

The Low-Level Radioactive Waste Policy Act

§ 2021b. Definitions

For purposes of sections 2021b to 2021j of this title:

(1) Agreement State

The term "agreement State" means a State that—

(A) has entered into an agreement with the Nuclear Regulatory Commission under section 2021 of this title; and

(B) has authority to regulate the disposal of low-level radioactive waste under such agreement.

(2) Allocation

The term "allocation" means the assignment of a specific amount of low-level radioactive waste disposal capacity to a commercial nuclear power reactor for which access is required to be provided by sited States subject to the conditions specified under sections 2021b to 2021j of this title.

(3) Commercial nuclear power reactor

The term "commercial nuclear power reactor" means any unit of a civilian light-water moderated utilization facility required to be licensed under section 2133 or 2134(b) of this title.

(4) Compact

The term "compact" means a compact entered into by two or more States pursuant to sections 2021b to 2021j of this title.

(5) Compact commission

The term "compact commission" means the regional commission, committee, or board established in a compact to administer such compact.

(6) Compact region

The term "compact region" means the area consisting of all States that are members of a compact.

(7) Disposal

The term "disposal" means the permanent isolation of low-level radioactive waste pursuant to the requirements established by the Nuclear Regulatory Commission under applicable laws, or by an agreement State if such isolation occurs in such agreement State.

(8) Generate

The term "generate", when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(9) Low-level radioactive waste

The term "low-level radioactive waste" means radioactive material that—

(A) is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section 2014(e)(2) of this title); and

(B) the Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph (A), classifies as low-level radioactive waste.

(10) Non-sited compact region

The term "non-sited compact region" means any compact region that is not a sited compact region.

(11) Regional disposal facility

The term "regional disposal facility" means a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated under a compact.

(12) Secretary

The term "Secretary" means the Secretary of Energy.

(13) Sited compact region

The term "sited compact region" means a compact region in which there is located one of the regional disposal facilities at Barnwell, in the State of South Carolina; Richland, in the State of Washington; or Beatty, in the State of Nevada.

(14) State

The term "State" means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub.L. 96-573, § 2, as added Pub.L. 99-240, Title I, § 102, Jan. 15, 1986, 99 Stat. 1842.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1986 Acts. House Report No. 99-314(Parts I and II), see 1985 U.S. Code Cong. and Adm. News, p. 2975.

Codifications

Section was not enacted as part of the Atomic Energy Act of 1954 which comprises this chapter, but as part of the Low-Level Radioactive Waste Policy Act.

Prior Provisions

A prior section 2021b, Pub.L. 96-573, § 2, Dec. 22, 1980, 94 Stat. 3347, which related to definitions respecting low-level radioactive waste policy as used in former sections 2021b to 2021d of this title, was repealed by Pub.L. 99-240, Title I, § 102, Jan. 15, 1986, 99 Stat. 1842.

Short Title

1986 Acts. Section 101 of Title I of Pub.L. 99-240 provided that: "This Title

[enacting sections 2021b to 2021j of this title, repealing former sections 2021b to 2021d of this title, enacting a provision set out as a note under this section, and repealing a provision set out as a note under this section] may be cited as the 'Low Level Radioactive Waste Policy Amendments Act of 1985'."

Section 1 of Pub.L. 96-573 as added by Pub. L. 99-240, Title 1, § 102, Jan. 15, 1986, 99 Stat. 1842, provided that: "This Act [enacting sections 2021b to 2021j of this title] may be cited as the 'Low-Level Radioactive Waste Policy Act'."

A prior section 1 of Pub.L. 96-573, which provided that Pub.L. 96-573, enacting former sections 2021b to 2021d of this title, be cited as the "Low-Level Radioactive Waste Policy Act", was repealed by Pub.L. 99-240, Title I, § 102, Jan. 15, 1986, 99 Stat. 1842.

LIBRARY REFERENCES**Administrative Law**

Unusual volumes allocation petition procedures, see 10 C.F.R. § 730.1 et seq.

American Digest System

Cooperation between state and United States. See States ¶4.19.

Environmental protection; nuclear projects and radioactivity, see Health and Environment ¶25. 5(7).

Encyclopedias

Federal and state cooperation, see C.J.S. States § 28.

Federal environmental regulations in general, see C.J.S. Health and Environment § 61 et seq.

Particular subjects of state environmental regulation, see C.J.S. Health and Environment § 129.

Law Reviews

Interstate waste: A key issue in resolving the national hazardous waste capacity crisis. B.J. Wynne, III and Terri Hamby, 32 S.Tex.L.Rev. 601 (1991).

Never ending story: Low-level waste and the exclusionary authority of noncompacting states. L. David Condon, 30 Nat. Resources J. 65 (1990).

State control of Great Lakes water diversion. J. David Prince, 16 Wm. Mitchell L.Rev. 107 (1990).

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k[add key number].

States cases: 360k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Constitutionality 1
Jurisdiction 2

Mich. v. U.S., W.D.Mich1991, 773 F.Supp. 997, affirmed 994 F.2d 1197.

1. Constitutionality

Implementation of federal Low Level Radioactive Waste Policy Act of 1985, which mandates responsibility of states in regard to disposal of low level radioactive waste, was legitimate exercise of federal commerce clause regulatory authority, and did not violate Michigan's state sovereignty; there was ample evidence that Michigan's senators and representatives participated in floor debate and even urged passage of this legislation. State of

2. Jurisdiction

District court lacked jurisdiction over claim by unincorporated nonprofit citizens organization and four of its members that Nuclear Regulatory Commission (NRC) performance standards for low-level radioactive waste conflicted with provisions of LLRW Amendments, which was merely claim for enforcement of statute even though organization attempted to cast it as constitutional claim, Concerned Citizens of Nebraska (CCN) v. U.S. Nuclear Regulatory Com'n (NRC), C.A.8 (Neb.) 1992, 970 F.2d 421.

§ 2021c. Disposal of low-level radioactive waste

(a) State responsibilities

(1) Each State shall be responsible for providing, either by itself or in cooperation with other States, for the disposal of—

(A) low-level radioactive waste generated within the State (other than by the Federal Government) that consists of or contains class A, B, or C radioactive waste as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983;

(B) low-level radioactive waste described in subparagraph (A) that is generated by the Federal Government except such waste that is—

(i) owned or generated by the Department of Energy;

(ii) owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy; or

(iii) owned or generated as a result of any research, development, testing, or production of any atomic weapon; and

(C) low-level radioactive waste described in subparagraphs (A) and (B) that is generated outside of the State and accepted for disposal in accordance with sections¹ 2021e or 2021f of this title.

(2) No regional disposal facility may be required to accept for disposal any material—

(A) that is not low-level radioactive waste as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983, or

(B) identified under the Formerly Utilized Sites Remedial Action Program.

Nothing in this paragraph shall be deemed to prohibit a State, subject to the provisions of its compact, or a compact region from accepting for disposal any material identified in subparagraph (A) or (B).

(b) Federal Government responsibilities

(1) The Federal Government shall be responsible for the disposal of—

(A) low-level radioactive waste owned or generated by the Department of Energy;

(B) low-level radioactive waste owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy;

(C) low-level radioactive waste owned or generated by the Federal Government as a result of any research, development, testing, or production of any atomic weapon; and

(D) any other low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.

