WEST VIRGINIA CODE: §29-1H-1

§29-1H-1. Appalachian states low-level radioactive waste compact approved.

The following Appalachian States Low-Level Radioactive Waste Compact, which has been negotiated by representatives of the Commonwealth of Pennsylvania, and the states of West Virginia, Delaware and Maryland, is hereby approved, ratified, adopted, enacted into law, and entered into by the State of West Virginia as a party state thereto, namely:

APPALACHIAN STATES LOW-LEVEL

RADIOACTIVE WASTE COMPACT

Preamble

WHEREAS, The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act (42 U.S.C. Sections 2021b-2021d) has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste; and

WHEREAS, Under section 4 (a) (1) (A) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. Sections 2021 (a) (1) (A)), each state is responsible for providing for the capacity for disposal of low-level radioactive waste generated within its borders; and

WHEREAS, To promote the health, safety and welfare of residents within the Commonwealth of Pennsylvania and the states of West Virginia, Delaware and Maryland, the aforementioned states wish to enter into a compact for the regional management of low-level radioactive waste;

Now, therefore, the Commonwealth of Pennsylvania and the states of West Virginia, Delaware and Maryland hereby agree to enter into the Appalachian States Low-Level Radioactive Waste Compact.

Article 1

Definitions

As used in this Compact, unless the context clearly indicates otherwise:

(a) "Broker" means any intermediate person who handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste obtained from a generator.

(b) "Carrier" means a person who transports low-level waste to a regional facility.

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(c) "Commission" means the Appalachian States Low-Level Radioactive Waste Commission.

(d) "Disposal" means the isolation of low-level waste from the biosphere.

(e) "Facility" means any real or personal property, within the region, and improvements thereof or thereon, and any and all plant, structures, machinery, and equipment, acquired, constructed, operated or maintained for the management or disposal of low-level waste.

(f) "Generate" means to produce low-level waste requiring disposal.

(g) "Generator" means a person whose activity results in the production of low-level waste requiring disposal.

(h) "Hazardous life" means the time required for radioactive materials to decay to safe levels, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by federal law or by standards to be set by a host state, whichever is more restrictive.

(i) "Host state" means Pennsylvania or any other party state so designated by the Commission in accordance with Article 3 of this Compact.

(j) "Institutional control period" means the time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency.

(k) "Low-level waste" means radioactive waste that:

(1) Is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11 (e)(2) of the Atomic Energy Act of 1954, as amended; and

(2) Is classified by the federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in Public Law 96-573, or federal research and development activities.

(l) "Management" means the reduction, collection, consolidation, storage, packaging or treatment of low-level waste.

(m) "Operator" means a person who operates a regional facility.

(n) "Party state" means any state that has become a party in accordance with Article 5 of this Compact.

(o) "Person" means an individual, corporation, partnership or other legal entity, whether public or private.

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(p) "Region" means the combined geographical area within the boundaries of the party states.

(q) "Regional facility" means a facility within any party state which has been approved by the Commission for the disposal of low-level waste.

(r) "Shallow-land burial" means the disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures or by proper packaging in containers as determined by the law of the host state.

(s) "Transuranic waste" means low-level waste containing radionuclides with an atomic number greater than 92 which are excluded from shallow-land burial by the federal government.

Article 2

The Commission

(A) Creation and Organization.

(1) Creation -- There is hereby created the Appalachian States Low-Level Radioactive Waste Commission. The Commission is hereby created as a body corporate and politic, with succession for the duration of this Compact, as an agency and instrumentality of the governments of the respective signatory parties, but separate and distinct from the respective signatory party states. The Commission shall have central offices located in Pennsylvania.

(2) Commission Membership -- The Commission shall consist of two voting members from each party state to be appointed according to the laws of each party state, and two additional voting members from each host state to be appointed according to the laws of each host state. Upon selection of the site of the regional facility, an additional voting member shall be appointed to the Commission who shall be a resident of the county or municipality where the facility is to be located. The appointing authority of each party state shall notify the Commission in writing of the identities of the members and of any alternates. An alternate may vote and act in the member's absence. No member shall have a financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any related industry for the duration of the member's term. No more than one half the members and alternates from any party state shall have been employed by or be employed by a low-level waste generator or related industry upon appointment to or during their tenure of office: Provided, That no member shall have been employed by or be employed by a regional facility operator. No member or alternate from any party state shall accept employment from any regional facility operator or brokers for at least three years after leaving office.

