

LOW-LEVEL RADIOACTIVE WASTE COMPACTS

JOINT HEARING
BEFORE THE
SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES
OF THE
COMMITTEE ON
NATURAL RESOURCES
AND THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
SECOND SESSION

ON

H.R. 4800

To grant the consent of the Congress to the Texas Low-Level Radioactive Waste Disposal Compact

AND

H.R. 4814

To grant the consent of the Congress to amendments to the Central Midwest Interstate Low-Level Radioactive Waste Compact

HEARING HELD IN WASHINGTON, DC
SEPTEMBER 13, 1994

Serial No. 103-115

(Committee on Natural Resources)

Serial No. 103-126

(Committee on Energy and Commerce)

Printed for the use of the Committee on Natural Resources and the Committee
on Energy and Commerce

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1994

84-087

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**H.R. 4800, GRANTING THE CONSENT OF THE
CONGRESS TO THE TEXAS LOW-LEVEL RA-
DIOACTIVE WASTE DISPOSAL COMPACT;
AND H.R. 4814, GRANTING THE CONSENT OF
CONGRESS TO AMENDMENTS TO THE
CENTRAL MIDWEST INTERSTATE LOW-
LEVEL RADIOACTIVE WASTE COMPACT**

TUESDAY, SEPTEMBER 13, 1994

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY
AND MINERAL RESOURCES, OF THE COMMITTEE ON
NATURAL RESOURCES; JOINTLY WITH COMMITTEE ON
ENERGY AND COMMERCE, SUBCOMMITTEE ON ENERGY
AND POWER,

Washington, DC.

The joint subcommittees met, pursuant to call, at 2:05 p.m., in room 1324, Longworth House Office Building, Hon. Philip R. Sharp (chairman of the subcommittee on Energy and Power) presiding.

STATEMENT OF HON. PHILIP R. SHARP

Mr. SHARP [presiding]. The subcommittees will please come to order.

Congressman Lehman has to be on the House Floor at this point in its proceedings and will be with us in just a few moments. I appreciate my colleague holding these hearings.

We will make these joint hearings with the Natural Resources Committee and the Energy and Commerce Committee, and I want to indicate that when States have fulfilled their responsibilities under the Low-Level Waste Policy Act, it is important that Congress act promptly to approve the resulting compact agreements. I am glad we were able to work together to make that process more efficient for all the witnesses and the interested parties.

While progress under the Low-Level Waste Policy Act has been slower than we had hoped, it is nonetheless notable that nine compacts have been approved by Congress, one compact has received a license, and several more expect to submit licenses or applications soon. Without exception, the controversies that have delayed progress in developing new disposal facilities fall within the authorities reserved under the Act to the States.

Thus, while I appreciate that there are many important questions about where to site any new disposal facility and how to make it economical, I start from the premise that these are matters for the various States and/or compacts to resolve. However, it is

our responsibility in Congress to ensure that the compact agreements satisfy the underlying Act's requirements and that we take seriously our job of reviewing and acting on compact legislation.

It is important, I think, to understand constitutionally that the power over interstate compacts was given to the Congress out of concern that other States that are not a party to a compact might find their interests damaged by interstate compacts and/or the Federal interests to protect. For example, interstate commerce might be damaged by an interstate compact.

But in general, the general proposition has been, since I have been in Congress, certainly that after we review the fundamental compacts to see that they comport with the underlying Federal law from which they derive that we reserve the controversies that may be local in nature to the local authorities.

Today, of course, we are going to examine two interstate compacts: H.R. 4800 which would approve the Texas Low-Level Radioactive Waste Disposal Compact, and H.R. 4814 which would approve the Central Midwest Interstate Low-Level Radioactive Waste Compact.

[Text of the bills, H.R. 4800 and H.R. 4814, follows:]

103D CONGRESS
2D SESSION

H. R. 4800

To grant the consent of the Congress to the Texas Low-Level Radioactive
Waste Disposal Compact.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 1994

Ms. SNOWE (for herself and Mr. ANDREWS of Maine) introduced the following
bill; which was referred jointly to the Committees on Energy and Com-
merce and Natural Resources

A BILL

To grant the consent of the Congress to the Texas Low-
Level Radioactive Waste Disposal Compact.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Texas Low-Level Ra-
5 dioactive Waste Disposal Compact Consent Act".

6 **SEC. 2. CONGRESSIONAL FINDING.**

7 The Congress finds that the compact set forth in sec-
8 tion 5 is in furtherance of the Low-Level Radioactive
9 Waste Policy Act (42 U.S.C. 2021b et seq.).

1 **SEC. 3. CONDITIONS OF CONSENT TO COMPACT.**

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

4 (1) shall become effective on the date of the en-
5 actment of this Act;

6 (2) is granted subject to the provisions of the
7 Low-Level Radioactive Waste Policy Act (42 U.S.C.
8 2021b et seq.); and

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

12 **SEC. 4. CONGRESSIONAL REVIEW.**

13 The Congress may alter, amend, or repeal this Act
14 with respect to the compact set forth in section 5 after
15 the expiration of the 10-year period following the date of
16 the enactment of this Act, and at such intervals thereafter
17 as may be provided in such compact.

18 **SEC. 5. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL**
19 **COMPACT.**

20 In accordance with section 4(a)(2) of the Low-Level
21 Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)),
22 the consent of the Congress is given to the States of
23 Texas, Maine, and Vermont to enter into the Texas Low-
24 Level Radioactive Waste Disposal Compact. Such compact
25 is substantially as follows:

1 **“ARTICLE II. DEFINITIONS**

2 **“SEC. 2.01. As used in this compact, unless the con-**
3 **text clearly indicates otherwise, the following definitions**
4 **apply:**

5 **“(1) ‘Act’ means the Low-Level Radioactive**
6 **Waste Policy Act, as amended by the Low-Level Ra-**
7 **dioactive Waste Policy Amendments Act of 1985 (42**
8 **U.S.C. 2021b–2021j).**

9 **“(2) ‘Commission’ means the Texas Low-Level**
10 **Radioactive Waste Disposal Compact Commission**
11 **established in Article III of this compact.**

12 **“(3) ‘Compact facility’ or ‘facility’ means any**
13 **site, location, structure, or property located in and**
14 **provided by the host state for the purpose of man-**
15 **agement or disposal of low-level radioactive waste for**
16 **which the party states are responsible.**

17 **“(4) ‘Disposal’ means the permanent isolation**
18 **of low-level radioactive waste pursuant to require-**
19 **ments established by the United States Nuclear Reg-**
20 **ulatory Commission and the United States Environ-**
21 **mental Protection Agency under applicable laws, or**
22 **by the host state.**

23 **“(5) ‘Generate,’ when used in relation to low-**
24 **level radioactive waste, means to produce low-level**
25 **radioactive waste.**

1 “(6) ‘Generator’ means a person who produces
2 or processes low-level radioactive waste in the course
3 of its activities, excluding persons who arrange for
4 the collection, transportation, management, treat-
5 ment, storage, or disposal of waste generated outside
6 the party states, unless approved by the commission.

7 “(7) ‘Host county’ means a county in the host
8 state in which a disposal facility is located or is
9 being developed.

10 “(8) ‘Host state’ means a party state in which
11 a compact facility is located or is being developed.
12 The State of Texas is the host state under this com-
13 pact.

14 “(9) ‘Institutional control period’ means that
15 period of time following closure of the facility and
16 transfer of the facility license from the operator to
17 the custodial agency in compliance with the appro-
18 priate regulations for long-term observation and
19 maintenance.

20 “(10) ‘Low-level radioactive waste’ has the
21 same meaning as that term is defined in Section
22 2(9) of the Act (42 U.S.C. 2021b(9)), or in the host
23 state statute so long as the waste is not incompatible
24 with management and disposal at the compact facil-
25 ity.

1 “(11) ‘Management’ means collection, consoli-
2 dation, storage, packaging, or treatment.

3 “(12) ‘Operator’ means a person who operates
4 a disposal facility.

5 “(13) ‘Party state’ means any state that has
6 become a party in accordance with Article VII of
7 this compact. Texas, Maine, and Vermont are initial
8 party states under this compact.

9 “(14) ‘Person’ means an individual, corpora-
10 tion, partnership or other legal entity, whether pub-
11 lic or private.

12 “(15) ‘Transporter’ means a person who trans-
13 ports low-level radioactive waste.

14 “ARTICLE III. THE COMMISSION

15 “SEC. 3.01. There is hereby established the Texas
16 Low-Level Radioactive Waste Disposal Compact Commis-
17 sion. The commission shall consist of one voting member
18 from each party state except that the host state shall be
19 entitled to six voting members. Commission members shall
20 be appointed by the party state governors, as provided by
21 the laws of each party state. Each party state may provide
22 alternates for each appointed member.

23 “SEC. 3.02. A quorum of the commission consists of
24 a majority of the members. Except as otherwise provided
25 in this compact, an official act of the commission must
26 receive the affirmative vote of a majority of its members.

1 “SEC. 3.03. The commission is a legal entity separate
2 and distinct from the party states and has governmental
3 immunity to the same extent as an entity created under
4 the authority of Article XVI, Section 59, of the Texas
5 Constitution. Members of the commission shall not be per-
6 sonally liable for actions taken in their official capacity.
7 The liabilities of the commission shall not be deemed li-
8 abilities of the party states.

9 “SEC. 3.04. The commission shall:

10 “(1) Compensate its members according to the
11 host state’s law.

12 “(2) Conduct its business, hold meetings, and
13 maintain public records pursuant to laws of the host
14 state, except that notice of public meetings shall be
15 given in the non-host party states in accordance with
16 their respective statutes.

17 “(3) Be located in the capital city of the host
18 state.

19 “(4) Meet at least once a year and upon the
20 call of the chair, or any member. The governor of
21 the host state shall appoint a chair and vice-chair.

22 “(5) Keep an accurate account of all receipts
23 and disbursements. An annual audit of the books of
24 the commission shall be conducted by an independ-
25 ent certified public accountant, and the audit report

1 shall be made a part of the annual report of the
2 commission.

3 “(6) Approve a budget each year and establish
4 a fiscal year that conforms to the fiscal year of the
5 host state.

6 “(7) Prepare, adopt, and implement contin-
7 gency plans for the disposal and management of low-
8 level radioactive waste in the event that the compact
9 facility should be closed. Any plan which requires
10 the host state to store or otherwise manage the low-
11 level radioactive waste from all the party states must
12 be approved by at least four host state members of
13 the commission. The commission, in a contingency
14 plan or otherwise, may not require a non-host party
15 state to store low-level radioactive waste generated
16 outside of the state.

17 “(8) Submit communications to the governors
18 and to the presiding officers of the legislatures of
19 the party states regarding the activities of the com-
20 mission, including an annual report to be submitted
21 on or before January 31 of each year.

22 “(9) Assemble and make available to the party
23 states, and to the public, information concerning
24 low-level radioactive waste management needs, tech-
25 nologies, and problems.

1 “(10) Keep a current inventory of all genera-
2 tors within the party states, based upon information
3 provided by the party states.

4 “(11) By no later than 180 days after all mem-
5 bers of the commission are appointed under Section
6 3.01 of this article, establish by rule the total vol-
7 ume of low-level radioactive waste that the host state
8 will dispose of in the compact facility in the years
9 1995–2045, including decommissioning waste. The
10 shipments of low-level radioactive waste from all
11 non-host party states shall not exceed 20 percent of
12 the volume estimated to be disposed of by the host
13 state during the 50-year period. When averaged over
14 such 50-year period, the total of all shipments from
15 non-host party states shall not exceed 20,000 cubic
16 feet a year. The commission shall coordinate the vol-
17 umes, timing, and frequency of shipments from gen-
18 erators in the non-host party states in order to as-
19 sure that over the life of this agreement shipments
20 from the non-host party states do not exceed 20 per-
21 cent of the volume projected by the commission
22 under this paragraph.

23 “SEC. 3.05. The commission may:

24 “(1) Employ staff necessary to carry out its du-
25 ties and functions. The commission is authorized to

1 use to the extent practicable the services of existing
2 employees of the party states. Compensation shall be
3 as determined by the commission.

4 “(2) Accept any grants, equipment, supplies,
5 materials, or services, conditional or otherwise, from
6 the federal or state government. The nature, amount
7 and condition, if any, of any donation, grant or
8 other resources accepted pursuant to this paragraph
9 and the identity of the donor or grantor shall be de-
10 tailed in the annual report of the commission.

11 “(3) Enter into contracts to carry out its duties
12 and authority, subject to projected resources. No
13 contract made by the commission shall bind a party
14 state.

15 “(4) Adopt, by a majority vote, bylaws and
16 rules necessary to carry out the terms of this com-
17 pact. Any rules promulgated by the commission shall
18 be adopted in accordance with the Administrative
19 Procedure and Texas Register Act (Article 6252-
20 13a, Vernon’s Texas Civil Statutes).

21 “(5) Sue and be sued and, when authorized by
22 a majority vote of the members, seek to intervene in
23 administrative or judicial proceedings related to this
24 compact.

1 “(6) Enter into an agreement with any person,
2 state, regional body, or group of states for the im-
3 portation of low-level radioactive waste into the com-
4 pact for management or disposal, provided that the
5 agreement receives a majority vote of the commis-
6 sion. The commission may adopt such conditions
7 and restrictions in the agreement as it deems advis-
8 able.

9 “(7) Upon petition, allow an individual genera-
10 tor, a group of generators, or the host state of the
11 compact, to export low-level waste to a low-level ra-
12 dioactive waste disposal facility located outside the
13 party states. The commission may approve the peti-
14 tion only by a majority vote of its members. The
15 permission to export low-level radioactive waste shall
16 be effective for that period of time and for the speci-
17 fied amount of low-level radioactive waste, and sub-
18 ject to any other term or condition, as is determined
19 by the commission.

20 “(8) Monitor the exportation outside of the
21 party states of material, which otherwise meets the
22 criteria of low-level radioactive waste, where the sole
23 purpose of the exportation is to manage or process
24 the material for recycling or waste reduction and re-

1 turn it to the party states for disposal in the com-
2 pact facility.

3 "SEC. 3.06. Jurisdiction and venue of any action con-
4 testing any action of the commission shall be in the United
5 States District Court in the district where the commission
6 maintains its office.

7 "ARTICLE IV. RIGHTS, RESPONSIBILITIES, AND
8 OBLIGATIONS OF PARTY STATES

9 "SEC. 4.01. The host state shall develop and have
10 full administrative control over the development, manage-
11 ment and operation of a facility for the disposal of low-
12 level radioactive waste generated within the party states.
13 The host state shall be entitled to unlimited use of the
14 facility over its operating life. Use of the facility by the
15 non-host party states for disposal of low-level radioactive
16 waste, including such waste resulting from decommission-
17 ing of any nuclear electric generation facilities located in
18 the party states, is limited to the volume requirements of
19 Section 3.04(11) of Article III.

20 "SEC. 4.02. Low-level radioactive waste generated
21 within the party states shall be disposed of only at the
22 compact facility, except as provided in Section 3.05(7) of
23 Article III.

24 "SEC. 4.03. The initial states of this compact cannot
25 be members of another low-level radioactive waste compact
26 entered into pursuant to the Act.

1 “SEC. 4.04. The host state shall do the following:

2 “(1) Cause a facility to be developed in a timely
3 manner and operated and maintained through the
4 institutional control period.

5 “(2) Ensure, consistent with any applicable fed-
6 eral and host state laws, the protection and preser-
7 vation of the environment and the public health and
8 safety in the siting, design, development, licensing,
9 regulation, operation, closure, decommissioning, and
10 long-term care of the disposal facilities within the
11 host state.

12 “(3) Close the facility when reasonably nec-
13 essary to protect the public health and safety of its
14 citizens or to protect its natural resources from
15 harm. However, the host state shall notify the com-
16 mission of the closure within three days of its action
17 and shall, within 30 working days of its action, pro-
18 vide a written explanation to the commission of the
19 closure, and implement any adopted contingency
20 plan.

21 “(4) Establish reasonable fees for disposal at
22 the facility of low-level radioactive waste generated
23 in the party states based on disposal fee criteria set
24 out in Sections 402.272 and 402.273, Texas Health
25 and Safety Code. The same fees shall be charged for

1 the disposal of low-level radioactive waste that was
2 generated in the host state and in the non-host
3 party states. Fees shall also be sufficient to reason-
4 ably support the activities of the Commission.

5 “(5) Submit an annual report to the commis-
6 sion on the status of the facility, including projec-
7 tions of the facility’s anticipated future capacity, and
8 on the related funds.

9 “(6) Notify the Commission immediately upon
10 the occurrence of any event which could cause a pos-
11 sible temporary or permanent closure of the facility
12 and identify all reasonable options for the disposal
13 of low-level radioactive waste at alternate compact
14 facilities or, by arrangement and Commission vote,
15 at noncompact facilities.

16 “(7) Promptly notify the other party states of
17 any legal action involving the facility.

18 “(8) Identify and regulate, in accordance with
19 federal and host state law, the means and routes of
20 transportation of low-level radioactive waste in the
21 host state.

22 “SEC. 4.05. Each party state shall do the following:

23 “(1) Develop and enforce procedures requiring
24 low-level radioactive waste shipments originating
25 within its borders and destined for the facility to

1 conform to packaging, processing, and waste from
2 specifications of the host state.

3 “(2) Maintain a registry of all generators with-
4 in the state that may have low-level radioactive
5 waste to be disposed of at a facility, including, but
6 not limited to, the amount of low-level radioactive
7 waste and the class of low-level radioactive waste
8 generated by each generator.

9 “(3) Develop and enforce procedures requiring
10 generators within its borders to minimize the volume
11 of low-level radioactive waste requiring disposal.
12 Nothing in this compact shall prohibit the storage,
13 treatment, or management of waste by a generator.

14 “(4) Provide the commission with any data and
15 information necessary for the implementation of the
16 commission’s responsibilities, including taking those
17 actions necessary to obtain this data or information.

18 “(5) Pay for community assistance projects des-
19 ignated by the host county in an amount for each
20 non-host party state equal to 10 percent of the pay-
21 ment provided for in Article V for each such state.
22 One-half of the payment shall be due and payable to
23 the host county on the first day of the month follow-
24 ing ratification of this compact agreement by Con-
25 gress and one-half of the payment shall be due and

1 payable on the first day of the month following the
2 approval of a facility operating license by the host
3 state's regulatory body.

4 “(6) Provide financial support for the commis-
5 sion's activities prior to the date of facility operation
6 and subsequent to the date of congressional ratifica-
7 tion of this compact under Section 7.07 of Article
8 VII. Each party state will be responsible for annual
9 payments equalling its pro-rata share of the commis-
10 sion's expenses, incurred for administrative, legal,
11 and other purposes of the commission.

12 “(7) If agreed by all parties to a dispute, sub-
13 mit the dispute to arbitration or other alternate dis-
14 pute resolution process. If arbitration is agreed
15 upon, the governor of each party state shall appoint
16 an arbitrator. If the number of party states is an
17 even number, the arbitrators so chosen shall appoint
18 an additional arbitrator. The determination of a ma-
19 jority of the arbitrators shall be binding on the party
20 states. Arbitration proceedings shall be conducted in
21 accordance with the provisions of 9 U.S.C. Sections
22 1 to 16. If all parties to a dispute do not agree to
23 arbitration or alternate dispute resolution process,
24 the United States District Court in the district
25 where the commission maintains its office shall have

1 original jurisdiction over any action between or
2 among parties to this compact.

3 “(8) Provide on a regular basis to the commis-
4 sion and host state—

5 “(A) an accounting of waste shipped and
6 proposed to be shipped to the compact facility,
7 by volume and curies;

8 “(B) proposed transportation methods and
9 routes; and

10 “(C) proposed shipment schedules.

11 “(9) Seek to join in any legal action by or
12 against the host state to prevent nonparty states or
13 generators from disposing of low-level radioactive
14 waste at the facility.

15 “SEC. 4.06. Each party state shall act in good faith
16 and may rely on the good faith performance of the other
17 party states regarding requirements of this compact.

18 “ARTICLE V. PARTY STATE CONTRIBUTIONS

19 “SEC. 5.01. Each party state, except the host state,
20 shall contribute a total of \$25 million to the host state.
21 Payments shall be deposited in the host state treasury to
22 the credit of the low-level waste fund in the following man-
23 ner except as otherwise provided. Not later than the 60th
24 day after the date of congressional ratification of this com-
25 pact, each non-host party state shall pay to the host state
26 \$12.5 million. Not later than the 60th day after the date

1 of the opening of the compact facility, each non-host party
2 state shall pay to the host state an additional \$12.5 mil-
3 lion.

4 "SEC. 5.02. As an alternative, the host state and the
5 non-host states may provide for payments in the same
6 total amount as stated above to be made to meet the prin-
7 cipal and interest expense associated with the bond indebt-
8 edness or other form of indebtedness issued by the appro-
9 priate agency of the host state for purposes associated
10 with the development, operation, and post-closure monitor-
11 ing of the compact facility. In the event the member states
12 proceed in this manner, the payment schedule shall be de-
13 termined in accordance with the schedule of debt repay-
14 ment. This schedule shall replace the payment schedule
15 described in Section 5.01 of this article.

16 "ARTICLE VI. PROHIBITED ACTS AND PENALTIES

17 "SEC. 6.01. No person shall dispose of low-level ra-
18 dioactive waste generated within the party states unless
19 the disposal is at the compact facility, except as otherwise
20 provided in Section 3.05(7) of Article III.

21 "SEC. 6.02. No person shall manage or dispose of any
22 low-level radioactive waste within the party states unless
23 the low-level radioactive waste was generated within the
24 party states, except as provided in Section 3.05(6) of Arti-
25 cle III. Nothing herein shall be construed to prohibit the
26 storage or management of low-level radioactive waste by

1 a generator, nor its disposal pursuant to 10 C.F.R. Part
2 20.302.

3 "SEC. 6.03. Violations of this article may result in
4 prohibiting the violator from disposing of low-level radio-
5 active waste in the compact facility, or in the imposition
6 of penalty surcharges on shipments to the facility, as de-
7 termined by the commission.

8 "ARTICLE VII. ELIGIBILITY, ENTRY INTO EFFECT;
9 CONGRESSIONAL CONSENT; WITHDRAWAL; EXCLUSION

10 "SEC. 7.01. The states of Texas, Maine, and Vermont
11 are party states to this compact. Any other state may be
12 made eligible for party status by a majority vote of the
13 commission and ratification by the legislature of the host
14 state, subject to fulfillment of the rights of the initial non-
15 host party states under Section 3.04(11) of Article III and
16 Section 4.01 of Article IV, and upon compliance with
17 those terms and conditions for eligibility that the host
18 state may establish. The host state may establish all terms
19 and conditions for the entry of any state, other than the
20 states named in this section, as a member of this compact;
21 provided, however, the specific provisions of this compact,
22 except for those pertaining to the composition of the com-
23 mission and those pertaining to Section 7.09 of this arti-
24 cle, may not be changed except upon ratification by the
25 legislatures of the party states.

1 “SEC. 7.02. Upon compliance with the other provi-
2 sions of this compact, a state made eligible under Section
3 7.01 of this article may become a party state by legislative
4 enactment of this compact or by executive order of the
5 governor of the state adopting this compact. A state be-
6 coming a party state by executive order shall cease to be
7 a party state upon adjournment of the first general session
8 of its legislature convened after the executive order is is-
9 sued, unless before the adjournment, the legislature enacts
10 this compact.

11 “SEC. 7.03. Any party state may withdraw from this
12 compact by repealing enactment of this compact subject
13 to the provisions herein. In the event the host state allows
14 an additional state or additional states to join the com-
15 pact, the host state’s legislature, without the consent of
16 the non-host party states, shall have the right to modify
17 the composition of the commission so that the host state
18 shall have a voting majority on the commission, provided,
19 however, that any modification maintains the right of each
20 initial party state to retain one voting member on the com-
21 mission.

22 “SEC. 7.04. If the host state withdraws from the
23 compact, the withdrawal shall not become effective until
24 five years after enactment of the repealing legislation and
25 the non-host party states may continue to use the facility

1 during that time. The financial obligation of the non-host
2 party states under Article V shall cease immediately upon
3 enactment of the repealing legislation. If the host state
4 withdraws from the compact or abandons plans to operate
5 a facility prior to the date of any non-host party state pay-
6 ment under Sections 4.05(5) and (6) of Article IV or Arti-
7 cle V, the non-host party states are relieved of any obliga-
8 tions to make the contributions. This section sets out the
9 exclusive remedies for the non-host party states if the host
10 state withdraws from the compact or is unable to develop
11 and operate a compact facility.

12 “SEC. 7.05. A party state, other than the host state,
13 may withdraw from the compact by repealing the enact-
14 ment of this compact, but this withdrawal shall not be-
15 come effective until two years after the effective date of
16 the repealing legislation. During this two-year period the
17 party state will continue to have access to the facility. The
18 withdrawing party shall remain liable for any payments
19 under Sections 4.05(5) and (6) of Article IV that were
20 due during the two-year period, and shall not be entitled
21 to any refund of payments previously made.