(2) All radioactive waste designated a Federal responsibility pursuant to subparagraph (b)(1)(D) that results from activities licensed by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, [42 U.S.C.A § 2011 et seq.], shall be disposed of in a facility licensed by the Nuclear Regulatory Commission that the Commission determines is adequate to protect the public health and safety.

(3) Not later than 12 months after January 15, 1986, the Secretary shall submit to the Congress a comprehensive report setting forth the recommendations of the Secretary for ensuring the safe disposal of all radioactive waste designated a Federal responsibility pursuant to subparagraph (b)(1)(D). Such report shall include—

(A) an identification of the radioactive waste involved, including the source of such waste, and the volume, concentration, and other relevant characteristics of such waste;

(B) an identification of the Federal and non-Federal options for disposal of such radioactive waste;

(C) a description of the actions proposed to ensure the safe disposal of such radioactive waste;

(D) a description of the projected costs of undertaking such actions;

(E) an identification of the options for ensuring that the beneficiaries of the activities resulting in the generation of such radioactive wastes bear all reasonable costs of disposing of such wastes; and

(F) an identification of any statutory authority required for disposal of such waste.

(4) The Secretary may not dispose of any radioactive waste designated a Federal responsibility pursuant to paragraph (b)(1)(D) that becomes a Federal responsibility for the first time pursuant to such paragraph until ninety days after the report prepared pursuant to paragraph (3) has been submitted to the Congress.

(Pub.L. 96-573, § 3, as added Pub.L. 99-240, Title 1, § 102, Jan. 15, 1986, 99 Stat. 1843.)

¹So in original. Probably should be “section”.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports as meaning the date of enactment of 1986 Acts. House Report No. Pub.L. 99-240 as the probable intent of 99-314(Parts I and II), see 1985 U.S. Congress. Code Cong. and Adm. News, p. 2975.

Codifications

References in Text

The Atomic Energy Act of 1954, as amended, referred to in subsec. (b)(2), is Act Aug. 30, 1954, c. 1073, 68 Stat. 921, as amended, which is classified generally to chapter 23 (section 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

January 15, 1986, referred to in subsec. (b)(3), was in the original “the date of enactment of this Act” and was translated

Section was not enacted as part of the Atomic Energy Act of 1954 which comprises this chapter but as part of the Low-Level Radioactive Waste Policy Act.

Prior Provisions

A prior section 2021c, Pub.L. 96-573, § 3, Dec. 22, 1980, 94 Stat. 3347, which related to the application of low-level radioactive compact, was repealed by Pub.L. 99-240, Title I, § 102, Jan. 15, 1986, 99 Stat. 1842. See section 2021d of this title.

LIBRARY REFERENCES

Administrative Law

Emergency access to facilities, see 10 C.F.R. § 62.1 et seq.

American Digest System

Cooperation between state and United States, see States ¶4.19.

Environmental protection; nuclear projects and radioactivity, see Health and Environment ¶25.5(7).

Encyclopedias

Federal and state cooperation, see C.J.S. States § 28.

Federal environmental regulations in general, see C.J.S. Health and Environment § 61 et seq.

Particular subjects of state environmental regulation, see C.J.S. Health and Environment § 129.

Law Reviews

Never ending story: Low-level waste and the exclusionary authority of noncompact states. L. David Condon, 30 Nat. Resources J. 65 (1990).

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k[add key number]

States cases: 360k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Mandatory nature of section 1

prises three sets of "incentives" for states to provide for disposal of waste generated within their borders; construing mandate as direct, independently enforceable command would upset usual constitutional balance of federal and state powers and the alternative construction is equally plausible, *New York v. U.S.*, U.S.N.Y. 1992, 112 S.Ct. 2408, 120 L.Ed.2d 120, on remand 978 F.2d. 705.

1. Mandatory nature of section

Low-Level Radioactive Waste Policy Act's mandate that each state "shall" be responsible for providing for disposal of waste is not congressional command to states independent of remainder of Act but, rather, construed as whole. Act com-

§ 2021d. Regional compacts for disposal of low-level radioactive waste

(a) In general**(1) Federal policy**

It is the policy of the Federal Government that the responsibilities of the States under section 2021c of this title for the disposal of low-level radioactive waste can be most safely and effectively managed on a regional basis.

(2) Interstate compacts

To carry out the policy set forth in paragraph (1), the States may enter into such compacts as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste.

(a) Applicability of Federal activities**(1) In general****(A) Activities of the Secretary**

Except as provided in subparagraph (B), no compact or action taken under a compact shall be applicable to the transportation, management, or disposal of any low-level radioactive waste designated in section 2021c(a)(1)(B)(i)-(iii) of this title.

(B) Federal low-level radioactive waste disposed of at non-Federal facilities

Low-level radioactive waste owned or generated by the Federal Government that is disposed of at a regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact shall be subject to the same conditions, regulations, requirements, fees, taxes, and surcharges imposed by the compact commission, and by the State in which such facility is located, in the same manner and to the same extent as any low-level radioactive waste not generated by the Federal Government.

(2) Federal low-level radioactive waste disposal facilities

Any low-level radioactive waste disposal facility established or operated exclusively for the disposal of low-level radioactive waste owned or generated by the Federal Government shall not be subject to any compact or any action taken under a compact.

(3) Effect of compacts on Federal law

Nothing contained in sections 2021b to 2021j of this title or any compact may be construed to confer any new authority on any compact commission or State—

(A) to regulate the packaging, generation, treatment, storage, disposal, or transportation of low-level radioactive waste in a manner incompatible with the regulations of the Nuclear Regulatory Commission or inconsistent with the regulations of the Department of Transportation;

(B) to regulate health, safety, or environmental hazards from source material, byproduct material, or special nuclear material;

(C) to inspect the Facilities of licensees of the Nuclear Regulatory Commission;

(D) to inspect security areas or operations at the site of the generation of any low-level radioactive waste by the

Federal Government, or to inspect classified information related to such areas or operations; or

(E) to require indemnification pursuant to the provisions of chapter 171 of Title 28 (commonly referred to as the Federal Tort Claims Act), or section 2210 of this title, whichever is applicable.

(4) Federal authority

Except as expressly provided in sections 2021b to 2021j of this title, nothing contained in sections 2021b to 2021j of this title or any compact may be construed to limit the applicability of any Federal law or to diminish or otherwise impair the jurisdiction of any Federal agency, or to alter, amend, or otherwise affect any Federal law governing the judicial review of any action taken pursuant to any compact.

(5) State authority preserved

Except as expressly provided in sections 2021b to 2021j of this title, nothing contained in sections 2021b to 2021j of this title expands, diminishes, or otherwise affects State law.

(c) Restricted use of regional disposal facilities

Any authority in a compact to restrict the use of the regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the compact region shall not take effect before each of the following occurs:

- (1) January 1, 1986; and
- (2) the Congress by law consents to the compact.

(d) Congressional review

Each compact shall provide that every 5 years after the compact has taken effect the Congress may by law withdraw its consent.

(Pub.L. 96-573, § 4, as added Pub.L. 99-240, Title I, § 102, Jan. 15, 1986, 99 Stat. 1845.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1986 Acts. House Report No. 99-314(Parts I and 11), see 1985 U.S. Code Cong. and Adm. News, p. 2975.

References in Text

The Federal Tort Claims Act, referred to in subsec.(b)(3)(E), is classified generally to section 1346(b) and chapter 171

Section 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

Codifications

Section was not enacted as part of the Atomic Energy Act of 1954 which comprises this chapter, but as part of the Low-Level Radioactive Waste Policy Act.

