwith to pay to the commission,
29 the amount the commission determines would have been paid
30 under the fee system established by the host state of the
31 compact facility, to dispose of at the compact facility the
32 estimated volume of low-level radioactive waste generated in
33 the withdrawing or revoked party state that would have been
34 disposed of at the compact facility from the time of
35 withdrawal or revocation until the time the compact facility

1 is closed. Any funds so paid to the commission shall be
2 distributed by the commission to the persons who would have
3 been entitled to receive the funds had they originally been
4 paid to dispose of low-level radioactive waste at the
5 facility. Any person receiving funds from the commission
6 shall apply the funds to the purposes to which they would have
7 been applied had they originally been paid to dispose of low-
8 level radioactive waste at the compact facility. In addition,
9 a withdrawing or revoked party state forthwith shall pay to
10 the commission an amount the commission determines to be
11 necessary to cover all other costs and damages incurred by the
12 commission and the remaining party states as a result of the
13 withdrawal or revocation. The intention of this section is to
14 eliminate a decrease in revenue resulting from withdrawal of a
15 party state or revocation of a party state's membership, to
16 eliminate financial harm to the remaining party states, and to
17 create an incentive for party states to continue as members of
18 the compact and to fulfill their obligations. This section
19 shall be construed and applied so as to effectuate this
20 intention.

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

29 g. This compact becomes effective July-17-1983, or at any
30 date subsequent to July-17-1983, upon enactment by at least
31 three eligible states and consent to this compact by the
32 congress. However, article-IX, section-b shall not take
33 effect until the congress has by law consented to this
34 compact. --The congress shall have an opportunity to withdraw
35 such consent every five years. --Failure of the congress to

1 affirmatively withdraw its consent has the effect of renewing
2 consent for an additional five-year period. The consent given
3 to this compact by the congress shall extend to any future
4 admittance of new party states under sections b and c of this
5 article and to the power of the region commission to ban
6 regulate the shipment and disposal of waste from the region
7 and disposal of naturally occurring and accelerator-produced
8 radioactive material pursuant to article III this compact.
9 Amendments to this compact are effective when enacted by all
10 party states and, if necessary, consented to by the congress.
11 To the extent required by the Low-Level Radioactive Waste
12 Policy Amendments Act of 1985, 42 U.S.C. § 2021(d)(4)(d),
13 every five years after this compact has taken effect, the
14 congress by law may withdraw its consent.

15 h. The withdrawal of a party state from this compact under
16 section e of this article, the suspension of low-level
17 radioactive waste disposal rights, the termination of a party
18 state's designation as a host state, or the revocation of a
19 state's membership in this compact under section f of this
20 article does not affect the applicability of this compact to
21 the remaining party states.

22 i. A state which has been designated by the commission to
23 be a host state has ninety days from receipt by the governor
24 of written notice of designation to withdraw from the compact
25 without any right to receive refund of any funds already paid
26 pursuant to this compact, and without any further payment.
27 Withdrawal becomes effective immediately upon notice as
28 provided in section e. A designated host state which
29 withdraws from the compact after ninety days and prior to
30 fulfilling its obligations shall be assessed a sum the
31 commission determines to be necessary to cover the costs borne
32 by the commission and remaining party states as a result of
33 that withdrawal. This compact may be dissolved and the
34 obligations arising under this compact may be terminated only
35 as follows:

1 1. Through unanimous agreement of all party states
2 expressed in duly enacted legislation; or

3 2. Through withdrawal of consent to this compact by the
4 Congress under article I, section 10, of the United States
5 Constitution, in which case dissolution shall take place one
6 hundred twenty days after the effective date of the withdrawal
7 of consent.

8 Unless explicitly abrogated by the state legislation
9 dissolving this compact, or if dissolution results from
10 withdrawal of congressional consent, the limitations on the
11 investment and use of long-term care funds in article VI,
12 section o and section q, subsection 4, the contractual
13 obligations in article V, section f, the indemnification
14 obligations and contribution rights in article VI, sections o
15 and s, and article VII, section g, and the operation rights
16 indemnification and hold-harmless obligations in article VI,
17 section q, shall remain in force notwithstanding dissolution
18 of this compact.

19 ARTICLE IX -- PENALTIES AND ENFORCEMENT

20 a. Each party state shall prescribe and enforce penalties
21 against any person who is not an official of another state for
22 violation of any provision of this compact.

23 ~~b. -- Unless otherwise authorized by the commission pursuant~~
24 ~~to article III, section h after January 1, 1986, it is a~~
25 ~~violation of this compact.~~

26 ~~1. -- For any person to deposit at a regional facility waste~~
27 ~~not generated within the region;~~

28 ~~2. -- For any regional facility to accept waste not generated~~
29 ~~within the region;~~

30 ~~3. -- For any person to export from the region waste which is~~
31 ~~generated within the region; or~~

32 ~~4. -- For any person to dispose of waste at a facility other~~
33 ~~than a regional facility.~~

34 b. The parties to this compact intend that the courts of
35 the United States shall specifically enforce the obligations,

1 including the obligations of party states and revoked or
2 withdrawn party states, established by this compact.

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

6 e. d. Each party state acknowledges that the receipt-by
7 transport into a host state of low-level radioactive waste
8 packaged or transported in violation of applicable laws,
9 rules, and regulations may result in the imposition of
10 sanctions by the host state which may include reasonable
11 financial penalties assessed against any generator,
12 transporter, or collector responsible for the violation, or
13 suspension or revocation of the-violator's-right-of access to
14 the compact facility in the host state by a generator,
15 transporter, or collector responsible for the violation.

16 d. e. Each party state has the right to seek legal
17 recourse against any a party state which acts in violation of
18 this compact.