22 “SEC. 7.06. Any party state that substantially fails
23 to comply with the terms of the compact or to fulfill its
24 obligations hereunder may have its membership in the
25 compact revoked by a seven-eighths vote of the commis-

1 sion following notice that a hearing will be scheduled not
2 less than six months from the date of the notice. In all
3 other respects, revocation proceedings undertaken by the
4 commission will be subject to the Administrative Proce-
5 dure and Texas Register Act (Article 6252-13a, Vernon's
6 Texas Civil Statutes), except that a party state may ap-
7 peal the commission's revocation decision to the United
8 States District Court in accordance with Section 3.06 of
9 Article III. Revocation shall take effect one year from the
10 date such party state receives written notice from the com-
11 mission of a final action. Written notice of revocation shall
12 be transmitted immediately following the vote of the com-
13 mission, by the chair, to the governor of the affected party
14 state, all other governors of party states, and to the Unit-
15 ed States Congress.

16 "SEC. 7.07. This compact shall take effect following
17 its enactment under the laws of the host state and any
18 other party state and thereafter upon the consent of the
19 United States Congress and shall remain in effect until
20 otherwise provided by federal law. If Texas and either
21 Maine or Vermont ratify this compact, the compact shall
22 be in full force and effect as to Texas and the other ratify-
23 ing state, and this compact shall be interpreted as follows:

24 "(1) Texas and the other ratifying state are the
25 initial party states.

1 “(2) The commission shall consist of two voting
2 members from the other ratifying state and six from
3 Texas.

4 “(3) Each party state is responsible for its pro-
5 rata share of the commission’s expenses.

6 “SEC. 7.08. This compact is subject to review by the
7 United States Congress and the withdrawal of the consent
8 of Congress every five years after its effective date, pursu-
9 ant to federal law.

10 “SEC. 7.09. The host state legislature, with the ap-
11 proval of the governor, shall have the right and authority,
12 without the consent of the non-host party states, to modify
13 the provisions contained in Section 3.04(11) of Article III
14 to comply with Section 402.219(c)(1), Texas Health &
15 Safety Code, as long as the modification does not impair
16 the rights of the initial non-host party states.

17 “ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

18 “SEC. 8.01. The provisions of this compact shall be
19 broadly construed to carry out the purposes of the com-
20 pact, but the sovereign powers of a party shall not be in-
21 fringed upon unnecessarily.

22 “SEC. 8.02. This compact does not affect any judicial
23 proceeding pending on the effective date of this compact.

24 “SEC. 8.03. No party state acquires any liability, by
25 joining this compact, resulting from the siting, operation,
26 maintenance, long-term care or any other activity relating

1 to the compact facility. No non-host party state shall be
2 liable for any harm or damage from the siting, operation,
3 maintenance, or long-term care relating to the compact
4 facility. Except as otherwise expressly provided in this
5 compact, nothing in this compact shall be construed to
6 alter the incidence of liability of any kind for any act or
7 failure to act. Generators, transporters, owners and opera-
8 tors of facility shall be liable for their acts, omissions, con-
9 duct or relationships in accordance with applicable law.
10 By entering into this compact and securing the ratification
11 by Congress of its terms, no party state acquires a poten-
12 tial liability under section 5(d)(2)(C) of the Act (42 U.S.C.
13 Sec. 2021e(d)(2)(C)) that did not exist prior to entering
14 into this compact.

15 “SEC. 8.04. If a party state withdraws from the com-
16 pact pursuant to Section 7.03 of Article VII or has its
17 membership in this compact revoked pursuant to section
18 7.06 of Article VII, the withdrawal or revocation shall not
19 affect any liability already incurred by or chargeable to
20 the affected state under Section 8.03 of this article.

21 “SEC. 8.05. The provisions of this compact shall be
22 severable and if any phrase, clause, sentence, or provision
23 of this compact is declared by a court of competent juris-
24 diction to be contrary to the constitution of any participat-
25 ing state or of the United States or the applicability there-

1 of to any government, agency, person or circumstances is
2 held invalid, the validity of the remainder of this compact
3 and the applicability thereof to any government, agency,
4 person, or circumstance shall not be affected thereby to
5 the extent the remainder can in all fairness be given effect.
6 If any provision of this compact shall be held contrary to
7 the constitution of any state participating therein, the
8 compact shall remain in full force and effect as to the state
9 affected as to all severable matters.

10 "SEC. 8.06. Nothing in this compact diminishes or
11 otherwise impairs the jurisdiction, authority, or discretion
12 of either of the following:

13 "(1) The United States Nuclear Regulatory
14 Commission pursuant to the Atomic Energy Act of
15 1954, as amended (42 U.S.C. Sec. 2011 et seq.).

16 "(2) An agreement state under section 274 of
17 the Atomic Energy Act of 1954, as amended (42
18 U.S.C. Sec. 2021).

19 "SEC. 8.07. Nothing in this compact confers any new
20 authority on the states or commission to do any of the
21 following:

22 "(1) Regulate the packaging or transportation
23 of low-level radioactive waste in a manner inconsis-
24 tent with the regulations of the United States Nu-

1 clear Regulatory Commission or the United States
2 Department of Transportation.

3 “(2) Regulate health, safety, or environmental
4 hazards from source, by-product, or special nuclear
5 material.

6 “(3) Inspect the activities of licensees of the
7 agreement states or of the United States Nuclear
8 Regulatory Commission.”.

○

103D CONGRESS
2D SESSION

H. R. 4814

To grant the consent of the Congress to amendments to the Central Midwest Interstate Low-Level Radioactive Waste Compact.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 1994

Mr. DURBIN (for himself, Mr. BAESLER, Mr. YATES, Mr. BARLOW, Mr. HASTERT, Mr. COSTELLO, Mr. EWING, Mr. SANGMEISTER, Mr. HYDE, Mr. PORTER, Mr. FAWELL, Mr. MICHEL, and Mr. MANZULLO) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Natural Resources

A BILL

To grant the consent of the Congress to amendments to the Central Midwest Interstate Low-Level Radioactive Waste Compact.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Central Midwest Inter-
5 state Low-Level Radioactive Waste Compact Amendments
6 Consent Act of 1993".

1 **SEC. 2. CONSENT OF CONGRESS TO COMPACT AMEND-**
2 **MENTS.**

3 The consent of the Congress is hereby given to
4 amendments made by the States of Illinois and Kentucky
5 to the Central Midwest Interstate Low-Level Radioactive
6 Waste Compact, which compact was consented to by the
7 Congress in section 224 of the Omnibus Low-Level Radio-
8 active Waste Interstate Compact Consent Act (Pub. L.
9 99-240; 42 U.S.C. 2021 note). The amendments to which
10 such consent is given are substantially as follows:

11 (1) The 2d undesignated paragraph of article I
12 of the compact is amended to read as follows:

13 “The states party to this compact recognize that the
14 Congress of the United States, by enacting the Low-Level
15 Radioactive Waste Policy Act (42 U.S.C. 2021), has pro-
16 vided for and encouraged the development of low-level ra-
17 dioactive waste compacts as a tool for managing such
18 waste. The party states also recognize that the manage-
19 ment of low-level radioactive waste is handled most effi-
20 ciently on a regional basis; and, that the safe and efficient
21 management of low-level radioactive waste generated with-
22 in the region requires that sufficient capacity to manage
23 such waste be properly provided.”.

24 (2) Section (k) of article II of the compact is
25 amended to read as follows:

1 “k) ‘Low-level radioactive waste’ or ‘waste’ means ra-
2 dioactive waste not classified as (1) high-level radioactive
3 waste, (2) transuranic waste, (3) spent nuclear fuel, or
4 (4) by-product material as defined in Section 11e. (2) of
5 the Atomic Energy Act of 1954. This definition shall apply
6 notwithstanding any declaration by the federal govern-
7 ment, a state or any regulatory agency that any radio-
8 active material is exempt from any regulatory control.”.

9 (3) Section (q) of article II of the compact is
10 amended to read as follows:

11 “q) ‘Regional facility’ means any facility as defined
12 in Article II(f) that is (1) located within the region, and
13 (2) established by a party state pursuant to designation
14 of that state as a host state by the Commission.”.

15 (4) Sections (a) and (b) of article III of the
16 compact are amended to read as follows:

17 “a) There is created the Central Midwest Interstate
18 Low-Level Radioactive Waste Commission. Upon the eligi-
19 ble states becoming party states, the Commission shall
20 consist of two voting Commissioners from each state eligi-
21 ble to be designated a host state under Article VI(b), one
22 voting Commissioner from any other party state, and for
23 each regional facility, one non-voting Commissioner who
24 is an elected official of local government and a resident
25 of the county where that regional facility is located. The

1 Governor of each party state shall notify the Commission
2 in writing of its Commissioners and any alternates.

3 “b) Each voting Commissioner is entitled to one vote.
4 No action of the Commission is binding unless a majority
5 of the voting membership casts its vote in the affirmative.
6 In addition, no agreement by the Commission under Arti-
7 cle III(i)(1), Article III(i)(2), or Article III(i)(3) is valid
8 unless all voting Commissioners from the party state in
9 which the facility where waste would be sent is located
10 cast their votes in the affirmative.”.

11 (5) Sections (d) and (e) of article III of the
12 compact are amended to read as follows:

13 “d) The Commission shall meet at least once annually
14 and shall also meet upon the call of any voting Commis-
15 sioner.

16 “e) All meetings of the Commission and its des-
17 igned committees shall be open to the public with rea-
18 sonable advance notice. The Commission may, by majority
19 vote, close a meeting to the public for the purpose of con-
20 sidering sensitive personnel or legal strategy matters.
21 However, all Commission actions and decisions shall be
22 made in open meetings and appropriately recorded. A roll
23 call may be required upon request of any voting Commis-
24 sioner.”

1 (6) Section (g) of article III of the compact is
2 amended to read as follows:

3 “g) The Office of the Commission shall be in Illinois.
4 The Commission may appoint or contract for and com-
5 pensate such staff necessary to carry out its duties and
6 functions. The staff shall serve at the Commission’s pleas-
7 ure with the exception that staff hired as the result of
8 securing federal funds shall be hired and governed under
9 applicable federal statutes and regulations. In selecting
10 any staff, the Commission shall assure that the staff has
11 adequate experience and formal training to carry out the
12 functions assigned to it by the Commission.”

13 (7) Sections (i) and (j) of article III of the com-
14 pact are amended to read as follows:

15 “i) The Commission may:

16 “1) Enter into an agreement with any person
17 to allow waste from outside the region to be disposed
18 of at facilities in the region. However, no such
19 agreement shall be effective unless and until ratified
20 by a law enacted by the party state to which the
21 waste would be sent for disposal.

22 “2) Enter into an agreement with any person
23 to allow waste described in Article VII(a)(6) to be
24 treated, stored, or disposed of at regional facilities.
25 However, no such agreement shall be effective unless

1 and until ratified by a law enacted by the host state
2 of the regional facility to which the waste would be
3 sent for treatment, storage, or disposal.

4 “3) Enter into an agreement with any person
5 to allow waste from outside the region to be treated
6 or stored at facilities in the region. However, any
7 such agreement shall be revoked as a matter of law
8 if, within one year of the effective date of the agree-
9 ment, a law is enacted ordering such revocation by
10 the party state to which the waste would be sent for
11 treatment or storage.

12 “4) Approve, or enter into an agreement with
13 any person for, the export of waste from the region.

14 “5) Approve the disposal of waste generated
15 within the region at a facility in the region other
16 than a regional facility, subject to the limitations of
17 Articles V(f) and VII(a)(6).

18 “6) Require that waste generated within the re-
19 gion be treated or stored at available regional facili-
20 ties, subject to the limitations of Articles V(f),
21 VII(a)(3) and VII(a)(6).

22 “7) Appear as an intervenor or party in interest
23 before any court of law or any federal, state or local
24 agency, board or commission in any matter related
25 to waste management. In order to represent its

1 views, the Commission may arrange for any expert
2 testimony, reports, evidence or other participation.

3 “8) Review the emergency closure of a regional
4 facility, determine the appropriateness of that clo-
5 sure, and take whatever actions are necessary to en-
6 sure that the interests of the region are protected,
7 provided that a party state with a total volume of
8 waste recorded on low-level radioactive waste mani-
9 fests for any year that is less than 10 percent of the
10 total volume recorded on such manifests for the re-
11 gion during the same year shall not be designated a
12 host state or be required to store the region’s waste.
13 In determining the 10 percent exclusion, there shall
14 not be included waste recorded on low-level radio-
15 active waste manifests by a person whose principal
16 business is providing a service by arranging for the
17 collection, transportation, treatment, storage or dis-
18 posal of such waste.

19 “9) Take any action which is appropriate and
20 necessary to perform its duties and functions as pro-
21 vided in this compact.

22 “10) Suspend the privileges or revoke the mem-
23 bership of a party state.

24 “j) The Commission shall:

1 “1) Submit within 10 days of its execution to
2 the governor and the appropriate officers of the leg-
3 islative body of the party state in which any affected
4 facility is located a copy of any agreement entered
5 into by the Commission under Article III(i)(1), Arti-
6 cle III(i)(2) or Article III(i)(3).

7 “2) Submit an annual report to, and otherwise
8 communicate with, the governors and the appro-
9 priate officers of the legislative bodies of the party
10 states regarding the activities of the Commission.
11 The annual report shall include a description of the
12 status of the activities taken pursuant to any agree-
13 ment entered into by the Commission under Article
14 III(i)(1), Article III(i)(2) or Article III(i)(3) and any
15 violation of any provision thereof, and a description
16 of the source, volume, activity, and current status of
17 any waste from outside the region or waste described
18 under Article VII(a)(6) that was treated, stored, or
19 disposed of in the region in the previous year.

20 “3) Hear, negotiate, and, as necessary, resolve
21 by final decision disputes which may arise between
22 the party states regarding this compact.

23 “4) Adopt and amend, as appropriate, a re-
24 gional management plan that plans for the establish-
25 ment of needed regional facilities.

1 “5) Adopt an annual budget.”.

2 (8) Sections (o) and (p) of article III of the
3 compact are amended to read as follows:

4 “o) The Commission is a legal entity separate and
5 distinct from the party states and is liable for its actions
6 as a separate and distinct legal entity. Commissioners are
7 not personally liable for actions taken by them in their
8 official capacity.

9 “p) Except as provided under Article III(n), Article
10 III(o), Article VI(p) and Article VI(q), nothing in this
11 compact alters liability for any action, omission, course of
12 conduct or liability resulting from any causal or other rela-
13 tionships.”.

14 (9) Sections (b) and (c) of article V of the com-
15 pact are amended to read as follows:

16 “b) Other than the provisions of Article V(f) and
17 VII(a)(6), each party state has the right to have all wastes
18 generated within borders managed at regional facilities.
19 This right shall be subject to the provisions of this Com-
20 pact. All party states have an equal right of access to any
21 facility outside the region made available to the region by
22 any agreement entered into by the Commission pursuant
23 to Article III(i)(4).

24 “c) Party states or generators may negotiate for the
25 right of access to a facility outside the region and may

1 export waste outside the region subject to Commission ap-
2 proval under Article III(i)(4).”.

3 (10) Section (f) of article V of the compact is
4 amended to read as follows:

5 “f) Waste originating from the Maxey Flats nuclear
6 waste disposal site in Fleming County, Kentucky shall not
7 be shipped to any facility in Illinois for storage, treatment
8 or disposal. Disposition of these wastes shall be the sole
9 responsibility of the Commonwealth of Kentucky and such
10 waste shall not be subject to the provisions of Articles
11 IX(b)(3) and (4) of this compact.”.

12 (11) Section (b) of article VI of the compact is
13 amended to read as follows:

14 “b) If all regional facilities required by the regional
15 management plan are not developed pursuant to Article
16 VI(a), or upon notification that an existing regional facil-
17 ity will be closed, the Commission may designate a party
18 state as a host state. A party state shall not be designated
19 as a host state for any regional facility under this Article
20 VI(b) unless that state’s total volume of waste recorded
21 on low-level radioactive waste manifests for any year is
22 more than 10% of the total volume recorded on such mani-
23 fests for the region during the same year. In determining
24 the 10% exclusion, there shall not be included waste re-
25 corded on low-level radioactive waste manifests by a per-

1 son whose principal business is providing a service by ar-
2 ranging for the collection, transportation, treatment, stor-
3 age or disposal of such waste, or waste described in Article
4 VII(a)(6).”.

5 (12) Section (c) of article VI of the compact is
6 repealed.

7 (13) Section (e) of article VI of the compact is
8 amended to read as follows:

9 “e) Any party state designated as a host state may
10 request the Commission to relieve that state of the respon-
11 sibility to serve as a host state. The Commission may re-
12 lieve a party state of this responsibility upon a showing
13 by the requesting party state that no feasible potential re-
14 gional facility site of the type it is designated to host exists
15 within its borders or for other good cause shown and con-
16 sistent with the purposes of this Compact.”.

17 (14) Sections (l) and (m) of article VI of the
18 compact are amended to read as follows:

19 “l) A host state intending to close a regional facility
20 located within its borders shall notify the Commission in
21 writing of its intention and the reasons. Notification shall
22 be given to the Commission at least five years prior to
23 the intended date of closure. This Section shall not pre-
24 vent an emergency closing of a regional facility by a host
25 state to protect its air, land and water resources and the

1 health and safety of its citizens. However, a host state
2 which has an emergency closing of a regional facility shall
3 notify the Commission in writing within 3 working days
4 of its action and shall, within 30 working days of its ac-
5 tion, demonstrate justification for the closing.

6 “m) If a regional facility closes before an additional
7 or new facility becomes operational, waste generated with-
8 in the region may be shipped temporarily to any location
9 agreed on by the Commission until a regional facility is
10 operational, provided that the region’s waste shall not be
11 stored in a party state with a total volume of waste re-
12 corded on low-level radioactive waste manifests for any
13 year which is less than 10% of the total volume recorded
14 on the manifests for the region during the same year. In
15 determining the 10% exclusion, there shall not be included
16 waste recorded on low-level radioactive waste manifests by
17 a person whose principal business is providing a service
18 by arranging for the collection, transportation, treatment,
19 storage or disposal of such waste, or waste described in
20 Article VII(a)(6).”.

21 (15) Sections (o) through (q) of article VI of
22 the compact are amended to read as follows:

23 “o) The host state shall create an ‘Extended Care
24 and Long-Term Liability Fund’ and shall allocate suffi-

1 cient fee revenues, received pursuant to Article VI(i), to
2 provide for the costs of:

3 “1) decommissioning and other procedures re-
4 quired for the proper closure of a regional facility;

5 “2) monitoring, inspection and other procedures
6 required for the proper extended care of a regional
7 facility;

8 “3) undertaking any corrective action or clean-
9 up necessary to protect human health and the envi-
10 ronment from radioactive releases from a regional
11 facility; and

12 “4) compensating any person for medical and
13 other expenses incurred from damages to human
14 health, personal injuries suffered from damages to
15 human health and damages or losses to real or per-
16 sonal property, and accomplishing any necessary cor-
17 rective action or clean-up on real or personal prop-
18 erty caused by radioactive releases from a regional
19 facility; the host state may allocate monies in this
20 Fund in amounts as it deems appropriate to pur-
21 chase insurance or to make other similar financial
22 protection arrangements consistent with the pur-
23 poses of this Fund; this Article VI(n) shall in no
24 manner limit the financial responsibilities of the site
25 operator under Article VI(o), the party states under

1 Article VI(p), or any person who sends waste to a
2 regional facility, under Article VI(q).

3 “p) The operator of a regional facility shall purchase
4 an amount of property and third-party liability insurance
5 deemed appropriate by the host state, pay the necessary
6 periodic premiums at all times and make periodic pay-
7 ments to the Extended Care and Long-Term Liability
8 Fund as set forth in Article VI(n) for such amounts as
9 the host state reasonably determines is necessary to pro-
10 vide for future premiums to continue such insurance cov-
11 erage, in order to pay the costs of compensating any per-
12 son for medical and other expenses incurred from damages
13 to human health, personal injuries suffered from damages
14 to human health and damages or losses to real or personal
15 property, and accomplishing any necessary corrective ac-
16 tion or clean-up on real or personal property caused by
17 radioactive releases from a regional facility. In the event
18 of such costs resulting from radioactive releases from a
19 regional facility, the host state should, to the maximum
20 extent possible, seek to obtain monies from such insurance
21 prior to using monies from the Extended Care and Long-
22 Term Liability Fund.

23 “q) All party states shall be liable for the cost of ex-
24 tended care and long-term liability in excess of monies
25 available from the Extended Care and Long-Term Liabil-

1 ity Fund, as set forth in Article VI(n) and from the prop-
 2 erty and third-party liability insurance as set forth in Arti-
 3 cle VI(o). A party state may meet such liability for costs
 4 by levying surcharges upon generators located in the party
 5 state. The extent of such liability shall be based on the
 6 proportionate share of the total volume of waste placed
 7 in the regional facility by generators located in each such
 8 party state. Such liability shall be joint and several among
 9 the party states with a right of contribution between the
 10 party states. However, this Section shall not apply to a
 11 party state with a total volume of waste recorded on low-
 12 level radioactive waste manifests for any year that is less
 13 than 10% of the total volume recorded on such manifests
 14 for the region during the same year.”.

15 (16) Sections (d) through (q) of article VI of
 16 the compact are redesignated as sections (c) through
 17 (p), respectively.

18 (17) Article VI of the compact is amended by
 19 adding at the end the following new section:

20 “q) Any person who sends waste from outside the re-
 21 gion or waste described in Article VII(a)(6) for treatment,
 22 storage or disposal at a regional facility shall be liable for
 23 the cost of extended care and long-term liability of that
 24 regional facility in excess of the monies available from the
 25 Extended Care and Long-Term Liability Fund as set forth

1 in Article VI(n) and from the property and third-party li-
2 ability insurance as set forth in Article VI(o). The extent
3 of the liability for the person shall be based on the propor-
4 tionate share of the total volume of waste sent by that
5 person to the regional facility.”.

6 (18) Section (a)(6) of article VII of the com-
7 pact is amended to read as follows:

8 “6) establishes any right to the treatment, stor-
9 age or disposal at any facility in the region or pro-
10 vides any authority to prohibit export from the re-
11 gion of waste that is owned or generated by the
12 United States Department of Energy, owned or gen-
13 erated by the United States Navy as a result of the
14 decommissioning of vessels of the United States
15 Navy, or owned or generated as the result of any re-
16 search, development, testing or production of any
17 atomic weapon; or”.

18 (19) Section (d) of article VII of the compact
19 is amended to read as follows:

20 “d) No person who provides a service by arranging
21 for collection, transportation, treatment, storage or dis-
22 posal of waste from outside the region shall be allowed
23 to dispose of any waste, regardless of origin, in the region
24 unless specifically permitted under an agreement entered

1 into by the Commission in accordance with the require-
2 ments of Article III(i)(1).”.

3 (20) Section (e) of article VIII of the compact
4 is amended to read as follows:

5 “e) The Commission is formed upon the appointment
6 of the Commissioners and the tender of the membership
7 fee payable to the Commission by the eligible states. The
8 Governor of Illinois shall convene the initial meeting of
9 the Commission. The Commission shall cause legislation
10 to be introduced in the Congress which grants the consent
11 of the Congress to this compact, and shall take action nec-
12 essary to organize the Commission and implement the pro-
13 visions of this compact.”.

14 (21) Section (e) of article VIII of the compact
15 is amended to read as follows:

16 “e) This compact becomes effective July 1, 1984, or
17 at any date subsequent to July 1, 1984, upon enactment
18 by the eligible states. However, Article IX(b) shall not
19 take effect until the Congress has by law consented to this
20 compact. The Congress shall have an opportunity to with-
21 draw such consent every 5 years. Failure of the Congress
22 affirmatively to withdraw its consent has the effect of re-
23 newing consent for an additional 5 year period. The con-
24 sent given to this compact by the Congress shall extend
25 to the power of the region to ban the shipment of waste

1 into the region pursuant to Article III(i)(1) and to pro-
2 hibit exportation of waste generated within the region
3 under Article III(i)(4).”.

4 (22) Section (b) of article IX of the compact is
5 amended to read as follows:

6 “b) Unless authorized by the Commission pursuant
7 to Article III(i), or otherwise provided in this compact,
8 after January 1, 1986 it is a violation of this compact:

9 “1) for any person to deposit at a facility in the
10 region waste from outside the region;

11 “2) for any facility in the region to accept
12 waste from outside the region;

13 “3) for any person to export from the region
14 waste that is generated within the region;

15 “4) for any person to dispose of waste at a fa-
16 cility other than a regional facility;

17 “5) for any person to deposit at a regional fa-
18 cility waste described in Article VII(a)(6); or

19 “6) for any regional facility to accept waste de-
20 scribed in Article VII(a)(6).”.

21 (23) Article IX of the compact is amended by
22 redesignating sections (c) and (d) as sections (d)
23 and (e), respectively, and by inserting after section
24 (b) the following new section:

1 “e) It is a violation of this compact for any person
2 to treat or store waste at a facility other than a regional
3 facility if such treatment or storage is prohibited by the
4 Commission under Article III(i)(6).”

○

Mr. SHARP. Are there further opening statements?

Mr. ALLARD. I want to be able to protect the right of the Members on this side to be able to submit comments for the records if they may.

Mr. SHARP. Without objection, we will do that.

We are pleased to have with us two Member witnesses on the different compacts to speak to them today. Actually, they are on the same one but opposite parts of the country. One does not often put Maine and Texas in the same context. But perhaps one of them can explain to us how they got here.

