

Approved March 3, 1987

HOUSE ENERGY AND NATURAL RESOURCES
HOUSE FEDERAL AND STATE AFFAIRS
SENATE ENERGY AND NATURAL RESOURCES

MINUTES OF THE JOINT COMMITTEE ON SENATE ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Ron Fox at
Chairperson

8:00 a.m./~~p.m.~~ on February 19, 1987 in room 313-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers, Legislative Research Department
Theresa Kiernan, Revisor of Statutes' Office
Betty Ellison, Secretary, House Energy and Natural Resources
Lynda Hutfles, Secretary, House Federal and State Affairs
Nancy Jones, Secretary, Senate Energy and Natural Resources

Conferees appearing before the committee:

Ramon Powers, Legislative Research Department
Lt. Governor Jack D. Walker
Raymond J. Peery, Executive Director, Central Interstate Low-Level
Radioactive Waste Compact Commission, Atlanta, GA

Staff gave a background report relative to waste disposal facilities, interstate compacts, and the Central States Low-Level Radioactive Waste Compact. (Attachment 1)

Lt. Governor Jack Walker, Secretary of Kansas Department of Health and Environment (KDHE), introduced Sharad Bhatia, Director of Division of Environment, and Harold Spiker, Chief of Environmental Surveillance and Planning for the Department. Dr. Walker gave an overview of KDHE's "white paper" on the Low-Level Radioactive Waste Compact. (A copy of the "white paper" may be found in the Legislative Research Department.)

Dr. Walker stressed that it was mandatory for the Legislature and the Governor to decide whether or not to remain in the Compact during this legislative session, because a site plan must be developed by the end of 1987. The site plan will require an appropriation of some \$500,000-\$750,000. It was not clear whether the developer, the state or the Compact would be obligated to pay this expense.

Ray Peery, Executive Director of the Central Interstate Low-Level Radioactive Waste Compact, explained to the committees the long process of Kansas entering into the Compact.

He commented that many of the questions currently being raised are not new, but have been asked during the past six years since the Compact was initiated. The negotiations between the states took approximately two years, followed by at least another year for the legislatures of the five states to adopt the Compact. Following that, the Compact was submitted to the Congress of the United States, which during the consent process, took up the issue of our Compact with the Compacts of the 1985 Amendments Act. During that six year span, all of the issues were discussed by many people. The 1985 Amendments Act was sponsored primarily by Senator Dole. More than six committees of both Houses of the U.S. Congress considered this legislation for over 2½ years. Numerous hearings were held in Washington and in select locations around the country. Everyone who had a remote interest in this legislation was given the opportunity to have input into the drafting of the 1985 Amendments Act and the legislation which ultimately came out.

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The National Governors Association, the National Conference of State Legislatures, industry groups, utility groups, National Sierra Club, Environmental Policy Institute, National Resource Defense Council, all testified in favor of the 1985 Amendments Act from the Compact concept. During that process, the issue of single state option also came up. It was well known at the time that the State of Texas had chosen the option of going it alone. They predicated their belief that they could exclude waste on a Texas Attorneys General opinion and there were Attorneys General from other states that said the opposite. The issue for single state option to allow exclusionary authority was brought up in the Energy Committee of the U.S. House of Representatives and was voted down. Therefore, there was no provision made in the 1985 Amendments Act to allow individual states to go it alone and have the same authority as the Compacts. One of the prime reasons in thinking this was that the Congress intended for this particular type of waste to be managed on a regional basis. The reasons were both environmental and economical.

The economics are very obvious--it would be much more cost effective to have one regional facility than a lot of facilities at the same cost. Environmentally, it is not sound because a lot of people in Congress could see hazardous waste facilities springing up around the country and not being properly regulated. The intent here is to insure that this does not happen with low-level radioactive waste. Instead, we would have a minimum number of facilities around the country that are properly developed and regulated. The Compact would be adding another regulatory system to these toxic facilities. The Compact initially selects a developer who meets the standards of criteria and a developer who would locate into the state and apply for a license application. It is the intent of this Compact that the individual host state would have the ultimate authority over the licensing of this type of facility. If a site is selected in a state and the site is not licensed by the host state, we start over again. The Compact cannot and will not demand that a particular site be licensed.