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

26 ARTICLE X -- SEVERABILITY AND CONSTRUCTION

27 The provisions of this compact shall be severable and if
28 any ~~phrase, clause, sentence, or~~ provision of this compact is
29 declared finally determined by a court of competent
30 jurisdiction to be contrary to the constitution of any a
31 participating state or of the United States or the
32 applicability application thereof to ~~any government, agency, a~~
33 person, or circumstance is held invalid, the validity of the
34 remainder of this compact to that person or circumstance and
35 the applicability thereof of the entire compact to any

1 government, agency, other person, or circumstance shall not be
2 affected thereby. If any a provision of this compact shall be
3 held contrary to the constitution of any a state participating
4 therein, the compact shall remain in full force and effect as
5 to the state affected as to all severable matters. If any
6 provision of this compact imposing a financial obligation upon
7 a party state, or a state that has withdrawn from this compact
8 or had its membership in this compact revoked, is finally
9 determined by a court of competent jurisdiction to be
10 unenforceable due to the state's constitutional limitations on
11 its ability to pay the obligation, then that state shall use
12 its best efforts to obtain an appropriation to pay the
13 obligation, and, if the state is a party state, its right to
14 have low-level radioactive waste generated within its borders
15 disposed of at compact facilities, or a noncompact facility
16 made available to the region by an agreement entered into by
17 the commission pursuant to article III, section h, subsection
18 6, shall be suspended until the appropriation is obtained.

19 EXPLANATION

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

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

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

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

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

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

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

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

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

35 The bill in article VI allows the host state of the then

1 operating compact facility to unilaterally decide to continue
2 to operate its compact facility, even though the compact
3 facility has already operated for 20 years or its capacity has
4 been reached, if the next compact facility does not begin
5 operating as planned.

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

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

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

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

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

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

1 in the compact.

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

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

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

18

BACKGROUND STATEMENT

19

SUBMITTED BY THE AGENCY

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

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

1 for failure to proceed in good faith with its obligation to
2 site a disposal facility.

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

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

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

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SENATE FILE 2219

AN ACT

RELATING TO THE MIDWEST INTERSTATE COMPACT ON LOW-LEVEL
RADIOACTIVE WASTE AND ESTABLISHING A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 457B.1, Code 1995, is amended to read
as follows:

457B.1 LOW-LEVEL RADIOACTIVE WASTE COMPACT.

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

ARTICLE I -- POLICY AND PURPOSE

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

The states party to this compact recognize that the
congress of the United States, by enacting the Low-Level
Radioactive Waste Policy Act (42-U.S.C.-§-2021), as amended by
the Low-Level Radioactive Waste Policy Amendments Act of 1985,
42 U.S.C. § 2021b-j, has provided for and encouraged the
development of low-level radioactive waste compacts as a tool
for managing disposing of such waste. The party states
acknowledge that the congress declared that each state is
responsible for providing for the availability of capacity
either within or outside the state for the disposal of low-
level radioactive waste generated within its borders, except
for waste generated as a result of certain defense activities
of the federal government or federal research and development
activities. The party states also recognize that the
management disposal of low-level radioactive waste is handled
most efficiently on a regional basis; and that the safe and
efficient management of low-level radioactive waste generated
within the region requires that sufficient capacity to manage
dispose of such waste be properly provided.

a. It is the policy of the party states to enter into a
regional low-level radioactive waste management disposal
compact for the purpose of:

1. Providing the instrument and framework for a
cooperative effort;
 2. Providing sufficient facilities for the proper
management disposal of low-level radioactive waste generated
in the region;
 3. Protecting the health and safety of the citizens of the
region;
 4. Limiting the number of facilities required to
effectively and efficiently manage dispose of low-level
radioactive waste generated in the region;
 5. Encouraging the source reduction of the amounts of low-
level radioactive waste generated in the region and the
environmentally sound treatment of waste that is generated to
minimize the amount of waste to be disposed of;
 6. Distributing Ensuring that the costs, benefits
expenses, liabilities, and obligations of successful low-level
radioactive waste management-equitably-among-the-party-states
and-among disposal are paid by generators and other persons
who use regional compact facilities to manage dispose of their
waste; and
 7. Ensuring that the obligations of low-level radioactive
waste disposal that are the responsibility of the party states
are shared equitably among them;
 8. Ensuring that the party states that comply with the
terms of this compact and fulfill their obligations under it
share equitably in the benefits of the successful disposal of
low-level radioactive waste; and
 - 7- 9. Ensuring the ecological-and environmentally sound,
economical management, and secure disposal of low-level
radioactive wastes.
- b. Implicit in the congressional consent to this compact
is the expectation by the congress and the party states that
the appropriate federal agencies will actively assist the
compact commission and the individual party states to this
compact by:

1. Expedient enforcement of federal rules, regulations, and laws;
2. Imposition of sanctions against those found to be in violation of federal rules, regulations, and laws; and
3. Timely inspection of their licensees to determine their compliance with these rules, regulations, and laws.

ARTICLE II -- DEFINITIONS

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

a. "Care" means the continued observation of a facility after ~~closure~~ closing for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and including the correction of problems which are detected as a result of that observation.

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

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

~~c. --~~ "Decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.

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

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

~~d. f.~~ "Disposal" means the isolation of waste from the biosphere in a permanent facility designed for that purpose with regard to low-level radioactive waste, means the permanent isolation of that waste in accordance with the requirements established by the United States nuclear regulatory commission or the licensing agreement state.

~~e. --~~ "Eligible state" means a state qualified to be a party state to this compact as provided in article VIII.

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

~~f. h.~~ "Facility" means a parcel of land or site, together with the structures, equipment, and improvements on or appurtenant to the land or site, which is or has been used or is being developed for the treatment, storage, or disposal of low-level radioactive waste, which is being developed for that purpose, or upon which the construction of improvements or installation of equipment is occurring for that purpose.