(3) Compensation -- Members of the Commission and alternates shall serve without

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compensation from the Commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

(4) Voting Power -- Each Commission member is entitled to one vote. Unless otherwise provided in this Compact, affirmative votes by a majority of a host state's members are necessary for the Commission to take any action related to the regional facility and the disposal and management of low-level waste within that host state.

(5) Organization and Procedure.

(a) The Commission shall provide for its own organization and procedures, and shall adopt bylaws not inconsistent with this Compact and any rules and regulations necessary to implement this Compact. It shall meet at least once a year in the county selected to host a regional facility and shall elect a chairman and vice chairman from among its members. In the absence of the chairman, the vice chairman shall serve.

(b) All meetings of the Commission shall be open to the public with at least fourteen days advance notice, except that the chairman may convene an emergency meeting with less advance notice. Each municipality and county selected to host a regional facility shall be specifically notified in advance of all Commission meetings. All meetings of the Commission shall be conducted in a manner that substantially conforms to the federal Administrative Procedure Act. The Commission may, by a two-thirds vote, including approval of a majority of each host state's Commission members, hold an Executive Session closed to the public for the purpose of: Considering or discussing legally privileged or proprietary information; to consider dismissal, disciplining of, or hearing complaints or charges brought against an employee or other public agent unless such person requests such public hearing; or to consult with its attorney regarding information or strategy in connection with specific litigation. The reason for the Executive Session must be announced at least fourteen days prior to the Executive Session except that the chairman may convene an emergency meeting with less advance notice in which case the reason for the Executive Session must be announced at the open meeting immediately subsequent to the Executive Session. All action taken in violation of this open meeting provision shall be null and void.

(c) Detailed written minutes shall be kept of all meetings of the Commission. All decisions, files, records and data of the Commission except for information privileged against introduction in judicial proceedings, personnel records, and minutes of a properly convened Executive Session shall be open to public inspection subject to a procedure that substantially conforms to the Freedom of Information Act (Public Law 89-554, 5 U.S.C. 552) and applicable West Virginia law, and may be copied upon request and payment of fees which shall be no higher than necessary to recover copying costs.

(d) The Commission shall select an appropriate staff, including an executive director, to carry out the duties and functions assigned by the Commission. Notwithstanding any other provision of law, the Commission may hire and/or retain its own legal counsel.

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(e) Any person aggrieved by a final decision of the Commission which adversely affects the legal rights, duties or privileges of such person, may petition a court of competent jurisdiction, within sixty days after the Commission's final decision, to obtain judicial review of said final decisions.

(f) Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken in their official capacity.

(B) Powers and Duties.

(1) The Commission:

(a) Shall conduct research and establish regulations to promote a reasonable reduction of volume and curie content of low-level wastes generated in the region. The regulations shall be reviewed and, if necessary, revised by the Commission at least annually.

(b) Shall ensure, to the extent authorized by federal law, that low-level wastes are safely disposed of within the region, except that the Commission shall have no power or authority to license, regulate or otherwise develop a regional facility, such powers and authority being reserved for the host state(s) as permitted under the law.

(c) Shall designate as "host states" any party state which generates twenty-five percent or more of Pennsylvania's volume or total curie content of low-level waste generated based on a comparison of averages over three successive years, as determined by the Commission. This determination shall be based on volume or total curie content, whichever is greater.

(d) Shall ensure, to the extent authorized by federal law, that low-level waste packages brought into the regional facility for disposal conform to applicable state and federal regulations. Low-level waste brokers or generators who violate these regulations will be subject to a fine or other penalty imposed by the Commission, including restricted access to a regional facility. The Commission may impose such fines and/or penalties in addition to any other penalty levied by the party states pursuant to Article 4(D).

(e) Shall establish such advisory committees as it deems necessary for the purpose of advising the Commission on matters pertaining to the management and disposal of low-level waste.