We are very pleased to have with us Ms. Olympia Snowe from Maine and Mr. Ron Coleman from Texas.

**STATEMENT OF HON. OLYMPIA SNOWE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MAINE**

Ms. SNOWE. Thank you, Mr. Chairman. I am certainly pleased to have the opportunity to address your subcommittee and the Subcommittee on Energy and Mineral Resources on my legislation, on H.R. 4800, which would provide the consent of Congress to the Texas Low-Level Radioactive Waste Disposal Compact that was agreed to by Texas and Maine and Vermont.

I am pleased to be here with my colleague. I wish we were on the same side of this issue, but I am pleased to be able to give my perspective and the perspective of my State of Maine.

These compacts were negotiated by the States in response to Federal legislation that was passed in Congress in 1980. We recognized that we had to establish a low-level radioactive waste policy and did so by passing the Act that essentially placed the responsibility within the States for the disposal of this low-level radioactive waste.

As an incentive, the Act included the ability of those States that were included in the compact area to exclude wastes from outside that compact area. In fact, in 1985, amendments were passed in Congress reinforcing this policy and the incentives to form the compacts.

Maine and Vermont, as well as Texas of course, have overwhelmingly supported this policy and this compact. It was passed in both the Maine and Vermont Legislatures as well as the Texas Legislature with overwhelming votes of approval. All three Governors have supported this compact. In Maine we had a referendum statewide in 1993 which endorsed this compact by more than 2-1.

It is essential that States are rewarded for moving ahead and fulfilling their responsibilities under the Act, and their faithfulness to congressional intent should be rewarded with timely congressional approval of the compact.

The Texas Low-Level Waste Compact includes Maine, Vermont, and Texas. Maine and Vermont would be allowed to dispose of their waste up to a level that is no more than 20 percent of the total waste generated in the State of Texas over a period of 50 years between 1995 and 2045. In return, Maine and Vermont would each have to pay the State of Texas \$25 million. In addition, each State would have to pay the county in which the disposal facility is located \$2.5 million.

We remain neutral in terms of this legislation with respect to the site location in the State of Texas. The site location is to be determined by that State and its environmental agency, so that is not anything that is addressed in this legislation.

In addition, the compact includes an eight-member commission, six of whom are appointed by the State of Texas. The other two members represent the State of Maine and the State of Vermont.

As far as the facility itself, of course, wherever it is established, it would have to meet the State and Federal environmental health and safety standards consistent with applicable Federal and State laws. This legislation is very important to our State and to the States that are involved so that we can move forward in a timely manner to be assured that we have a long-term disposal for our low-level radioactive waste.

This is something that is strongly supported by my State by indications of the votes that we had in the State legislature and by the other States as well. I would hope that this committee would recognize that and move forward as expeditiously as possible so that the three affected States can grapple with this low-level waste question now rather than perpetuating this issue for years to come. I think we need to finally remove the cloud of uncertainty regarding long-term disposal and to focus on executing the States' painstakingly crafted plans, so I would urge expeditious support of this legislation.

Thank you, Mr. Chairman.

Mr. SHARP. Thank you very much. If you don't mind waiting, we would like to hear from Mr. Coleman.

[Prepared statement of Ms. Snowe follows:]

TESTIMONY ON H.R. 4800, A BILL TO GRANT THE CONSENT OF THE
CONGRESS TO THE TEXAS LOW-LEVEL RADIOACTIVE WASTE
DISPOSAL COMPACT

BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER AND THE
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

The Honorable Olympia J. Snowe
Member of Congress, 2nd District, Maine
September 13, 1994

Mr. Chairman, members of the Subcommittee on Energy and Power and the Subcommittee on Energy and Mineral Resources, thank you for giving me the opportunity to testify on behalf of the bill that I have introduced, H.R. 4800.

H.R. 4800 will provide the consent of the Congress to the Texas Low-Level Radioactive Waste Disposal Compact agreed to by Texas, Maine, and Vermont. The compact negotiated by these states is a response to federal law. They are doing what Congress intended for them to do. All three states believe that the compact serves their interests, and it received strong support in the three state legislatures. H.R. 4800 has nothing whatsoever to do with the site location of the waste disposal facility. The compact only provides for the orderly disposal of low-level waste generated in these three states.

For these reasons, I am urging the members of the subcommittees to support H.R. 4800, and to make every effort to enact the bill before the current Congress adjourns.

In 1789, Ben Franklin said that nothing in his world was certain but death and taxes. Sadly, death and taxes are still with us today, but we can add at least one other item to Mr. Franklin's list, and that is low-level radioactive waste. Whether we like it or not, low-level waste is with us. It exists. And we cannot avoid dealing with it.

In 1980, Congress recognized that we could not avoid dealing with low-level radioactive waste when it passed the Low-Level Radioactive Waste Policy Act. By passing the Act, Congress placed the responsibility for disposing of low-level radioactive waste with the states. To help states meet their responsibilities, it authorized States to enter into regional disposal compacts. As an incentive to forming these compacts, the Act allowed the compact members to exclude waste from outside the compact area. The 1985 Amendments to the Act reinforced this policy and the incentives to form compacts.

In response to these federal statutes, nine compacts involving 42 states have been proposed, and nine have been ratified. Texas, Maine, and Vermont propose the tenth. They are following the lead established by Congress. I believe that their faithfulness to Congressional intent deserves to be rewarded with timely Congressional approval of the compact.

The Texas Low-Level Radioactive Waste Disposal Compact allows Maine and Vermont to dispose of the low-level radioactive waste generated within their borders at a disposal facility in Texas over a period of fifty years, from 1995 to 2045. In return, Maine and Vermont must pay \$25 million each to Texas for use of a facility that Texas had already decided to build on its own in 1981. Maine and Vermont will also have to pay \$2.5 million each to the county in which the disposal facility will be

located.

Ratification of the compact will allow Texas to exclude waste from any state besides Maine and Vermont. The compact caps the amount of waste that Maine and Vermont can send to Texas at 20% of the projected total waste produced in Texas. An 8-member Compact Commission established by the compact will oversee implementation of the agreement and will determine policies such as the timing and frequency of waste shipments. With 6 members, Texas will have a controlling interest in the Compact Commission.

One thing that neither H.R. 4800 nor the compact itself provide for, however, is the site location of the disposal facility. Both are neutral on this question. The compact requires only that Texas shall develop and have full administrative control over the development, management, and operation of the disposal facility. And in the development and management of the facility, the compact requires the protection and preservation of the environment, public health, and safety, consistent with all applicable federal and state laws.

Concerns about the particular site chosen for the disposal facility in Texas are extraneous to the subject of this hearing. The compact implicitly defers questions on those matters to the Texas Legislature, the Texas Low-Level Radioactive Waste Disposal Authority, the Texas Water Commission, and other state agencies. H.R. 4800 only provides the consent of Congress to an agreement freely negotiated among the states, and negotiated in response to federal encouragement.

The Texas compact was approved in the legislatures of each of the party states by large majorities. The Maine House approved the compact by a vote of 131 to 6, and the Maine Senate approved the agreement by 26 to 3 vote. In a 1993 State Referendum, Maine voters approved the compact by a vote of over 2 to 1.

The Texas House approved the compact by a voice vote, with only 5 members registering opposition; the Texas Senate approved the compact by a vote of 26 to 2. In Vermont, the House voted 104 to 36 in favor of the compact, and the Senate approved it by voice vote. The governors of all three states have approved the compact.

Most citizens in the three states clearly believe that the compact serves their interests. The Texas compact follows ample precedent established in other parts of the country. It represents the desired response to federal low-level radioactive waste policy, as established by the Low-Level Radioactive Waste Policy Act. And it will ensure the orderly disposal of low-level radioactive waste generated in these three states in a manner that is consistent with all applicable federal and state environmental, public health, and public safety laws.

Maine, Texas, and Vermont have found a constructive and responsible way to deal with a problem that cannot be ignored in contemporary society -- low-level waste. I think that they deserve the support of the Congress, and I hope that they will receive the support of your subcommittees when you consider H.R. 4800.

I would also like to request that you make every effort to move the bill to the House floor as expeditiously as possible. The three affected states have been grappling with the low-level waste question for years. They need to finally remove the cloud of uncertainty regarding long-term disposal for their low-level waste, and to focus on executing their painstakingly crafted plans.

Thank you again for the opportunity to testify before you today.

**STATEMENT OF HON. RONALD D. COLEMAN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. COLEMAN. Thank you, Mr. Chairman. And I thank both subcommittees for holding a hearing on such an important issue. I am grateful for the opportunity to be able to share with you the concerns that I have about the Texas, Vermont and Maine Low-Level Radioactive Waste Disposal Compact.

My colleague is right. We are on opposite sides of the issue in terms of supporting it or not supporting it. Most Members from the Texas delegation would support a compact like this because it is not in their part of the State. It is also not in my congressional district although it is an area that I used to represent before redistricting.

I will tell you, however, that my concern is not as a person that says not in my back yard only. My concern has been for a long period of time that we do the right thing in terms of geology. I will not argue that issue here because that is not the issue before these two subcommittees. I will tell you, however, that we should be concerned nonetheless about environmental protection.

For us in Congress to give up any rights or authority about the public health and welfare of the American people regardless of compacts done by States is wrong. We have an obligation to see to it that we honor our international agreements, and we have one with Mexico. And this particular location of this particular dump site is in clear violation of several of those agreements with Mexico.

I am concerned about the siting of dump sites in minority communities. The committees may have been made aware by recent articles that have been published concerning the location of hazardous waste dump sites in areas where we have not paid attention to those who are defenseless in terms of being able to carry on a fight. We can ensure that inferior sites are protected and international agreements followed.

My concern is that adequate protection is not given to the host State, Texas, in the event that hazardous waste stored at the disposal site contaminates the surrounding area. Let me say that is not just somebody's idea of something that could happen.

There have been six underground facilities similar to the one Texas has proposed. Of those six, five have been closed due to contamination. The probability that the site in Texas will leak, I believe, is great given the industry's history.

This is certainly not the first time I have testified before a congressional committee in opposition to waste being dumped in Hudspeth County, Texas. In 1992, I testified before the Merchant Marine and Fisheries Subcommittee on Coast Guard and Navigation on a proposal to dump New York City's municipal waste at a site outside the community of Sierra Blanca which is the county seat. I expressed then similar concerns about the lack of evidence that the current methods of disposing of waste do not pose a threat either to human health or the environment.

In July of this year, the Texas Natural Resource Conservation Commission fined a New York company for not properly treating 180 tons of sludge. I call 180 tons of untreated sludge a hazard. Hudspeth County is the waste site selected by Texas. The citizens

of Hudspeth County have already been put at risk by unsafe technology. This compact exposes Texans to significant risk again and then asks them to pay for it.

I noted the chairman suggested that Maine and Texas are not geographically close. Let me point out that if we are attempting to bury nuclear waste or indeed entire facilities that may be moved from either Vermont or Maine in West Texas, they may come through your district, Mr. Chairman, and then you will know the connection.

I know there are two groups that will be most concerned about whether or not there is an accident in the transport of that radioactive material. It would be your citizens and my taxpayers, because under this compact, Texas has to bear the liabilities. I submit so will the United States Government. This compact exposes Texans to significant risks again and asks for them to pay for it. This goes too far.

As you know, these wastes can be dangerous for many thousands of years. I submit to you that this compact provides no protection to the citizens of the host State and host county who will be most affected by the leakage of this waste. Remember, the mountain ranges of West Texas, Northern Mexico and the Chihuahua Desert are areas of seismic activities. In fact, a lot of people don't think of earthquakes as occurring in Texas, but the largest one that ever occurred in Texas occurred in 1931. The epicenter was at the site that has been selected by the State of Texas.

My second objection is the compact does not protect Texas by limiting the volume of waste it must accept from party States and contracting States. Under this agreement, Texas accepts responsibility for both management and disposal. It is also unclear if waste imported from other States but incinerated in Texas is counted under the Texas portion or the non-host allotment. That should be corrected.

The shipment volumes are tied exclusively to disposal estimates. The compact is silent on how much volume can be shipped for management.

These technical flaws could result in the State legislatures amending the compact, and Congress will have to revisit this issue again as soon as next year. Texas officials have indicated their willingness to propose legislation next year to tighten the contracting clause.

Money, not the best science, is driving this compact process. This compact gives Texas the authority to unilaterally allow other States to dump in Texas, allowing the State to earn even more money at the expense, again, of the residents of a minority community out in the desert. As recently as July, representatives from Connecticut were in Hudspeth County exploring the financial benefits of Connecticut's ability to participate. Connecticut? I thought this was Texas, Maine and Vermont. You know what I know.

Although almost all the other States are involved in similar compacts, all but three will open after the Texas site. Once the Hudspeth County site opens, other States will look to it to hold their waste. One has to wonder why other compacts are moving more carefully and deliberately than this compact in opening a site.

A third objection that I have relates to respecting our binational agreements. As I mentioned, in selecting Sierra Blanca 20 miles from the Rio Grande River which is the international boundary between the U.S. and Mexico, selection of this site in my view is a clear violation of the 1983 Agreement for Cooperation on the Environment between the United States and Mexico commonly referred to as the La Paz Agreement. I request the communications from the Government of Mexico to the State Department outlining its objections be inserted in the record as a part of the record of this hearing.

Mr. SHARP. We will make it part of the record.

[The information follows:]

UNOFFICIAL TRANSLATION

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The Embassy of Mexico presents its compliments to the State Department and has the honor of referring to the plans for the residual waste deposit sites that are supposed to be built near the U.S.-Mexican border: in Texas, Low Level in Sierra Blanca in Hudspeth County, Dryden in Terrell County, and Spofford in Kinney County; in New Mexico, the Waste Isolation Pilot Plan in Eddy County; in California, La Posta and Campo in San Diego and Ward Valley in San Bernardino County.

As the State Department is aware, the plans for these hazardous waste deposit sites in the border zone, for which the Mexican Chancellery has appropriately given warning, have provoked strong reactions from the border communities, environmental organizations and both Mexican and United States Congressmen.

The Embassy would like to reiterate that the technical considerations shown by the Mexican Government, by the U.S. Environmental Protection Agency itself and by various non-governmental organizations of both countries, demonstrate that the plans and precautions of the companies promoting the above mentioned waste deposit projects cannot avoid the risk factor of transboundary pollution. In a context of greater environmental awareness and cooperation in the international community, neither one of our governments can ignore these types of concerns.

In accordance with the principles of cooperation and good-neighbors, the Embassy wishes to reiterate to the State Department the duty of all countries to prevent, inform and negotiate any action in their territory that could cause harm to a third state. In addition, we would like to remind you that during the High Level Meeting on Proposals for Radioactive and Hazardous Waste Deposits in the Border Zone, held on April 22, 1992, in Washington, the State Department committed itself to "be the means through which the corresponding authorities of the United States would be made aware of any information or concern of the Mexican Government in this regard."

As such, Mexico hopes that the United States takes all the preventative measures at its disposal to avoid the possibility of any risk of transboundary damage, or that the U.S might cause said damage, in compliance with what was agreed upon by both governments in Article 2 of the La Paz Convention in the following terms: "The Parties commit themselves as far as it is possible, to adopt the appropriate measures to prevent, reduce and eliminate sources of pollution in their respective territories that affect the border zone of the other." Based on the cited article, the hazardous waste deposit sites represent important sources of transboundary pollution.

At the same time, the second part of the article indicates that "the Parties will cooperate in the resolution of environmental problems in the border zone for the common good, in accordance with the provisions of this Convention." As such, the fact that the United States Government sets a limit on its responsibility in regard to the actions taking place in its territory, whether by federal, state, local authorities or even individuals, demonstrates an unwillingness to cooperate in finding a solution to environmental problems, to which it agreed in the Convention of La Paz.

As it has already been expressed by the Mexican Government, to contemplate building such a large number of waste deposits near the international boundary or near international rivers implies that the border location was selected, and this is an outrage against the legitimate right of the people in the regional communities not to have their natural birthright and health affected.

In view of the above, and the fact that the United States has allowed local or state courts to approve such waste deposit projects without taking into account the agreements between our two countries, the Government of Mexico wishes to reiterate its particular concern because the United States Federal Government still has not taken an active role in this regard and it still has not responded to diplomatic note 1214 of October 29, 1993, in regard to the waste deposit site at Ward Valley.

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In this context, the Embassy of Mexico would like to propose to the State Department that a High Level Meeting be held as soon as possible, that will allow our Governments to exchange viewpoints on the plans for the hazardous waste deposits in the border area.

The Embassy avails itself of this opportunity to renew to the State Department the assurances of its highest and most distinguished consideration.

Washington, D.C., August 1, 1984

To the Department of State
of the United States of America
Washington, D.C

Mr. COLEMAN. While Congress may have no authority over the site selection process, we are responsible for guaranteeing our binational agreements are respected by our own citizens as well as our State governments.

My final concern is waste sites in minority communities. Under this compact, the site county will receive a total of \$5 million from Vermont and Maine. It is a 64 percent Latino community; 2,915 people live there with a per capita income of only \$1,329. It is a rural community whose residents are generally poor and don't have the means to hire lobbyists or the population to influence State policy. It is an area not unlike the many other poor and minority communities across the country which have been forced to cohabitate with other radioactive waste.

On February 11, 1994, President Clinton signed an Executive order on Federal actions to address environmental justice in minority and low-income populations. This Executive order was in response to the overwhelming evidence that minorities and low-income populations are disproportionately burdened with environmental hazards. Hudspeth County is a fine example of that.

The President directed all Federal agencies to ensure that the practice did not continue. It is left to Congress to address its responsibilities in the same spirit as that Act. We have a responsibility to protect those without the means to protect themselves, a responsibility to abide by our binational agreements. We can fulfill our responsibilities by disallowing this compact until a more suitable site is located.

Mr. Chairman, I thank you and all Members for your patience and your consideration today.

[Prepared statement of Mr. Coleman follows:]

STATEMENT OF THE HONORABLE RONALD D. COLEMAN
BEFORE THE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
AND THE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER

Opposition to the Texas Low-Level
Radioactive Waste Disposal Compact

September 13, 1994

I thank the Chairmen for holding this hearing on this very important issue and am grateful for the opportunity to share with the Committees my concerns about the Texas, Vermont, Maine Low-Level Radioactive Waste Disposal Compact. I oppose the Compact for several reasons, including environmental protection, proliferation of dumping, international agreements with Mexico, and my concern about waste sites in minority communities. I understand that Congress has no oversight with respect to siting within a state. However, we can help ensure that inferior sites are protected and international agreements followed.

My greatest concern is that adequate protection is not given to the host state, Texas, in the event the hazardous waste stored at the disposal site contaminates the surrounding area. There have been six underground low-level radioactive waste storage sites opened across the country. Of those six, five have been closed due to contamination. The area surrounding the sixth site has been shown to be contaminated. However, this site in Hanford, Washington is surrounded by weapons disposal facilities and the exact source of the contamination has not been determined. The probability that the site in Texas will leak is

great given the industry's history.

Under Article VIII, Section 8.03 of the Compact, the states of Vermont and Maine will not be held liable for damage incurred due to the "siting, operation, maintenance, long-term care, or any other activity relating to the compact facility." Who does this leave liable? Generators, transporters, owners, and operators of the facility. However, these companies have limited financial resources. Ultimately, the taxpayers of Texas and the Federal government will bear the liability. When the water supply for an entire region of the state is contaminated, who will pay for water to be brought in? The taxpayers of Texas and the Federal government.

This is not the first time I have testified before a Congressional Committee in opposition to waste being dumped in Hudspeth County, Texas. In 1992, I testified before the Merchant Marine and Fisheries Subcommittee on Coast Guard and Navigation on a proposal to dump New York City's municipal waste at a site outside the community of Sierra Blanca, which is in Hudspeth County, Texas. I expressed then similar concerns about the lack of evidence that the current methods of disposing of waste does not pose a threat either to human health or the environment. I was assured then by experts that the practice of land application of municipal waste, in the form of sludge, did not pose a hazard. In July of this year, the Texas Natural Resource Conservation Commission fined a New York company for not properly treating 180 tons of sludge. I call 180 tons of untreated sludge a hazard.

Hudspeth County is the waste site selected by Texas. The citizens of Hudspeth County have already been put at risk by unsafe waste technology. This compact exposes Texans to significant risk again and then asks them to pay for it.

As you know, these wastes can be dangerous for many thousands of years. The Environmental Protection Agency has insisted on guarantees that such material stay isolated from "the accessible environment" for 10,000 years--held secure in canisters for 100 or more of those years and then, as the containers begin to degrade, by the geological formations in which they are entombed. I submit to you that this compact provides no protection to the citizens of the host state and host county who will be most effected by the leakage of this waste. Vermont and Maine will not be held liable. Studies done to ascertain the suitability of the areas for this type of dumping are not accurate. Remember, the mountain ranges of West Texas, Northern Mexico and the Chihuahua desert are areas of seismic activity. The site is near the epicenter of the earthquake that occurred in 1931, the strongest recorded earthquake in Texas. The very people who have endangered their lives by accepting the wastes of other states, the people of Texas, will have to pay for the cleanup. It is they who could very well have to abandon their homes. Under this compact, Texas citizens will be left to pick up the tab, even though they, unlike Maine citizens, were never given the opportunity to vote on whether they approve of a compact or not.

My second objection to this Compact is that it does not protect Texas by limiting the volume of waste it must accept from Party States and Contracting States. Under this agreement, Texas accepts responsibility for both management and disposal as described in Article I, Section 1.01. Management is defined as "collection, consolidation, storage, packaging, or treatment." Treatment is not defined in the agreement. However, it is generally accepted as including incineration. Incineration reduces the volume of the waste, but not the level of radioactivity. Thus, less volume of waste will be disposed of at the site, but at a greater level of radioactivity.

It is also unclear if waste imported from other states, but incinerated in Texas, is counted under the Texas portion or the non-host allotment. Article III, Section 3.04(11) says:

The shipments of low-level radioactive waste from all non host party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period.

Shipment volumes are tied exclusively to disposal estimates. The Compact is silent on how much volume can be shipped for management. A substantially larger amount of waste can be shipped in and incinerated than the disposal estimates allow. Incineration of waste will allow more states to contract to dispose of their waste in Texas.

These technical flaws could result in the state legislatures amending the Compact and Congress having to revisit this issue as

soon as next year. Texas officials have indicated their willingness to propose legislation next year to tighten the contracting clause. However, once the Texas site is open there will be incredible outside pressure not to change the contract clause and it probably will not happen.

Money -- not the best science -- is driving the compact process. Texas chose to be the host site for other states so that it could earn additional revenue. Texas could have entered into a reciprocal compact like Connecticut and New Jersey whereby each state agrees to manage and dispose of its own waste, but remains protected under the 1985 Low Level Radioactive Waste Disposal Policy Act Amendments. Instead, Texas chose to enter into a compact with Vermont and Maine. Each of these states have aging nuclear plants which will eventually be buried lock, stock, and barrel in Texas.

This Compact gives Texas the authority to unilaterally allow other states to dump in Texas, allowing the state to earn even more money at the expense of the residents of West Texas. Connecticut, which I mentioned before is protected from having to house other states' waste, has shown a strong desire to be in the Compact. As recently as July, representatives from Connecticut were in Hudspeth County exploring the financial benefits of Connecticut's ability to participate.

Although almost all other states are involved in similar compacts, all but three will open after the Texas site. The other states are having to house their waste until a site opens.

Once the Hudspeth County site opens, other states will look to it to hold their waste. One has to wonder why other compacts are moving more carefully, and deliberately than this compact in opening a site.

A third objection relates to respecting our bi-national agreements. Texas is selecting Sierra Blanca, Hudspeth County, also the county seat, as the waste site. The town of Sierra Blanca is 20 miles from the Rio Grande River which is the international boundary between the U.S. and Mexico. Selection of this site is in clear violation of the 1983 Agreement for Cooperation on the Environment between the U.S. and Mexico, commonly referred to as the La Paz Agreement. Under Article 2 of the La Paz Agreement the U.S. and Mexican governments are directed "to the fullest extent practical . . . adopt the appropriate measures to prevent, reduce, and eliminate sources of pollution in their respective territory which affect the border area of the other." Article 7 of the Agreement states that the two governments shall assess, as appropriate, " . . . projects that may have significant impacts on the border area, so that appropriate measures may be considered to avoid or mitigate adverse environmental effects." The border region is defined as properties within 100 kilometers on either side of the Rio Grande.

I request that a communication from the Government of Mexico to the State Department outlining the its objection be inserted into the record immediately following my statement. While

Congress may have no authority over the site selection process, we are responsible for guaranteeing that our bi-national agreements are respected by our own citizens, as well as, our state governments.

A final issue concerns waste sites in minority communities. Under this Compact the site county will receive a total of \$5 million from Vermont and Maine. Hudspeth County is 64% Latino. 2,915 people live there and the per capita income is only \$13,029. It is a rural community whose residents are generally poor and do not have the means to hire lobbyists or the population to influence state policy. It is an area not unlike the many other poor, minority communities across the country which have been forced to co-habitate with other's radioactive waste. Five million dollars is a lot of money to anyone, but especially to these poor citiz

I would like to point out ent action by our President which speaks to the issue of poor, minority communities such as Sierra Blanca who are targeted under agreements sanctioned by this Compact. On February 11, 1994, President Clinton signed the Executive Order on Federal Actions to address Environmental Justice in Minority Populations and Low-Income Populations. This executive order was in response to the overwhelming evidence that minorities and low-income populations are disproportionately burdened with environmental hazards. Hudspeth County is a prime example of this. The President directed all Federal agencies to ensure that the practice did not continue. It is left to

Congress to address its responsibility in the same spirit of this Act.