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

g. j. "Generator" means a person who first produces or possesses low-level radioactive waste, including, without limitation, any person who does so in the course of or incident to manufacturing, power generation, processing, waste treatment, waste storage, medical diagnosis and treatment,

research, or other industrial or commercial activity and who, to the extent required by law, is licensed by the United States nuclear regulatory commission or a party state, to produce or possess such waste. "Generator" does not include a person who provides a service by arranging for the collection, transportation, treatment, storage, or disposal of wastes generated outside the region. If the person who first produced an item or quantity of low-level radioactive waste cannot be identified, "generator" means the person first possessing the low-level radioactive waste who can be identified.

h. k. "Host state" means any state which is designated by the commission to host a regional compact facility or has hosted a compact facility.

l. "Long-term care" means those activities taken by a host state after a compact facility is permanently closed to ensure the protection of air, land, and water resources and the health and safety of all people who may be affected by the compact facility.

i. m. "Low-level radioactive waste" or "waste" means radioactive waste that is not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954 and that is Class A, B, or C low-level radioactive waste as defined in 10 C.F.R. § 61.55, as that section existed on January 26, 1983. "Low-level radioactive waste" or "waste" does not include any such radioactive waste that is owned or generated by the United States department of energy; by the United States navy as a result of the decommissioning of its vessels; or as a result of research, development, testing, or production of an atomic weapon.

j. "Management plan" means the plan adopted by the commission for the storage, transportation, treatment, and disposal of waste within the region.

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

k. o. "Party state" means any an eligible state which that enacts the this compact into law, pays any eligibility fee established by the commission, and has not withdrawn from this compact or had its membership in this compact revoked, provided that a state that has withdrawn from this compact or had its membership revoked becomes a party state if it is readmitted to membership in this compact pursuant to article VIII, section a. "Party state" includes a host state. "Party state" also includes statutorily created administrative departments, agencies, or instrumentalities of a party state, but does not include municipal corporations, regional or local units of government, or other political subdivisions of a party state that are responsible for governmental activities on less than a statewide basis.

i. p. "Person" means any individual, corporation, association, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, association, business enterprise, or other legal entity. "Person" also includes the United States, states, political subdivisions of states, and any department, agency, or instrumentality of the United States or a state.

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

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 District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

q. t. "Storage" means the temporary holding of low-level radioactive waste for treatment or disposal.

r. u. "Treatment" means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or

composition of any low-level radioactive waste in order to render the low-level radioactive waste safer for transport or management, amenable to recovery, convertible to another usable material or reduced in volume.

s. v. "Waste management", "manage waste", "management of waste", "management", or "managed" means the storage, transportation, treatment, or disposal of low-level radioactive waste.

ARTICLE III -- THE COMMISSION

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

b. Each commission member is entitled to one vote. No Except as otherwise specifically provided in this compact, an action of the commission is binding unless if a majority of the total membership cast their casts its vote in the affirmative. A party state may direct its member or alternate member of the commission how to vote or not vote on matters before the commission.

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

d. The commission shall meet at least once annually and shall also meet upon the call of the chairperson or a any other commission member.

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

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

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

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

1--Enter-into-an-agreement-with-any-person,-state,-or-group-of-states-for-the-right-to-use-regional-facilities-for-waste-generated-outside-the-region-and-for-the-right-to-use-facilities-outside-the-region-for-waste-generated-within-the-region--The-right-of-any-person-to-use-a-regional-facility-for-waste-generated-outside-of-the-region-requires-an-affirmative-vote-of-a-majority-of-the-commission,-including-the-affirmative-vote-of-the-member-of-the-host-state-in-which-any-affected-regional-facility-is-located-

2--Approve-the-disposal-of-waste-generated-within-the-region-at-a-facility-other-than-a-regional-facility-

3- 1. Appear as an intervenor or party in interest before any court of law or any federal, state, or local agency, board, or commission in any matter related to waste management. In order to represent its views, the commission

may arrange for any expert testimony, reports, evidence, or other participation.

4. 2. Review the any emergency closure closing of a regional compact facility, determine the appropriateness of that closure closing, and take whatever lawful actions are necessary to ensure that the interests of the region are protected.

5. 3. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

~~6. --Suspend-the-privileges-or-revoke-the-membership-of-a party-state-by-a-two-thirds-vote-of-the-membership-in accordance-with-article-VIII--~~

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

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

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

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

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

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

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

i. The commission shall do all of the following:

~~1. --Receive-and-act-on-the-petition-of-a-nonparty-state-to become-an-eligible-state--~~

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

~~3. --Hear, negotiate, and, as necessary, resolve by final decision disputes which may arise between the party states regarding this compact--~~

4. 2. Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to article IV, a regional management disposal plan which designates host states for the establishment of needed regional compact facilities.

5. 3. Adopt an annual budget.

4. Establish and implement a procedure for determining the capacity of a compact facility. The capacity of a compact facility shall be established as soon as reasonably practical after the host state of the compact facility is designated and shall not be changed thereafter without the consent of the host state. The capacity of a compact facility shall be based on the projected volume, radioactive characteristics, or both, of the low-level radioactive waste to be disposed of at the

compact facility during the period set forth in article VI, section i.

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

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

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

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

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

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

j. Funding of the budget of for the commission shall be provided as follows:

1. Each state, upon becoming a party state, shall pay fifty thousand dollars or one thousand dollars per cubic meter shipped from that state in 1980, whichever is lower, to the commission which shall be used for the administrative costs of the commission. When no compact facility is operating, the commission may assess fees to be collected from generators of low-level radioactive waste in the region. The fees shall be reasonable and equitable. The commission shall establish and implement procedures for assessing and collecting the fees. The procedures may allow the assessing of fees against less than all generators of low-level radioactive waste in the region; provided that if fees are assessed against less than

all generators of waste in the region, generators paying the fees shall be reimbursed the amount of the fees, with reasonable interest, out of the revenues of operating compact facilities.

2. When a compact facility is operating, funding for the commission shall be provided through a surcharge collected by the host state as part of the fee system provided for in article VI, section j. The surcharge to be collected by the host state shall be determined by the commission and shall be reasonable and equitable.

~~2. 3. Each state hosting a regional facility shall levy surcharges on all users of the regional facility based upon its portion of the total volume and characteristics of wastes managed at that facility. The~~ In the aggregate, the fees or surcharges collected at all regional facilities, as the case may be, shall be no more than is necessary to:

(a) Be sufficient to cover Cover the annual budget of the commission; and.