(f) May contract to accomplish its duties and effectuate its powers subject to projected available resources. No contract made by the Commission shall bind a party state.

(g) Shall prepare contingency plans for management and disposal of low-level waste in the event any regional facility should be closed or otherwise unavailable.

(h) Shall examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge, and may make recommendations to the host state(s) which shall review the recommendations in accordance

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with its (their) own sovereign laws.

(i) Shall have the power to sue and be sued subject to Article 2 (A) (5) (e) and may seek to intervene in any administrative or judicial proceeding.

(j) Shall assemble and make available to the party states and to the public, information concerning low-level waste management and disposal needs, technologies and problems.

(k) Shall keep current and annual inventories of all generators by name and quantity of low-level waste generated within the region, based upon information provided by the party states. Inventory information shall include both volume in cubic feet and total curie content of the low-level waste and all available information on chemical composition and toxicity of such wastes.

(l) Shall keep an inventory of all regional facilities and specialized facilities, including, but not necessarily restricted to, information on their size, capacity, and location, as well as specific wastes capable of being managed, and the projected useful life of each regional facility.

(m) Shall make and publish an annual report to the Governors of the signatory party states and to the public detailing its programs, operations and finances, including copies of the annual budget and the independent audit required by this Compact.

(n) Notwithstanding any other provision of this Compact to the contrary, may, with the unanimous approval of the Commission members of the host state(s), enter into temporary agreements with nonparty states or other regional boards for the emergency disposal of low-level waste at the regional facility, if so authorized by law(s) of the host state(s), or other disposal facilities located in states that are not parties to this agreement.

(o) Shall promulgate regulations, pursuant to host state law, to specifically govern and define exactly what would constitute an emergency situation and exactly what restrictions and limitations would be placed on temporary agreements.

(p) Shall not accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source, except from any federal agency and from party states which are certified as being legal and proper under the laws of the donating party state.

(C) Budget and Operation.

(1) The Commission shall establish a fiscal year which conforms to the fiscal year of the Commonwealth of Pennsylvania.

(2) Upon legislative enactment of this Compact by two party states and each year until the regional facility becomes available, the Commission shall adopt a current expense budget for its fiscal year. The budget shall include the Commission's estimated expenses for

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administration. Such expenses shall be allocated to the party states according to the following formula:

Each designated initial host state will be allocated costs equal to twice the costs of the other party states, but such costs will not exceed $200,000.

Each remaining party state will be allocated a cost of one half the cost of the initial host state, but such costs will not exceed $100,000.

The party states will include the amounts allocated above in their respective budgets, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the Commission in quarterly installments during the fiscal year.

(3) For continued funding of its activities, the Commission shall submit an annual budget request to each party state for funding, based upon the percentage of the region's waste generated in each state in the region, as reported in the latest available annual inventory required under Article 2 (B) (1) (k). The percentage of waste shall be based on volume of waste or total curie content as determined by the Commission.

(4) The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

(5) Annual Independent Audit.

(a) As soon as practicable after the closing of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal direct or indirect interest in the financial affairs of the Commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each Commission member and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the Commission and necessary to facilitate the audit; and, they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

Article 3

Rights, Responsibilities

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and Obligations of Party States

(A) There shall be regional facilities sufficient to dispose of the low-level waste generated within the region. Each regional facility shall be capable of disposing of such low-level waste but in the form(s) required by regulations or license conditions. Specialized facilities for particular types of low-level waste management reduction or treatment may not be developed in any party state unless they are in accordance with the laws and regulations of such state and applicable federal laws and regulations.

(B) Each party state shall have equal access as other party states to regional facilities located within the region and accepting low-level waste: Provided, That the host state may close the regional facility located within its borders when necessary for public health and safety. However, a host state shall send notification to the Commission in writing within three (3) days of its action, and shall, within thirty (30) working days, provide in writing the reasons for the closing.

(C) Pennsylvania and party states which generated twenty-five percent or more of the volume or curies of low-level waste generated by Pennsylvania based on a comparison of averages over the three years, one thousand nine hundred eighty-two through one thousand nine hundred eighty-four, are designated as "initial host states" and are required to develop and host low-level waste sites as regional facilities. The percentage of waste from each state shall be determined by cubic foot volume or total curie content, whichever is greater.