Mr. Peery discussed what the Compact is doing in regard to siting and licensing. There seem to be a lot of questions about what is happening in Arkansas and Nebraska, as well as what is happening in the Phase II Study. There was a draft of the Phase II Study out to the states for their review. The draft was not public at the time because it was not complete. There was no intent to hide that document, but the document will be coming out for public review and public hearings will be held to take comments and suggestions for changes. No site has been selected in this region. The Phase II document lists approximately 173 potential siting areas; that does not mean that you can license a facility in this area. This means that based upon the criteria of the licensing requirements on its face, Kansas has not been excluded. On closer examination, it may in fact be excluded. The Phase II study by necessity was very broad in nature.

The Phase III Study basically determines what any developer will have to do in licensing this type of facility. Specific on-site core borings and in-depth analysis of the geological study for that particular area will be required. Relative to the question of who is going to pay for the siting, Mr. Peery advised that the Compact also has to meet that requirement of the 1985 Amendments Act which states that by the end of this year we have to come up with a site. The developer will have to have a plan for the site and the developer will have to bear the cost of facility, not the state. All along, the intent of the Compact has been to minimize the extent of the cost to the individual states for this process. The view of the Commission has always been that the generator should bear the cost as much as possible. There is an initial \$25,000 fee which the states pay which basically

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is for the administrative functions of the Commission and that alone. Currently, we are looking at the possibility of having a joint funding venture with the developer. The developers have indicated to the Compact that the amount of waste generated by this region will not be economically feasible. The Compact has looked at the possibility and asked them to recommend how much they would anticipate to be off-set primarily for the environmental studies, analysis, etc. The Compact will consider these estimates. The Compact must decide on some other funding mechanisms. This matter has already been discussed with the generators and they will be assessed to pay for that particular type of work. Hospitals and academic institutions cannot really afford the potentially higher cost; hence some way of off-setting costs of \$200 per cubic foot and \$100 per cubic foot will not be cheap, but it is not astronomical. Perhaps to a utility or someone large, it is astronomical, but it would be impossible for a hospital or university to absorb.

The Commission has not excluded any type of waste disposal in this region. We have not precluded above ground disposal. The only thing we have precluded is pre-1979 shallow land burial. In the guidelines of 1961, the Nuclear Regulatory Commission has made it very clear that those are going to be minimum siting requirements no matter what type of facility you have--below ground, above ground, engineer, vaults, anything.

The process schedule is as follows:

Release proposals - - - - - February 1

Letters from potential developers - - - February 21
(Expect between 3 and 4 developers)

Proposals required back - - - - - April 1

Commission will release proposals to repositories for public review and hearings.

Selection in early June, if a proposal is accepted. We do not have to accept a proposal!

If a proposal is selected, by the end of this year we must do two things:

1. Name a host state.
2. Come up with a siting plan.

During 1988, the developer will be working with selected communities that have been identified as being potential sites for facilities. There will be a negotiation process between the developer, the Commission, and the state to determine who will take this type of facility and under what terms.

The Compact is now looking at one facility in the region as opposed to a number of facilities, based on the amount of waste you have. The Commission believes, given the studies over the last few years, that one regional facility is the most environmentally sound approach that can be taken and it would economically spread the cost so it would not be on one individual state.

The Commission has maintained its office out of the region so that no one state would have any more influence over the process than any other state. Mr. Peery felt that this Commission had been more fair and done more to meet its responsibilities than any other region had. He noted that the staff in Atlanta always remains accessible for questions or anything they can provide.

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Questions and answers related to Raymond Peery:

Senator Werts: If states start withdrawing, and we know of at least three states which have had bills introduced which would cause this to happen, at what point would the Compact fall apart?

Mr. Peery: It's hard to say at what point the other states decide that they can't go forward with the Compact. The question is so complex. If one state alone withdraws, say the State of Kansas, it is my personal belief that the bill in Arkansas will not be coming out of committee. The legislation in Nebraska is not a bill to get out of the Compact, it is a bill that says if they are selected as the host state, the legislature at that time will make a decision whether to stay in or get out. It is my belief that the bill will not be going anywhere. If one state should get out, I believe that the Compact would still make the decision to go forward with a four state Compact.

Rep. Fox: If we made the decision to get out of the Compact by say, June 1 of this year, would our fee assessment be the \$125,000 over the next five years or what you just said, that we also would be assessed for those additional fees that would be relative to the operation of the site, in your opinion?