~~(b) Represent the financial commitments of all party states to the commission; and~~

~~(c) Be paid to the commission, provided, that each host state collecting surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection; and that the remainder be sufficient only to cover the approved annual budget of the commission.~~

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

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

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

~~k. The commission shall keep accurate accounts of all receipts and disbursements. Financial statements of the commission shall be prepared according to generally accepted accounting principles. The commission shall contract with an independent certified public accountant to annually audit all~~

~~receipts and disbursements of commission funds, its financial statements and to submit an audit report to the commission. The audit report shall be made a part of the annual report of the commission required by this article.~~

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

~~m. The commission is not liable for any costs associated with any of the following:~~

- ~~1. The licensing and construction of any facility;~~
- ~~2. The operation of any facility;~~
- ~~3. The stabilization and closure of any facility;~~
- ~~4. The care of any facility;~~
- ~~5. The extended institutional control, after care of any facility; or~~
- ~~6. The transportation of waste to any facility.~~

~~n. m. The commission is a legal entity separate and distinct from the party states and is liable for its actions as a separate and distinct legal entity. Liabilities of the commission are not liabilities of the party states. Members of the commission and its employees are not personally liable for actions taken by them in their official capacity. The commission is not liable or otherwise responsible for any costs, expenses, or liabilities resulting from the development, construction, operation, regulation, closing, or long-term care of any compact facility or any noncompact facility made available to the region by any contract or agreement entered into by the commission under section h, subsection 6. Nothing in this section relieves the commission of its obligations under this article or under contracts to~~

~~which it is a party. Any liabilities of the commission are not liabilities of the party states.~~

~~2. Except as provided under section m and section n, subsection 1, nothing in this compact alters liability for any act, omission, course of conduct, or liability resulting from any causal or other relationships.~~

~~o. Any person aggrieved by a final decision of the commission may obtain judicial review of such decision in any court of jurisdiction by filing in such court a petition for review within sixty days after the commission's final decision.~~

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

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

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

~~3. Judicial review of a final decision shall be initiated by filing a petition in the United States district court for the district in which the person seeking the review resides or in which the commission's office is located not later than sixty days after issuance of the commission's written decision. Concurrently with filing the petition for review with the court, the petitioner shall serve a copy of the petition on the commission. Within five days after receiving a copy of the petition, the commission shall mail a copy of it to each party state and to all other persons who have notified the commission of their desire to receive copies of such petitions. Any failure of the commission to so mail copies of the petition does not affect the jurisdiction of the reviewing court. Except as otherwise provided in this subsection, standing to obtain judicial review of final decisions of the~~

commission and the form and scope of the review are subject to and governed by 5 U.S.C. § 706.

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

(a) Imposes financial penalties on a party state.

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

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

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

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

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

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

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

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

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

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

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

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

p. The commission shall establish a remedial action fund to pay the costs of reasonable remedial actions taken by a party state if an event results from the development, construction, operation, closing, or long-term care of a compact facility that poses a threat to human health, safety, or welfare or to the environment. The amount of the remedial action fund shall be adequate to pay the costs of all reasonably foreseeable remedial actions. A party state shall notify the commission as soon as reasonably practical after the occurrence of any event that may require the party state to take a remedial action. The failure of a party state to notify the commission does not limit the rights of the party state under this section.

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

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

r. If this compact is dissolved, all moneys held by the commission shall be used first to pay for any ongoing or reasonably anticipated remedial actions. Remaining moneys shall be distributed in a fair and equitable manner to those party states that have operating or closed compact facilities within their borders and shall be added to the long-term care funds maintained by those party states.

ARTICLE IV -- REGIONAL MANAGEMENT DISPOSAL PLAN

The commission shall adopt and periodically update a regional management disposal plan designed to ensure the safe and efficient management disposal of low-level radioactive waste generated within the region. In adopting a regional low-level radioactive waste management disposal plan, the commission shall do all of the following:

a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of regional compact facilities which are presently necessary and which are projected to be necessary to manage dispose of low-level radioactive waste generated within the region;

~~b. Develop and consider policies promoting source reduction of waste generated within the region;~~

~~c. b.~~ Develop and adopt procedures and criteria for identifying a party state as a host state for a regional compact facility. In developing these criteria, the commission shall consider all of the following:

1. The health, safety, and welfare of the citizens of the party states.
2. The existence of regional compact facilities within each party state.
3. The minimization of low-level radioactive waste transportation.
4. The volumes and types of low-level radioactive wastes projected to be generated within each party state.
5. The environmental, economic, and ecological impacts on the air, land, and water resources of the party states.
6. The economic impacts on the party states.

~~d. c.~~ Conduct such hearings, and obtain such reports, studies, evidence, and testimony required by its approved procedures prior to identifying a party state as a host state for a needed regional compact facility;

~~e. d.~~ Prepare a draft management disposal plan and any update thereof, including procedures, criteria, and host states, including alternatives, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the commission shall conduct a public hearing in that state prior to the adoption or update of the management disposal plan. The management disposal plan and any update thereof shall include the commission's response to public and party state comment.

ARTICLE V -- RIGHTS AND OBLIGATIONS OF PARTY STATES

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Each Except for low-level radioactive waste attributable to radioactive material or low-level radioactive waste imported into the region in order to render the material or low-level radioactive waste amenable to transportation, storage, disposal, or recovery, or in order to convert the low-level radioactive waste or material to another usable material, or to reduce it in volume or otherwise treat it, each party state has the right to have all low-level radioactive wastes generated within its borders managed disposed of at regional compact facilities subject to the payment of all fees established by the host state under article VI, section j, and to the provisions contained in article VI, sections l and s, article VIII, section d, article IX, section sections c and d and article X. All party states have an equal right of access to any facility made available to the region by any an agreement entered into by the commission pursuant to article III, section h, subsection 6, subject to the provisions of article VI, sections l and s, article VIII, sections c and d, and article X.