Prior Provisions

A prior section 202 Id. Pub.L. 96-573, § 4, Dec. 22, 1980, 94 Stat. 3348, which related to the policy of the Federal government concerning low-level radioactive waste disposal, implementation of that policy, and a report to Congress and the States to assist in carrying out the policy, was repealed by Pub.L. 99-240, Title I, § 102, Jan. 15, 1986, 99 Stat. 1842.

Appalachian States Low-Level Radioactive Waste Compact Consent Act

Pub.L. 100-319, May 19, 1988, 102 Stat. 471, provided that:

"Section 1. Short Title.

"This Act may be cited as the 'Appalachian States Low-Level Radioactive Waste Compact Consent Act'.

"Sec. 2. Congressional Finding.

The Congress finds that the compact set forth in Section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act [sections 2021b to 2021j of this title].

"Sec. 3. Conditions of Consent to Compact.

"The consent of the Congress to the compact set forth in section 5—

"(1) shall become effective on the date of the enactment of this Act [May 19, 1988].

"(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act [sections 2021b to 2021j of this title], and

"(3) is granted only for so long as the Appalachian States Low-Level Radioactive Waste Commission, advisory committees, and regional boards established in the compact comply with all the provision of such Act.

"Sec. 4. Congressional Review.

"The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act [May 19, 1988], and at such intervals thereafter as may be provided for in such compact.

"Sec. 5. Appalachian States Low-Level Radioactive Waste Compact.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(A)(2)) [subsec. (a)(2) of this section], the consent of Congress is given to the States of Pennsylvania, West Virginia, and any eligible States as de-

finied in Article 5(A) of the Appalachian States Low-Level Radioactive Waste Compact to enter into such compact. Such compact is substantially as follows:

"(For text, see 102 Stat. 471 to 482)."

Central Midwest Interstate Low-Level Radioactive Waste Compact Amendments Consent Act of 1994

Pub.L. 103-439, Nov. 2, 1994, 108 Stat. 4607, provided that:

"Section I. Short Title.

"The Act may be cited as the 'Central Midwest Interstate Low-Level Radioactive Waste Compact Amendments Consent Act of 1994'.

"Sec. 2. Conditions of Consent to Compact Amendments.

"The consent of the Congress to the compact amendments set forth in section 3—

"(1) shall become effective on the date of the enactment of this Act [Nov 2, 1994];

"(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.); and

"(3) is granted only for so long as the regional commission established in the amended compact complies with all of the provisions of such Act.

"Sec. 3. Consent of Congress to Compact Amendments.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress is hereby given to amendments made by the States of Illinois and Kentucky to the Central Midwest Interstate Low-Level Radioactive Waste Compact, which compact was consented to by the Congress in section 224 of the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act (Public Law 99—240; 42 U.S.C. 2021 note). The amendments to which such consent is given are substantially as follows:

"[For text, of amendments, see 108 Stat. 4607 to 4614]."

Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act

Pub.L. 99-240, Title II, Jan. 15, 1986, 99 Stat. 1859, provided that:

"Sec. 201. Short Title.

"This Title may be cited as the 'Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act'.

"Subtitle A – General Provisions

"Sec. 211. Congressional Finding.

"The Congress hereby finds that each of the compacts set forth in subtitle B is in furtherance of the Low-Level Radioactive Waste Policy Act [sections 2021b to 2021j of this title].

"Sec 212. Conditions of Consent to Compacts.

"The consent of the Congress to each of the compacts set forth in subtitle B—

"(1) shall become effective on the date of the enactment of this Act [Jan. 15, 1986]:

"(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, as amended [sections 2021b to 2021j of this title]; and

"(3) is granted only for so long as the regional commission, committee, or board established in the compact complies with all of the provisions of such Act.

"Sec. 213. Congressional Review.

"The Congress may alter, amend, or repeal this Act with respect to any compact set forth in subtitle B after the expiration of the 10-year period following the date of the enactment of this Act [Jan. 15, 1986], and at such intervals thereafter as may be provided in such compact.

"Subtitle B—Congressional Consent to Compacts

"Sec. 221. Northwest Interstate Compact on Low-Level Radioactive Waste Management.

"The consent of Congress is hereby given to the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming to enter into the Northwest Interstate Compact on Low-level Radioactive Waste Management, and to each and every part and article thereof. Such compact reads substantially as follows:

"[For text, see 99 Stat.1860 to 1863]

"Sec. 222. Central Interstate Low-Level Radioactive Waste Compact.

"The consent of Congress is hereby given to the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma to enter into the Central Interstate Low-Level

el Radioactive Waste Compact, and to each and every part and article thereof. Such compact reads substantially as follows:

"[For text, see 99 Stat. 1864 to 1871]

"Sec. 223. Southeast Interstate Low-Level Radioactive Waste Management Compact.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)) [subsec. (a)(2) of this section] the consent of the Congress is hereby given to the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia to enter into the Southeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

"[For text, see 99 Stat. 1871 to 1880; 103 Stat. 1289, 1290]

"Sec. 224. Central Midwest Interstate Low-Level Radioactive Waste Compact.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act(42 U.S.C.2021d(a)(2))[subsec. (a)(2) of this section], the consent of the Congress hereby is given to the States of Illinois and Kentucky to enter into the Central Midwest Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows:

"[For text, see 99 Stat. 1880 to 1892]

"Sec. 225. Midwest Interstate Low-Level Radioactive Waste Management Compact.

"The consent of Congress is hereby given to the States of Iowa, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin to enter into the Midwest Interstate Compact on Low-Level Radioactive Waste Management. Such compact is as follows:

"[For text, see 99 Stat. 1892 to 1902]

"Sec. 226. Rocky Mountain Low-Level Radioactive Waste Compact.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)) [subsec. (a)(2) of this section], the consent of the Congress hereby is given co the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming to enter into the Rocky Mountain Interstate Low-Level Ra-

Dioactive Waste Compact. Such compact is substantially as follows:

"[For text, see 99 Stat. 1907 to 1909]"

"Sec. 227. Northeast Interstate Low-Level Radioactive Waste Management Compact.

"In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act [subsec. (a)(2) of this section], the consent of the Congress is hereby given to the States of Connecticut, New Jersey, Delaware, and Maryland to enter into the Northeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

"[For text, see 99 Stat. 1910 to 1924]"

Southwestern Low-Level Radioactive Waste Disposal Compact Consent Act
Pub.L. 100-712, §§ 1-5, Nov. 23, 1988, 102 Stat. 4773, provided that:

"Sec. 1. Short title.

"This Act may be cited as the 'Southwestern Low-Level Radioactive Waste Disposal Compact Consent Act'.

"Sec. 2. Congressional finding.

"The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act [sections 2021b to 2021j of this title].

"Sec. 3. Conditions to consent to compact

"The consent of the Congress to the compact set forth in section 5—

"(1) shall become effective on the date of the enactment of this Act [November 23, 1988];

"(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act [sections 2021b to 2021j of this title]; and

"(3) is granted only for so long as the regional commission established in the compact complies with all of the provisions of such Act.

"Sec. 4. Congressional review.

"The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of enactment of this Act [November 23, 1988], and at such intervals thereafter as may be provided in such compact.

"Sec. 5. Southwestern Low-Level Radioactive Waste Compact.