Mr. Peery: There is a potential for that, but that is not resolved. That would have to be a decision of the Commission, whether or not to assess those fees. Legally, under the Compact, withdrawal would have to take place in five years. Therefore, if you were assessing fees on the generators in Arkansas during that five year period, you would continue to assess those fees on your generators.

Sen. Martin: Under 65-34A01, which is part of our Low-Level Radioactive Waste Compact statute, if withdrawal doesn't take place until five years later, after the Governor gives notice, what are the liabilities and how severe are they?

Mr. Peery: Speculation at this point is that over the next five years, we would probably assess between \$300,000 and \$400,000 per year, per utility.

Sen. Martin: So Kansas, with one utility, could be assessed additional fees of up to \$300,000. Are there appeal rights for us?

Mr. Peery: Yes, in the federal courts.

Sen. Martin: Under Article VI, which deals with other laws and regulations, it states that nothing in this Compact shall be construed to prohibit or otherwise restrict the management of waste on the site where it is generated if such is otherwise lawful. That seems to me to say that we could, unless it is otherwise unlawful, put the waste on site.

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- Mr. Peery: That provision was put in specifically with regard to current Nuclear Regulatory Commission regulations which allow for five year on-site storage. We cannot interfere with that particular allocation of NRC regulation.
- Sen. Martin: So those regulations would have to be abandoned.
- Mr. Peery: That is correct. That would relate only to storage. Any disposal at that site would still have to be licensed at that disposal facility and would have to meet the guidelines and licensing criteria.
- Sen. Kerr: If a state is selected as a host state, what sort of authority or latitude does the state have to dictate terms such as length of time, economic benefit, etc.?
- Mr. Peery: At this time, the first host state can probably write its own ticket with regard to specifying how long the state may want to host the facility, perhaps 20 years instead of 30 years, and "X" amount of waste. They could negotiate as much as they want in terms of economics between the developer and the state. The state that is first selected may do what the state of North Carolina has chosen to do--that is to go back to the Compact Commission and request that new language be added to tighten up the Compact to assure that no state would be able to drop out. North Carolina initially said, "There is no way we are going to do it--we are getting out of the Compact." The matter was discussed fully and they made the determination that they would go forward and host the facility. However, we are requesting that language be put in the Compact that prohibits other states from getting out.
- Rep. Roe: Regarding fairness of the Compact, isn't it unusual that Kansas, which is the lowest volume producer of waste in our Compact, would be selected as the host state?
- Mr. Peery: It is a very complex issue. The only thing I can say to you is that someone is going to be lowest and someone is going to be highest. I think the degrees of low and high in this region are pretty close together, compared to some other states.
- Rep. Roe: If we had a statewide ban on underground burial of low-level radioactive waste, do you think that would violate the rules of the Compact?
- Mr. Peery: I can't say. Personally, I would not like to see that bill passed. However, I think if that bill were to pass, it should pass quickly, so potential developers could operate under it.
- Rep. Roe: Following up on one of Senator Martin's questions relating to the Tennessee Valley Authority, it is my understanding that they operate under some exceptions.

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- Mr. Peery: You have to understand that the Tennessee Valley Authority tends to operate a little differently. They have some rules which are different from all others.
- Rep. Fox: Following up on Representative Roe's point--there have been exceptions made already, even though the Tennessee Valley Authority does operate under different rules from everyone else.
- Rep. Fry: In my area, we have what we call an abandoned salt mine. Could they be used for disposal without an environmental impact study? There are around \$105,000 people living on top of it, . . . aquifers, and all that. If we go down to deep cavity, is that engineered?
- Mr. Peery: The gentleman who makes that proposal . . . I can't comment on that because there is a chance that we would get that proposal and the proposal would be looked at on its merits or demerits. That is all I can say.
- Rep. Fry: If I understand you right, the engineered part . . . I don't believe you answered me on that.
- Mr. Peery: He maintains this is a totally different type of system than even engineered. It is a deep lying cavity, sunken off all to itself.
- Rep. Fry: Then it's different from burial or above ground disposal/storage?
- Mr. Peery: Yes, it is. I'm not sure I can get answers because I'm not sure NRC has the answers. As I said, it would be considered on its merits or demerits.
- Sen. Werts: It is my understanding that if the proposal were to go to this, the State of Kansas would have the final authority on approving a site.
- Mr. Peery: That is correct.
- Rep. Grotewiel: Is the state that is selected, which is a decision that the Compact makes, influenced by the proposals that are submitted by the developers, or does the Compact select the site and then look at proposals that are for that state?
- Mr. Peery: We look only at the proposals--we do not select the state.
- Rep. Grotewiel: So you look at all four proposals and pick essentially the state and the site at the same time?
- Mr. Peery: No, those are picked later. The proposals we get are going to be analyzed and chosen purely on technical merit. When I say technical merit, I'm talking about the design of the facility, the finance capabilities of the past history. There is only one proposal that is a potential proposal.