~~c. Party-states-or-generators-may-negotiate-for-the-right-of-access-to-a-facility-outside-the-region-and-may-export-waste-outside-the-region-subject-to-commission-approval-under-article-III. If a party state's right to have waste generated within its borders disposed of at compact facilities, or at any noncompact facility made available to the region by an agreement entered into by the commission under article III, section h, subsection 6, is suspended, low-level radioactive waste generated within its borders by any person shall be disposed of at any such facility during the period of the suspension.~~

not

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations, and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this section shall be construed to require a party state to enter into any agreement with the United States nuclear regulatory commission.

e. Each party state shall provide to the commission any data and information the commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the commission.

f. If, notwithstanding the sovereign immunity provision in article VII, section f, subsection 1, and the indemnification provided for in article III, section p, article VI, section o, and article VII, section g, a party state incurs a cost as a result of an inadequate remedial action fund or an exhausted long-term care fund, or incurs a liability as a result of an action described in article VII, section f, subsection 1, and not described in article VII, section f, subsection 2, the cost or liability shall be the pro rata obligation of each party state and each state that has withdrawn from this compact or had its membership in this compact revoked. The commission shall determine each state's pro rata obligation in a fair and equitable manner based on the amount of low-level radioactive waste from each such state that has been or is

projected to be disposed of at the compact facility with respect to which the cost or liability to be shared was incurred. No state shall be obligated to pay the pro rata obligation of any other state.

The pro rata obligations provided for in this section do not result in the creation of state debt. Rather, the pro rata obligations are contractual obligations that shall be enforced by only the commission or an affected party state.

g. If the party states make payment pursuant to this section, the surcharge or fee provided for in article III, section j, shall be used to collect the funds necessary to reimburse the party states for those payments. The commission shall determine the time period over which reimbursement shall take place.

ARTICLE VI -- DEVELOPMENT, AND OPERATION, AND CLOSING
OF COMPACT FACILITIES

a. A party state may volunteer to become a host state, and the commission may designate that state as a host state upon a two-thirds-vote-of-its-members.

b. If not all regional compact facilities required by the regional management disposal plan are not developed pursuant to section a, or-upon-notification-that-an-existing-regional facility-will-be-closed, the commission may designate a host state.

c. Each-party After a state is designated as a host state by the commission, it is responsible for determining-possible facility-locations-within-its-borders the timely development and operation of the compact facility it is designated to host. The-selection-of-a-facility-site-shall-not-conflict with-applicable-federal-and-host-state-laws,-regulations,-and rules-not-inconsistent-with-this-compact-and-shall-be-based-on factors-including,-but-not-limited-to,-geological, environmental,-and-economic-viability-of-possible-facility locations. The development and operation of the compact facility shall not conflict with applicable federal and host state laws, rules, and regulations, provided that the laws, rules, and regulations of a host state and its political

subdivisions shall not prevent, nor shall they be applied so as to prevent, the host state's discharge of the obligation set forth in this section. The obligation set forth in this section is contingent upon the discharge by the commission of its obligation set forth in article III, section i, subsection 5.

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

d- e. Any party state designated as a host state may request the commission to relieve that state of the responsibility to serve as a host state. ~~The~~ Except as set forth in section d, the commission may relieve a party state of ~~this~~ its responsibility only upon a showing by the requesting party state that, based upon criteria established by the commission that are consistent with applicable federal criteria, no feasible potential regional compact facility site of-the-type-it-is-designated-to-host exists within its borders. A party state relieved of its host state responsibility shall repay to the commission any funds provided to that state by the commission for the development of a compact facility, and also shall pay to the commission the amount the commission determines is necessary to ensure that the commission and the other party states do not incur financial loss as a result of the state being relieved of its host state responsibility. Any funds so paid to the commission with respect to the financial loss of the other party states shall be distributed forthwith by the commission to the party states that would otherwise incur the loss. In addition, until the state relieved of its responsibility is again designated as a host state and a compact facility located in that state begins operating, it shall annually pay

to the commission, for deposit in the remedial action fund, an amount the commission determines is fair and equitable in light of the fact the state has been relieved of the responsibility to host a compact facility, but continues to enjoy the benefits of being a member of this compact.

e.--After-a-state-is-designated-a-host-state-by-the commission,-it-is-responsible-for-the-timely-development-and operation-of-a-regional-facility-

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

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

f- h. To the extent permitted by federal and state law, a host state shall regulate and license any compact facility within its borders and ensure the extended long-term care of that compact facility.

g.--The-commission-may-designate-a-party-state-as-a-host state-while-a-regional-facility-is-in-operation-if-the

~~commission determines that an additional regional facility is or may be required to meet the needs of the region. The commission shall make this designation following the procedures established under article IV.~~

~~h. Designation of a host state is for a period of twenty years or the life of the regional facility which is established under that designation, whichever is longer. Upon request of a host state, the commission may modify the period of its designation.~~

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

i. j. A host state may shall establish a fee system for of fees to be collected from the users of any regional compact facility within its borders. The fee system, and the costs paid through the system, shall be reasonable and equitable. The fee system shall be subject to the commission's approval. This The fee system shall provide the host state with sufficient revenue to cover any pay costs associated with the compact facility, including, but not limited to the planning, siting, licensure, operation, decommissioning, extended care, and long-term liability, associated with such facilities closing, long-term care, debt service, legal costs, local impact assistance, and local financial incentives. This fee system may also include reasonable revenue beyond the costs incurred for the host state, subject to approval by the commission. A host state shall submit an annual financial audit of the operation of the regional facility to the

commission. The fee system also shall be used to collect the surcharge provided in article III, section j, subsection 2. The fee system may shall include incentives for source reduction and may shall be based on the hazard of the low-level radioactive waste as well as the volume.

j. k. A host state shall ensure that a regional compact facility located within its borders which that is permanently closed is properly decommissioned cared for so as to ensure protection of air, land, and water resources and the health and safety of all people who may be affected by the facility. A host state shall also provide for the care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured.

k. A host state intending to close a regional facility located within its borders shall notify the commission in writing of its intention and the reasons. Notification shall be given to the commission at least five years prior to the intended date of closure.

1. The development of subsequent compact facilities shall be as follows:

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

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

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

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

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

If a host state fails to take any of these actions within the specified time, all low-level radioactive waste generated by a person within that state shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, section h, subsection 6, until the action is taken. Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the affirmative. A host state that fails to take any of these actions within the specified time has failed to fulfill its obligations as a host state and is subject to the provisions of this section, and article VIII, section d.