"In accordance With section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)) [subsec. (a)(2) of this section], the consent of Congress is given to the states of Arizona, California, and any eligible states as defined in article VII the Southwestern Low-Level Radioactive Waste Disposal Compact, to enter into such compact. Such compact is substantially as follows.

"[For text of compact, see 102 Stat. 4773 to 4783]."

LIBRARY REFERENCES

American Digest System

Compacts between states, see States ¶ 6.

Environmental protection: nuclear projects and radioactivity, see Health and Environment ¶ 25.5(7).

Encyclopedias

Compacts and agreements between states, see C.J.S. States § 31.

Federal environmental regulations in general, see C.J.S. Health and Environment § 61 et seq.

Particular subjects of state environmental regulation, see C.J.S. Health and Environment § 129.

Law Reviews

Interstate waste: A key issue in resolving the national hazardous waste capacity crisis. B.J. Wynne, III and Terri Hamby, 32 S.Tex.L.Rev. 601 (1991).

Never ending story: Low-level waste and the exclusionary authority of noncompacting states, L. David Condon, 30 Nat. Resources J, 65 (1990).

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k[add key number].

States cases: 360k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Central Interstate Low-Level Radioactive Waste Commission 1
Time for judicial review 2

C.A.8 (Neb.) 1994, 26 F.3d 77, certiorari denied 115 S.Ct. 483.

1. Central Interstate Low-Level Radioactive Waste Commission

Under provision of Compact creating the Central Interstate Low-Level Radioactive Waste Commission, stating that 60-day limitation period for seeking judicial review of decision of the Commission applies to all actions by "[a]ny person or party state aggrieved by final decision of the commission," application of the limitation period was determined by nature of plaintiff's claim rather than by identity of defendant, and thus where essence of state's action against developer of proposed disposal site was challenge to the Commission's site selection, it was subject to the limitation period. State of Neb. ex rel. Nelson v. Central Interstate Low-Level Radioactive Waste Com'n,

2. Time for judicial review

Even if letter from chairperson of Central Interstate Low-Level Radioactive Waste Commission and notice to Nebraska legislature from proposed developer of disposal site did not constitute binding decision of the Commission so as to commence running of 60-day period for obtaining judicial review as to site selection, the content of the documents established that the Commission had made a final site selection; copies of chairperson's letter were sent to all the other Commissioners and there was no evidence that any of them objected to its contents, which stated that the Commission had directed developer to file notice of final selection. State of Neb. ex rel. Nelson v. Central Interstate Low-Level Radioactive Waste Com'n. C.A.8 (Neb.) 1994, 26 F.3d 77. certiorari denied 115 S.Ct. 483.

§ 2021e. Limited availability of certain regional disposal facilities during transition and licensing periods

(a) Availability of disposal capacity

(1) Pressurized water and boiling water reactors

During the seven-year period beginning January 1, 1986 and ending December 31, 1992, subject to the provisions of subsections (b) through (g) of this section, each State in which there is located a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section shall make disposal capacity available for low-level radioactive waste generated by pressurized water and boiling water commercial nuclear power reactors in accordance with the allocations established in subsection (c) of this section.

(2) Other sources of low-level radioactive waste

During the seven-year period beginning January 1, 1986 and ending December 31, 1992, subject to the provisions of subsections (b) through (g) of this section, each State in which there is located a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section shall make disposal capacity available for low-level radioactive waste generated by any source not referred to in paragraph (1).

(3) Allocation of disposal capacity

(A) During the seven-year period beginning January 1, 1986, and ending December 31, 1992, low-level radioactive waste generated within a sited compact region shall be accorded priority under this section in the allocation of available disposal capacity at a regional disposal facility referred to in paragraphs (1) through (3) or subsection (b) of this section and located in the sited compact region in which such waste is generated.

(B) Any State in which a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) of this section is located may, subject to the provisions of its compact, prohibit the disposal at such facility of low-level radioactive waste generated outside of the compact region if the disposal of such waste in any given calendar year, together with all other low-level radioactive waste disposed of at such facility within that same calendar year, would result in that facility disposing of a total annual volume of low-level radioactive waste in excess of 100 per centum of the average annual volume for such facility designated in subsection (b) of this section: *Provided, however,* That in the event that all three States in which regional disposal Facilities referred to in paragraphs (1) through (3) of subsection (b) of this section act to prohibit the disposal of low-level radioactive waste pursuant to this subparagraph, each such State shall, in accordance with any applicable procedures of its compact, permit, as necessary, the disposal of additional quantities of such waste in increments of 10 per centum of the average annual volume for each such facility designated in subsection (b) of this section.

(C) Nothing in this paragraph shall require any disposal facility or State referred to in paragraphs (1) through (3) of subsection (b) of this section to accept for disposal low-level radioactive waste in excess of the total amounts designated in subsection (b) of this section.

(4) Cessation of operation of low-level radioactive waste disposal facility

No provision of this section shall be construed to obligate any State referred to in paragraphs (1) through (3) of subsection (b) of this section to accept low-level radioactive waste from any source in the event that the regional disposal facility located in such State ceases operations.

(b) Limitations

The availability of disposal capacity for low-level radioactive waste from any source shall be subject to the following limitations:

(1) Barnwell, South Carolina

The State of South Carolina, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Barnwell, South Carolina to a total of 8,400,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 1,200,000 cubic feet of low-level radioactive waste).

(2) Richland, Washington

The State of Washington, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Richland, Washington to a total of 9,800,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 1,400,000 cubic feet of low-level radioactive waste).

(3) Beatty, Nevada

The State of Nevada, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Beatty, Nevada to a total of 1,400,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 200,000 cubic feet of low-level radioactive waste).

(c) Commercial nuclear power reactor allocations

(1) Amount

Subject to the provisions of subsections (a) through (g) of this section each commercial nuclear power reactor shall upon request receive an allocation of low-level radioactive waste disposal capacity (in cubic feet) at the facilities referred to in subsection (b) of this section during the 4-year transition period beginning January 1, 1986, and ending December 31, 1989, and during the 3-year licensing period beginning January 1, 1990 and ending December 31, 1992, in an amount calculated by multiplying the appropriate number from the following table by the number of months remaining in the applicable period as determined under paragraph (2).

ReactorType	4-year Transition Period		3-year Licensing Period	
	In Sited Region	All Other Locations	In Sited Region	All Other Locations
PWR.....	1027	871	934	685
BWR.....	2300	1951	2091	1533

(2) Method of calculation

For purposes of calculating the aggregate amount of disposal capacity available to a commercial nuclear power reactor under this subsection, the number of months shall be computed beginning with the first month of the applicable period, or the sixteenth month after receipt of a full power operating license, whichever occurs later.

(3) Unused allocations

Any unused allocation under paragraph (1) received by a reactor during the transition period or the licensing period may be used at any time after such reactor receives its full power license or after the beginning of the pertinent period, whichever is later, but not in any event after December 31, 1992, or after commencement of operation of a regional disposal facility in the compact region or State in which such reactor is located, whichever occurs first.

(4) Transferability

Any commercial nuclear power reactor in a State or compact region that is in compliance with the requirements of subsection (e) of this section may assign any disposal capacity allocated to it under this subsection to any other person in each State or compact region. Such assignment may be for valuable consideration and shall be in writing, copies of which shall be filed at the affected compact commissions and States, along with the assignor's unconditional written waiver of the disposal capacity being assigned.