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Rep. Grotewiel: And once you have accepted one of those, how do you go about selecting the actual state and then the actual site?

Mr. Peery: The developer does that after they have had an opportunity to negotiate with the state and with the local community. The Compact terms do not specify the exact terms of licensing.

Rep. Grotewiel: Then you would say that the statutes that the state had selected would have some flexibility in determining what kind of storage?

Mr. Peery: To a degree. The NRC is required by the 1985 Act to come up with licensing requirements for alternative disposal acts. They are currently supposedly working with the states and with the Compacts to come up with a standard criteria. The NRC sets standard licensing authority on facilities.

Rep. Holmes: Originally there were six sites in the Unites States; three of them have been closed down due to shallow water. The Dames and Moore report that came out had some exclusionary areas. Why was shallow groundwater not one of those criteria? If it was, why were areas selected with only five feet of the surface and groundwater beneath?

Mr. Peery: The reports are not conclusive. The information that reports were based on was existing documentation of state geological maps and other published information.

Sen. Daniels: Would you explain why, if the site is in Oklahoma, it would be submitted to the NRC, rather than to the Compact or the host state?

Mr. Peery: The State of Oklahoma is the only state in this Compact that is not what is called an "agreement state." The reason for that is that Oklahoma has never seen the need to establish within the state system, an agency to deal with that. I suspect that if Oklahoma were selected, they would probably get their status very quickly so they would have a choice.

Rep. Webb: Due to the fact that they have picked six sites and three have been closed because of problems, I understand some of the sites we have do have some leaching. If there is no question how safe underground-shallow ground burial is, what is wrong with the theory of changing the NRC rules which take just five years-- as I understand it, they can go five years and ask for another five years and another, indefinitely. There will always be a low-level site at the nuclear power plant.

Mr. Peery: Most utilities do not store on site now. For environmental reasons, they would like to get the material off-site as quickly as possible. The three sites that were closed were built way-back-when. Under the regulations that apply today, those sites could not be

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built and the regulations today specifically address the problem encountered because they were geologically not sound areas. Most nuclear power plants require water and have to be near a very large water source, which you don't want anywhere near a low-level waste disposal because of the chance that there might be seepage. That's one reason alone that you do not want it at a nuclear power plant. From another perspective, the nuclear power industry is not in the business of waste disposal. We are not sure that they are best suited to dispose of these wastes. It is a better policy to have those who are in the business of disposal handling it.

Rep. Fox: Some general broad questions that will be coming as we move through this are:

1. Based on 1982 projections of waste, do you have any of those original waste projections based upon present waste? There is considerable concern by some members of the Compact relative to you not having those fully documented amounts of waste. At some point in time, you will have to face that.
2. The funding question isn't answered.
3. The question of prohibition of burial versus above ground is still very unclear.
4. The ultimate decision for selection of a site is made by the proposed host state. Is that not correct?

Mr. Perry: Yes, that is correct.

The meeting was adjourned at 9:30 a.m.

Date: Feb. 19, 1987

GUEST REGISTER
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GUEST REGISTER
HOUSE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

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MEMORANDUM

February 18, 1987

FROM: Kansas Legislative Research Department

RE: The Central Interstate Low-Level Radioactive Waste Compact

Definition

Low-level radioactive wastes are materials that have become contaminated by radioactive elements or radionuclides. Low-level radioactive wastes are usually defined primarily in terms of what they are not; for example, they do not include spent reactor fuel, wastes from the reprocessed reactor fuel, uranium mine and mill tailings (residue), or materials contaminated with specific levels of transuranic elements.*

High-level radioactive wastes contain greater concentrations of radioactive elements and long-lived radionuclides. Consequently, spent fuel, mill tailings, and transuranic wastes must be isolated much longer than low-level radioactive wastes. Spent fuel and wastes from reprocessing require shielding and cooling due to their intense levels of radioactivity and heat.