(D) Party states which generated less than twenty-five percent of the volume or curies of low-level waste generated by Pennsylvania based on a comparison of averages over the years one thousand nine hundred eighty-two through one thousand nine hundred eighty-four shall be exempt from initial host state responsibilities. These states shall continue to be exempt as long as they generate less than the twenty-five percent threshold over successive three-year periods. Once a state generates an average of twenty-five percent or more of the volume or curies generated by Pennsylvania over a successive three-year period, it shall be designated as a "host state" for a thirty-year period by the Commission and shall immediately initiate development of a regional facility to be operational within five years. Such host state shall be prepared to accept at its regional facility low-level waste at least equal to that generated in the state. With Commission approval, any party state may volunteer to host a regional facility. The percentage of waste from each state shall be determined by either a cubic foot volume or total curie content, whichever is greater.

(E) Pennsylvania and other host states are obligated to develop regional facilities for the duration of this Compact. All regional facilities shall be designed for at least a thirty-year useful life. At the end of the facility's life, normal closure and maintenance procedures shall be initiated in accordance with the applicable requirements of the host state and the federal government. Each host state's obligation for operating regional facilities shall remain as long as the state continues to produce over a three-year period twenty-five percent or more of the volume or curies of low-level waste generated by Pennsylvania.

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(F) Each host state shall:

(1) Cause a regional facility to be sited and developed on a timely basis.

(2) Ensure by law, consistent with applicable state and federal law, the protection and preservation of public health, safety and environmental quality in the siting, design, development, licensure or other regulation, operation, closure, decommissioning long-term care and the institutional control period of the regional facility within the state. To the extent authorized by federal law, a host state may adopt more stringent laws, rules or regulations than required by federal law.

(3) Ensure and maintain a manifest system which documents all waste-related activities of generators, brokers, carriers and related activities of generators, brokers, carriers and operators, and establish the chain of custody of waste from its initial generation to the end of its hazardous life. Copies of all such manifests shall be submitted to the Commission on a timely basis.

(4) Ensure that charges for disposal of low-level waste at the regional facility are sufficient to fully fund the safe disposal and perpetual care of the regional facility and that charges are assessed without discrimination as to the party state of origin.

(5) Submit an annual report to the Commission on the status of the regional facility which contains projections of the anticipated future capacity.

(6) Notify the Commission immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the Commission.

(7) Require that the institutional control period of any disposal facility be at least as long as the hazardous life, as defined in Article 1(h), of the radioactive materials that are disposed at that facility.

(8) Prohibit the use of any shallow land burial, as defined in Article 1(r), and develop alternative means for treatment, storage and disposal of low-level waste.

(9) Establish by law, to the extent not prohibited by federal law, requirements for financial responsibility, including, but not limited to:

(a) Requirements for the purchase and maintenance of adequate insurance by generators, brokers, carriers and operators of the regional facility;

(b) Requirements for the establishment of a long-term care fund to be funded by a fee placed on generators to pay for preventive or corrective measures of low-level waste to the regional facility; and

(c) Any further financial responsibility requirements that shall be submitted by generators,

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brokers, carriers and operators as deemed necessary by the host state.

(G) Each party state:

(1) Shall appropriate its portion of the Commission's initial and annual budgets as set out in Article 2 (C) (2) and (3).

(2) To the extent authorized by federal law, shall develop and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to volume reduction, packaging and transportation requirements and regulations as well as any other requirements specified by the regional facility. Such procedures shall include but are not limited to:

(i) Periodic inspections of packaging and shipping practices;

(ii) Periodic inspections of low-level waste containers while in custody of carriers; and

(iii) Appropriate enforcement actions with respect to violations.

(3) To the extent authorized by federal law, shall after receiving notification from a host state, or other person, that a person in a party state has violated volume reduction, packaging, shipping or transportation requirements or regulations, take appropriate action to ensure that violations do not recur. Appropriate action shall include, but is not limited to, the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected. Appropriate action may also include suspension of the violator's use of the regional facility. Should such suspension be imposed, the suspension shall remain in effect until such time as the violator has, to the satisfaction of the party state imposing such suspension, complied with the appropriate requirements or regulations upon which the suspension was based and has taken appropriate action to ensure that such violation or violations do not recur.