We have a responsibility to protect those without the means to protect themselves. We have a responsibility to abide by our bi-national agreements. We can fulfill our responsibility by disallowing this compact until a more suitable site is located.

In addition, there is a recognition by the State of Texas that its contract with Maine and Vermont should also do the following:

- a. prohibit the entering into of agreements with entities other than state governments for the importation of low-level radioactive waste;
- b. define the volume of low-level radioactive waste to be accepted from contract entities.

The fact that the Compact would have to be changed by an act of the Texas Legislature between January and May of next year (1995) means that Congressional approval of the Compact subject to such a change is premature. We may have to approve an amended contract next year.

Thank you for your consideration of these arguments.

Mr. SHARP. Thank you very much, Mr. Coleman. Certainly you have been a vigorous, intense and thoughtful advocate for the folks in your area who are no longer part of your congressional district because I know you have been talking to me about this for several years.

I know you have fought hard within the State of Texas as they were making decisions, as the Governor and the State legislature decided to go this route, and I respect the vigor with which you have pursued most of us on these committees in hopes of pursuing your point of view. We want to take seriously the issues you raise.

As I indicated in my opening statement, at least I and some others I have talked with feel it is important to note that this is a regulated activity, either by the NRC or by an agreement with the State government. In this case, the State of Texas has an agreement with the Nuclear Regulatory Commission and therefore will have to regulate hazards that come with low-level nuclear waste, though they are not nearly the kind of hazards that come with high-level nuclear waste, that there is a built-in system of protection that is to be exercised in this process. Certainly I would be terribly concerned if that did not exist and if the decisions we were to make here disposed of that central issue.

I personally have noted that we have great difficulty getting the States to take responsibility for this just as we have great difficulty at the Federal level taking responsibility for the high-level nuclear waste and getting those decisions made. I am inclined to keep people's feet to the fire—we are trying on high-level to keep our own feet to the fire—but also on low-level. So certainly I will try to respect and take seriously what you have indicated here and the international ramifications of it as well with our important neighbors to the south.

But my own view is the burden of rejection must be on the folks that ask us to reject because, legally, we have set up a structure in which that power and authority has been left to the State with the collateral Federal power to regulate the environmental question of the nuclear waste, and that has yet to be exercised and will be exercised and should be exercised, and this and other committees should have oversight of that particular part of the activity.

I don't particularly have any questions. You and I have discussed this on many occasions. I appreciate and respect that.

Do my colleagues have questions? Mr. Allard, do you have any questions?

Mr. Barlow. Mr. McInnis.

Mr. MCINNIS. Congressman, could you tell me in more detail the provisions that you allege are in violation with the agreement with Mexico?

Mr. COLEMAN. They are commonly referred to as the La Paz Agreement. And in that regard, President Reagan and President de la Madrid reached an accord that said that we would try to keep an environmentally free and safe zone within 100 kilometers of each side of our international borders.

The siting of this facility in my view is in total violation of that agreement. One only has to look at the geology of the area to recognize that any water flows that occur, any flooding, any seismic activity would cause the underground seepage to flow toward the Rio Grande. It flows from Texas south toward the Rio Grande River.

The communication from Mexico states that it would hope that the United States would take all preventive measures to avoid the possibilities of any transboundary damage in compliance with article 2 of the La Paz Convention which state:

The parties commit themselves as far as is possible to adopt the appropriate measures to prevent, reduce and eliminate sources of pollution in the respective territories that affect the border zone of the other.

Hazardous waste deposit sites represent important sources of transboundary pollution.

Mr. MCINNIS. Which authority makes the selection of the site?

Mr. COLEMAN. In Texas, it was the Texas Low-Level Radioactive Waste Authority. That was done truthfully under the requirements set forth by the Texas Legislature. The Texas Legislature got together and said, well, we will see to it that it is sited on government-owned land. So right away, you eliminate a whole bunch of areas which might be more geologically sound, and essentially forced it out to west of a longitudinal line in Texas where most of our government-owned land is and where there is less resistance in terms of population and in terms of representation in the Texas Legislature.

When that site was selected, the Commission itself was obligated under their charge to do what they have done. I don't question the Commission's decision, per se. I question the efficacy of the legislature having done what it did in terms of demanding that it be in only a certain region of the State when in fact early geological reports when this issue was first brought up were sent to then-Governor Mark White which suggested that indeed sites in North Texas were far more desirable geologically. Governor Mark White, Governor Bill Clements and Governor Richards have made a decision that they want to continue following the mandate set forth by the legislature.

Mr. MCINNIS. It seems the proper forum for determining the merits of the compact is in this room, but the proper forum for determining the merits of the siting is in the form of the legislature and the siting authorities.

Mr. COLEMAN. I have argued that with Chairman Dingell and others in the past, and I always seem to lose the argument when they say that is a State issue. We made a decision in 1982 that we would take high-level waste and States would take low-level so, therefore, we wash our hands of the health and welfare of all American citizens if it is only low-level.

I think they will both kill you, and I don't know where that line is. There will be a problem for families or children in certain areas, especially if there is contamination and leakage. So I question the validity of that argument. Nonetheless, I lose that argument.

So you are right, I am not here arguing the siting issue unless it is a violation of an international agreement. Then I think the State erred and it can be set right by the Federal Government, and I think we ought to do it. That is certainly one of my arguments.

Mr. MCINNIS. One more question. Just for clarification, it seems to me that your entire argument is based on siting.

Mr. COLEMAN. To answer your question about who was responsible for siting, I was giving you my analysis of what happened in terms of the siting and my statements that I think that was wrong as well.

I would repeat my view of some of the main problems with the compact itself, not dealing with the siting. One, the Texas Legislature will probably have to go forward with amendments themselves, because they realize the error in having accepted responsibility for management and disposal.

Two, there are technical flaws, in the compact so that a substantially larger amount of waste could be shipped in and incinerated than the disposal estimates allow and incineration of waste will allow more States to contract to dispose of their waste in Texas. The compact is not tightly drawn. If Texas does have to amend the compact, it is my understanding of the Federal statute that we will be back here having to do this again.

My question is: Why are we rushing to judgment on this compact when there are problems, in my view, and I am trying to raise those?

Ms. SNOWE. I would like to add something. I think the legislatures in all three States have carefully examined this compact and they have approved it by overwhelming votes. Even in the State legislature of Texas, there were only four members opposed and only two opposed in the Senate. In Vermont, the House voted 104 to 36 in favor of the compact, and the Senate approved it by voice vote. And in Maine, there were only six opposed in the Maine House and in the Senate, three opposed. So we are talking about very minimal opposition in any one of the States with respect to this compact.

I understand the point that Ron is making, but on the other hand, there will be a process next year in which there will be hearings in the State of Texas regarding the site, regarding the issues, with respect to environmental issues, and that would be the appropriate forum in which to address those issues.

Obviously, the States are involved and have been involved and have given this their strongest consideration and support.

Mr. MCINNIS. Thank you, Mr. Chairman.

It appears to me, and I respect the gentleman from Texas' tenacity, but it appears to me from what I understand reading this, and I have very little experience as compared to you in this area, that your position is strictly site driven and not overall concern about treaty obligations and minority considerations. I am trying to get over that and have not been able to do that.

Mr. COLEMAN. Let me suggest that, yes, I am very worried about the site selection. It was a mistake driven by money, by political power, driven by a lot of reasons. You are right, I have a problem with the site selection. That is only one element, though, of what is wrong with this compact.

The compact itself has a problem. The State legislature is going to need to redraw it. I was going to offer those to you for committee perusal. I have four or five amendments that I think are valid for

you to consider, ones that I think should correctly put conditions on the States.

It is interesting to note that my colleague from Maine suggests that the legislatures all did it right. She should point out early on about how many members would sit on the commission. There were six from Texas and one each from Maine and Vermont. How many of them are from West Texas? We are almost like a separate State. We are the place where they are going to put it; we got one. So it is one to five to two.

It sounds to me like the votes will wind up being seven to one. We can argue that this is fair except for a truly minority district. We have a county that is 64 percent Latino and you are once again doing exactly what we said we wouldn't do. I am suggesting that there are a lot of things wrong with the compact and siting is one of them. I continue to be concerned about the 10,000 years that is supposed to be there.

We don't know when the next earthquake is going to be. I am not trying to argue siting here. I want you to get over that issue, that that is what drives me to the point of being worried about it. There are other problems with this compact and I have tried to voice those concerns and have amendments that I would hope you might consider.

Mr. SHARP. As the gentleman realizes, the gentleman is trying to make his point as clear as he can that we have to accept or reject an interstate compact. The compact is an agreement among three States and they are petitioning us for approval or disapproval of that agreement and that is the way the legislative process works on this feature. I understand the gentleman with his amendments would try to demonstrate the issues that he feels very deeply about.

Mr. COLEMAN. If I could in response say to you that, of course, all my amendments do is make approval contingent on those things occurring. Those would be the tenor of my amendments.

Mr. SHARP. Does the gentleman from Illinois, Mr. Hastert, have any questions?

We appreciate very much your serious attention to this matter and trust that our subcommittees will take it very seriously. Thank you very much for being with us.

Mr. COLEMAN. Thank you.

Ms. SNOWE. Thank you.

Mr. SHARP. We now welcome our first panel of outside witnesses, the Hon. Clyde Alexander from the Texas House of Representatives; Ms. Diane Conrad, the State geologist for the State of Vermont; Stephen G. Ward, public advocate for the State of Maine; and Linda Lynch with the Alert Citizens for Environmental Safety from the State of Texas.

Ladies and gentlemen, I suspect you have been informed about our processes here. We will be happy to make your written statements a part of our printed record and would appreciate having your oral summary at this point.

Mr. Alexander, we will be pleased to hear from you. Try to hold your oral summary to five minutes.

PANEL CONSISTING OF HON. CLYDE ALEXANDER, MEMBER, TEXAS HOUSE OF REPRESENTATIVES; DIANE L. CONRAD, STATE GEOLOGIST, STATE OF VERMONT; STEPHEN G. WARD, PUBLIC ADVOCATE, STATE OF MAINE; AND, LINDA LYNCH, ALERT CITIZENS FOR ENVIRONMENTAL SAFETY, STATE OF TEXAS, ACCOMPANIED BY HUGH KAUFMAN, TECHNICAL ADVISOR

Mr. ALEXANDER. Chairman Sharp and members of the subcommittee, my name is Clyde Alexander and I am a member of the Texas house.

A brief history. In 1991, the legislature of Texas amended its laws to enable Texas to enter into this compact. Pursuant to passage of this Act, the legislature passed Senate Bill 1206 in 1993 that authorized the State of Texas to enter into a compact with the States of Maine and Vermont. It was negotiated by the Governor of the State of Texas, and after committee hearings and debate in both houses of the legislature, it was overwhelmingly approved. Subsequently, it was approved by the people in Maine and Vermont.

I would like to point out that the Texas Low-Level Radioactive Waste Compact is not site specific. It is simply an agreement between the States of Texas, Maine, and Vermont to enter into a compact for the safe and efficient disposal of low-level radioactive waste from the three States involved pursuant to the mandates that the Congress of the United States has previously passed. The compact is wise policy wherever the site may ultimately be located in Texas.

I would like to state again that the compact was vigorously negotiated by Governor Ann Richards of Texas and underwent thorough open debate in both committee and on the floors of each house in the States of Maine and Vermont. It has subsequently been approved by all parties concerned and only awaits ratification of Congress.

With due respect to Congressman Coleman, the La Paz Agreement with Mexico simply states that if a facility is to be located within 100 kilometers, we will communicate and be in contact with Mexico. The State of Texas has been in contact numerous times, and we do not have any official disagreement with Mexico about this. But then again, it is not about site.

The reason this was so overwhelmingly accepted in the State of Texas is because this limits our risk. This is the best insurance policy we could ever have because it limits it to 20 percent of what we produce. If we don't do this compact, if this is not ratified, we are open to many more States dumping their waste in Texas. At the same time, the site is in control of the Texas Natural Resource Conservation Commission, and they are the most aggressively green agency the State of Texas has ever had. And I have full confidence that they will protect the health and welfare of the citizens of Texas.

Thank you.

[Prepared statement of Mr. Alexander follows:]

Testimony of the Honorable Clyde Alexander
Before The
Subcommittee on Energy and Mineral Resources
And
Subcommittee on Energy and Power
The United States Congress
House of Representatives
Washington, DC

September 13, 1994

Dear Chairman Lehman, Chairman Sharp and Members of the
Subcommittees:

My name is Clyde Alexander, and I am a member of the Texas House of
Representatives. I was author of House Bill 2036, which was the
companion bill of Senate Bill 1206 that the Texas Legislature
passed in 1993, pursuant to the requirements set forth by you in
the 1985 amendments to the Low-level Radioactive Waste Policy Act
(42 USCA §2021d).

A brief history of the Texas Low-level Radioactive Waste Compact is
as follows:

- In 1991, the Texas Legislature amended its laws to enable
Texas to enter into a low-level radioactive waste disposal compact
with other states setting certain guidelines and restrictions on
such compact.

- Pursuant to the passage of this Act, the Texas Legislature
passed Senate Bill 1206 in 1993, that authorized the State of Texas
to enter into a low-level compact with the states of Maine and
Vermont. This Compact was negotiated by the Governor of the State
of Texas and after committee hearings and debate in both houses of
the legislature it was overwhelmingly approved.

- Subsequently it was approved by the State of Maine Legislature
and then approved by the people of Maine in a statewide referendum.

- The State of Vermont's Legislature approved it earlier this
year and subsequently it has been introduced in both the Senate and
House and is before you now as H.R. 4800.

I would like to point out that the Texas Low-level Radioactive
Waste Compact is not site specific. It is simply an agreement
between the states of Texas, Maine and Vermont to enter into a
compact for the safe and efficient disposal of low-level
radioactive waste from the three states involved pursuant to the
mandates that the Congress of the United States have previously
passed. The Compact is wise policy wherever the site may
ultimately be located in Texas.

The Compact is set-out in detail before you in H.R. 4800 and rather than explaining each part of the compact, I would rather open it up for any questions you might have regarding any details of the compact at the end of my testimony.

In closing I would like to again state, that this Compact was vigorously negotiated by Governor Richards of Texas and under went thorough and open debate both in committee and on the floors of each house of the Texas Legislature and in the legislatures of the states of Maine and Vermont. It has been subsequently approved by all the parties concerned and only awaits the ratification by Congress.

I respectfully request speedy ratification of the Compact, so that the states of Texas, Maine and Vermont can move forward under the guidelines that you here in the Congress have requested that we follow.

Thank you very much for your courtesy in allowing me to be present today, and offer this testimony. I am ready to answer any questions any of you might have.

Supplemental Sheet
To Testimony
The Honorable Clyde Alexander

September 13, 1994

Texas Low-Level Radioactive Waste Compact
H.R. 4800

I. History

Ratification of the Texas Low-level Radioactive Waste Compact by the states of Texas, Maine, and Vermont.

II. Purpose

An agreement for the safe and efficient disposal of low-level radioactive waste as set forth by Congress in 1985 amendments to the Low-level Radioactive Waste Policy Act (42 USCA § 2021d).

III. Conclusion

Requesting ratification by Congress of the Compact so that the states can move forward.

The Honorable Clyde Alexander
State Representative
House of Representatives
P.O. Box 2910
Austin, TX 78768-2910
512/463-0730

Mr. Lance Lively
Assistant
512/463-0730

Mr. SHARP. Ms. Conrad.

STATEMENT OF DIANE L. CONRAD

Ms. CONRAD. Thank you, Mr. Chairman. Chairman Sharp and members of the subcommittees, thank you for inviting me to testify on behalf of the State of Vermont on H.R. 4800. As you know, my name is Diane Conrad. Since 1991, in my capacity as Vermont State geologist, I have represented Governor Howard Dean in negotiations with Texas and Maine to form the three-State disposal compact now before you for ratification.

A brief history of Vermont's involvement in the process may be helpful. We began discussions with Texas and Maine in 1988 at the invitation of the State of Texas. In 1990, Vermont passed its own siting law in order to meet the Federal mandate that each State provide a disposal solution for its own low-level radioactive waste. Our law required that the State pursue two parallel paths looking for a disposal site in the State and at the same time vigorously pursuing compact opportunities with other States.

In 1990, we contacted every compact and non-affiliated State in the Nation to determine interest in compacting with Vermont, and Texas indicated its willingness to go forward at that time. The Texas and Maine Legislatures approved the compact legislation in late spring 1993 followed by a Maine referendum in November 1993. Vermont continued its in-state search for a disposal site until April 1994 when our legislature overwhelmingly approved our entry into the compact. As such, the compact arrangement was agreed upon after several years of painstaking research and deliberations.

You should know that passage of the compact legislation in Vermont was neither simple nor effortless. Vermont is known for its environmental record. Vermonters are independent people who believe very deeply in solving their own problems. Vermont's siting law provided that the State enter a compact only if that agreement would adequately protect the environment of the host State.

As such, Vermont legislators were very concerned about the environment in Texas and that the site chosen would provide sufficient protection to human health and the environment. Before they would endorse the compact bill, our legislature needed to be certain that, in the event the site already selected wasn't sufficient, the siting process for selection of a new site would be scientifically based and would provide the protection our legislature required.

After considerable discussion, their concerns were satisfied and the compact bill was passed by a substantial margin. That was 75 percent in both chambers.

As Vermont's State geologist, I manage the State's Geological Survey, as do State geologists in the other 49 States. These organizations are the repository for geologic information and research on the State level and employ people who are experts on their own States' geology.

Much of the work to select a Texas site and then to characterize the selected site was conducted by the Texas Bureau of Economic Geology, which is the Texas Survey. The Bureau employs professional geologists who are experts in their field. While it is important to remember that this compact is independent of a specific site, it was important to us to look at the site and how it was selected.

I have inspected the site with Bureau geologists and I have personally reviewed the plans for site disposal. I am confident that the site selected is technically one of the best in the country and that the site selection process was based on good science and a sound understanding of Texas climate and geology.

I would urge passage of the Texas compact for the following reasons. If it were possible to disregard State boundaries, the best location for waste disposal would be a dry, geologically stable environment. Vermont and Maine, both humid States with harsh winters located in areas which are more earthquake prone than Texas can't provide that quality of disposal area. Thus the Texas disposal site provides an environmentally superior solution.

Vermont and Maine together have spent nearly \$13 million in their searches for environmentally protective sites within their own State boundaries. A disposal facility designed to accommodate the waste from the three States will provide savings due to economies of scale for all the States involved.

Finally, if the Texas compact becomes the tenth compact in the Nation to receive congressional approval, Texas will benefit. By accepting the small amounts of waste generated in and for disposal as specified by the agreement, congressional ratification ensures that Texas is protected from non-compact wastes and will avoid becoming the Nation's disposal area.

Ratification of the Texas compact provides equally important benefits nationally. By forming the compact, the number of disposal sites in the Nation goes down by two because Maine and Vermont are no longer siting.

Further, congressional intent in passing the 1985 amendments to the Low-Level Radioactive Waste Policy Act was clear. Incentives were granted encouraging States to form compacts and thereby decreasing the proliferation of disposal sites. Approval of the Texas compact meets the congressional mandates.

Thank you for the opportunity to speak to you this afternoon and I am available for any questions you may have.

Mr. LEHMAN [presiding]. Thank you.

[Prepared statement of Ms. Conrad follows:]

U.S. HOUSE OF REPRESENTATIVES
JOINT SUBCOMMITTEE HEARING
ENERGY AND MINERAL RESOURCES SUBCOMMITTEE
ENERGY AND POWER SUBCOMMITTEE
TESTIMONY OF DIANE L. CONRAD
STATE GEOLOGIST, STATE OF VERMONT
SEPTEMBER 13, 1994

Chairman Lehman, Chairman Sharp and members of the Energy and Mineral Resources Subcommittee and the Energy and Power Subcommittee, thank you for inviting me to testify on behalf of the State of Vermont on H.R. 4800, the "Texas Low-level Radioactive Waste Disposal Compact Consent Act." My name is Diane Conrad. Since 1991, in my capacity as Vermont State Geologist, I have represented Governor Howard Dean in negotiations with Texas and Maine to form the three-state disposal compact now before you for ratification.

A brief history of Vermont's involvement in the process may be helpful. We began discussions with Texas and Maine in 1988, at the invitation of the state of Texas. In 1990, Vermont passed its own siting law in order to meet the federal mandate that each state provide a disposal solution for its own low-level radioactive waste. Our law required that the state pursue two parallel paths: looking for a disposal site in-state and, at the same time, "vigorously pursuing" compact opportunities with other states. In 1990, we contacted every compact and non-affiliated state in the nation to determine interest in compacting with Vermont. Texas indicated its willingness to go forward with compact discussions.

The Texas and Maine legislatures approved the compact legislation in late spring, 1993, followed by a Maine referendum in November, 1993. Vermont continued its in-state search for a disposal site until April, 1994, when Vermont's legislature overwhelmingly approved our entry into the compact. As such, the compact arrangement was agreed upon after several years of painstaking research and deliberations.

Passage of the compact legislation in Vermont was neither simple nor effortless. Vermont is known for its environmental record; Vermonters are independent people who believe deeply in solving their own problems. Vermont's siting law provided that the state could enter a compact only if that the agreement would "adequately protect the environment of the host state." As such, Vermont legislators were very concerned that the site chosen would provide sufficient protection to human health and the environment in Texas. Before they would endorse the compact bill, our legislature needed to be certain that, in the event the site already selected was not sufficient, the siting process for selection of a new site would be scientifically based and would provide the protection our legislature required before they would endorse the compact bill. After considerable discussion, their concerns were satisfied and the compact bill passed by a substantial margin.

As Vermont's State Geologist, I manage the state's Geological Survey, as do state geologists in the other 49 states. These organizations are the repository for geologic information and research on the state level, and employ people who are experts on their own state's geology. Much of the work to select a Texas site, and then to characterize the selected site, was conducted by the Texas Bureau of Economic Geology, which is the Texas Survey.

The Bureau employs professional geologists who are experts in their field. I have inspected the site, and I have personally reviewed the plans. I am confident that the site selected is technically one of the best in the country, and that the site selection process was based on good science and a sound understanding of Texas climate and geology.

I urge passage of the Texas compact for the following reasons:

- * If it were possible to disregard state boundaries, the best location for waste disposal would be a dry, geologically stable environment. Vermont and Maine, both humid states with harsh winters located in areas which are more earthquake prone than Texas, cannot provide the quality of disposal area that can be found in Texas. Thus, a Texas disposal site provides an environmentally superior solution.

- * Vermont and Maine together have spent nearly \$13 million in their searches for environmentally protective sites within their state boundaries. A disposal facility designed to accommodate the wastes from the three states will provide savings due to economies of scale for all of the states involved.

- * Finally, If the Texas compact becomes the 10th compact in the nation to receive Congressional approval, Texas will benefit. By accepting the small amounts of waste generated in Vermont and Maine for disposal as specified by the compact agreement, Congressional ratification will ensure that Texas is protected from non-compact wastes and will avoid becoming the nation's disposal area.

Ratification of the Texas compact provides equally important benefits nationally. By forming a compact, the number of disposal sites planned for the nation drops by two, since Vermont and Maine will no longer be designated host states under the agreement. Further, Congressional intent in passing the 1985 amendments to the Low-Level Radioactive Waste Policy Act was clear - incentives were granted encouraging states to form compacts, thereby decreasing the proliferation of disposal sites. Approval of the Texas compact meets the Congressional mandate.

Thank you for the opportunity to speak with you this afternoon. I am available to answer any questions you may have.

Mr. LEHMAN. Mr. Ward.

STATEMENT OF STEPHEN G. WARD

Mr. WARD. Mr. Chairman and members of the Energy and Mineral Resources Subcommittee and the Energy and Power Subcommittee, thank you for the opportunity of providing this statement. My name is Stephen Ward and I serve as the advocate in Maine for the interests of utility customers and have represented Governor McKernan for many years in negotiations for Maine's entrance into a Low-Level Radioactive Waste Compact.

These negotiations began in 1988 and since that date have actually involved three successive Governors in Vermont and two Governors in the State of Texas. I have represented the interests of the State of Maine at every stage of the process. The purpose of this testimony is to urge ratification in the U.S. House of the terms in the proposed compact as presented in H.R. 4800.

As we have heard, there was overwhelming approval in the legislatures of Maine, Vermont, and Texas as well as a three to one vote by the people of the State of Maine in favor of this arrangement.

There are three primary reasons why I urge action in this session of Congress to ratify the Texas compact. The first is that it will endorse the formal policy choice of the Texas Legislature as well as the legislatures of Maine and Vermont in creating an interstate compact.

The member States of the proposed compact have determined that a workable solution that is safe and predictable disposal of their radioactive waste is possible if and only if Texas, Maine, and Vermont are able to restrict access to any disposal facility built by Texas to those wastes streams that come from generators in the three States.