Low-level wastes require less shielding than high-level wastes and no cooling. The half-life, i.e., the time that it takes for a particular radioactive isotope to decay to one-half of its original activity, of most of the radionuclides in low-level radioactive wastes can be measured in days, weeks, or decades, rather than hundreds or thousands of years as in the case of high-level wastes; however, some concentrations of long-lived radionuclides may be present in low-level radioactive wastes. Since the half-life of radionuclides cannot be altered by chemical or physical processes, some low-level radioactive wastes will have to be contained and managed for extended periods of time.

Description

Low-level radioactive wastes are produced in a variety of forms including contaminated paper towels, plastic gloves and clothes, machinery parts, medical treatment materials, animal carcasses, organic and aqueous liquids, and sludges. Producers and generators of low-level waste include commercial power reactors, hospitals, research institutions, industry, and the federal government. It is estimated that commercial power reactors in 1983, produced 62 percent of the volume of low-level radioactive wastes created in that year; hospitals, clinics, and research institutions produced 11 percent; industry, 25 percent; and government, 2 percent. All states produce some radioactive wastes; however, ten states produce 73 percent of all of the wastes disposed of at the country's three commercial disposal sites in Nevada, Washington, and South Carolina. In 1985, 26,806,504 cubic feet of low-level

* A transuranic element has a higher atomic number than that of uranium.

radioactive waste were produced in the United States and disposed of at the three disposal sites. Kansas produced 1,695 cubic feet of waste in 1985.

Background

In 1979, the states of Nevada and Washington temporarily closed their commercial low-level radioactive waste disposal facilities, and South Carolina, the only other state with such a facility, restricted the amount of wastes it would accept. All three states announced, at that time, that they did not intend to continue accepting all of the nation's commercial low-level radioactive wastes. In response, Congress passed the Low-Level Radioactive Waste Policy Act in December of 1980 (P.L. 96-573) giving each state the responsibility for the disposal of commercial low-level radioactive wastes generated within its border. Congress further declared that low-level wastes could be most efficiently and safely managed on a regional basis and authorized states to enter into compacts to establish and operate regional disposal sites. These compacts, which Congress must approve, would allow these regional groups of states after January 1, 1986, to exclude wastes generated outside the compact region.

As the deadline for formation of compacts and the creation of low-level radioactive waste disposal facilities within the Compact regions drew closer and it was obvious that sufficient compact arrangements had not developed and no regional facilities were even contemplated, Congress finally acted. In December of 1985, Congress enacted the Low-Level Radioactive Waste Policy Amendments Act (P.L. 99-240) which established a new series of requirements for the states. The 1985 Act, the result of an agreement between the federal government and South Carolina, Washington, and Nevada, stipulated that the states would continue to temporarily accept low-level radioactive waste, but in reduced amounts. According to the Act those states that failed to reduce the volume of wastes transported to those sites would be subject to penalties. Seven interstate compacts received Congressional approval under P.L. 99-240: the Southeast, Northwest, Rocky Mountain, Central States, Central Midwest, Midwest, and Northeast.

The new milestones created by the 1985 Act provided that each state would either join a low-level radioactive waste compact or indicate its intent to develop within its own borders a facility for disposal of low-level waste by July 1, 1986. Until December 31, 1986, the three states with operating low-level waste sites, Nevada, South Carolina, and Washington, could charge double the normal surcharge to persons disposing wastes from states which failed to meet the July 1, 1986, deadline. Beginning January 1, 1987, the three states could deny disposal access to persons from states which still failed to join a compact or indicate intent to develop a disposal site.

The 1985 Act also provides that each compact commission must identify a "host state" for its low-level radioactive waste disposal facility by January 1, 1988, and each host state must have a plan for establishing the location for a facility. States that are not members of a compact must develop plans for choosing facility sites within their own borders.

By January 1, 1990, a complete application (as determined by the NRC or appropriate agreement state agency) must be filed for a licence to operate a

low-level radioactive waste disposal facility within each compact region or the nonmember state; or the Governor of any state that is not a member of a compact region must 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.

Also, by January 1, 1990, noncompact states must file applications to operate disposal facilities or must certify to the NRC that they will locate low-level waste storage or disposal sites within their own borders after December 31, 1991. States not meeting the January 1, 1990, deadline could be denied access to the three states presently hosting disposal sites.