3. Within fourteen years after a compact facility begins operating, the state designated to host the next compact facility shall have obtained a license from the responsible licensing authority to construct and operate the compact facility the state has been designated to host. If the license is not obtained within the specified time, all low-level radioactive waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, section h, subsection 6, until the license is obtained. The state designated to host the next compact facility shall have failed in its obligations as a host state and shall be subject to section d, and article VIII, section d. In addition, at the sole option of the host state of the then operating compact facility, all low-level radioactive waste generated by any person within any party state that has not fully discharged its obligations under section i, shall be denied access to the then operating compact facility, and to a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, until the license is obtained. Denial of access may be rescinded by the commission, with the

member from the host state of the then operating compact facility voting in the affirmative.

4. If twenty years after a compact facility begins operating, the next compact facility is not ready to begin operating, the state designated to host the next compact facility shall have failed in its obligation as a host state and shall be subject to section d, and article VIII, section d. If at the time the capacity of the then operating compact facility has been reached, or twenty years after the facility began operating, whichever occurs first, the next compact facility is not ready to begin operating, the host state of the then operating compact facility, without the consent of any other party state or the commission, may continue to operate the facility until a compact facility in the next host state is ready to begin operating. During any such period of continued operation of a compact facility, all low-level radioactive waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility and to a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6. In addition, during such period, at the sole option of the host state of the then operating compact facility, all low-level radioactive waste generated by any person within any party state that has not fully discharged its obligations under section i, shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, section h, subsection 6. Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the affirmative. The provisions of this subsection shall not apply if their application is inconsistent with an agreement between the host state of the then operating compact facility and the commission as authorized in section i, or inconsistent with section p or q.

5. During any period that access is denied for low-level radioactive waste disposal pursuant to section 1, subsection 2, 3, or 4, the party state designated to host the next compact disposal facility shall pay to the host state of the then operating compact facility an amount the commission determines is reasonably necessary to ensure that the host state, or an agency or political subdivision thereof, does not incur financial loss as a result of the denial of access.

6. The commission may modify any of the requirements contained in section 1, subsections 2 and 3, if it finds that circumstances have changed so that the requirements are unworkable or unnecessarily rigid or no longer serve to ensure the timely development of a compact facility. The commission may adopt such a finding by a two-thirds vote, with the member from the host state of the then operating compact facility voting in the affirmative.

m. This section compact shall not prevent an emergency closing of a regional compact facility by a host state to protect its air, land, and water resources and the health and safety of its citizens all people who may be affected by the compact facility. However, a host state which that has an emergency closing of a regional compact facility shall notify the commission in writing within three working days of its action and shall, within thirty working days of its action, demonstrate justification for the closing.

~~i. If a regional facility closes before an additional or new facility becomes operational, waste generated within the region may be shipped temporarily to any location agreed on by the commission until a regional facility is operational.~~

~~m. A party state which is designated as a host state by the commission and fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the commission.~~

n. A party state that has fully discharged its obligations under section i shall not again be designated a host state of a compact facility without its consent until each party state has been designated to host a compact facility and has fully

discharged its obligations under section i, or has been relieved under section e, of its responsibility to serve as a host state.

o. Each host state of a compact facility shall establish a long-term care fund to pay for monitoring, security, maintenance, and repair of the facility after it is permanently closed. The expenses of administering the long-term care fund shall be paid out of the fund. The fee system established by the host state that establishes a long-term care fund shall be used to collect moneys in amounts that are adequate to pay for all long-term care of the compact facility. The moneys shall be deposited into the long-term care fund. Except where the matter is resolved through arbitration, the amount to be collected through the fee system for deposit into the fund shall be determined through an agreement between the commission and the host state establishing the fund. Not less than three years, nor more than five years, before the compact facility it is designated to host is scheduled to begin operating, the host state shall propose to the commission the amount to be collected through the fee system for deposit into the fund. If, one hundred eighty days after such proposal is made to the commission, the host state and the commission have not agreed, either the commission or the host state may require the matter to be decided through binding arbitration. The method of administration of the fund shall be determined by the host state establishing the long-term care fund, provided that moneys in the fund shall be used only for the purposes set forth in this section, and shall be invested in accordance with the standards applicable to trustees under the laws of the host state establishing the fund. If, after a compact facility is closed, the commission determines the long-term care fund established with respect to that compact facility is not adequate to pay for all long-term care for that compact facility, the commission shall collect and pay over to the host state of the closed compact facility, for deposit into the long-term care fund, an amount determined by the

commission to be necessary to make the amount in the fund adequate to pay for all long-term care of the compact facility. If a long-term care fund is exhausted and long-term care expenses for the compact facility with respect to which the fund was created have been reasonably incurred by the host state of the compact facility, those expenses are a liability with respect to which generators shall provide indemnification as provided in article VII, section g. Generators that provide indemnification shall have contribution rights as provided in article VII, section g.

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

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

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

2. The host state shall physically segregate low-level radioactive waste disposed of at the compact facility after

this compact is dissolved from low-level radioactive waste disposed of at the compact facility before this compact is dissolved.

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

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

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

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

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

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

3. Any liability for damages to persons, property, or the environment incurred by a party state, or employee of that state while acting within the scope of employment, resulting from the development, construction, operation, regulation, closing, or long-term care of a compact facility, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, or other matter arising from this compact. The agreement also shall require generators to indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending an action for such damages. This indemnification shall not extend to liability based on any of the following:

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

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

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

The agreement shall provide that the indemnification obligation of generators shall be joint and several, except that the indemnification obligation of the party states with respect to their activities as generators of low-level radioactive waste shall not be joint and several, but instead shall be prorated according to the amount of waste that each state had disposed of at the compact facility giving rise to the liability. Such proration shall be calculated as of the date of the event giving rise to the liability. The agreement shall be in a form approved by the commission with the member

from the host state of any then operating compact facility voting in the affirmative. Among generators there shall be rights of contribution based on equitable principles, and generators shall have rights of contribution against another person responsible for such damages under common law, statute, rule, or regulation, provided that a party state that through its own activities did not generate any low-level radioactive waste disposed of at the compact facility giving rise to the liability, an employee of such a party state, and the commission shall not have a contribution obligation. The commission may waive the requirement that the party state sign and file such an indemnification agreement as a condition to being able to dispose of low-level radioactive waste generated as a result of the party state's activities. Such a waiver shall not relieve a party state of the indemnification obligation imposed by article VII, section g.