This is an issue which the U.S. Supreme Court addressed in 1992 in a case called *New York v. U.S.* In that decision, the U.S. Supreme Court determined that member States of an interstate compact—of which there are nine currently across the country—acquire a right to exclude out-of-region radioactive waste by virtue of ratification of the compact by the U.S. Congress. In the absence of compact ratification, the necessary certainty in planning and in financing and in operating disposal facilities is simply not present.

In short, Congress' intent in passing the 1980 and 1985 Federal Low-Level Radioactive Waste Policy Act will be frustrated. States like Maine, Vermont, and Texas will lack certainty about their ability to restrict access to newly constructed facilities to an extent that could jeopardize new facilities from coming on-line. This is the key benefit. It is a legal protection which the State of Texas will receive under this arrangement.

Secondly, in addition to fulfilling Congress' purpose and encouraging cooperation among the States in coming up with regional solutions to this problem, the State of Maine urges congressional ratification for a second reason. Maine's climate and geology are not suitable for the long-term isolation of radioactive waste in view of heavy amounts of rainfall in excess of 40 inches annually and depth to groundwater at levels as little as 8 feet.

In contrast, rainfall amounts in West Texas, many parts of Texas, come to one-quarter of that total annually and depth groundwater can be 100 times greater than prevailing levels in northern New England. Maine's five-year effort to locate a suitable

site for a waste facility consumed \$7 million, involved an extensive citizen-participation process and a great deal of effort, but ultimately did not identify any site with the potential advantages of the site proposed in Texas.

Nothing in this compact agreement specifies any particular site or a particular location in Texas or anywhere else, but clearly a site which can safely isolate waste in Texas will be superior to sites identified so far in Maine and Vermont. The words Hudspeth County appear nowhere in the compact documents. Maine and Vermont are in no way involved in the licensing process. In fact, the compact gives all responsibilities for the siting and operation, management and decommissioning of the facility to the State of Texas.

The last reason we urge ratification is to maintain and continue the progress which the States have been making on this issue since passage of the 1980 Low-Level Radioactive Waste Policy Act and its 1985 amendments. Today sites are undergoing the licensing process in North Carolina, California, Nebraska, and Texas.

Furthermore, an existing site in Washington State will remain open to handle low-level waste generated in the Northwest compact and as well in the Rocky Mountain Compact. An active siting process is also going forward in Ohio and Illinois and in Pennsylvania in order to protect the progress which these efforts indicate it is essential for Congress to continue its record of compact ratification.

Nine compacts have been proposed and nine have been ratified. A contrary result will slow the efforts now under way.

Thank you for the opportunity of providing these comments, and I would be happy to respond to any questions.

[Prepared statement of Mr. Ward follows:]

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUB-COMMITTEE ON ENERGY AND MINERAL RESOURCES
COMMITTEE ON ENERGY AND COMMERCE
SUB-COMMITTEE ON ENERGY AND POWER
JOINT SUB-COMMITTEE HEARING
TESTIMONY OF STEPHEN G. WARD
PUBLIC ADVOCATE, STATE OF MAINE
SEPTEMBER 13, 1994

Mr. Chairman, members of the Energy and Mineral Sub-Committee and the Energy and Power Sub-Committee, thank you for providing this opportunity for a statement. My name is Stephen Ward and I serve as the advocate in Maine government for the interests of utility customers. I have represented Governor McKernan for many years in negotiations for Maine's entrance into a low-level radioactive waste compact. These negotiations began in 1988 and, since that date have involved three successive Governors in Vermont and two Governors in the State of Texas. I have represented the interests of the State of Maine at every stage of the process.

The purpose of this testimony is to urge ratification in the U.S. House of the terms of the proposed compact as presented in HR 4800. This result will fulfill the intent of the Maine Legislature which overwhelmingly approved the identical compact language in June 1993, as well as the intent of Governor McKernan who promptly signed this legislation into law. Additionally, it will fulfill the clear preference of the Maine electorate which voted by a 3 to 1 margin on November 2, 1993 to formally endorse the compact arrangement.

There are three primary reasons why I urge action in this session of Congress to ratify the Texas compact. The first is that it will endorse the formal policy choice of the Texas Legislature, as well as the Legislatures of Maine and Vermont, in creating an interstate compact arrangement. The member states of the proposed Texas compact have determined that a workable solution for the safe and predictable disposal of their radioactive waste is only possible if Texas, Maine and Vermont are able to restrict access to any disposal facility built by Texas to waste generators in the three states. As the U.S. Supreme Court affirmed in the 1992 New York v. U.S. decision, (112 S.Ct. 2408 (1992)), member states of an interstate compact (of which there are nine currently) acquire this right to exclude out-of-region radioactive waste by virtue of compact ratification by the U.S. Congress. In the absence of compact ratification,

necessary certainty in planning, financing and operating disposal facilities is simply not present. In short, Congress' intent in passing the 1985 amendments to the Low-Level Radioactive Waste Policy Act will be frustrated: states like Maine, Vermont and Texas will lack certainty about their ability to restrict access to newly-constructed disposal facilities to an extent that could jeopardize a new facility from coming on line.

In addition to fulfilling Congress' purpose in encouraging states to cooperate in regional solutions for radioactive waste disposal, the State of Maine urges Congressional ratification for a second reason. In view of Maine's climate and geology, it is preferable by far for disposal of Maine's waste to occur in a dry desert locale such as exists in West Texas. In contrast to 40 inches of rainfall annually in Maine, rainfall amounts in West Texas come to 1/4 of that total, or less, in most years. Depth to groundwater in West Texas is as much as 100 times greater than average 8 foot depths in Maine. Maine's five-year effort to locate a suitable site for a waste facility consumed \$7 million, represented a considerable amount of effort but ultimately did not identify any site with these potential advantages. A key benefit of the Texas compact then is to enable waste generated in Maine to be disposed of in a setting whose geology and climate adds to, rather than subtracting from, longterm environmental security.

Nothing in the compact agreement specifies a particular site or a particular location in Texas but clearly a site which can safely isolate waste in Texas will be superior to any sites identified in Maine or Vermont.

The last reason we urge ratification is to maintain and continue the progress which the states have been making on this issue since passage of the 1980 Low-Level Radioactive Waste Policy Act and its 1985 amendments. Today sites are undergoing the licensing process in North Carolina, California, Nebraska and Texas. Furthermore, an existing site in Washington State will remain open to handle low-level waste generated in the Northwest Compact and the Rocky Mountain Compact. An active siting process is also going forward in Ohio, Illinois and Pennsylvania. In order to protect the progress which these siting efforts indicate, it is essential for Congress to continue its record of compact ratification: nine compacts proposed, nine compacts ratified. A contrary result will slow the efforts now underway in many states for safe disposal and facility licensing, or halt them altogether.

Thank you for the opportunity of providing these comments. I am available in the event a committee member has questions, and urge Congressional action to ratify the Texas compact.

SUPPLEMENTAL SHEET:
Committee on Natural Resources
U.S. House of Representatives

1. Name: Stephen G. Ward
2. Address: Public Advocate Office
State House Station 112
Augusta, ME 04333-0112
3. Telephone Number: 207-287-2445
4. Outline of Statement:

Mr. Ward urges Congressional approval of the agreement between Maine, Vermont and Texas for the formation of an interstate compact for the disposal of low-level radioactive waste pursuant to the 1985 Low-Level Radioactive Waste Policy Amendments Act.

Mr. LEHMAN. Thank you very much. We have a vote on now, so before we get to Ms. Lynch, I will go and vote. And as soon as we get back here, we will take your testimony.

We will be in recess for maybe 10 minutes.

Mr. BARLOW [presiding]. The committee will reconvene.

If the witnesses will please take their chairs, we will continue with Ms. Lynch.

STATEMENT OF LINDA LYNCH

Ms. LYNCH. Thank you. I appreciate the opportunity to be here today. I am a native of West Texas, and it is a new experience to testify here. I would like to thank you and the subcommittee members for inviting me to present a statement and answer questions at today's joint hearing on the Texas Nuclear Waste Dump Compact which is being considered for your ratification today.

I speak today not only as a representative of Alert Citizens for Environmental Safety which is based in West Texas and Save Sierra Blanca which is based in the community where this dump site is being located, but also for the hundreds of voiceless residents and taxpayers of the Texas-Mexico border communities. I am also accompanied by Hugh Kaufman of the U.S. Environmental Protection Agency, its most experienced official in the field of waste management.

I had a couple of quick comments to make in terms of the earlier testimony. Ms. Conrad, being here on behalf of her geological perspective in the State of Vermont, you will see as I go through my 5 minutes that primarily one thing I want you to focus on is the liability of what this compact presents to the State of Texas.

I would like to offer for the record that, if the State of Vermont is so confident that the geology is sound and that the potential injury to the populations at the site is so assured to be safe, in that case, Maine and Vermont should be mandated by this compact to take full liability for the site for its full lifetime and into its decommissioning.

As you know, the compact which is the subject of this hearing is to be ratified under the provisions of the Federal 1980 Low-Level Radioactive Waste Policy Act and the 1985 amendments. As you are also aware, this Act and the amendments mandated that nuclear waste generated in certain geographic regions of the United States should be managed in the geographic region in which the wastes are generated. In other words, the basis for ratification under the Act and its amendments presumes that States within a geographic region agree to work together to manage the radioactive waste that region creates.

As I believe you mentioned earlier, I am sure you will agree that Texas, Maine, and Vermont at least to my knowledge don't appear to be in the same geographic region. Thus, this compact is not a regional compact as defined by the 1980 Act and its 1985 amendments. Therefore, the question arises to this subcommittee as to what Congress is actually being asked to ratify.

After a thorough analysis of this compact, paying particular attention to the fine print, it has become clear to us, the Texas taxpayers, what you are truly being asked to consent to. You are being asked to sanction Governor Ann Richards and the Texas Legislature's decision to volunteer Texas taxpayers to become liable for

trillions of dollars of nuclear waste liabilities created worldwide by private industry and military and civilian governments.

I point to section 3.01, paragraph 6 of the compact bill which opens the bill to any entity under any limit under any circumstances to dump in the State of Texas. This compact which needs your approval is different from every other compact you have previously ratified. This compact allows unelected officials unaccountable to taxpayers to set their own salaries and to negotiate for dumping of nuclear waste from anywhere in the world without the traditional checks and balances of accountability which normal government and business organizations must adhere to.

In short, this compact is not as advertised, and it sets a dangerous precedent. It is a bad business deal for Texas, and it sends the wrong signal of environmental protection to Americans, especially poor and minority citizens who already bear a great burden of environmental injustice in our country.

Unlike the other compacts you have ratified, the site for dumping has already been mandated and is in violation of President Clinton's 1994 Executive order on environmental justice and the civil rights of 1964. Over 70 percent of the residents of Hudspeth County, Texas, the mandated home of this compact dump, are Hispanic, and over 40 percent of the residents live below the poverty line.

The compact commission which you will be creating if you ratify this document will be spending Federal dollars, setting its commissioners' own salaries, accepting money and gifts, contracting for services without following Federal Government procedures, and will be contracting worldwide for the services of this dump in Hudspeth County. In short, Congress will be allowing this commission to act in potentially unconstitutional ways under the ruse of managing nuclear waste generated in one region of the country.

If Congress truly wants to ratify a compact for the Texas region, this compact must be repaired. I simply submit to you that the repairs take effect before ratification. The changes mandated must include but not be limited to the following:

First, all contracts of the compact commission must follow Federal Government procedures which include competitive bidding and public scrutiny because Federal funds are involved.

Second, compact commissioners must not be allowed to earn more money than Federal officials since they are managing Federal dollars and the compact commission for which they work was created by Congress.

Third, the compact commission must be mandated to adhere to all laws which the Federal Government must comply with, including but not limited to the Freedom of Information Act and the Civil Rights Act.

Four, the compact commission must not be allowed to enter into any agreements with any person or entity to accept waste not generated in the Texas geographic region.

Five, the compact commission must not accept a nuclear waste dump mandated and designed by the host State which does not even comply with the standard guidelines of the U.S. Environmental Protection Agency for design of a household trash landfill, and I assure you this one does not.

In conclusion, we support congressional intent to ensure environmentally sound, economically protective and fair and equitable management of nuclear waste generated in the many regions of America.

We want to be a part of the solution of the problems engendered with treatment, storage and management of nuclear waste. However, this compact without modifications, as I stated above, does not meet these requirements and must be modified to come into compliance with the spirit and letter of the Constitution and the laws of the United States.

On behalf of ACES, Safe Sierra Blanca and the voiceless on the Texas-Mexico border, I can say with confidence that we want to work with you and the elected officials in Texas towards a nuclear waste management strategy which fully complies with the Constitution and the laws of the United States and is not an environmental and economic burden to the taxpayers of our region.

Thank you.

[Prepared statement of Ms. Lynch follows:]

TESTIMONY OF LINDA LYNCH

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON ENERGY AND POWER (ENERGY AND COMMERCE COMMITTEE)
AND
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES (NATURAL RESOURCES
COMMITTEE)

HEARING ON
NUCLEAR WASTE DUMP COMPACT IN TEXAS

SEPTEMBER 13, 1994

WASHINGTON, D.C.

Messrs. Chairmen and Members of the Subcommittees, thank you very much for inviting me to present a statement and answer questions at today's Joint Hearing on the Texas nuclear waste dump Compact, which is being considered for ratification by Congress. I am speaking today not only as a representative of Alert Citizens for Environmental Safety (ACES) and Save Sierra Blanca, but also for the hundreds of "voiceless" residents and taxpayers of Texas/Mexico border communities.

As you know the Compact, which is the subject of this hearing, is to be ratified under the provisions of the Federal 1980 Low Level Radioactive Waste Policy Act and the 1985 Amendments. As you are also aware, this Act and the Amendments mandated that nuclear waste generated in certain geographic regions of the United States should be managed in the geographic region in which the wastes are generated. In other words, the basis for ratification under the Act and its Amendments, presumes that states within a geographic region agree to work together to manage the radioactive waste that region creates. I am sure you will all agree with me, that Maine, Vermont and Texas are not in the same geographic region. Thus, this Compact is not a regional compact as defined by the 1980 Act and its 1985 Amendments. Therefore the question arises, as to what Congress is actually being asked to ratify.

After a thorough analysis of this Compact, paying particular attention to the fine print, it has become crystal clear to us, the taxpayers in Texas, what you are really being asked to consent to. YOU ARE BEING ASKED TO SANCTION GOVERNOR ANN RICHARDS' AND THE TEXAS LEGISLATURE'S DECISION TO VOLUNTEER TEXAS TAXPAYERS TO BECOME LIABLE FOR TRILLIONS OF DOLLARS OF NUCLEAR WASTE LIABILITIES CREATED WORLDWIDE BY PRIVATE INDUSTRY AND MILITARY AND CIVILIAN GOVERNMENTS.

Joint Hearing on the Nuclear Waste Dump Compact in Texas
September 13, 1994
Page Two

This Compact, which needs your approval, is different from every other compact you have previously ratified. This Compact allows unelected officials unaccountable to the taxpayers, to set their own salaries, and negotiate for dumping of nuclear waste from anywhere in the world without the traditional checks and balances of accountability which normal governmental and business organizations must adhere to. In short, this Compact is not as advertised, and sets a dangerous precedent. It is a bad business deal for Texas and it sends the wrong signal of environmental protection to Americans, especially poor and minority citizens who already bear a great burden of environmental injustice in our country.

Unlike the other compacts you have ratified, the site for dumping has already been mandated and is in violation of President Bill Clinton's 1994 Executive Order on Environmental Justice and the Civil Rights Act of 1964. Over 70% of the residents of Hudspeth County, Texas - the mandated home of this dump - are Hispanic and over 40% of the residents live below the poverty line.

The Compact Commission which you will be creating if you ratify this document, will be spending Federal dollars, setting its Commissioner's own salaries, accepting money and gifts, contracting for services without following Federal government procedures, and will be contracting worldwide for the services of this dump in Hudspeth County. In short, Congress will be allowing this Commission to act in potentially unconstitutional ways under the ruse of managing nuclear waste generated in one region of the country.

If Congress truly wants to ratify a compact for the Texas region, this Compact must be repaired. The changes mandated must include, but are not limited to, the following:

1. All contracts of the Compact Commission must follow Federal Government procedures, which include competitive bidding and public scrutiny because Federal funds are involved.
2. Compact Commissioners must not be allowed to earn more money than Federal officials since they are managing Federal dollars and the Compact Commission for which they work was created by Congress.
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Page Three

including but not limited to, the Freedom of Information Act and the Civil Rights Act.

4. The Compact Commission must not be allowed to enter into any agreements with any person or entity to accept waste not generated in the Texas geographic region.
5. The Compact Commission must not accept a nuclear waste dump site mandated and designed by the host state which does not even comply with the guidelines of the U.S. Environmental Protection Agency, for design of a household trash landfill.

In conclusion, we support Congressional intent to assure environmentally sound, economically protective, and fair and equitable management of nuclear waste generated in the many regions of America. We want to be a part of the solution of the problems engendered with treatment, storage and management of nuclear waste. However, this Compact does not meet these requirements and must be modified to come into compliance with the spirit and letter of the Constitution and Laws of the United States.

On behalf of ACES, Save Sierra Blanca and our voiceless on the Texas/Mexico border, I can say with confidence, that we want to work with you and the elected officials in Texas towards a nuclear waste management strategy which fully complies with the Constitution and the Laws of the United States and is not an environmental and economic burden to the taxpayers of our region.

Austin American-Statesman

COMMENTARY**EDITORIALS****Texas can do without low-level waste dump**

No matter how many economic carrots the state dangles, constructing a low-level radioactive waste disposal site in Hudspeth County is undesirable. Sadly, the issue appears to be driven by politics rather than a concern for the well-being of a community and its environment.

It is a struggle, moreover, that is being played out nationally and internationally.

Dueling scientific data over the environmental hazards of such facilities is essentially obscuring a fundamental question: If low-level waste can be safely stored (and therefore pose minimal health threats to communities) why haul it from urban areas where it is generated to rural communities for disposal?

If it is simply a matter of storage space, as some dump proponents argue, why not invest in space near the sites — primarily hospitals and universities? Right now, because of a shortage of low-level waste disposal facilities, many hospitals and other waste generators already have to store the refuse on site.

U.S. Reps. Henry Bonilla, R-San Antonio, and Ron Coleman, D-El Paso, a range of activists and — according to a state survey — a majority of residents oppose the Hudspeth County site. The dump is supported by some county officials who apparently find the allotment of state money for infrastructure that comes with accepting the dump very attractive.

Opponents of burying waste argue that companies could construct adequate storage facilities above ground at the sites where the waste is generated. There, they could be monitored more effectively, unlike dumps at which leaks are more difficult to detect and more costly in human and financial terms to clean up.

What no one can argue, however, is that there has been a pattern of placing dumps and other waste sites in minority communities with limited political power. The proposed Texas dump will be a few miles outside of Sierra Blanca, a community of 700 people, 90 percent Latino.

Hudspeth County is already the home of New York City sludge. The dump would take low-level radioactive waste from Vermont and Maine for a sizable fee, including chunks of de-

commissioned nuclear power plants. The majority of waste, however, would come from Texas.

The compact, as the arrangement is called, was necessitated by a 1980 federal law requiring states to work together to find ways to dispose of the waste. The law resulted in the creation of the Texas Low-Level Radioactive Waste Disposal Authority. Later, rather than waiting for the feds to tell Texas what to do, legislators took the initiative in proposing and authorizing a compact with the New England states.

After almost 10 years of unsuccessful attempts to locate the dump in other communities, Sierra Blanca was targeted by the authority. It is no surprise that Hudspeth County, which has more state-owned land than any county in Texas, was selected only after preferred proposed sites in South Texas were roundly criticized by powerful elected officials.

Gov. Ann Richards, who has signed off on the compact (no matter how reluctantly) may have ended up in a situation not of her making. But she is governor and certainly could be more forceful in ensuring that this bad idea carries adequate safeguards.

If the compact proposal clears Congress, as it is expected to, the state's elected leadership, with the governor at the helm, should work to close loopholes in legislation to ensure that Texas does not become the nation's dump. There are four dump proposals awaiting approval nationally. At this rate, however, Texas' site could be the first to become operational.

The governor's environmental policy staff says it is possible that a loophole allowing emergency dumping from states outside the compact will be addressed by the Legislature in its upcoming session. The license for the facility also must be approved by the Texas Natural Resource Conservation Commission.

Beyond Texas and even the people of Sierra Blanca, a larger, troubling world issue exists: how to safely and efficiently dispose of radioactive waste. Like most issues of this type this one wears a cloak of science over a corpus of costs and profits.

While the issue is debated, it should be remembered that human and environmental needs come first.

El Paso Times

Issues

Sunday

Aug. 21, 1994

West Texas is haven for toxic waste

 By Linda Lynch
 Guest columnist

For many years, those of us living on the U.S.-Mexico border and the Rio Grande benefited from living in a region somewhat unexplored. Our isolation was our blessing. For a time, our environment and our communities were clean.

Now our isolation is our tragedy.

The Rio Grande border has been discovered by virtually every major financial interest in our nation as an ideal place to exploit and dump toxic and radioactive wastes.

Indians have purposely sought out communities that are economically depressed, rural, comprised of ethnic minorities, Catholic and those in which English is not the first language spoken. They have sought communities, consequently, in which no audible political voice exists.

These are the communities near the Rio Grande. These are the communities — like our own, more than 70 percent Hispanic — for which we are seeking civil and human rights.

Here is a short synopsis of a few of the environmental and public-health assaults

along the Rio Grande:

- Nuclear waste dump: A 16,000-acre, state-owned, shallow landfill dump, proposing to hold extremely long-lived radioactive waste from nuclear power plants, is planned within a 100-year flood plain and near surface/subsurface water-drainage systems to the river.

A majority of the dump's waste will consist of dismantled nuclear-power plants, initially from the states of Maine and Vermont. The dump will be the first of its kind licensed in the United States assuring its role as the future home of most dismantled nuclear-power plants in the nation. Plutonium-239, Cesium, Cobalt 60, Nickel 59 and much more will be dumped there. They have a potential life of upwards of 240,000 years.

- New York City sewage-sludge dump: More than 30 percent of New York City sewage currently is being imported to a 128,000-acre site on Chihuahuan desert rangeland. The site is about 18 miles from the Rio Grande and is a potential threat to the river, groundwater and the air. Most recent government tests of the waste at more (germs and viruses) of the waste at more than 30 times safe standards. This waste cannot be dumped in the Atlantic Ocean due to devastation of that ecosystem.

- Westinghouse Nuclear Waste Dump: An approximately 1,250-acre parcel of land has

been leased for 10 to 20 years to import and store unlimited radioactive waste. Westinghouse is a major government nuclear contractor worldwide.

- Wind Mountain: An out-of-state corporation has mined mineral rights on Wind Mountain. The publicly owned mountain will be destroyed over a 20-year period to mine nepheline syenite, a mineral used predominantly to make amber beer bottles.

All four projects are within a 60-mile vicinity of each other along the border. But in fact, every county along the Rio Grande is experiencing this kind of exploitation.

We do not need new laws enacted at the federal and state level. We do, however, need elected and appointed officials to stand up to big-money interests and vigorously enforce the law. Most importantly, we need an informed citizenry to hold these officials accountable.

We cannot afford to allow governors of any political party to continue to treat us as political chips to garner favors and campaign contributions from out-of-state and out-of-region money interests.

Save our health, save our home, save our children.

Linda Lynch is a representative of Alert Citizens for Environmental Safety.



Lynch

Sierra Blanca is our responsibility

Sierra Blanca, Texas, is slowly, deliberately being turned into the nation's dumping ground. Residents can see it, the rest of us can sense it.

Texas officials — most notably Gov. Ann Richards — are allowing the small, rural community near the U.S.-Mexico border to become a waste receptacle.

Today, New York City sewage sludge, containing potentially dangerous levels of metals, is being spread across Sierra Blanca's rangeland. A radioactive waste dump is also planned. Barring public pressure, Sierra Blanca is likely to become the nuclear power industry's favorite dumping ground.

The people of El Paso, Las Cruces, Juarez and all the towns in between have a stake in keeping Sierra Blanca's people, land and ground water safe from these threats.

All of us can stop the trend with major acts of protest and minor acts of concern. Whatever it takes so that officials such as Richards, U.S. Sens. Phil Gramm and Kay Bailey Hutchison and U.S. Reps. Ron Coleman and Henry Bonilla protect West Texas.

But what is most needed is public education. Here are some of the facts: ● More than 240,000 tons of sewage sludge from New York City will be spread over Hudspeth County rangeland over a six-year period. The sewage sludge has been traveling to West Texas for two years. Merco Joint Venture Co.,

Maine and Vermont to transport their radioactive waste to West Texas.

Coleman and Bonilla have vowed to vote against the agreement. Gramm and Hutchison have not decided.

But even if Congress rejects the compact, Texas will move forward to establish the dump for Texas-generated radioactive waste. Chances are good that the dump still could become a national one, given the interests of other states like Connecticut, Massachusetts and California to find a recipient for their wastes and Texas' willingness to take it. The compact agreement contains a gigantic loophole that gives the compact commission authority to contract for waste shipments from other states on a case-by-case basis.

The question of what to do with the waste produced by nuclear power plants is a national crisis. The solution to this crisis rests, in part, in storing such waste above ground and on site — where it was produced, where citizens allowed it to be produced and where it can be more easily monitored and protected. That would hold everyone involved more accountable.