(5) Unusual volumes

(A) The Secretary may, upon petition by the owner or operator of any commercial nuclear power reactor, allocate to such reactor disposal capacity in excess of the amount calculated under paragraph (1) if the Secretary finds and states in writing his reasons for so finding that making additional capacity available for such reactor through this paragraph is required to permit unusual or unexpected operating, maintenance, repair or safety activities.

(B) The Secretary may not make allocations pursuant to subparagraph (A) that would result in the acceptance for disposal of more than 800,000 cubic feet of low-level radioactive waste or would result in the total of the allocations made pursuant to this subsection exceeding 11,900,000 cubic feet over the entire seven-year interim access period.

(6) Limitation

During the seven-year interim access period referred to in subsection (a) of this section, the disposal facilities referred to in subsection (b) of this section shall not be required to accept more than 11,900,000 cubic feet of low-level radioactive waste generated by commercial nuclear power reactors.

(d) Use of surcharge funds for milestone incentives; consequences of failure to meet disposal deadline**(1) Surcharges**

The disposal of any low-level radioactive waste under this section (other than low-level radioactive waste generated in a sited compact region) may be charged a surcharge by the State in which the applicable regional disposal facility is located, in addition to the fees and surcharges generally applicable for disposal of low-level radioactive waste in the regional disposal facility involved. Except as provided in subsection (e)(2) of this section, such surcharges shall not exceed—

(A) in 1986 and 1987, \$10 per cubic foot of low-level radioactive waste;

(B) in 1988 and 1989, \$20 per cubic foot of low-level radioactive waste; and

(C) in 1990, 1991, and 1992, \$40 per cubic foot of low-level radioactive waste.

(2) Milestone incentives**(A) Escrow account**

Twenty-five per centum of all surcharge fees received by a State pursuant to paragraph (1) during the seven-year period referred to in subsection (a) of this section shall be transferred on a monthly basis to an escrow account held by the Secretary. The Secretary shall deposit all funds received in a special escrow account. The funds so deposited shall not be the property of the United States. The Secretary shall act as trustee for such funds and shall invest them in interest-bearing United States Government Securities with the highest available yield. Such funds shall be held by the Secretary until—

(i) paid or repaid in accordance with subparagraph (B) or (C); or

(ii) paid to the State collecting such fees in accordance with subparagraph (F).

(B) Payments

(i) July 1, 1986.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning on January 15, 1986, and ending June 30, 1986, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(A) of this section is met by the State in which such waste originated.

(ii) January 1, 1988.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning July 1, 1986 and ending December 31, 1987, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(B) of this section is met by the State in which such waste originated (or its compact region, where applicable).

(iii) January 1, 1990.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1988 and ending December 31, 1989, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(C) of this section is met by the State in which such waste originated (or its compact region, where applicable).

(iv) The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992, and transferred to the Secretary under subparagraph¹ (A), shall be paid by the Secretary in accordance with subparagraph (D) if, by January 1, 1993, the State in which such waste originated (or its compact region, where applicable) is able to provide for the disposal of all low-level radioactive waste generated within such State or compact region.

(C) Failure to meet January 1, 1993 deadline

If, by January 1, 1993, a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region—

(i) each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, shall be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1993 as the generator or owner notifies the State that the waste is available for shipment; or

(ii) if such State elects not to take title to, take possession of, and assume liability for such waste, pursuant to clause (i), twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992 shall be repaid, with interest, to each generator from whom such surcharge was collected. Repayments made pursuant to this clause shall be made on a monthly basis, with the first such repayment beginning on February, 1, 1993, in an amount equal to one thirty-sixth of the total amount required to be repaid pursuant to this clause, and shall continue until the State (or, where applicable, compact region) in which such low-level radioactive waste is generated is able to provide for the disposal of all such waste generated within such State or compact region or until January 1, 1996, whichever is earlier.

If a State in which low-level radioactive waste is generated elects to take title to, take possession of, and assume liability for such waste pursuant to clause (i), such State shall be paid such amounts as are designated in subparagraph (B)(iv). If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated provides for the disposal of such waste at any time after January 1, 1993 and prior to January 1, 1996, such State (or, where applicable, compact region) shall be paid in accordance with subparagraph (D) a lump sum amount equal to twenty-five per centum of any amount collected by a State under paragraph (1): *Provided, however,* That such payment shall be adjusted to reflect the remaining number of months between January 1, 1993 and January 1, 1996 for which such State (or, where applicable, compact region) provides for the disposal of such waste. If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such

waste generated within such State or compact region by January 1, 1996, each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment.

(D) Recipients of payments

The payments described in subparagraphs (B) and (C) shall be paid within thirty days after the applicable date—

(i) if the State in which such waste originated is not a member of a compact region, to such State;

(ii) if the State in which such waste originated is a member of the compact region to the compact commission serving such State.

(E) Uses of payments

(i) Limitations

Any amount paid under subparagraphs (B) or (C) may only be used to—

(I) establish low-level radioactive waste disposal facilities;

(II) mitigate the impact of low-level radioactive waste disposal facilities on the host State;

(III) regulate low-level radioactive waste disposal facilities; or

(IV) ensure the decommissioning, closure, and care during the period of institutional control of low-level radioactive waste disposal facilities.

(ii) Reports

(I) Recipient

Any State or compact commission receiving a payment under subparagraphs (B) or (C) shall, on December 31 of each year in which any such funds are expended, submit a report to the Department of Energy itemizing any such expenditures.

(II) Department of Energy

Not later than six months after receiving the reports under subclause (I), the Secretary shall submit to the Congress a summary of all such reports that shall include an assessment of the compliance of each such State or compact commission with the requirements of clause (i).

(F) Payment to States

Any amount collected by a State under paragraph (1) that is placed in escrow under subparagraph (A) and not paid to a State or compact commission under subparagraphs (B) and (C) or not repaid to a generator under subparagraph (C) shall be paid from such escrow account to such State collecting, such payment under paragraph (1). Such payment shall be made not later than 30 days after a determination of ineligibility for a refund is made.

(G) Penalty surcharges

No rebate shall be made under this subsection of any surcharge or penalty surcharge paid during a period of noncompliance with subsection (e)(1) of this section.

(e) Requirements for access to regional disposal facilities**(1) Requirements for non-sited compact regions and non-member States**

Each non-sited compact region, or State that is not a member of a compact region that does not have an operating disposal facility, shall comply with the following requirements:

(A) By July 1, 1986, each such non-member State shall ratify compact legislation or, by the enactment of legislation or the certification of the Governor, indicate its intent to develop a site for the location of a low-level radioactive waste disposal facility within such State.

(B) By January 1, 1988

(i) each non-sited compact region shall identify the State in which its low-level radioactive waste disposal facility is to be located, or shall have selected the developer for such facility and the site to be developed, and each compact region or the State in which its low-level radioactive waste disposal facility is to be located shall develop a siting plan for such facility providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application and shall delegate authority to implement such plan;

(ii) each non-member State shall develop a siting-plan providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application for a low-level radioactive waste disposal facility and shall delegate authority to implement such plan; and

(iii) The siting plan required pursuant to this paragraph shall include a description of the optimum way to attain operation of the low-level radioactive waste disposal facility involved, within the time period specified in sections 2021b to 2021j of this title. Such plan shall include a description of the objectives and a sequence of deadlines for all entities required to take action to implement such plan, including, to the extent practicable, an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning facility operation. Such plan shall also identify, to the extent practicable, the process for (1) screening for broad siting areas; (2) identifying and evaluating specific candidate sites; and (3) characterizing the preferred site(s), completing all necessary environmental assessments, and preparing a license application for submission to the Nuclear Regulatory Commission or an Agreement State.