(4) Shall maintain a registry of all generators and quantities generated within the state.

(H) In the event of liability arising from the operation of any regional facility and during and after closure of that facility, each party state shall share in that liability in an amount equal to that state's share of the region's low-level waste disposed of at the facility. If such liability arises from negligence, malfeasance or neglect on the part of a host state or any party state, then any other host or party state(s) may make any claim allowable under law for that negligence, malfeasance or neglect. If such liability arises from a particular waste shipment or shipments to, or quantity of waste or condition at, the regional facility, then any host or party state may make any claim allowable under law for such liability. The percentage of waste shall be based on volume of waste or total curie content.

(I) A party state which fails to fulfill its obligations, including timely funding of the Commission may have its privileges under the Compact suspended or its membership in the Compact revoked by the Commission and be subject to any other legal and equitable

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remedies available to the party states.

Article 4

Prohibited Acts and Penalties

(A) It shall be unlawful for any person to dispose of low-level waste within the region except at a regional facility unless authorized by the Commission.

(B) After establishment of the regional facility or facilities, it shall be unlawful for any person to dispose of any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the Commission and by law of the host state in which said disposal takes place. For the purposes of this Compact, waste generated within the region excludes radioactive material shipped from outside the party states to a waste management facility within the region. In determining whether to grant such authorization, the factors to be considered by the Commission shall include, but not be limited to, the following:

(1) The impact on the health, safety and environmental quality of the citizens of the party states;

(2) The impact of importing waste on the available capacity and projected life of the regional facility;

(3) The availability of a regional facility appropriate for the safe disposal of the type of low-level waste involved.

(C) Any and all low-level waste generated within the region shall be disposed of at a regional facility, except for specific cases agreed upon by the Commission, with the affirmative votes by a majority of the Commission members of the host state(s) affected by the decision.

(D) Generators, brokers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct or relationships in accordance with all laws relating thereto. The party states shall impose a fine for any violation in an amount equal to the present and future costs associated with correcting any harm caused by the violation and shall assess punitive fines or penalties if it is deemed necessary. In addition, the host state shall bar any person who violates host state or federal regulations from using the regional facility until that person demonstrates to the satisfaction of the host state their ability and willingness to comply with the law.

(E) No commissioner, officer or employee shall:

(1) Be financially interested, either directly or indirectly, in a contract, sale, purchase, lease or transfer of real or personal property to which the Commission is a party.

(2) Solicit or accept money or any other thing of value in addition to the expenses paid to

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him by the Commission for services performed within the scope of his official duties.

(3) Offer money or anything of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Commission.

(F) Any officer or employee who shall willfully violate any of the provisions of this article shall forfeit his office or employment.

(G) Any contract or agreement knowingly made in contravention of this section is void.

(H) Officers and employees of the Commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by federal law and the law of the signatory state in which such misconduct occurs.

Article 5

Eligibility, Entry into Effect,

Congressional Consent, Withdrawal

(A) Only the states of Pennsylvania, West Virginia, Delaware and Maryland are eligible to become parties to this Compact.

(B) An eligible state may become a party state by legislative enactment of this Compact or by executive order of the Governor adopting this Compact: Provided, That a state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its Legislature convened thereafter, unless the Legislature shall have enacted this Compact before such adjournment.

(C) This Compact shall take effect when it has been enacted by the Legislatures of Pennsylvania and one or more eligible states. However, subsections (B) and (C) of Article 4 shall not take effect until Congress has consented to this Compact. Every fifth year after such consent has been given, Congress may withdraw consent.

(D) A party state may withdraw from the Compact by repealing the enactment of this Compact, but no such withdrawal shall become effective until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the fran region until five years after the effective date of the withdrawal.

Article 6

Construction and Severability

(A) The provisions of this Compact shall be broadly construed to carry out the purposes of the Compact, but the sovereign powers of a party state shall not unnecessarily be infringed.

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(B) If any part or application of this Compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

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