Sierra Blanca brings home the problem of radioactive waste and sewage sludge. The town's dilemma has made the problems tangible. It has made the problem ours. And only we can solve it.

WHO TO CALL

For more information about Sierra Blanca campaigns against the radioactive dump and the sewage sludge project, call:

- Save Sierra Blanca in Hudspeth County, (915) 369-2541.
- Alert Citizens for Environmental Safety in El Paso, (915) 544-8380.

which was barred by Oklahoma from making a home there, transports the sludge by rail.

Though Texas approved the project for six years — and did so without public hearings — the company understandably wants to stay longer. Merco maintains the sludge is fertilizing the rangeland of Sierra Blanca, but others insist the sludge contains unacceptably high levels of metal concentrations. The sludge was once dumped in the ocean, but that practice was banned in 1992.

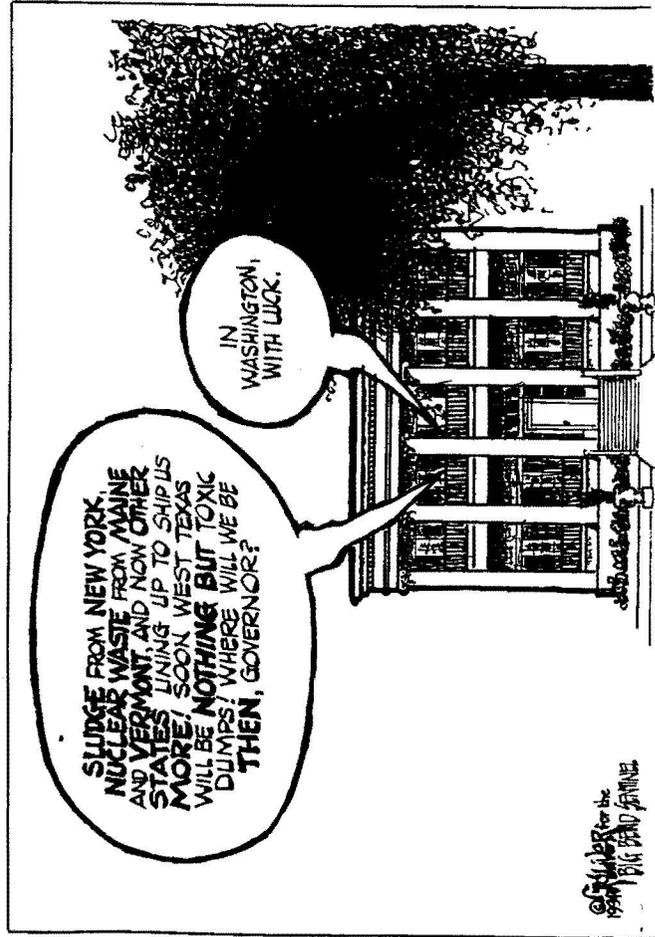
● The Sierra Blanca radioactive waste dump is planned to open in 1997, but a bill before the Congress would establish what is called a "compact agreement," allowing the states of

El Paso Times

Issues

Sunday

Aug. 21, 1994



SLUDGE FROM NEW YORK,
NUCLEAR WASTE FROM MAINE
AND VERMONT, AND NOW OTHER
STATES, LINING UP TO SHIP US
MORE? SOON WEST TEXAS
WILL BE NOTHING BUT TOXIC
DUMPS! WHERE WILL WE BE
THEN, GOVERNOR?

IN
WASHINGTON,
WITH LUCK.

© 1994 by [unclear] for the
1994 [unclear] but BEAD SPINNING

Mr. LEHMAN [presiding]. Let me thank each of the witnesses and apologize as the chairman for the legislative schedule this afternoon. I hope you will understand that we are very busy right now. I also want to thank Mr. Barlow for sitting in for me and Mr. Sharp, my fellow chairman, for beginning in my absence.

Representative Alexander, prior to 1991, Texas had what we call a go-it-alone strategy dealing with their own waste. What changed your mind?

Mr. ALEXANDER. We changed our mind because this limits our liability to 20 percent of what we produce. It is just a much more sane approach.

Mr. LEHMAN. Did the State have second thoughts about its ability to exclude out-of-state waste without a compact?

Mr. ALEXANDER. We have grave doubts about our ability to exclude. That is why it was so overwhelmingly passed by both houses.

Mr. LEHMAN. Do you personally think the State would be able to exclude out-of-state waste without a compact?

Mr. ALEXANDER. I don't think it is worth the risk.

Mr. LEHMAN. Let me ask you this: Following up on what Mr. Coleman and Ms. Lynch have said, what effect would Congress' failure to give its consent to the compact have on the siting process in Texas?

Mr. ALEXANDER. I think the siting process is an independent process all by itself and that is going to start next summer by the Texas Natural Resource Conservation Commission, and I imagine the siting process will continue regardless, but we are open to an unlimited amount of low-level waste if we don't go into the compact.

Mr. LEHMAN. Congressman Coleman says there is a likelihood the legislature will want to amend the compact within the next year. What can you tell me about that?

Mr. ALEXANDER. I know that this was thoroughly negotiated and studied by all three States and we are happy with it. I think Congress encouraged us to get this done and we have done so. The points that Ms. Lynch raised, I believe that the point she is concerned about, our compact mirrors most of what the other nine compacts—

Ms. LYNCH. I wouldn't want to be in those either in that case.

Mr. LEHMAN. Ms. Lynch, I will let you respond. You are saying that you don't think it is likely that the legislature will want to change it?

Mr. ALEXANDER. I don't think it is in our best interest to delay this another two years at all and to lay us wide open.

Ms. LYNCH. I wanted to clarify on the 20-percent issue. That amount is based on volume not curie level. When you start calculating the kind of waste—Maine and Vermont are both decommissioning very soon two of their power plants which have very potent levels of components that are called low-level waste.

Twenty percent calculated in the Texas legislation is twenty percent by volume not twenty percent by curie level. You can have smaller volume and intense levels of radioactivity at the sites.

I would submit to you to read section 3.01, paragraph 6. If Texas truly intends for this compact to be closed and to protect the State

from being forced to take waste, why is that section there and why must it remain for Congress to ratify it?

Mr. KAUFMAN. Excuse me. I am Hugh Kaufman from the EPA here helping the citizens of the great State of Texas.

Mr. LEHMAN. Are you in an official capacity with EPA here today?

Mr. KAUFMAN. I am here in an unofficial capacity providing technical assistance. EPA has no official position either way on this compact. You asked Mr. Alexander the question, what difference would it make whether Congress ratified this compact or not?

It would make absolutely no difference in the process. Texas purchased the land; they own the facility; they will be contracting. It will make no difference. They will be going about their business not with congressional ratification, and the process I believe violates the Civil Rights Act of the United States in site selection and Congress will not be ratifying that breaking of the Civil Rights Act if it doesn't ratify.

Mr. LEHMAN. Ms. Conrad, as a geologist, do you think there is any likelihood that the Rio Grande River could be contaminated by the proposed facility?

Ms. CONRAD. The Texas Bureau of Economic Geology has studied the problem. I will try to explain it in the least technical detail. It is 800 feet to groundwater at that site so there is no hydrogeologic connection between groundwater and surface water at that site. In other words, if rain were to fall on that site, it doesn't go down. It evaporates faster than it goes down so it never reaches groundwater.

The only way for contaminated groundwater—if there was such a thing at the site—to get to the Rio Grande would be to go through groundwater. They have estimated travel times to be on the safe side, and they have discovered that it would take 20,000 to 40,000 years for any contamination from the site to get to the Rio Grande. That is assuming there was some, and the facility is designed not to have any.

Mr. KAUFMAN. Mr. Chairman—

Mr. LEHMAN. The gentleman is not a witness and has not been invited to testify. I am asking questions to Ms. Conrad and to Mr. Ward.

Mr. Ward, how would you respond to the charge that political rather than geologic considerations were a key to selecting the site?

Mr. WARD. From the perspective of the State of Maine, neither Maine nor Vermont were actively involved in the process of selecting the site. That was a Texas decision. We worked on a three-State agreement that would establish a sort of gatekeeper function for permitting waste to enter or leave a three-State region consisting of Maine, Vermont, and Texas.

But all decisions about the politics of the sites, geology of the sites, et cetera, are decisions that were made by Texans and are being pursued by Texans independently.

Mr. LEHMAN. Your testimony notes the difference in aridity between New England and West Texas as a major advantage of this compact. What is the implication I guess of that conclusion for other siting efforts in the humid East and Midwest?

Mr. WARD. It is clear that one of the pathways for the movement of contaminants off-site is by virtue of the movement of water. And as Diane Conrad has pointed out, a hypothesis about the movement of contaminants to the Rio Grande, for example, has to look at water. It made sense for those States which have the opportunity to enter into agreements for access to a disposal facility in an arid area to seek that as a high priority. For that reason, since 1988, that was a very high priority for the State of Maine.

Ms. LYNCH. I would think that in that case following these two comments, it would not be unreasonable to write into the bill that Maine and Vermont take liability for the site if the confidence is there for its stability.

Mr. WARD. There is a provision in the compact that essentially purports to remove the States of Maine and Vermont from liability associated with the operation of the site. It is true, in general, the structure of the compact is to delegate to Texas all the key decisions about locating, siting, operating, decommissioning the site. And therefore, during negotiations, it appeared fair for those States that weren't involved in those key decisions not to be burdened with liability.

It is clear, though, that over time liability issues will be worked out should they arise in a manner that considers the language of the compact but also considers case law, actions in Federal court, any number of other things. So we don't regard that language as an absolute barrier to any potential liability.

Ms. LYNCH. The risk is to Texas.

Mr. LEHMAN. Ms. Conrad, you note that Vermont and Maine add relatively small increments to waste that Texas has to dispose of anyway. According to your projections, what percentages or portions of the total waste stream come from each State?

Ms. CONRAD. The waste volumes are figured over the 50-year life of the contracts, and we are limited according to Texas law to 20 percent of the Texas volume coming from Maine and Vermont. As it happens, Maine and Vermont each have one reactor. We have about the same waste volumes, and it comes to less than 10,000 cubic feet a year.

Mr. LEHMAN. Thank you. Ms. Lynch, is it your position that the Texas compact is the first which is not regional in nature?

Ms. LYNCH. No, not at all.

Mr. LEHMAN. Is it your position that Congress should not consent to compacts that are not strictly regional in character?

Ms. LYNCH. I think that Congress should not consent to compacts that are clearly not meeting the law and the constitution of the United States and Federal regulation.

Mr. LEHMAN. Would you still be opposed to this compact if Texas had not yet started its siting process?

Ms. LYNCH. I would definitely have to reserve any judgment on the compact based on the modifications that I testified to today. Until those types of problems are addressed, I would not be able to judge the compact at all. I would like to say that if it did adhere to Federal civil rights and to other Federal regulations for contracting, it would definitely put into question the current site.

Mr. WARD. Could I comment? Ms. Lynch has made frequent reference to a provision of the compact that enables by majority vote

the compact commission to enter into contracts for accepting waste from outside the region—Maine, Vermont, and Texas.

That provision that is in the proposed Texas compact that is before you today is identical to provisions that exist in, I believe, eight out of the nine existing compacts that have already been approved by Congress. Congress has looked at this issue and decided it is reasonable to give a compact commission the authority to make year-to-year adjustments in terms of accepting waste from outside the region and in addition to permit a compact commission to look at the management of waste for processing, for treatment, rather than necessarily only for disposal. So this is an old issue that has been before Congress each time compacts have been submitted.

Ms. LYNCH. The current Illinois bill coming up for you today does not have that provision in it. I think Mr. Kaufman has something to add.

Mr. LEHMAN. Mr. Kaufman is not a witness. Mr. Ward, I want to follow up on what I asked Mr. Alexander. Can you shed any light on the likelihood for amendments to the compact within the next year?

Mr. WARD. I have no knowledge about the prospect for any amendments to the compact in Texas or any other State.

Mr. LEHMAN. We have a vote on, so I will stop the questioning there. I appreciate each of your involvement today. We will put your full statement in the record.

I am going to vote and then we will come back and hear from panel two.

Ms. LYNCH. Could I state for the record that no Texas official is here at the moment testifying on behalf of Texas?

Mr. LEHMAN. That will be duly noted.

Ms. LYNCH. Thank you.

Mr. BARLOW. The committee will reconvene.

Let's have the second panel, Clark W. Bullard, Chair, Central Midwest Interstate Low-Level Radioactive Waste Compact; and Stephen J. England, chief legal counsel, Illinois Department of Nuclear Safety.

Gentlemen, if you will, you may summarize your testimony for the record. There is a 5-minute time limit. We appreciate your being here and look forward to what you have to say.

Dr. Bullard.

PANEL CONSISTING OF DR. CLARK W. BULLARD, CHAIR, CENTRAL MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION, ACCOMPANIED BY ERIC M. SCHWING, COUNSEL; AND, STEPHEN J. ENGLAND, CHIEF LEGAL COUNSEL, ILLINOIS DEPARTMENT OF NUCLEAR SAFETY

Dr. BULLARD. Thank you for giving me the opportunity to enlist your support for these amendments to the Central Midwest Compact. I am Clark Bullard, and I serve as chairman of the three-member commission that administers the compact. I have served as the chairman since the compact was formed nearly 10 years ago.

I am here today not as a representative of the State of Illinois or the Commonwealth of Kentucky. I am here as a spokesman for

the cooperative effort by both States to effectively manage the Central Midwest Region's low-level radioactive waste.

Initially, the Federal Government had responsibility for disposing of low-level waste produced by the private sector, but when the Atomic Energy Commission closed its facilities to commercially-generated waste, the task fell to the private sector. Six commercial disposal facilities were established, even though at the time no Federal regulations specifically directed to land disposal were in effect.

For a number of reasons, this approach proved unsatisfactory, so in 1980, the Congress, with the concurrence of the States, shifted this responsibility to the States themselves. Congress refined and reaffirmed this shift in 1986. That law represents an agreement that the States will solve this problem.

Why would any State voluntarily agree as members of our compacts have done to assume this burden? I assure you that establishing a safe radioactive waste disposal facility is an extremely difficult, controversial and expensive job.

Why would a State subject itself voluntarily to the accusation that it has merely become a pawn of the nuclear industry? I assure you that such accusations are made.

And which of us States needs yet another problem to solve? The answer is that no State wants to become the Nation's dumping ground and no State wants to see the mistakes of the past repeated. We are willing to bear our own burden in low-level radioactive waste management and our fair share of the national burden.

We appreciate that Congress gave us the tools we need to do the job, the interstate radioactive waste compacts. Each compact is unique. The Central Midwest Compact reflects the unhappy experience of its member states, Illinois and Kentucky. Each of these States already contains one failed low-level radioactive waste disposal facility at Sheffield, Illinois, and Maxie Flats, Kentucky. Thus, the Central Midwest was among the first to prohibit land disposal.

Reducing the amount of radioactive waste is also of concern to Illinois and Kentucky, and we have seen a two-thirds reduction in the volume of waste generated during the last 10 years. In large part, that success is due to the rapid growth of waste processing technologies and facilities.

There are several facilities in the Central Midwest Region that treat or temporarily store radioactive waste for decay. We want them to continue to do so. They accept waste from all over the Nation, but Illinois passed a law to shut these facilities down in 1993 unless the compact commission could control waste imports to and from them.

We persuaded the Illinois Legislature to repeal that law at the same time it adopted the compact amendments that we bring before you today. These amendments to the compact will allow those facilities to continue to accept waste from outside Illinois and Kentucky.

In addition, if a new storage facility is built in Illinois, the amended compact will allow us to make that facility available to others, but first we must assure ourselves that the waste will not

be orphaned in the Central Midwest Region. In addition, we must guard against future occurrences of an unfortunate event that occurred in 1992.

The Department of Energy's contractors unilaterally declared radioactive waste to be below regulatory concern and sent that waste to treatment facilities in the Central Midwest Region that were not licensed to receive radioactive waste.

The incineration of the Department of Energy's radioactive waste at a municipal garbage incinerator in the city of Chicago, to put it mildly, tended to undermine public trust and confidence in our commission's ability to control imports and exports of waste to and from storage treatment facilities.

I am sure you are familiar with the kinds of problems that can be caused by poor planning and lax control in the area of municipal waste with train loads of waste traveling back and forth across the country and in barges in search of a home. The Central Midwest compact and the other compacts are intended to assure that plans are in place, facilities are available to manage our low-level waste.

We examined the sources and characteristics of the waste. We set forth policies with respect to source and volume reduction. We describe the number and types of facilities needed. We developed a tracking system and we set forth our policies on import and export and our procedures in the event of an unplanned closure. We designated Illinois as the host State for the disposal facility and are examining the need for a temporary storage facility.

We have reciprocal agreements with several interstate compacts regarding access to treatment storage facilities and we are presently negotiating additional access agreements. No other entity is making these plans; not the Federal Government, not the waste generators or even the waste management industry. No other entity is responsible for assuring that capacity is available to store and treat and dispose of this waste.

Other interstate compacts already have the authority to control the import and export of waste. This is nothing new. While the Nuclear Regulatory Commission has expressed some concerns over these provisions of the Central Midwest compact, these are the same sorts of issues that NRC raised in 1985 when the interstate compacts were first approved by Congress. We believe that we have adequately addressed these issues in our written testimony.

The interstate compacts are not and never were tools for implementing the Nuclear Regulatory Commission's policies. They are tools by which the States implement their responsibilities to their citizens and their responsibilities under Federal law. I firmly believe that this regional approach is the most effective way of proceeding.

And in conclusion, I ask for your approval of these amendments to the Central Midwest compact. The amended compact reaffirms the commitment of the State of Illinois and the Commonwealth of Kentucky to the goals of the Low-Level Radioactive Waste Policy Act, to each other and to the citizens of the Central Midwest Region that the low-level waste generated in the region will be safely and efficiently managed.

We respectfully request that you proceed quickly to markup so we can move forward to fully implement the compact before the end of this year. Thanks very much for your attention.

I have our commission counsel, Mr. Eric Schwing, with me to help answer any questions you may have.

[Prepared statement of Dr. Bullard follows:]

TESTIMONY OF
DR. CLARK W. BULLARD
CHAIRMAN
CENTRAL MIDWEST INTERSTATE
LOW-LEVEL RADIOACTIVE WASTE COMMISSION
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
AND THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER
U.S. HOUSE OF REPRESENTATIVES
SEPTEMBER 13, 1994

Chairman Lehman, Chairman Sharp, Members of the Subcommittees:

My name is Clark W. Bullard. I am Chairman of the Central Midwest Interstate Low-Level Radioactive Waste Commission. I appreciate the opportunity to offer my views as you consider consenting to recent amendments to the Central Midwest Interstate Low-Level Radioactive Waste Compact. Of course, I urge you to grant your consent to these amendments.

Let me tell you why both the Kentucky and Illinois legislatures enacted these amendments by overwhelming majorities and why we needed these changes to the Central Midwest Compact. First, it was over a decade ago, when in response to the Low-Level Radioactive Waste Policy Act of 1980, Illinois and Kentucky created the Central Midwest Interstate Low-Level Radioactive Waste Compact. Congress granted its consent to the Compact in 1986, but at the same time, Congress made significant changes in the federal law. As a result, there were several inconsistencies between the Central Midwest Compact as originally adopted by the party states and the federal law that consented to the Compact. The amended Compact that you are considering today changed the Compact in Illinois and Kentucky to conform with the Low-Level Radioactive Waste Policy Amendments Act of 1985.

Second, and as might be expected, over time the party states have discovered that the Compact did not adequately address all the issues that have arisen in administering the two state agreement. I have been a Commissioner representing Illinois on the Central Midwest Compact and have served as the Commission's Chairman since the Commission's inception. During that time, I have been able to observe first hand the effects of the deficiencies in the original Compact. The Central Midwest Compact, as originally adopted by its party states and approved by Congress, did not clearly establish the authority of the Compact Commission regarding the use of low-level radioactive waste facilities in the region by persons from outside the region. In an attempt to correct that problem, the Illinois General Assembly made changes in Illinois State law. These changes should have been made to the two-State compact, with Kentucky's knowledge and approval. This "single state" solution was not satisfactory. In September 1992, after discussions between the Compact's party states, the Central Midwest Compact was amended in Illinois and in May 1993 Kentucky made correlative changes.

As I noted previously, the Central Midwest Compact was originally created in response to the Low-Level Radioactive Waste Policy Act of 1980. Illinois and Kentucky entered into the compact cautiously. Each state already contains one failed low-level radioactive waste disposal facility. In addition, as "Agreement States" under the Atomic Energy Act, Illinois and Kentucky have assumed responsibility for regulating treatment, storage, and disposal of low-level radioactive waste within these states. Illinois and Kentucky have learned, through hard experience, the complexity of the issues regarding radioactive waste management. They have attempted in the amended Compact to create an institutional framework capable of dealing with those issues.

The changes to the Compact fall into three categories. First, the amended Compact makes clear that access to any low-level radioactive waste facility in Illinois or Kentucky by persons outside those two states requires the prior approval of the Compact Commission. This requirement is similar to the provisions included in some (but not all) of the other interstate compacts that have already been approved by Congress. To date, the Compact Commission has entered into agreements specifically approving the use of treatment and storage facilities within the Central Midwest Region by persons located in the Northeast, Rocky Mountain, and Southwestern States Compact Regions. We are discussing similar arrangements with other interstate compacts. These agreements contain provisions that assure that neither Illinois nor Kentucky will unknowingly become responsible for disposal of waste from other states by virtue of making their storage and treatment facilities available. The amendments to the Compact enable the Central Midwest Commission to open existing waste management facilities within the region to waste generators outside the region without expanding the responsibilities or liabilities of the party states. Further, these amendments will allow new waste management facilities to be built and made available to waste generators located outside the Central Midwest Region. I firmly believe that no new treatment or storage facilities will be established in either Illinois or Kentucky in the absence of the safeguards provided in the amended Compact. This would be unfortunate. Recent developments in sorting, storage, and treatment technologies have contributed to huge reductions in the volume of low-level radioactive waste needing disposal in the Central Midwest Region and the Nation.

Second, the Compact has been amended to conform with the provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, particularly with regard to the respective roles of the federal government and the states in low-level radioactive waste management. The Compact is now for the first time consistent with federal law.

Third, minor technical amendments were made to clarify ambiguous language in the Compact and to correct internal inconsistencies in the Compact.

In 1993, Senator Simon began considering introduction of a bill that would grant Congress' consent to these amendments (S.2369). The United States Nuclear Regulatory Commission (NRC) had submitted comments to Senator Simon's staff regarding that bill. To my knowledge, no other entity has expressed any concern regarding the Central Midwest Compact. On August 11, 1994, the Senate Judiciary Committee unanimously reported that bill out of Committee and sent it to the full Senate for consideration.

The Compact Commission also considered the comments raised by NRC and believes NRC's comments are without merit and its concerns unfounded. The NRC indicated that, in its opinion, the revised Compact "goes beyond the purview of Public Law 96-573 (the Low-Level Radioactive Waste Policy Act of 1980) and Public Law 99-240 (the Low-Level Radioactive Waste Policy Amendments Act of 1985) which we (the NRC) believe to be limited to disposal."

We note in response that many of the interstate compacts already approved by Congress in Title II of Public Law 99-240 provide comparable, if not greater, authority to their respective administrative bodies. For example, the Rocky Mountain Low-Level Radioactive Waste Compact, which was approved by Congress in 1986, provides that it is unlawful to "manage" (treat, store, or dispose of) in the Rocky Mountain Region low-level radioactive waste from outside the region without the approval of both the Rocky Mountain Board and the state in the Rocky Mountain Region where the management takes place (Article VII(c)). Similarly, the Southeast Interstate Low-Level Radioactive Waste Management Compact forbids the management (treatment, storage or disposal) at any regional facility of waste from outside the region without the Southeast Interstate Low-Level Radioactive Waste Management Commission's approval (Article 4(L)). In fact, the Texas Compact, which is also now before Congress for approval, would also place restrictions on waste management, including storage, treatment, brokering, etc.

The NRC's concerns about the scope of the authorities provided in the various interstate compacts date back to the time of creation of these compacts. It has been almost nine years since Congress approved of the Compact system. While the NRC continues to press its interpretation the Low-Level Radioactive Waste Policy Amendments Act of 1985 as being simply a federal mandate to the states to build disposal facilities, the Commission believes that Congress understood all along that the compacts were intended to address a number of problems associated with low-level radioactive waste management. I can safely assure you that neither Illinois nor Kentucky entered into the Central Midwest Compact simply because they wanted the opportunity to build yet a third disposal facility in the Central Midwest Region. From the very beginning, the public and the legislators in Illinois and Kentucky resolved to establish a system for

managing waste from cradle to grave, and placed extraordinary emphasis on source and volume reduction. The system is working. In 1985 over 300,000 cubic feet of low-level radioactive waste was shipped for disposal from Illinois and Kentucky. We estimate that in 1995 the region will generate about one-third that volume of waste for disposal.