(C) By January 1, 1990

(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State; or

(ii) the Governor (or, for any State without a Governor, the chief executive officer) of any State that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists.

(D) By January 1, 1992, a complete application (as determined by the Nuclear Regulatory Commission or the appro-

pirate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State.

(E) The Nuclear Regulatory Commission shall transmit any certification received under subparagraph (C) to the Congress and publish any such certification in the Federal Register.

(F) Any State may, subject to all applicable provisions, if any, of any applicable compact, enter into an agreement with the compact commission of a region in which a regional disposal facility is located to provide for the disposal of all low-level radioactive waste generated within such State, and, by virtue of such agreement, may, with the approval of the State in which the regional disposal facility is located, be deemed to be in compliance with subparagraphs (A), (B), (C), and (D).

(2) Penalties for failure to comply

(A) By July 1, 1986

If any State fails to comply with subparagraph (1)(A)—

(i) any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning July 1, 1986, and ending December 31, 1986, be charged 2 times the surcharge otherwise applicable under subsection (d) of this section; and

(ii) on or after January 1, 1987, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section.

(B) By January 1, 1988

If any non-sited compact region or non-member State fails to comply with paragraph (1)(B)—

(i) any generator of low-level radioactive waste within such region or non-member State shall

(I) for the period beginning January 1, 1988, and ending June 30, 1988, be charged 2 times the surcharge otherwise applicable under subsection (d) of this section; and

(II) for the period beginning July 1, 1988, and ending December 31, 1988, be charged 4 times the

surcharge otherwise applicable under subsection (d) of this section; and

(ii) on or after January 1, 1989, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section.

(C) By January 1, 1990

If any non-sited compact region or non-member State fails to comply with paragraph (1)(C), any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b) of this section.

(D) By January 1, 1992

If any non-sited compact region or non-member State fails to comply with paragraph (1)(D), any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning January 1, 1992 and ending upon the filing of the application described in paragraph (1)(D), be charged 3 times the surcharge otherwise applicable under subsection (d) of this section.

(3) Denial of access

No denial or suspension of access to a regional disposal facility under paragraph (2) may be based on the source, class, or type of low-level radioactive waste.

(4) Restoration of suspended access; penalties for failure to comply

Any access to a regional disposal facility that is suspended under paragraph (2) shall be restored after the non-sited compact region or non-member State involved complies with such requirement. Any payment of surcharge penalties pursuant to paragraph (2) for failure to comply with the requirements of subsection (e) of this section shall be terminated after the non-sited compact region or non-member State involved complies with such requirements.

(f) Monitoring of compliance and denial of access to non-Federal facilities for noncompliance; information requirements of certain States; proprietary information

(1) Administration

Each State and compact commission in which a regional disposal Facility referred to in paragraphs (1) through (3) of subsection (b) of this section is located shall have authority—

(A) to monitor compliance with the limitations, allocations, and requirements established in this section; and

(B) to deny access to any non-Federal low-level radioactive waste disposal facilities within its borders to any low-level radioactive waste that—

(i) is in excess of the limitations or allocations established in this section; or

(ii) is not required to be accepted due to the failure of a compact region or State to comply with the requirements of subsection (e)(1) of this section.

(2) Availability of information during interim access period

(A) The States of South Carolina, Washington, and Nevada may require information from disposal facility operators, generators, intermediate handlers, and the Department of Energy that is reasonably necessary to monitor the availability of disposal capacity, the use and assignment of allocations and the applicability of surcharges.

(B) The States of South Carolina, Washington, and Nevada may, after written notice followed by a period of at least 30 days, deny access to disposal capacity to any generator or intermediate handler who fails to provide information under subparagraph (A).

(C) Proprietary information.—

(i) Trade secrets, proprietary and other confidential information shall be made available to a State under this subsection upon request only if such State—

(I) consents in writing to restrict the dissemination of the information to those who are directly involved in monitoring under subparagraph (A) and who have a need to know;

(II) accepts liability for wrongful disclosure; and

(III) demonstrates that such information is essential to such monitoring.

(ii) The United States shall not be liable for the wrongful disclosure by any individual or State of any information provided to such individual or State under this subsection.

(iii) Whenever any individual or State has obtained possession of information under this subsection, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State shall be subject to the same provisions of law with respect to the disclosure of such

information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives, trade secrets, proprietary information, or other confidential information under sections 2021b to 2021j of this title may be required to disclose such information under State law.

(g) Nondiscrimination

Except as provided in subsections (b) through (e) of this section, low-level radioactive waste disposed of under this section shall be subject without discrimination to all applicable legal requirements of the compact region and State in which the disposal facility is located as if such low-level radioactive waste were generated within such compact region.

(Pub.L. 96-573, § 5, as added Pub.L. 99-240, Title I, § 102, Jan. 15, 1986, 99 Stat. 1846.)

¹ So in original. Probably should be "subparagraph".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports prises this chapter but as part of the Low-
1986 Acts. House Report No. Level Radioactive Waste Policy Act.
 99-914(Parts I and II), see 1985 U.S.
 Code Cong. and Adm. News, p. 2975.

Codifications

Section was not enacted as part of the Atomic Energy Act of 1954 which com-

LIBRARY REFERENCES

American Digest System

Compacts between states, see States ¶ 6.
 Environmental protection; nuclear projects and radioactivity, see Health and Environment ¶ 25.5(7).

Encyclopedias

Compacts and agreements between states, see C.J.S. States § 31.
 Federal environmental regulations in general, see C.J.S. Health and Environment § 61 et seq.
 Particular subjects of state environmental regulation, see C.J.S. Health and Environment § 129.

Law Reviews

Never ending story: Low-level waste and the exclusionary authority of noncompacting states, L. David Condon, 30 Nat. Resources J. 65 (1990).

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k[add key number].
 States cases: 360k[add key number].
 See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Compliance requirements 3 **Jurisdiction** 4
Constitutionality 1

Reporting and compliance requirements

3

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1. Constitutionality

Low-Level Radioactive Waste Policy Act's "take title" provision, offering states choice of either accepting ownership of waste generated within their borders or regulating according to instructions of Congress, neither of which options could be constitutionally imposed as freestanding requirement, was outside Congress' enumerated powers and infringed upon state sovereignty in violation of Tenth Amendment, *New York v. U.S.*, USNY. 1992, 112 S.Ct. 2408, 120 L.Ed.2d 120, on remand 978 F.2d 705.

2. Surcharges

Under statute entitling state in which radioactive waste produced by nuclear power generators originated, or state's compact region, to recover surcharge deposited with Department of Energy if, by January 1, 1993, state or compact is able to provide for the disposal of all low-level radioactive waste generated therein, "disposal" encompasses contract for storage at waste facility elsewhere and does not require state or compact to develop its

own storage facilities by the target date *Central Midwest Interstate Low-Level Radioactive Waste Com'n v. O'Leary* C.D.I11.1994. 858 F.Supp. 114.

