CHAPTER 23-20.5
LOW-LEVEL RADIOACTIVE WASTE

23-20.5-01. Southwestern low-level radioactive waste disposal compact.

The southwestern low-level radioactive waste disposal compact is hereby entered into with all jurisdictions legally joining the compact, in the form substantially as follows:

ARTICLE I - COMPACT POLICY AND FORMATION

The party states hereby find and declare all of the following:

1. The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act, Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 [42 U.S.C. 2021b - 2021j], has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.
2. It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.
3. It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.
4. It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.
5. Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

ARTICLE II - DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

1. "Commission" means the southwestern low-level radioactive waste commission established in article III of this compact.
2. "Compact region" or "region" means the combined geographical area within the boundaries of the party states.
3. "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if the state hosts a disposal facility.
4. "Generate", when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.
5. "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.
6. "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.
7. "Host state" means a party state in which a regional disposal facility is located or being developed. California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.
8. "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.
9. "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:
    a. The waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11e(2) of the Atomic Energy Act of 1954 [42 U.S.C. 2014(e)(2)].
    b. The waste is not uranium mining or mill tailings.

c. The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 [42 U.S.C. 2021c(b)].

d. The waste is not an alpha-emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.

10. "Major generator state" means a party state that generates ten percent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party state other than California generates at least ten percent of the total amount, "major generator state" means the party state that is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.
11. "Management" means collection, consolidation, storage, packaging, or treatment.
12. "Operator" means a person who operates a regional disposal facility.
13. "Party state" means any state that has become a party in accordance with article VII of this compact.
14. "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.
15. "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee observes, monitors, and carries out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.
16. "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.
17. "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.
18. "Transporter" means a person who transports low-level radioactive waste.
19. "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

ARTICLE III - THE COMMISSION

1. There is hereby established the southwestern low-level radioactive waste commission.

a. The commission consists of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.

b. The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one percent of the membership on the commission. The host state's additional members must be appointed by the host state governor and confirmed by the host state senate.

If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

c. If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who must be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to subdivision d.

d. The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of county commissioners of the host county.
e. In recommending and appointing the host county member pursuant to subdivision d, the board of county commissioners and the governor shall give first consideration to recommending and appointing the members of the board of county commissioners in whose district the regional disposal facility is located or being developed. If the board of county commissioners of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.
f. The host county member is subject to confirmation by the senate of the host state and serves at the pleasure of the governor of the host state.

2. The commission is a legal entity separate and distinct from the party states and is liable for its actions. Members of the commission are not personally liable for actions taken in their official capacity. The liabilities of the commission are not to be deemed liabilities of the party states.
3. The commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action must be governed by the laws of the host state. The commission must be located in the capital city of the host state in which the regional disposal facility is located.
4. The commission's records are subject to the host state's public records law, and the meetings of the commission must be open and public in accordance with the host state's open meeting law.
5. The commission members are public officials of the appointing state and are subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members must be compensated according to the appointing state's law.
6. Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this capacity, a majority of the total number of votes on the commission is necessary for the commission to take any action.
7. The commission has all of the following duties and authority:
   a. The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.
   b. The commission shall meet at least once a year and otherwise as business requires.
   c. The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge must be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and must be collected by the operator of the disposal facility.

      The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge must be sufficient to establish and maintain a reasonable level of funds for all of the following purposes:
      (1) The activities of the commission and commission staff.
      (2) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This paragraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.
      (3) A local government reimbursement fund, for the purpose of reimbursing the local governmental entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement,

monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.

d. The surcharges imposed by the commission for purposes of paragraphs 2 and 3 of subdivision c and surcharges pursuant to subdivision c of subsection 5 of article IV must be transmitted on a monthly basis to the host state for distribution to the proper accounts.

e. The commission shall establish a fiscal year that conforms to the fiscal years of the party states to the extent possible.

f. The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission must be conducted by an independent certified public accountant, and the audit report must be made a part of the annual report of the commission.

g. The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.

h. The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal government or a state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this subdivision and the identity of the donor or grantor must be detailed in the annual report of the commission.