As long as states are meeting a timetable for developing new sites, either within a compact or within their own borders, they have until December 31, 1992, to comply with the Low-Level Radioactive Waste Policy Act of 1980 and the Low-Level Radioactive Waste Policy Amendments Act of 1985. By January 1, 1993, all states will be required to have made provisions for disposal of all low-level radioactive wastes generated within each respective state.

By January 1, 1992, if a nonsited compact region or a nonmember state fails to secure access to a licensed facility, any generator of low-level radioactive waste in the region or the nonmember state would be charged three times the surcharge specified in the 1986 Act, *i.e.*, \$120 per cubic foot. If a nonsited compact region or a nonmember state fails to provide for disposal of low-level radioactive waste by January 1, 1993, such region or state must take title to the waste generated in the region or state or incur the additional penalty of refunding part of the surcharge to the generators. By January 1, 1996, all noncomplying compact regions or states must take title and possession of all low-level radioactive waste generated in the region or state.

Interstate Compacts

To date, 11 regions have formed and negotiated compacts; however, only nine compacts have been submitted to Congress for approval. The northern New England states negotiated a compact, but not all the states in that region have joined; and California, Texas, and New York are proposing to manage their own waste. Kansas assumed a lead role in the formation of the Central Interstate Low-Level Radioactive Waste Compact, which currently includes the states of Kansas, Nebraska, Oklahoma, Arkansas, and Louisiana. Kansas formally entered into the Central Interstate Compact in 1982 when the Legislature approved the Compact and enacted it into law in K.S.A. 65-34a01 *et seq.* The Compact provided for creation of the Central Interstate Low-Level Radioactive Waste Commission with one voting member from each state. Kansas' member is the Secretary of the Kansas Department of Health and Environment (KDHE); the alternative member is the Director of the Division of Environment of KDHE. At the same time that the Legislature enacted the Compact, it created an Advisory Board on Low-Level Radioactive Waste consisting of legislators, agency personnel, and appointees of the Governor.

The Central States Low-Level Radioactive
Waste Compact

Substitute for H.B. 2809, which was enacted in the 1982 Session, contains the text of the Central Interstate Low-Level Radioactive Waste Compact. The states initially eligible for membership in the Compact were: Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma. The Compact became effective after enactment by three of the eligible states and consent by Congress.

Under the Compact, the member states recognize that each state in the Compact is responsible for the management of its low-level radioactive wastes. It is the purpose of the Compact:

1. to provide sufficient facilities for the proper management of low-level waste within the region;
2. to limit the number of facilities required to effectively and efficiently manage waste generated within the region;
3. to encourage the reduction in amounts of low-level waste generated in the region; and
4. to ensure the ecological and economical management of low-level radioactive wastes.

Initial eligibility for membership in the Compact terminated on January 1, 1984. To become a member of the Compact, unanimous approval of the Compact Commission is required for any state not initially eligible or those states initially eligible which did not enact the Compact into law prior to January 1, 1984.

The Compact Commission is created by the Compact with each party state having one vote. The Commission will operate by majority vote on most issues. Unanimity is required for certain issues. Prior to development and operation of a facility, however, each party state contributes equally. Initial funding was set at \$25,000 for each state. Once a regional facility is established, the host state of the facility will levy a surcharge on all users of the facility sufficient to cover the annual budget of the Commission and any administrative costs incurred by the host state.

Included in the powers and duties of the Commission is authority:

1. to make a preliminary selection of the best facility proposal or proposals;
2. to require states to submit pertinent data and information to the Commission;
3. to hear and negotiate disputes among the party states;
4. to act as an intervenor or a party in interest in any judicial proceeding;

5. to set and approve an annual budget; and
6. to retain a staff and to contract for services.

The site selection procedure provides that any party state may volunteer as a host state for a facility. If no state volunteers, the Commission solicits proposals for the development and operation of a regional facility with the Commission determining criteria for the preliminary selection of a regional facility, including:

1. applicant's capability to obtain a license;
2. applicant's financial assurances;
3. economic efficiency of the proposed facility;
4. the accessibility of the proposed facility to the party states;
and
5. other criteria as deemed necessary by the Commission.

Based on the criteria, the Commission makes a preliminary selection of the best proposal. The preliminary selection does not become final until the licensing agency of the state where the proposed facility is located (or the Nuclear Regulatory Commission, if such state is not an "agreement state") processes and approves a license for the facility. The appropriate licensing authority may disapprove the license for any valid reason, but a disapproval, which is found to be arbitrary and capricious, could result in the expulsion of the state from the Compact.