3. Reporting and compliance requirements

After it distributes the rebate, the federal government continues to oversee the compact commissions by regulating their use of the funds with strict recording and compliance requirements to ensure that advancement of specified federal policies *US v Peery*, C.A.8 (Neb.) 1992, 977 F.2d 1230, certiorari denied 113 S.Ct. 1354, 122 L.Ed.2d 734.

4. Jurisdiction

Officials who administered operation of low-level radioactive waste disposal sites in Nevada, Washington, and South Carolina were not subject to personal jurisdiction in Michigan; officials would not reasonably expect to be haled into court in Michigan based solely on their compliance with federal law and their communications with state officials in Michigan concerning disposal of radioactive waste. *Michigan Coalition of Radioactive; Material Users, Inc. v. Griepentrog*, C.A.6 (Mich.) 1992, 954 F.2d 1174.

§ 2021f. Emergency access

(a) In general

The Nuclear Regulatory Commission may grant emergency access to any regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste, if necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security. The procedure for granting emergency access shall be as provided in this section.

(b) Request for emergency access

Any generator of low-level radioactive waste, or any Governor (or, for any State without a Governor, the chief executive officer of the State) on behalf of any generator or generators located in his or her State, may request that the Nuclear Regulatory Commission grant emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste. Any such request shall contain any information and certifications the Nuclear Regulatory Commission may require.

(b) Determination of Nuclear Regulatory Commission**(1) Required determination**

Not later than 45 days after receiving a request under subsection (b) of this section, the Nuclear Regulatory Commission shall determine whether—

(A) emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security; and

(B) the threat cannot be mitigated by any alternative consistent with the public health and safety, including storage of low-level radioactive waste at the site of generation or in a storage facility obtaining access to a disposal facility by voluntary agreement, purchasing disposal capacity available for assignment pursuant to section 2021e(t.) of this title or ceasing activities that generate low-level radioactive waste.

(2) Required notification

If the Nuclear Regulatory Commission makes the determinations required in paragraph (1) in the affirmative, it shall designate an appropriate non-Federal disposal facility or facilities, and notify the Governor (or chief executive officer) of the State in which such facility is located and the appropriate compact commission that emergency access is required. Such notification shall specifically describe the low-level radioactive waste as to source, physical and radioactive characteristics, and the minimum volume and duration, not exceeding 180 days, necessary to alleviate the immediate threat to public health and safety or the common defense and security. The Nuclear Regulatory Commission shall also notify the Governor (or chief executive officer) of the State in which the low-level radioactive waste requiring emergency access was generated that emergency access has been granted and that, pursuant to subsection (e) of this section, no extension of emergency access may be granted absent diligent State action during the period of the initial grant.

(d) Temporary emergency access

Upon determining that emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security, the Nuclear Regulatory Commission may at its discretion grant temporary emergency access, pending its determination whether the threat could be mitigated by any alternative consistent with the public health and safety. In granting access under this subsection, the Nuclear Regulatory Commission shall provide the same notification and information required under subsection (c) of this section. Absent a determination that no alter-

native consistent with the public health and safety would mitigate the threat, access granted under this subsection shall expire 45 days after the granting of temporary emergency access under this subsection.

(e) Extension of emergency access

The Nuclear Regulatory Commission may grant one extension of emergency access beyond the period provided in subsection (c) of this section, if it determines that emergency access continues to be necessary because of an immediate and serious threat to the public health and safety or the common defense and security that cannot be mitigated by any alternative consistent with the public health and safety, and that the generator of low-level radioactive waste granted emergency access and the State in which such low-level radioactive waste was generated have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access. Any extension granted under this subsection shall be for the minimum volume and duration the Nuclear Regulatory Commission finds necessary to eliminate the immediate threat to public health and safety or the common defense and security, and shall not in any event exceed 180 days.

f) Reciprocal access

Any compact region or State not a member of a compact that provides emergency access to non-Federal disposal facilities within its borders shall be entitled to reciprocal access to any subsequently operating non-Federal disposal facility that serves the State or compact region in which low-level radioactive waste granted emergency access was generated. The compact commission or State having authority to approve importation of low-level radioactive waste to the disposal facility to which emergency access was granted shall designate for reciprocal access an equal volume of low-level radioactive waste having similar characteristics to that provided emergency access.

(g) Approval by compact commission

Any grant of access under this section shall be submitted to the compact commission for the region in which the designated disposal facility is located for such approval as may be required under the terms of its compact. Any such compact commission shall act to approve emergency access not later than 15 days after receiving notification from the Nuclear Regulatory Commission, or reciprocal access not later than 15 days after receiving notification from the appropriate authority under subsection (f) of this section.

(h) Limitations

No State shall be required to provide emergency or reciprocal access to any regional disposal facility within its borders for low-level radioactive waste not meeting criteria established by the license or license agreement of such facility, or in excess of the approved capacity of such facility, or to delay the closing of any such facility pursuant to plans established before receiving a request for emergency or reciprocal access. No State shall, during any 12-month period, be required to provide emergency or reciprocal access to any regional disposal facility within its borders For more than 20 percent of the total volume of low-level radioactive waste accepted for disposal at such facility during the previous calendar year.

(i) Volume reduction and surcharges

Any low-level radioactive waste delivered for disposal under this section shall be reduced in volume to the maximum extent practicable and shall be subject to surcharges established in sections 2021b to 2021j of this title.

(j) Deduction from allocation

Any volume of low-level radioactive waste granted emergency or reciprocal access under this section, it generated by any commercial nuclear power reactor, shall be deducted from the low-level radioactive waste volume allocable under section 2021e(c) of this title.

(k) Agreement States

Any agreement under section 2021 of this title shall not be applicable to the determinations of the Nuclear Regulatory Commission under this section.

(Pub. L. 96-573, § 6, as added Pub.L. 99-240, Title I, § 102, Jan. 15, 1986, 99 Stat. 1855.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1986 Acts. House Report No. 99-314(Parts I and II), see 1985 U.S. Code Cong. and Adm. News. p. 2975. prises this chapter but as part of the Low-Level Radioactive Waste Policy Act.

Codifications

Section was not enacted as part of the Atomic Energy Act of 1954 which com-

LIBRARY REFERENCES**Administrative Law**

Non-federal and regional low-level waste disposal facilities, see 10 C.F.R. § 62.1 et seq.

American Digest System

Compacts between states. see States ¶6.

Corporations and special instrumentalities controlled by United States; powers, liabilities, and activities, see United States §53(6.1).

Environmental protection; nuclear projects and radioactivity, see Health and Environment §25.5(7).

Encyclopedias

Compacts and agreements between states, see C.J.S. States § 31.

Federal environmental regulations in general, see C.J.S. Health and Environment § 61 et seq.

Government owned or controlled corporations in general, see C.J.S. United States § 65.

Particular subjects of state environmental regulation, see C.J.S. Health and Environment § 129.

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k[add key number].

States cases: 360k[add key number].

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2021g. Responsibilities of Department of Energy

(a) Financial and technical assistance

The Secretary shall, to the extent provided in appropriations Act, provide to those compact regions, host States, and nonmember States determined¹ by the Secretary to require assistance for purposes of carrying out sections 2021b to 2021j of this title—

(1) continuing technical assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title. Such technical assistance shall include, but not be limited to, technical guidelines for site selection, alternative technologies for low-level radioactive waste disposal, volume reduction options, management techniques to reduce low-level waste generation, transportation practices for shipment of low-level wastes, health and safety considerations in the storage, shipment and disposal of low-level radioactive wastes, and establishment of a computerized database to monitor the management of low-level radioactive wastes; and

(2) through the end of fiscal year 1993, financial assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title.