However, the host state is entitled to receive, for the uses specified in subparagraph E of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph A of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code.

i. The commission shall submit communications to the governors and to the presiding officers of the legislative assemblies of the party states regarding the activities of the commission, including an annual report to be submitted on or before January fifteenth of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods that are alternative technologies to the shallow land burial of low-level radioactive waste.

j. The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

k. The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.

l. The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.

m. The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.

n. The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission may bind a party state.

o. The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.

p. The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.

q. The commission must be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.

r. The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.

s. The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:

(1) The commission approves the importation agreement by a two-thirds vote of the commission.

(2) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.

t. The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes is effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.

u. The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.

v. The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

ARTICLE IV - RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES

1. There must be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.

2. Low-level radioactive waste generated within the region must be disposed of at regional disposal facilities and each party state must have access to any regional disposal facility without discrimination.

3. a. Upon the effective date of this compact, California must serve as the host state and must comply with the requirements of subsection 5 for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration is at the option of California.

If California does not extend this obligation, the party state, other than California, which is the largest major generator state must then serve as the host state for the second regional disposal facility.

The obligation of a host state which hosts the second regional disposal facility must also run for thirty years from the date the second regional disposal facility begins operations.

b. The host state may close its regional disposal facility when necessary for public health or safety.

4. The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 [42 U.S.C. 2021b - 2021j].

5. A host state shall do all of the following:

a. Cause a regional disposal facility to be developed on a timely basis.

b. Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.

c. Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:

(1) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.
(2) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.
(3) Assure that charges are assessed without discrimination as to the party state of origin.

d. Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.

e. The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.

6. Each party state is subject to the following duties and authority:

a. To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures must include all of the following requirements:
(1) Periodic inspections of packaging and shipping practices.
(2) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.
(3) Appropriate enforcement actions with respect to violations.

b. A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by subdivision a.

c. To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions include requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibiting future shipments to the regional disposal facility.

d. Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

e. Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.

f. Each party state may rely on the good-faith performance of the other party states to perform those acts that are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

g. Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

h. Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states may be disposed of in the regional disposal facility, except as provided in subdivision s of subsection 7 of article III.

i. Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to paragraph 2 of subdivision c of subsection 7 of article III, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state is liable for any harm or damage resulting from a regional facility not located within the state.

ARTICLE V - APPROVAL OF REGIONAL FACILITIES

A regional disposal facility must be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensing, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

ARTICLE VI - PROHIBITED ACTS AND PENALTIES

1. No person may dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in subdivisions t and u of subsection 7 of article III.
2. No person may dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in subdivisions s, t, and u of subsection 7 of article III.
3. Violations of this section must be reported to the appropriate law enforcement agency within the party state's jurisdiction.
4. Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

ARTICLE VII - ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

1. Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislative assemblies of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subsection, as a member of this compact.
2. Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order ceases to be a party state upon adjournment of the first general session of its legislative assembly convened after the executive order is issued, unless before the adjournment the legislative assembly enacts this compact.
3. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal does not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subsection, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact.

   If the host state withdraws from the compact, the withdrawal does not become effective until five years after the effective date of the repealing legislation.
4. A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by this compact.
5. This compact takes effect upon the enactment by statute by the legislatures of California and at least one other eligible state and upon the consent of Congress and remains in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

ARTICLE VIII - CONSTRUCTION AND SEVERABILITY

1. This compact must be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state may not be infringed unnecessarily.
2. This compact does not affect any judicial proceeding pending on the effective date of this compact.
3. If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity does not affect other provisions or

applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.

4. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:
   a. The nuclear regulatory commission pursuant to the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].
   b. An agreement state under section 274 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2021].
5. Nothing in this compact confers any new authority on the states or commission to do any of the following:
   a. Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.
   b. Regulate health, safety, or environmental hazards from source, byproduct, or special nuclear material.
   c. Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.