Leaving to the individual compacts the task of addressing specific regional concerns (rather than the concerns of the federal government or its administrative agencies) is the very essence of the regional system now in place. The interstate compacts are not, and never were, strictly tools for implementing federal policies. To be sure, they were intended to stimulate construction of new disposal facilities. However, Congress recognized that States and regions would have to develop their own strategies for accomplishing this goal. Source and volume reduction is an integral part of that strategy in the Central Midwest Region, as is development of necessary storage, treatment and disposal facilities. In order to build such facilities, states must provide the public with assurances that import and export of waste can and will be controlled. In addition to providing disposal capacity, the Central Midwest Compact was created to provide these assurances. The Compact was also created to limit the number of facilities required to manage the region's waste; promote reduction in the source and volumes of the region's waste; and distribute the costs, benefits and obligations of waste management equitably. The Low-Level Radioactive Waste Policy Amendments Act of 1985 does not even address these issues. No federal law addresses these issues. Thus, while one of the purposes of the Compact is providing disposal capacity, the Compact was never limited, as the NRC claims, to that single purpose.

The NRC believes that the Central Midwest Compact is required to "conform to a uniform definition of low-level radioactive waste." The NRC is wrong. The House Interior Committee Report on the 1985 Act spoke directly to this very issue:

State compact low-level radioactive waste definitions will be incorporated by Congressional ratification as valid for state compact commissions' activities and for state law, and may be changed by the states, or as provided for by the commissions. (House Interior Committee Report, HR 99-314, Part I, p. 17.)

In fact, Congress has consented already to a number of interstate compacts with different definitions of low-level radioactive waste. None of these definitions affects the scope of the States' responsibilities under federal law.

The revision to the Central Midwest Compact's definition of low-level radioactive waste is primarily a response to the NRC's own unsuccessful attempt, a few years ago, to adopt a so called "BRC" ("Below Regulatory Concern") rule. That attempt ultimately drew Congressional rebuke and the NRC was ordered by Congress to cease its effort to deregulate radioactive waste. This change in definition also addresses a practice of the contractors of the Department of Energy that came to the attention of the Illinois and Kentucky in 1992. Apparently, the Department of Energy's contractors were unilaterally determining that radioactive wastes need not be handled as such. As a result, the Department of Energy's contractors sent radioactive

waste to treatment facilities within the Central Midwest Region that were not licensed to accept radioactive waste. The incineration of the Department of Energy's radioactive waste at a garbage incinerator in Chicago, to put it mildly, tended to undermine public trust and confidence in our Commission's ability to control imports of waste to and exports of waste from other storage, treatment, and disposal facilities. The Commission is concerned that the NRC, the Department of Energy or an Agreement State under the Atomic Energy Act may again attempt to adopt a "BRC" rule or policy and claim that such rule or policy is binding on the Compact. The Commission is also concerned that waste generators in the region may take advantage of the less stringent "BRC" regulations that may be adopted by other states, and claim that by virtue of such regulations their waste is no longer subject to the Commission's control. Either event could have serious consequences for the economic viability of the regional disposal facility, and must only be permitted after the Compact Commission has had a chance to evaluate the economic, health, and safety consequences. To be sure, the Compact defines low-level radioactive waste differently than that term is defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985. We accept the definition contained in the Policy Amendments Act as establishing the scope of our responsibility to make disposal capacity available. However, the Commission cannot allow the NRC, the Department of Energy or any other regulatory agency to unilaterally re-define the scope of our Commission's responsibility to the citizens of Illinois and Kentucky or its authority to meet that responsibility.

As we have learned, managing the low-level radioactive waste generated by the private sector and by government is a difficult and often a controversial task. First and foremost, we must assure our citizens that our waste management facilities are being built and operated safely. That task falls primarily to the U.S. Nuclear Regulatory Commission and the authorized agreement states. The Central Midwest Compact contains no provisions that would interfere with that important function. It is not the intent of the Central Midwest Commission to usurp any regulatory authority that has been delegated under the Atomic Energy Act or to interfere unreasonably with interstate commerce. However, we must provide assurance to our citizens that Congress' intent in creating a regional system for managing low-level radioactive waste will be implemented. We must assure that no state or region is unwillingly forced to become the Nation's dumping grounds. This is precisely the concern that led to the passage of the Low-Level Radioactive Waste Policy Act of 1980, and its 1985 successor. When our citizens ask for assurances that the rules will not be changed in the middle of the game, we must provide these assurances. Before we accept waste into Illinois or Kentucky for the treatment or temporary storage, we must assure our citizens and ourselves that the waste will not be orphaned here. We must assure that the federal administrative agencies will not, and cannot, change the rules by which we all operate. We need the support and commitment of Congress to assure our citizens that the scope of our responsibility will not be enlarged - or diminished - without our approval.

In conclusion, I would emphasize that the amendments to the Compact do not, and are not intended to, lessen in any way our commitment to provide for the safe disposal of low-level radioactive waste generated within the Central Midwest Region. To the contrary, the amendments clarify the authority and responsibilities of the party states and of the Commission to enable them to get ahead and address the difficult problems associated with the management

of low-level radioactive waste. The amendments set forth a system for making facilities that treat or store waste available to waste generators in other states. As amended, the Central Midwest Compact is absolutely consistent with the Congress' intent as expressed in the Low-Level Radioactive Waste Policy Amendments Act of 1985.

Again, I thank you for allowing me to present my views concerning the importance of your consent to the amended Central Midwest Compact. I would be happy to try to answer any questions you may have.

DESCRIPTION OF AMENDMENTS TO THE CENTRAL MIDWEST COMPACT

ARTICLE I

These changes respond to the Supreme Court's holding that the Congress cannot force a state to take title to low-level radioactive waste and pay damages for failing to do so. This language does not weaken our commitment to safely dispose of waste under the Compact.

ARTICLE II

These changes assure that the federal government or a state cannot deprive the Compact Commission of its authority over low-level radioactive waste by deciding not to regulate the radioactive waste. These changes also clarify the definition of "regional facility," which is a facility that is established by a party state under the Compact.

ARTICLE III

Section III(a) was modified to make technical corrections and to add language that provides for a non-voting Commission member from the community where the regional disposal facility is located, who must be a local official, but not necessarily a county board member.

Section III(b) was modified to make technical corrections. As modified, this section now specifies that no action of the Commission is binding unless a majority of the voting membership votes in the affirmative. This amended section also provides that no agreement of the Commission concerning import into the region of waste for disposal; treatment, storage or disposal of federal waste at a regional facility; or import into the region of waste for treatment or storage is valid unless all voting Commissioners representing the state in which the receiving facility would be located cast their vote in the affirmative.

Section III(d) was amended to provide that any voting Commissioner may call for a meeting of the Commission. Section III(e) as amended provides that a roll call may be called upon the request of any voting Commissioner. Section III(g) was amended to specify that the Commission's offices are to be located in Illinois, as they have been since the Commission's creation.

Subsection III(i) was amended to:

(1) authorize the Commission to enter into agreements to allow waste from outside the region to be disposed of at facilities in the region, provided that such agreements are ratified in advance by a law enacted by the state in which the disposal facility is located;

(2) add a new subsection III(i)(2) authorizing the Commission to enter into agreements to allow federal waste described in Article VII(a)(6) of the Compact (i.e., federal low-level radioactive waste that is not a state responsibility under the Low-Level Radioactive Waste Policy

Amendments Act of 1985) to be treated, stored, or disposed of at regional facilities, provided that such agreements are ratified in advance by a law enacted by the state to which the waste would be sent for treatment, storage, or disposal.

(3) modify subsection III(i)(3), formerly subsection III(i)(2), to authorize the Commission to enter into agreements to allow waste from outside the region to be treated or stored at facilities within the region. This amendment also provides for automatic revocation of such agreements if, within one year of the effective date of an agreement, a law is passed ordering such revocation.

(4) add a new subsection III(i)(4), authorizing the Commission to approve or enter into an agreement for export of waste from the region.

(5) add a new subsection III(i)(5), authorizing the Commission to approve the disposal of waste generated within the region at a facility in the region other than a regional facility, subject to limitations set out under Articles V(f) (concerning waste at the closed Maxey Flats disposal facility in Kentucky) and Article VII(a)(6) (concerning waste that is a federal responsibility under the Low-Level Radioactive Waste Policy Amendments Act of 1986).

(6) add a new subsection III(i)(6) authorizing the Commission to require that waste generated within the region be treated or stored at available regional facilities, subject to the limitations set out in Articles V(f) (concerning waste at the closed Maxey Flats disposal facility in Kentucky) and Article VII(a)(6) (concerning waste that is a federal responsibility under the Low-Level Radioactive Waste Policy Amendments Act of 1985).

Subsection III(j) was amended to:

(1) add a new subsection III(j)(1) requiring the Commission to submit a copy of any agreement entered into the Commission under Article III(i)(1), (2), or (3), to the governor and legislative officers of the state in which any affected facility is located.

(2) amend new subsection III(j)(2) (formerly subsection III(j)(1)) to require that the Commission include in its annual report a discussion of the status activities pursuant to agreements entered into under Article III(i)(1), (2), or (3), as well as a description of the any waste from outside the region or any federal waste managed at a facility in the region.

Subsection III(o) was amended to refer to members of the Commission as "Commissioners". Subsection III(p) was amended to correct cross-references.

ARTICLE V

Article V has been amended to revise cross-references and to clarify that waste at the closed Maxey Flats, Kentucky facility is not the responsibility of Illinois.

ARTICLE VI

(1) Subsection VI(b) has been amended to combine subsections (b) and (c) and to clarify that the Commission may not designate a party state whose generators produce less than 10 percent of the region's waste (excluding waste handled by brokers and federal waste) as a host state for a regional facility, although a party state may volunteer to be a host state for a regional facility.

(2) Former subsection VI(e), now subsection VI(d), provides that the Commission may relieve a host state of its responsibilities upon good cause shown consistent with the purposes of the Compact, including a showing that no feasible potential regional facility site of the type it is designated to host exists within the host state's borders.

(3) Former subsection VI(m), now subsection VI(l), has been amended to clarify that when determining whether a state generates 10 percent of the Region's waste federal waste for which the states are not responsible for providing disposal capacity shall not be included.

(4) Cross-references in former subsections VI(o) and VI(p), now subsections VI(n) and VI(o), have been modified.

(5) In former subsection VI(q), now subsection VI(p), ambiguous language regarding the liability of persons who send waste into the region has been deleted. A new subsection VI(q) has been added to clarify the liability of persons who use regional facilities. Anyone who is allowed to use regional facilities for waste from outside the two-state region must share in any costs of liability or long-term care.

ARTICLE VII

To be consistent with federal law, subsection VII(a)(6) of the Compact was amended to clarify that federal defense waste is not a state responsibility. In addition, subsection VII(d) was amended to clarify that waste brokers must now enter into an agreement with the Compact Commission before disposing of any waste, regardless of origin, at a regional facility. This provides added assurances that waste from outside the region will not become a responsibility of the party states.

ARTICLE VII

No substantive changes were made to this Article. Cross references have been revised and the Article now refers to Commission members as "Commissioners."

ARTICLE IX

Under the original Compact, the authority of the Compact Commission to keep waste from outside the two-state region from entering facilities in the region was not made clear. Subsection IX(b) has been amended to clarify that:

- a) waste from outside the region may not be sent to any facility in the region without the Compact Commission's approval; and
- b) no person may deposit at a regional facility, or accept at a regional facility, federal waste for which the states are not required to provide disposal capacity, without the approval of the Compact Commission.

A new subsection IX(c) has been added which contains language to enforce the provisions of Article III(i)(6) requiring use of regional treatment and storage facilities. This language was added to ensure the economic viability of any regional treatment or storage facilities that may be built in the future.

Mr. BARLOW. Thank you very much, Dr. Bullard. Let's move next to Stephen England. If we may have your statement, then we will have questions.

STATEMENT OF STEPHEN J. ENGLAND

Mr. ENGLAND. Mr. Chairman, members of the subcommittee, my name is Stephen England. I am the chief legal counsel for the Illinois Department of Nuclear Safety. Thomas Ortziger, the Director of the Department, had planned to address you today, but he was required to attend a legislative hearing back in Springfield.

I would like to thank you for the opportunity to testify in support of H.R. 4814, which grants the consent of Congress to amendments to the Central Midwest Interstate Low-Level Radioactive Waste Compact. In my testimony, I would like to provide you a very brief background on activities in Illinois and then address one of the concerns that has been raised by staff at the Nuclear Regulatory Commission.

Illinois supports the Low-Level Radioactive Waste Policy Act and the system of compacts authorized in that Act. The compact amendments are consistent with Federal law and will assist Illinois in fulfilling its responsibility to develop a new regional disposal facility. The compact amendments have been approved by law in both Illinois and Kentucky. In the State of Illinois there are 13 operating nuclear power reactors, a spent fuel storage facility, a uranium hexafluoride conversion facility and many academic and industrial and medical users of low-level radioactive materials.

Illinois approved of the Central Midwest compact in 1984. In 1987, Illinois was designated as the host State for a new regional disposal facility. From 1987 until 1992, the State spent approximately \$90 million in an attempt to develop a new facility. That process was unsuccessful. Following the rejection of the proposed site in late 1992, the State created a new siting process which is currently under way.

I would now address the concern that has been raised by NRC staff. Article 3 of the compact was amended to protect Illinois and Kentucky against orphaned waste from other regions. Specifically, the compact commission was granted the same approval authority over receipt of waste at facilities that are not, quote, "regional facilities," unquote, that it has always had with regard to regional facilities. Regional facility is a defined term which means a treatment, storage, or disposal facility established by a party State pursuant to a host State designation by the compact commission.

While there are currently no regional facilities in Illinois, there are several treatment and storage facilities that are not, quote, "regional facilities." Those facilities were developed and are owned and operated by private companies, not the State of Illinois. The facilities do receive waste from outside the compact region.

While NRC has recognized that most compacts contain provisions that provide some degree of control over import and export of low-level radioactive waste for treatment and storage, it has stated that the overall tone of the amendments to the Central Midwest compact go beyond any other compact and could present a substantial burden on interstate commerce.

Finally, NRC encouraged agreements between compacts to ensure the return of waste to the region of origin. Illinois agrees with

NRC that regional access agreements between compacts are desirable. The Central Midwest Compact has entered into three such agreements and is negotiating several more. The opportunity to enter into such agreements itself does not provide adequate protection against orphaned waste. If another compact refuses to enter into an agreement and refuses to be responsible for waste generated within its borders, that waste should not be forced on the State of Illinois for disposal.

We disagree with NRC that the change goes beyond any existing compact. The Rocky Mountain and Northwest compacts, which have been ratified by Congress, grant their governing bodies approval authority over imports for treatment and storage. So does the Texas compact that is before you today.

The protection against orphaned waste is important to Illinois and will not impose a substantial burden on interstate commerce. Illinois and the Central Midwest compact have a clear record of supporting interstate commerce in waste for treatment and storage. The authority to exclude out-of-region waste would be exercised only to protect Illinois and Kentucky from being forced to dispose of waste from those States. This protection is at the heart of the Low-Level Radioactive Waste Policy Act.

Thank you for the opportunity to testify in support of H.R. 4814. I would be happy to answer any questions.

[Prepared statement of Mr. England follows:]

Testimony in Support of HR 4814

*"Central Midwest Interstate Low-Level Radioactive
Waste Compact Amendments Consent Act"*

by
Stephen J. England
Chief Legal Counsel, Illinois Department of Nuclear Safety

before the
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Subcommittee on Energy and Power
Committee on Energy and Commerce

United States House of Representatives

September 13, 1994

Chairman Lehman, Chairman Sharp, Members of the Subcommittee, good afternoon. My name is Stephen England. I am the Chief Legal Counsel of the Illinois Department of Nuclear Safety. Thomas Ortziger, the Director of the Department, had planned to address you, but unfortunately he was required to attend a legislative hearing in Springfield.

I would like to thank you for the opportunity to appear before you today in support of HR 4814, which would grant the consent of Congress to amendments to the Central Midwest Interstate Low-Level Radioactive Waste Compact.

I. INTRODUCTION

The Illinois Department of Nuclear Safety, on behalf of the State of Illinois, supports HR 4814, which grants Congressional consent to amendments to the Central Midwest Interstate Low-Level Radioactive Waste Compact. The amendments assist Illinois in the fulfillment of its responsibility to provide a new regional low-level radioactive waste disposal facility and are in the public interest.

The Low-Level Radioactive Waste Policy Act (Public Law 96-573) authorized states to enter into interstate compacts to provide for the establishment and operation of regional disposal facilities of low-level radioactive waste. Illinois and Kentucky formed the Central Midwest Interstate Low-Level Radioactive Waste Compact (Central Midwest Compact or Compact). The Central Midwest Compact was ratified by law in Illinois effective September 7, 1984 (Public Act No. 83-1340), by Executive Order in Kentucky effective September 21, 1984 (Executive Order 84-803), and by law in Kentucky effective July 15, 1986 (KRS 211.859). Congress consented to the Central Midwest Compact, along with several other similar compacts, in the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, which was Title II of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Public Law 99-240), effective January 15, 1986.

In 1987, the Central Midwest Low-Level Radioactive Waste Commission (Compact Commission), the Compact's governing body made up of two Commissioners from Illinois and one from Kentucky, designated Illinois as the host state for a new regional disposal facility. From 1987 through 1992, Illinois spent approximately \$90 million in a process to site and license a new disposal facility. That process was unsuccessful. Following the rejection of the Martinsville site in late 1992, Illinois created a new siting process which is currently underway.

In 1992, the Compact Commission proposed amendments to the Compact to facilitate fulfillment of the purposes of the Compact. The amendments were introduced in the Illinois General Assembly in the spring of 1992. They became effective in Illinois when Governor Jim Edgar signed Public Act 87-1166 on September 18, 1992. Governor Brereton C. Jones of Kentucky approved the amendments in an executive order effective May 26, 1993. Governor Jones' Executive Order was ratified by the Kentucky General Assembly in Senate Bill 52 on April 8, 1994, and became law in Kentucky on July 15, 1994.

This statement will address the substantive changes made by the Compact amendments and will focus on the concerns raised by staff of the Nuclear Regulatory Commission (NRC). On November 9, 1993, Dennis K. Rathbun, Director of NRC's Office of Congressional Affairs, provided written comments on the amendments to Senator Paul Simon. Thomas W. Ortziger, Director of the Illinois Department of Nuclear Safety (Department or IDNS) responded to Mr. Rathbun's comments on March 25, 1994. Martin G. Malsch, NRC's Deputy General Counsel for Licensing and Regulation, replied to Mr. Ortziger on May 3, 1994. The Department understands that copies of the letters have been provided to the Subcommittees' staffs.

II. DISCUSSION OF AMENDMENTS

A. Policy and Purpose

The amendments to the Compact deleted language in Article I, Policy and Purpose, that recognized Congress had declared that each state was responsible for providing disposal capacity for low-level radioactive waste generated within its borders. At the time the amendments were proposed in Illinois, the case brought by the State of New York that challenged the constitutionality of the Low-Level Radioactive Waste Policy Amendments Act was pending before the United States Supreme Court. The Congressional declaration referenced in Article I of the Compact was one of the provisions challenged in the New York case. New York v. United States, et al., U.S., 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). The Central Midwest Compact, Illinois, and Kentucky desired that the Central Midwest Compact stand on its own even if the federal law were declared unconstitutional. While the subject provision was not declared unconstitutional by the Supreme Court, the proposal to "decouple" the Compact from the challenged provision indicates the strong commitment of Illinois and Kentucky to handle their own low-level radioactive waste on a regional basis. In its letter to Senator Simon, NRC staff expressed concern about this change to the Compact. The Department understands that its explanation of the reason for the change was acceptable to NRC.

B. Definition of Low-Level Radioactive Waste

The amendments expand the definition of low-level radioactive waste by specifying that the definition applies regardless of a determination by the NRC or a state that waste is below regulatory concern. This change was made in reaction to the NRC's below regulatory concern (BRC) policy. There was a concern that this policy could have led to waste previously considered low-level radioactive waste being deregulated without any control at the Compact or State level. This could have resulted in radioactive waste from outside the Compact region being declared BRC and shipped into the region for unregulated disposal. IDNS and others opposed the BRC policy on the grounds that it was ill-conceived and would interfere with the State's efforts to site a new disposal facility. NRC was forced to withdraw that policy by Congress in the Energy Policy Act of 1992 (Public Law 102-486). Although the Compact amendment was proposed before Congress adopted the Energy Policy Act of 1992, there is no material inconsistency between the two. NRC staff expressed concern with this change in its letter to Senator Simon. The Department understands that its explanation of the reason for this change also was acceptable to NRC.

C. Treatment and Storage Facilities

The amendments eliminated ambiguities regarding acceptance of low-level radioactive waste from outside the Compact region at facilities within the region, commonly referred to as "imports" of the waste. Article II of the original Compact defined "facility" and "regional facility." It appeared that they were not the same, but the issue was unclear. The amendments clarified that a regional facility is a type of facility, but that there can be facilities that are not regional facilities. The distinction is significant because a party state designated as the host state for a regional facility is responsible under Article VI c) and e) [paragraphs d) and f) of the original Compact] for its siting, development and operation. Additionally, a host state has continuing responsibilities for fees, decommissioning, closure, extended care, and a liability fund for a regional facility under Article VI i), j), and n) [paragraphs j), k), and o) of the original Compact].

Illinois has several facilities that have for many years received, treated and stored low-level radioactive waste from throughout the nation. These facilities were sited and developed by private businesses, not the State of Illinois. There was uncertainty whether these facilities constituted regional facilities under the original Compact. There was also a significant concern that waste from outside the Compact region could be abandoned at these facilities and left for the State of Illinois to dispose of. It was feared that as Illinois made progress on developing a new disposal facility, and other states did not, waste from the other states would be sent to treatment and storage facilities in the State of Illinois and "orphaned" at the facilities. This would have had the effect of negating the protection given the State of Illinois under the Low-Level Radioactive Waste Policy Amendments Act. If waste could be sent from outside the Compact region and orphaned at treatment and storage facilities, those facilities would become de facto disposal facilities, notwithstanding the prohibition on waste from outside the Compact being disposed of within the region without the Compact's approval.

Under the Article III i) of the original compact, imports to regional treatment, storage, and disposal facilities within the Central Midwest Compact region had to be approved by a majority of the Commission and all Commissioners from the effected party state. It was unclear to some persons what authority the Compact Commission had with regard to imports to treatment and storage facilities that were not regional facilities. The question was important to Illinois because Illinois has several treatment and storage facilities that are not regional facilities. The amendments to Article III i) clarify that the Compact Commission must approve imports to all treatment, storage, and disposal facilities in the region, regardless of whether those facilities meet the definition of "regional facility."

NRC expressed concern about the changes relating to treatment and storage facilities. NRC recognized that most compacts contain provisions that provide some degree of control over import and export of low-level radioactive waste for treatment and storage but felt that the "overall tone" of the amendments to the Central Midwest Compact went beyond any existing Compact. NRC stated that it believes a disparity in rules could present a substantial burden on national commerce in LLRW. Finally, NRC encouraged agreements between compacts and unaffiliated states to ensure the return of waste to the region or state of origin.

Illinois supports the entry of agreements between compacts and unaffiliated states addressing the issue of shipments of waste between compacts for treatment, storage, and disposal. The Central Midwest Compact has entered into such agreements with three compacts and is negotiating several other agreements. These agreements have been sent to Governor Edgar and the legislative leaders in Illinois as provided in Article III j) 1) of the Compact. There has been no opposition whatsoever to the agreements.

Illinois does not agree with NRC's implied position that the opportunity to enter into the agreements with other compacts and unaffiliated states provides adequate protection against "orphaned" waste. It is clear that there is not unanimous support throughout the country for the Low-Level Radioactive Waste Policy Amendments Act. Some states, including Illinois, have made great efforts in the face of many obstacles to develop new disposal facilities within their borders. Other states have not. There have been efforts to reopen the Policy Amendments Act and revise the compact system. Illinois has never supported those efforts.

Our concern about "orphaned" waste is not focused on the waste from compacts or states that have made efforts to develop their own disposal facilities and enter into agreements with the Central Midwest Compact agreeing that their waste will not be "orphaned" in Illinois. Our concern is with the waste from compacts or states that have not. If those compacts or states refuse to enter into agreements recognizing that they are responsible for their generators' waste that is sent to Illinois for treatment and storage, what protection does Illinois have that the waste will not be "orphaned" in Illinois? Without the Compact amendments, essentially none.

For this reason, it is important to Illinois that the Compact Commission have the authority, as provided in the Compact amendments, to approve imports of low-level radioactive waste to treatment and storage facilities in the Compact region in order to ensure that appropriate arrangements are made to protect against the possibility of Illinois being left with the disposal responsibility for "orphaned" waste that should be the responsibility of another state or compact. We do not believe that this is an expansion of the Compact beyond the purview of federal law, or, even if it is assumed to be, that it is inconsistent with the federal law. Congress expressly allowed compact states that develop disposal facilities to discriminate against waste from outside the compact. This was a significant incentive for the states to form compacts and to develop new disposal facilities. The reality is that this authorization from Congress could be rendered meaningless if a compact has no control over waste that is shipped into the region for storage and treatment.