(b) Reports

The Secretary shall prepare and submit to the Congress on an annual basis a report which (1) summarizes the progress of low-level waste disposal siting and licensing activities within each compact region, (2) reviews the available volume reduction technologies, their applications, effectiveness, and costs on a per unit volume basis, (3) reviews interim storage facility requirements, costs, and usage, (4)

summarizes transportation requirements for such wastes on an inter- and intra-regional basis, (5) summarizes the data on the total amount of low-level waste shipped for disposal on a yearly basis, the proportion of such wastes subjected to volume reduction, the average volume reduction attained, and the proportion of wastes stored on an interim basis, and (6) projects the interim storage and final disposal volume requirements anticipated for the following year, on a regional basis.

(Pub.L. 96-573, § 7, as added Pub.L. 99-240, Title I, § 102, Jan. 15, 1986, 99 Stat. 1858.)

¹So in original.. Probably should be "determined".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1986 Acts. House Report No. 99-914(Parts I and II), see 1985 U.S. Code Cong. and Adm. News. p. 2975. prises this chapter but as part of the Low-Level Radioactive Waste Policy Act.

Codifications

Section was not enacted as part of the Atomic Energy Act of 1954 which com-

LIBRARY REFERENCES

American Digest System

Environmental protection; nuclear projects and radioactivity, see Health and Environment ¶25.5(7).

Particular executive departments, see United States ¶33.

Encyclopedias

Federal environmental regulations in general, see C.J.S. Health and Environment § 61 et seq.

Particular executive departments, see C.J.S. United States § 33.

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k[add key number].

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2021h. Alternative disposal methods

(a) Methods other than shallow land burial

Not later than 12 months after January 15, 1986, the Nuclear Regulatory Commission shall, in consultation with the States and other interested persons, identify methods for the disposal of low-level radioactive waste other than shallow land burial, and establish and publish technical guidance regarding licensing of facilities that use such methods.

(b) Technical information and requirements

Not later than 24 months after January 15, 1986, the Commission shall, in consultation with the States and other interested persons,

identify and publish all relevant technical information regarding the methods identified pursuant to subsection (a) of this section that a State or compact must provide to the Commission in order to pursue such methods, together with the technical requirements that such facilities must meet, in the judgment of the Commission, if pursued as an alternative to shallow land burial. Such technical information and requirements shall include, but need not be limited to, site suitability, site design, facility operation, disposal site closure, and environmental monitoring, as necessary to meet the performance objectives established by the Commission for a licensed low-level radioactive waste disposal facility. The Commission shall specify and publish such requirements in a manner and form deemed appropriate by the Commission.

Pub-L. 96-573. § 8, as added Pub. 99-240, Title I, § 102, Jan 15, 1986, 99 Stat. 1858.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1986 Acts. House Report No. 99-314(Parts I and II), see 1985 U.S. Code Cong. and Adm. News. p. 2975. prises this chapter but as part of the Low-Level Radioactive Waste Policy Act.

Codifications

Section was not enacted as part of the Atomic Energy Act of 1954 which com-

LIBRARY REFERENCES

American Digest System

Compacts between states. see States ¶ 6.

Environmental protection; nuclear projects and radioactivity, see Health and Environment ¶25.5(7).

Encyclopedias

Compacts and agreements between states, see C.J.S. States § 31.

Federal environmental regulations in general, see C.J.S. Health and Environment § 61 et seq.

Particular subjects of state environmental regulation, see C.J.S. Health and Environment § 129.

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k[add key number].

States cases: 360k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2021i. Licensing review and approval

In order to ensure the timely development of new low-level radioactive waste disposal facilities, the Nuclear Regulatory Commission or, as appropriate, agreement States, shall consider an application for a disposal facility license in accordance with the laws applicable to such application, except that the Commission and the agreement state¹ shall—

(1) not later than 12 months after January 15, 1986, establish procedures and develop the technical capability for processing applications for such licenses;

(2) to the extent practicable, complete all activities associated with the review and processing of any application for such a license (except for public hearings) no later than 15 months after the date of receipt of such application; and

(3) to the extent practicable, consolidate all required technical and environmental reviews and public hearings.

(Pub.L. 96-573, § 9, as added Pub.L. 99-240, Title I, § 102, Jan. 5, 1986, 99 Stat. 1859.)

¹ So in original. Probably should be "State".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1986 Acts. House Report No. 99-314(Parts I and II), see 1985 U.S. Code Cong. and Adm. News. p. 2975. prises this chapter but as part of the Low-Level Radioactive Waste Policy Act.

Codifications

Section was not enacted as part of the Atomic Energy Act of 1954 which com-

LIBRARY REFERENCES

American Digest System

Corporations and special instrumentalities controlled by United States; powers, liabilities, and activities, see United States §53(6.1).

Environmental protection; nuclear projects and radioactivity, see Health and Environment §25.5(7).

Encyclopedias

Federal environmental regulations in general, see C.J.S. Health and Environment § 61 et seq.

Government owned or controlled corporations in general, see C.J.S. United States § 65.

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k[add key number].

States cases: 393[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 2021j. Radioactive waste below regulatory concern

(a) Standards and procedures

Not later than 6 months after January 1, 1986, the Commission shall establish standards and procedures, pursuant to existing authority, and develop the technical capability for considering and acting upon petitions to exempt specific radioactive waste streams from regulation by the Commission due to the presence of radionuclides in such waste streams in sufficiently low concentrations or quantities as to be below regulatory concern.

(b) Submission of supporting information

The standards and procedures established by the Commission pursuant to subsection (a) of this section shall set forth all information required to be submitted to the Commission by licensees in support of such petitions, including, but not limited to—

(1) a detailed description of the waste materials, including their origin, chemical composition, physical state, volume, and mass; and

(2) the concentration or contamination levels, half-lives, and identities of the radionuclides present.

Such standards and procedures shall provide that, upon receipt of a petition to exempt a specific radioactive waste stream from regulation by the Commission, the Commission shall determine in an expeditious manner whether the concentration or quantity of radionuclides present in such waste stream requires regulation by the Commission in order to protect the public health and safety. Where the Commission determines that regulation of a radioactive waste stream is not necessary to protect the public health and safety, the Commission shall take such steps as may be necessary, in an expeditious manner, to exempt the disposal of such radioactive waste from regulation by the Commission.

(Pub.L. 96-573, § 10, as added Pub.L. 99-240, Title 1, § 102, Jan. 15, 1986, 99 Stat. 1859.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1986 Acts. House Report No. 99-314(Parts I and II), see 1985 U.S. Code Cong. and Adm. News. p. 2975. prises this chapter but as part of the Low-Level Radioactive Waste Policy Act.

Codifications

Section was not enacted as part of the Atomic Energy Act of 1954 which com-

LIBRARY REFERENCES**American Digest System**

Corporations and special instrumentalities controlled by United States; powers, liabilities, and activities, see United States ¶53(6.1).

Environmental protection; nuclear projects and radioactivity, see Health and Environment ¶25.5(7).

Encyclopedias

Federal environmental regulations in general, see C.J.S. Health and Environment § 61 et seq.

Government owned or controlled corporations in general, see C.J.S. United States § 65.

WESTLAW ELECTRONIC RESEARCH

Health and environment cases: 199k[add key number].

States cases: 393[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.