ARTICLE VII -- OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

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

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

3. Prohibits any storage generator from storing or treatment-of-waste-by-the-generator treating, on its own premises, low-level radioactive waste generated by it within the region;

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

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

6. Affects the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the secretary of the United States department of energy or successor agencies or federal research and development activities as defined described in 42 U.S.C. § 2051 2021; or

7. ~~Affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders or affects the rights and powers of any party state or its political subdivisions to tax or impose fees on the waste managed at any facility within its border.~~

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

9. ~~Alters or limits liability of transporters of waste, owners, and operators of sites for their acts, omissions, conduct, or relationships in accordance with applicable laws.~~ Limits, expands, or otherwise affects the authority of a state to regulate low-level radioactive waste classified by any agency of the United States government as below regulatory concern or otherwise exempt from federal regulation.

b. ~~For purposes of this compact, all state laws or parts of laws in conflict~~ If a court of the United States finally determines that a law of a party state conflicts with this compact ~~are hereby superseded, this compact shall prevail to the extent of the conflict. The commission shall not commence an action seeking such a judicial determination unless commencement of the action is approved by a two-thirds vote of the membership of the commission.~~

c. ~~No~~ Except as authorized by this compact, no law, rule, or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

d. Except as provided in article III, section m, and section f of this article, no provision of this compact shall be construed to eliminate or reduce in any way the liability or responsibility, whether arising under common law, statute, rule, or regulation, of any person for penalties, fines, or damages to persons, property, or the environment resulting from the development, construction, operation, closing, or long-term care of a compact facility, or a noncompact facility made available to the region by an agreement entered into by

the commission pursuant to article III, section h, subsection 6, or other matter arising from this compact. The provisions of this compact shall not alter otherwise applicable laws relating to compensation of employees for workplace injuries.

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

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

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

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

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

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

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

g. If in an action described in section f, subsection 1, and not described in section f, subsection 2, it is determined that, notwithstanding section f, subsection 1, a party state, or employee of that state who acted within the scope of employment, is liable for damages or has liability for other matters arising under this compact as described in article VI, section s, subsection 3, the generators who caused waste to be placed at the compact facility with respect to which the liability was incurred shall indemnify the party state or employee against that liability. Those generators also shall indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending against any such action. The indemnification obligation of generators under this section shall be joint and several, except that the indemnification obligation of party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste each state has disposed of at the compact facility giving rise to the liability. Among generators, there shall be rights of contribution based upon equitable principles, and generators shall have rights of contribution against another person responsible for damages under common law, statute, rule, or regulation. A party state that through its own activities did not generate low-level radioactive waste disposed of at the compact facility giving rise to the liability, an employee of a party state, and the commission shall have no contribution obligation under this section. This section shall not be construed as a waiver of the sovereign immunity provided for in section f, subsection 1.

h. The sovereign immunity of a party state provided for in section f, subsection 1, shall not be extended to a private contractor assigned responsibilities as authorized in article VI, section g.

ARTICLE VIII -- ELIGIBLE PARTIES, WITHDRAWAL,

REVOCATION, SUSPENSION OF ACCESS, ENTRY INTO FORCE, AND
TERMINATION

~~a. Eligible parties to this compact are the states of Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Virginia, and Wisconsin. Eligibility terminates on July 1, 1984.~~

~~b. a. Any state not eligible for membership in the compact may petition the commission for eligibility to be eligible for membership in the compact. The commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the commission, including the affirmative vote of all the member from each host states state in which a compact facility is operating or being developed or constructed. Any state becoming eligible upon the approval of the commission becomes a member of the compact in the same manner as any state eligible for membership at the time this compact enters into force when the state enacts this compact into law and pays the eligibility fee established by the commission.~~

~~c. An eligible state becomes a party state when the state enacts the compact into law and pays the membership fee required in article III, section j, subsection 1.~~

~~d. b. The commission is formed upon the appointment of commission members and the tender of the membership fee payable to the commission by three party states. The governor of the first state to enact this compact shall convene the initial meeting of the commission. The commission shall cause legislation to be introduced in the congress which grants the consent of the congress to this compact, and shall take action necessary to organize the commission and implement the provisions of this compact.~~

~~e. c. Any A party state that has fully discharged its obligations under article VI, section i, or has been relieved under article VI, section e, of its responsibilities to serve~~

as a host state, may withdraw from this compact by repealing the authorizing legislation but no withdrawal may take effect until five years after the governor of the withdrawing state gives notice in writing of the withdrawal to the commission and to the governor of each party state and by receiving the unanimous consent of the commission. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal takes effect on the date specified in the commission resolution consenting to withdrawal. Any host state which grants a disposal permit for waste generated in a withdrawing state shall void the permit when the withdrawal of that state is effective. All legal rights of the withdrawn state established under this compact, including, but not limited to, the right to have low-level radioactive waste generated within its borders disposed of at compact facilities, cease upon the effective date of withdrawal, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in section e continue until they are fulfilled.

f. d. Any party state which that fails to comply with the terms of this compact or fails to fulfill its obligations may have its privileges reasonable financial penalties imposed against it, may have the right to have low-level radioactive waste generated within its borders disposed of at compact facilities, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, suspended, or may have its membership in the compact revoked by the commission in accordance with article III, section h, subsection 6 a two-thirds vote of the commission, provided that the membership of the party state designated to host the next compact facility shall not be revoked unless the member from the host state of a then operating compact facility votes in the affirmative. Revocation takes effect one year from on the date the affected party state receives written notice from the commission of its action specified in the resolution revoking the party state's membership. All legal rights of the affected revoked party

state established under this compact, including, but not limited to, the right to have low-level radioactive waste generated within its borders disposed of at compact facilities, cease upon the effective date of revocation, but any legal obligations of that party state arising prior to revocation under this compact, including, but not limited to, those set forth in section e continue until they are fulfilled. The chairperson of the commission shall transmit written notice of a revocation of a party state's membership in the compact, suspension of a party state's low-level radioactive waste disposal rights, or imposition of financial penalties immediately following the vote of the commission to the governor of the affected party state, all other governors of all the other party states, and the congress of the United States.