A state where a facility is located (i.e., host state) has the responsibility to process applications within a reasonable period of time; review and approve rates set by the operator of a facility; fix a users fee to cover costs of regulating, monitoring, and providing for perpetual care of sites; help fund the Commission's budget; and regulate the development and operation of a regional facility.

All party states have the responsibility of enforcing any applicable laws relating to packaging and transportation of low-level waste; funding the initial budget of the Commission; and funding the expenses of the state's Commission member.

If the fees fixed by the host state are found to be inadequate, and if the host state has allowed the Commission to review and approve the fee system, then the party states are to share in the costs associated with the regulating, monitoring, and perpetual care of a facility.

Any state may withdraw from the Compact by repealing the Compact statute. Unless permitted earlier by unanimous approval of the Commission, such withdrawal will take effect five years after the Governor of the withdrawing state has given notice in writing of the withdrawal to each governor of the

party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

After January 1, 1986, the Compact would have made it unlawful, unless otherwise authorized by the Commission, for any person to export waste generated within the region to any facility outside the region, or import or accept waste generated outside the region to any facility within the Compact region.

In addition, the 1982 Legislature enacted H.B. 2810, which authorized the Secretary of KDHE to be the representative of the state of Kansas to the Central Interstate Low-Level Radioactive Waste Compact Commission. The Director of the Division of the Environment of KDHE would act as the alternate to the Secretary.

The bill also established the Advisory Board on Low-Level Radioactive Waste which is to consult with and advise the state's representative to the Commission on technical and policy matters. The Advisory Board consists of the Secretary of KDHE, who serves as chairperson; the Director of the Division of the Environment of KDHE; the Director of the Bureau of Radiation Control (now the Manager of the Bureau of Air Quality and Radiation Control), at KDHE; a representative of the Governor's Office; the Chairperson of the Senate Committee on Energy and Natural Resources; a member of the Senate Committee on Energy and Natural Resources designated by the Senate Minority Leader; the Chairperson of the House Committee on Energy and Natural Resources; a member of the House Committee on Energy and Natural Resources designated by the House Minority Leader; and two public members appointed by the Governor. The Director of the Legislative Research Department and the Revisor of Statutes or their designees will assist the Advisory Board.

To provide for the implementation of Article II of the Central Interstate Low-Level Radioactive Waste Compact, the State Corporation Commission is designated as the agency responsible for the review of rates of any facility that might be established in Kansas under the provisions of the Compact.

Joseph Harkins, then Secretary of KDHE, described the unique features of the Central States Compact in a presentation to a 1982 National Governors' Association Conference (NGA) meeting on low-level radioactive waste disposal. Mr. Harkins was Kansas' chief negotiator in the drafting of the Compact. He told the NGA conference participants:

The compact in the Central states group that we have developed has one unique feature -- the technique for selecting a site. I have not studied all of the other compacts, but I believe most provide that a commission will select a host state. Our compact does not have that provision in it. We put a provision in that allows a state to volunteer to be a host state, but we do not expect that to occur in the Central states region. After each state has been given an opportunity to volunteer, there is an alternate provision for a siting process. First, the commission would establish certain review criteria for proposals and then accept proposals from private developers. The commission would compare the proposals with the criteria and make an initial selection of the most appropriate proposal to serve the needs of the region. It would be at that point that we would determine who the host state would be. The private applicant would then be authorized

to go to the host state to apply for a license, if it is an Agreement State, or go to the NRC to apply for a license, if it is not an Agreement State.

There is a reason why we chose the above procedure: the states which constitute our region feel expressly that the decision about siting a facility is the crucial one. Further, we did not feel that state legislatures in some of the states would be willing to choose between two or three or four options within the boundaries of their particular state. In other words, the identification of a host state up front puts the responsibility ultimately in the hands of the state legislature which makes the decision regarding the location within its boundaries of the regional facility. For many of us (including Kansas - which is one of the smallest producers of low level nuclear waste in the country), it would be very simple at that point for the state legislature to conclude if it is going to have to make this decision to put a facility in some of our neighbors' back yards, it would just be easier to get out now and develop one for ourselves. We tried to devise a mechanism that would deal with and possibly prevent that occurrence. The only other important issue in our compact which has not been emphasized today is that we do have a provision for rate regulation in the compact. We feel very strongly that each compact should contain a provision for rate regulation because of the unique economic advantages that the site operator will be granted once the compact is in operation.

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