e. A party state that withdraws from this compact or has its membership in the compact revoked before it has fully discharged its obligations under article VI forthwith shall repay to the commission the portion of the funds provided to that state by the commission for the development, construction, operation, closing, or long-term care of a compact facility that the commission determines is fair and equitable, taking into consideration the period of time the compact facility located in that host state was in operation and the amount of low-level radioactive waste disposed of at the compact facility. If at any time after a compact facility begins operating, a party state withdraws from the compact or has its membership revoked, the withdrawing or revoked party state shall be obligated forthwith to pay to the commission, the amount the commission determines would have been paid under the fee system established by the host state of the compact facility, to dispose of at the compact facility the estimated volume of low-level radioactive waste generated in the withdrawing or revoked party state that would have been disposed of at the compact facility from the time of withdrawal or revocation until the time the compact facility is closed. Any funds so paid to the commission shall be

distributed by the commission to the persons who would have been entitled to receive the funds had they originally been paid to dispose of low-level radioactive waste at the facility. Any person receiving funds from the commission shall apply the funds to the purposes to which they would have been applied had they originally been paid to dispose of low-level radioactive waste at the compact facility. In addition, a withdrawing or revoked party state forthwith shall pay to the commission an amount the commission determines to be necessary to cover all other costs and damages incurred by the commission and the remaining party states as a result of the withdrawal or revocation. The intention of this section is to eliminate a decrease in revenue resulting from withdrawal of a party state or revocation of a party state's membership, to eliminate financial harm to the remaining party states, and to create an incentive for party states to continue as members of the compact and to fulfill their obligations. This section shall be construed and applied so as to effectuate this intention.

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

g. This compact becomes effective July 17, 1987, or at any date subsequent to July 17, 1987 upon enactment by at least three eligible states and consent to this compact by the congress. However, article IX, section b shall not take effect until the congress has by law consented to this compact. The congress shall have an opportunity to withdraw such consent every five years. Failure of the congress to affirmatively withdraw its consent has the effect of renewing consent for an additional five-year period. The consent given to this compact by the congress shall extend to any future

admittance of new party states under sections b and e of this article and to the power of the region commission to ban regulate the shipment and disposal of waste from the region and disposal of naturally occurring and accelerator-produced radioactive material pursuant to article III this compact. Amendments to this compact are effective when enacted by all party states and, if necessary, consented to by the congress. To the extent required by the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. § 2021(d)(4)(d), every five years after this compact has taken effect, the congress by law may withdraw its consent.

h. The withdrawal of a party state from this compact under section e of this article, the suspension of low-level radioactive waste disposal rights, the termination of a party state's designation as a host state, or the revocation of a state's membership in this compact under section f of this article does not affect the applicability of this compact to the remaining party states.

i. A state which has been designated by the commission to be a host state has ninety days from receipt by the governor of written notice of designation to withdraw from the compact without any right to receive refund of any funds already paid pursuant to this compact, and without any further payment. Withdrawal becomes effective immediately upon notice as provided in section e. A designated host state which withdraws from the compact after ninety days and prior to fulfilling its obligations shall be assessed a sum the commission determines to be necessary to cover the costs borne by the commission and remaining party states as a result of that withdrawal. This compact may be dissolved and the obligations arising under this compact may be terminated only as follows:

1. Through unanimous agreement of all party states expressed in duly enacted legislation; or

2. Through withdrawal of consent to this compact by the congress under article I, section 10, of the United States Constitution, in which case dissolution shall take place one

hundred twenty days after the effective date of the withdrawal of consent.

Unless explicitly abrogated by the state legislation dissolving this compact, or if dissolution results from withdrawal of congressional consent, the limitations on the investment and use of long-term care funds in article VI, section o and section q, subsection 4, the contractual obligations in article V, section f, the indemnification obligations and contribution rights in article VI, sections o and s, and article VII, section g, and the operation rights indemnification and hold-harmless obligations in article VI, section q, shall remain in force notwithstanding dissolution of this compact.

ARTICLE IX -- PENALTIES AND ENFORCEMENT

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

~~b. Unless otherwise authorized by the commission pursuant to article III, section h after January 17, 1986, it is a violation of this compact:~~

~~1. For any person to deposit at a regional facility waste not generated within the region;~~

~~2. For any regional facility to accept waste not generated within the region;~~

~~3. For any person to export from the region waste which is generated within the region; or~~

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

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

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

c. d. Each party state acknowledges that the receipt by transport into a host state of low-level radioactive waste

packaged or transported in violation of applicable laws, rules, and regulations may result in the imposition of sanctions by the host state which may include reasonable financial penalties assessed against any generator, transporter, or collector responsible for the violation, or suspension or revocation of the violator's right of access to the compact facility in the host state by a generator, transporter, or collector responsible for the violation.

d. e. Each party state has the right to seek legal recourse against any a party state which acts in violation of this compact.

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

ARTICLE X -- SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared finally determined by a court of competent jurisdiction to be contrary to the constitution of any a participating state or of the United States or the applicability application thereof to any government, agency, a person, or circumstance is held invalid, the validity of the remainder of this compact to that person or circumstance and the applicability thereof of the entire compact to any government, agency, other person, or circumstance shall not be affected thereby. If any a provision of this compact shall be held contrary to the constitution of any a state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. If any provision of this compact imposing a financial obligation upon a party state, or a state that has withdrawn from this compact or had its membership in this compact revoked, is finally determined by a court of competent jurisdiction to be

unenforceable due to the state's constitutional limitations on its ability to pay the obligation, then that state shall use its best efforts to obtain an appropriation to pay the obligation, and, if the state is a party state, its right to have low-level radioactive waste generated within its borders disposed of at compact facilities, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, shall be suspended until the appropriation is obtained.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2219, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 4, 1996

TERRY E. BRANSTAD
Governor