Illinois disagrees with NRC's position that the changes regarding imports for treatment and storage go beyond any existing Compact and pose a substantial threat of burdening national commerce in LLRW. Article IV.(2) of the Northwest Interstate Compact on Low-Level Radioactive Waste Management and Article VII.(c) of the Rocky Mountain Low-Level Radioactive Waste Compact, which have been ratified by Congress, grant the governing bodies of those compacts express approval authority over imports for treatment and storage. Section 6.02 of the Texas Low-Level Radioactive Waste Compact also provides that waste from outside the compact may not be treated or stored in that compact region without approval of the compact's governing body.

Illinois would also disagree with any argument that the Low-Level Radioactive Waste Policy Amendments Act and the compacts formed and approved under that Act focused entirely on disposal and recognized no compact authority over treatment and storage. As noted above, the Northwest and Rocky Mountain Compacts expressly recognize authority over treatment and storage. In addition, Article III i) of the original Central Midwest Compact authorized the Compact Commission to enter into agreements with other states and compacts for the use of regional facilities, which could be treatment or storage facilities as well as disposal facilities. Thus, Congress has already ratified the Compact Commission having the authority to approve imports to regional storage and treatment facilities. The change that the amendments made was to give the Compact Commission the same authority regarding "facilities" that it has always had regarding "regional facilities."

Finally, Illinois disagrees that the changes pose a substantial threat of burdening interstate commerce, either because they are different from provisions in other compacts or because of the authority that they grant the Compact Commission. First, there are already numerous differences between the compacts. These differences have not caused significant burdens on interstate commerce. Second, two Congressionally-approved compacts and one compact pending Congressional approval already have the controls over treatment and storage that have been added to the Central Midwest Compact. Third, the records of both the Central Midwest Compact and the State of Illinois clearly show that they are not proponents of protectionist measures to impede interstate commerce in low-level radioactive waste sent for treatment and storage.

The Compact has entered into reciprocal access agreements with the Rocky Mountain, Northeast, and Southwest Compacts and is negotiating several other agreements. In addition, it has passed a series of resolutions approving the continued imports to treatment and storage facilities in the Central Midwest region. It has never prohibited any person, state or compact from shipping waste to a facility in Illinois or Kentucky.

As mentioned above, the State of Illinois has made great effort to fulfil its responsibilities under the Policy Amendments Act. It has done nothing to impede the commerce in waste for treatment and storage. The State's record is highlighted by actions that IDNS has taken since the Barnwell facility closed to waste generators outside the Southeast Compact. The Department has convened two meetings of Illinois generators to facilitate solution of the storage problem they will face until a new disposal facility can be developed. This problem is particularly acute for medical and academic generators. The nuclear power plants have considerably more space available to them and are not facing a shortage of storage capacity within a few months as many of the smaller generators are. While many non-reactor generators in Illinois produce more waste than they can store on-site, they may not generate enough waste to make the development of a new facility to handle that waste economically viable. IDNS has taken the public position that one possible solution is the development of a new storage facility to be located within the State of Illinois that would receive waste from other compacts or states, provided that those compacts or states provide assurances that the waste will be returned to the compact or state of origin and will not be "orphaned" in Illinois. We are aware of no other State that has taken this initiative.

D. Other Changes

The amendments also revise language in Article VII of the Compact pertaining to low-level radioactive waste whose disposal is the responsibility of the federal government (e.g., waste generated as a result of development of atomic weapons) under 42 U.S.C. sec. c (a)(1)(B). The amendments correct inaccurate references in the original Compact to this type of waste and clarify that the Compact Commission has neither responsibility for nor control over such waste (e.g., the Compact Commission cannot prohibit export of such waste from the Compact region as it can for other waste), except that the waste cannot be deposited at regional facilities without approval of the Compact Commission.

Finally, the amendments make several procedural changes at the State level to improve implementation of the Compact. For instance, the amendment to Article III i) eliminates the requirement for advance State legislative approval of agreements with other compacts for reciprocal use of each other's treatment and storage facilities. Under the original Compact, agreements for the use of regional treatment and storage facilities in the Central Midwest Region were not valid unless approved in advance by the legislature of the affected state. Under the amendments, such agreements are effective unless revoked by the legislature of the affected State. This change facilitates the entry into agreements between the Central Midwest Compact and other compacts or states for use of treatment and storage facilities.

E. Ratification Language From Public Law 99-240

NRC recommended including in Congressional approval of the Compact amendments language used in Public Law 99-240, and subsequent compact ratification laws, which states that the consent of Congress is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act and is granted only for so long as the Compact Commission complies with all of the provision of that Act. Illinois has no objection to inclusion of this language.

III. CONCLUSIONS

Illinois, Kentucky, and the Central Midwest Compact support the Low-Level Radioactive Waste Policy Act and the compact system authorized in that Act. They are committed to the development of a new regional disposal facility. Illinois was designated as the host state for that facility and made a determined, but unsuccessful, effort to site and license the facility. Following rejection of the Martinsville site, the Illinois General Assembly created a new process that is currently underway.

The amendments to the Central Midwest Compact were proposed due to concerns about developments, and lack of developments, outside the Compact region. One particular concern was that waste generated outside the Compact region could be "orphaned" at treatment and storage facilities in Illinois.

The Compact amendments regarding treatment and storage facilities will not endanger the national scheme under which the states are responsible for providing disposal capacity for low-level radioactive waste generated within their borders. To the contrary, the revisions are consistent with existing law and promote achievement of the goal of providing new disposal capacity. Two compacts already approved by Congress and one other compact presently before Congress have the same provision.

The changes do not pose a substantial threat of burdening interstate commerce. It should be clearly understood that the amendments were not a protectionist measure to prevent all low-level radioactive waste generated outside the Compact region from being treated or stored within the region. The revisions were made to ensure that the protection against being effectively forced to dispose of waste from outside the region, a protection expressly approved by Congress, would not be eroded or even destroyed.

The amendments to the Central Midwest Compact are in the public interest and should be approved by Congress.

Mr. BARLOW. Thank you very much, Mr. England. We will suspend for a few moments. We have a vote on over on the Floor and then we will begin the questions for Dr. Bullard and Mr. England. It will be about 5 or 10 minutes.

Mr. LEHMAN [presiding]. The hearing will come to order. The gentleman from Texas, Mr. Coleman, had some amendments he wanted to submit for the record and I will take those amendments for the record.

Mr. COLEMAN. Thank you very much, Mr. Chairman. I appreciate that for your consideration prior to markup.

Mr. LEHMAN. The Chair will note the presence of the representative from Texas.

Next, we will hear from our panel two, Dr. Clark W. Bullard. We got them already. Okay.

Gentlemen, most of my questions can be addressed to either one of you, so I will just ask them and maybe you can decide amongst yourselves or just jump in if you want to handle it. Your testimony notes that the other compacts, including the Southeast, forbid the treatment, storage, or disposal at any regional facility of waste from outside the region without the consent of the compact commission.

SEG, Incorporated, the largest waste processors in the country and the company that has expressed concern about your amendments is located in the Southeast compact. To your knowledge, has any generator been denied access to the services of SEG because that compact has refused to give its consent.

Mr. ENGLAND. I can answer that. To my knowledge, no, no generator has been denied access. My department has used the services of SEG, as have many generators in the State of Illinois. They attended a program that we sponsored a few weeks ago on the solution of current storage problems. We fully support the use of those services of companies like SEG.

Mr. LEHMAN. To your knowledge have any wastes actually been orphaned at any treatment facility, for example, in States like Michigan whose generators have had access to disposal facilities for many years—rather, have lacked access there. Has that prevented their generators from accepting their own waste from out-of-State compacting facilities?

Mr. ENGLAND. I can speak to one instance in the State of Illinois. Illinois has a storage facility in Tenley Park operated by ADCO services. At the time that Michigan was denied access to the Southeast compact, there was some Michigan waste that was orphaned for a period of time in the ADCO facility before access resumed to Barnewell. That has happened. It was resolved in the past.

Mr. LEHMAN. Dr. Bullard.

Dr. BULLARD. One concern that the people of our region have is that we need to know whether there is any orphaned waste in our region, potentially orphaned waste, and we need these compact amendments to go into effect so that we can exercise positive control over waste that is imported so we can be sure that it has a round-trip ticket before it comes. That is the whole purpose.

We think the greatest success over the last few years is we reduced our volume of waste for disposal by a factor of three over the

last 10 years due to the availability of treatment and storage facilities like SEG outside of our region and like the many facilities within our region. And it is the interstate commerce among those facilities that has been the key to reducing waste volumes. What we need to do is operate those facilities under assurances. We need to provide assurances to our citizens so that they can continue to operate and we can continue to have the benefits of access to facilities all over the Nation and vice versa. No State wants to build one of every kind of treatment facility.

Mr. LEHMAN. If the public in your compact expresses strong opposition to out-of-region waste being treated within the compact, would the compact commission consider banning the practice altogether? Would that be within your authority under the amended compact language?

Dr. BULLARD. Even the existing compact language requires that there be approval before waste can be imported for treatment or storage to a regional facility. And as I said earlier, Illinois had passed a law to shut down all of the facilities in the State, all of the treatment facilities that were not classified as regional facilities and subject to that positive control.

The reason we were able to persuade the Illinois Legislature to repeal that law was that we developed these compact amendments which provide this control and assurances so that interstate commerce can proceed. It was just bad law and bad practice to have an individual State do that. It is something that should have been done first under the compact umbrella.

Mr. LEHMAN. My understanding is that all or most of the other existing compacts are addressing questions of transshipment of waste among the compacts for purposes of treatment and storage through a uniform interregional agreement. I believe that the Central Midwest compact has chosen not to sign on to an interregional agreement, but instead is going to enter bilateral agreements with individual compacts or States. Why?

Dr. BULLARD. We have always had the provision in our compact that the host State has to consent to imports of waste and that the compact commission has to approve imports.

The multilateral agreement that you are speaking of is something that many regions can agree upon. It is sort of a least-common-denominator agreement that addresses part of the issue. What it does is, a compact agrees not to exercise its exclusionary authority to prevent the return of waste to its region of origin. It does nothing to provide the positive affirmative approval of acceptance of waste into a region. So we would need bilateral agreements anyway. So the issue is not bilateral versus multilateral; the issue is that many compacts, including ours, need this affirmative approval up front. The bilateral agreements we already have in place with three or four compact regions already and several others under negotiation, they are all virtually identical and they are much more flexible.

They allow if one generator in one State abuses the privilege of access to facilities in other States, that one generator can be disciplined or excluded without the whole agreement coming unglued and there are also questions regarding some of the States and compacts, States that are signing on to this multilateral agreement, as

to whether or not they have even the authority to commit their State. So for a host of legal and other reasons, we have chosen to go to execute these bilateral agreements that we are aggressively seeking to do so. In fact, some of the regions who want to sign agreements with us will say we will sign just as soon as you get your amendments ratified because that will assure us that you can enforce your own compact.

Mr. LEHMAN. My staff has provided you with an amendment that I hope to offer when the subcommittee marks up H.R. 4814. Substantively, the amendment would add to the implementing provisions of the bill prior to the compact amendments conditions of congressional consent to the amendments that are identical to those in the original compact consent bill and all others. These conditions provide that the consent of Congress becomes effective on the date the enactment is granted subject to the provisions of the Low-Level Waste Act; and comments granted only for so long as the compact commission complies with all of the provisions of the Act.

I don't believe that the change is strictly necessary since the conditions of consent to the original compact should still apply to the amendments. However, in light of the controversy that has arisen over some of the provisions in the compact, explicit inclusion of this conditional consent seems to provide a useful comfort level to some of the more interested observers.

Does either the compact commission or the State have any objection to the adoption of that amendment?

Dr. BULLARD. The compact commission has no objection whatsoever.

Mr. ENGLAND. The State of Illinois has no objection, either.

Mr. LEHMAN. Okay. Thank you very much. I appreciate your waiting today patiently and the testimony you have given. The Chair will announce that the House has adjourned for the day and I, being the only Member here, we had planned to mark this bill up now, but I don't think we will. We will do that as quickly as possible and the Chair will have an announcement very soon as to what day we will mark it up. Thank you very much.

[Whereupon, at 4:00 p.m., the subcommittees were adjourned.]

A P P E N D I X

SEPTEMBER 13, 1994

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

Opening Statement of Chairman Richard Lehman

The Natural Resources Subcommittee on Energy and Mineral Resources and the Energy and Commerce Subcommittee on Energy and Power meet jointly this afternoon to consider two bills which give Congressional consent to interstate low-level radioactive waste compacts.

H.R. 4800 would give consent to a new compact among the states of Texas, Maine, and Vermont. H.R. 4814 would give consent to amendments to the existing Central Midwest Compact between the states of Illinois and Kentucky.

Progress in the federal program to develop new low level radioactive waste disposal facilities under the Low Level Radioactive Waste Policy Act has been disappointing. Under the Act, as amended in 1985, the states are given responsibility for developing new disposal facilities for low-level wastes generated by the nuclear power industry, other industries, and the medical and scientific research communities, within their borders.

The Act encourages states to form interstate compacts and develop regional or other multi-state facilities rather than single-state facilities. A major incentive for the formation of interstate compacts is that Congressional consent to the compacts confers upon the compacts the authority to exclude from compact facilities waste that is generated outside the compact. Such exclusionary authority would otherwise generally not be available to the states due to the "commerce clause" of the Constitution.

There are nine existing low-level waste compacts. None of them has succeeded in developing a new disposal facility by the January 1, 1993 deadline established in the 1985 amendments to the Low Level Waste Act. Some of the compacts and their designated repository host states have been quite diligent in their pursuit of facility development, but the siting process has proved much more time consuming than had been anticipated. This would be true of both of the compacts that are before us today.

There are also states that have defaulted on their responsibilities under the Act by failing to establish credible siting programs. They seem to hope that Congress will revisit the Act and get them off the hook. So far, Congress has been and continues to be unwilling to take that step. The consensus still seems to be that we should give the process more time to work, rather than punish the states that have been responsible by pulling the rug out from under them at this late date.

The new Texas compact would be the tenth; it is the first new compact to come before the Congress since 1988. The State of Texas had been

pursuing a "go-it-alone" strategy in the low-level waste program until a couple years ago. The state was already well along in its facility siting process for its own facility, and had tentatively identified a site in Hudspeth County in western Texas, when the compact was proposed.

Consequently, we have today the first instance of opposition to a compact due to the fact that the "victims" of the siting process are already identified. Although facility siting is not a compact issue, but rather a host state issue, and Congressional consent to the compact implies no endorsement of the siting process, opponents of the Texas siting process will express their opposition to the compact today.

The Central Midwest Compact between the states of Illinois and Kentucky was initially approved by Congress in 1985. H.R. 4814 would provide Congressional consent to a number of amendments to that compact. The NRC and low-level waste generators and processors have expressed a number of concerns about certain provisions in the amendments. Those concerns focus primarily on provisions that purport to give the compact commission greater authority to regulate both imports to and exports from the compact region of wastes for purposes of **treatment and storage**, as opposed to **disposal**.

The waste generators and processors assert that Congress in the Low Level Waste Act never intended to permit states or compacts to impede interstate commerce for purposes other than waste **disposal**. We have received and will include in the record of this hearing the written statement of H.W. Arrowsmith, the President of Scientific Ecology Group, Inc., of Oak Ridge, Tennessee, the nation's largest low-level waste processor, expressing these concerns.

The compact, for its part, argues that keeping tabs on treatment and storage is an essential component of managing a disposal system, and that the lack of such authority could result in out-of-compact wastes being "orphaned" in the compact region.

Time has proven what we should always have expected: that developing new disposal facilities is politically very difficult. In light of that, I believe it is crucial that Congress and federal agencies including the NRC afford the states as much flexibility as possible in making arrangements for these facilities.

At the same time, it is equally crucial that the compact system not be permitted to cause the balkanization of the country's waste treatment and storage industries. Waste treatment for purposes of volume reduction and waste form stabilization have become very important—particularly in light of

the fact that generators in 31 states will have to store their low-level wastes for several years due to lack of access to disposal facilities. New technologies for waste compaction and form stabilization continue to be developed; the compacts must not restrict interstate access to those technologies.

Congress recognized from the beginning that the states might include in compacts provisions that go beyond the literal scope of the Low Level Waste Act. Indeed, there are provisions very similar to those in question here in several other compacts.

Rather than tie up the already difficult compacting process with endless Congressional remands, Congress has opted to let the compact process go forward by always granting its consent "subject to the provisions of the Low Level Waste Act." Moreover, Congressional approval "is granted for only so long as the regional [commission] established in the compact ... complies with all of the provisions of such Act."

These conditions of the Congressional consent were included in the original consent to the Central Midwest Compact, and would ordinarily have been construed to apply to the amendments being considered here. However, in light of the controversy that these provisions have engendered at this time, it would appear to be prudent to address them explicitly in a manner which does not unduly hinder the compact's flexibility.

Accordingly, when the Energy and Mineral Resources Subcommittee marks up H.R. 4814 at the conclusion of this hearing, I intend to offer a short list of technical amendments including one that incorporates those conditions of consent explicitly in the enacting provisions of this consent bill.

At this time I would like to recognize the distinguished and unfortunately departing Chairman of the Energy and Power Subcommittee, Mr. Sharp.

Amendment to H.R. 4814
Offered by Mr. Lehman

Page 1, line 6, strike "1993" and insert "1994".

Page 1, after line 6, insert the following new section
 (and redesignate the subsequent section accordingly):

1 SEC. 2. CONDITIONS OF CONSENT TO COMPACT AMEND-
 2 MENTS.

3 The consent of the Congress to the compact amend-
 4 ments set forth in section 3—

5 (1) shall become effective on the date of the en-
 6 actment of this Act;

7 (2) is granted subject to the provisions of the
 8 Low-Level Radioactive Waste Policy Act (42 U.S.C.
 9 2021b et seq.); and

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

Page 2, line 3, strike "The" and insert the follow-
 ing:

13 In accordance with section 4(a)(2) of the Low-Level Ra-
 14 dioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the

Amendment to H.R. 4800
Offered by _____

Page 2, after line 11, insert the following new sub-section:

1 (b) **ADDITIONAL CONDITIONS.**—The consent of the
2 Congress to the compact set forth in section 5 is granted
3 subject to the additional conditions that—

4 (1) the compact commission shall not enter into
5 an agreement with any person or entity (other than
6 a State) that is not a party State for the importa-
7 tion of low-level radioactive waste into the compact
8 for management or disposal; and

9 (2) the shipments of low-level radioactive waste
10 to the compact facility from all non-party States
11 shall not exceed 5 percent of the volume of such
12 waste estimated to be disposed of in such facility by
13 all of the non-host party States during the 50-year
14 period beginning in 1995.

Page 2, line 2, insert “(a) **IN GENERAL.**—” before
“The consent”.

Amendment to H.R. 4800
Offered by _____

Page 2, after line 11, insert the following new sub-section:

1 (b) **ADDITIONAL CONDITION.**—The consent of the
2 Congress to the compact set forth in section 5 is granted
3 subject to the additional condition that, in lieu of any total
4 volume limitation, the total radioactivity (measured in cu-
5 ries) of all shipments of low-level radioactive waste to the
6 compact facility from all non-host party States shall not
7 exceed 20 percent of the total radioactivity of all such
8 waste estimated to be disposed of in such facility by the
9 host State during the 50-year period beginning in 1995.

Page 2, line 2, insert “(a) **IN GENERAL.**—” before
“The consent”.

Amendment to H.R. 4800
Offered by _____

Page 2, after line 11, insert the following new sub-
section:

1 (b) **ADDITIONAL CONDITION.**—The consent of the
2 Congress to the compact set forth in section 5 is granted
3 subject to the additional condition that the compact facil-
4 ity shall not be located in any county in which minority
5 group members account for more than 50 percent of the
6 total population.

Page 2, line 2, insert “(a) **IN GENERAL.**—” before
“The consent”.

Amendment to H.R. 4800
Offered by _____

Page 2, after line 11, insert the following new subsection:

1 (b) **ADDITIONAL CONDITIONS.**—The consent of the
2 Congress to the compact set forth in section 5 is granted
3 subject to the additional conditions that—

4 (1) in lieu of any total volume limitation, the
5 total radioactivity (measured in curies) of all ship-
6 ments of low-level radioactive waste to the compact
7 facility from all non-host party States shall not ex-
8 ceed 20 percent of the total radioactivity of all such
9 waste estimated to be disposed of in such facility by
10 the host State during the 50-year period beginning
11 in 1995; and

12 (2) the total radioactivity (measured in curies)
13 of all shipments of low-level radioactive waste to the
14 compact facility from all persons or entities that are
15 not party States shall not exceed 5 percent of the
16 total radioactivity of all such waste estimated to be
17 disposed of in such facility by all of the non-host

1 party States during the 50-year period beginning in
2 1995.

Page 2, line 2, insert “(a) IN GENERAL.—” before
“The consent”.

Testimony by the Honorable Henry Bonilla
before the Natural Resources Committee
Subcommittee on Energy and Mineral Resources
September 13, 1994

Thank you Mr. Chairman and subcommittee members. In 1985, seven years before I was elected to the House of Representatives, Congress passed the Low-Level Radioactive Waste Policy Amendment Act. This legislation granted individual states the authority to make disposal compacts with other states. It was designed to be fair and mutually beneficial to all participants; and it is for the most part, except for one particular party involved - the people who live at the selected sites. This particular point makes all the difference as to why H.R. 4800 is not good legislation.

As the Congressman for such an impacted area -- Hudspeth County, Texas -- I strongly believe that the original language of the Low-Level Radioactive Waste Policy Amendment Act is deficient, because site selection and local rights are not addressed. In fact, the most important factor -- the site itself -- is not even a bill consideration. The 1986 compact bill and the process it establishes for interstate waste compacts does not take into account local rights in site selection.

The critical question I want raised here in Congress surrounds the consequences of approving the Texas-Maine-Vermont compact. At no point should my constituents in Hudspeth County be forced to accept low-level radioactive waste generated outside of Texas. Nor should any American community for that matter. My constituents and all Americans deserve to have their fears and concerns addressed.

I am very aware of a federal circuit court ruling, based on interstate commerce law, which requires states to accept the low-level waste of other states. However, radioactive waste commerce cannot be considered in the same light as other interstate commerce. This was recognized by Congress when the House passed the Low-Level Radioactive Waste Policy Amendment Act. That legislation provided a means of restricting this form of commerce between states. The Texas-Vermont-Maine compact has the benefit of limiting waste shipments to these three states.

However, there remain serious problems with this compact. The language of the compact is not clear as to whether the commission established under the compact could open the Hudspeth site to waste from other states. In addition, the people of Hudspeth County are forced to accept, this waste without recourse. It is vital that everyone understand the facts and what is involved. My constituents' voice must be heard.

I am requesting that the Natural Resources Committee mark up new legislation to replace the 1986 Low-Level Radioactive Policy Amendments Act. This new legislation should provide for greater community involvement and allow communities greater opportunity to keep out shipments of out of state waste. I further request that the Texas-Maine-Vermont compact and all other interstate compacts under the committee consideration be kept pending until passage of a new Low-Level Radioactive Policy Act which addresses local concerns. A new Low-Level Radioactive Policy Act will make this and any other compacts unnecessary.

Thank you for your time and consideration and for allowing me to represent my constituents before the committee.

STATEMENT OF THE HONORABLE CARLOS J. MOORHEAD

BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER

AND THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

SEPTEMBER 13, 1994

HEARING ON H.R. 4800 AND H.R. 4814

TEXAS AND CENTRAL MIDWEST

LOW-LEVEL RADIOACTIVE WASTE COMPACTS

MR. CHAIRMAN,

I WOULD LIKE TO THANK THE CHAIRMEN OF THESE
TWO SUBCOMMITTEES FOR HOLDING THIS HEARING ON
THE TEXAS LOW-LEVEL RADIOACTIVE WASTE COMPACT
CONSENT ACT AND THE PROPOSED AMENDMENTS TO THE

CENTRAL MIDWEST COMPACT. ALTHOUGH IT IS LATE IN THE SESSION, IT IS EXTREMELY IMPORTANT THAT WE CONSIDER THESE BILLS AND, IF WE FIND THAT THEY COMPLY WITH THE LOW-LEVEL RADIOACTIVE WASTE POLICY ACT, APPROVE THEM AS QUICKLY AS POSSIBLE.

I WOULD LIKE TO COMMEND THE STATES INVOLVED IN BOTH THE TEXAS AND THE CENTRAL MIDWEST COMPACTS FOR WORKING CONSTRUCTIVELY TOGETHER TO PROVIDE FOR THE DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE GENERATED WITHIN THEIR BORDERS.

ALTHOUGH I UNDERSTAND THAT THERE ARE THOSE WITH QUESTIONS REGARDING THE SITING OF THE FACILITY, I WOULD LIKE TO EMPHASIZE THAT THE APPROVAL OF A COMPACT DOES NOT CONSTITUTE AN APPROVAL OF ANY SPECIFIC SITE. AT THE REQUEST OF THE STATES, THE ACT PLACES PRINCIPAL RESPONSIBILITY FOR MANY IMPORTANT ISSUES, INCLUDING SITE SELECTION, WITH THE STATES.

OUR RESPONSIBILITY IS TO ADDRESS THE REQUIREMENTS OF THE ACT AND NOT INTERFERE WITH ISSUES THAT HAVE BEEN PLACED WITHIN STATE AUTHORITY. I AM HOPEFUL THAT BOTH OF THESE

COMMITTEES CAN APPROVE THESE BILLS WITH ALL DUE
DISPATCH.

THANK YOU MR. CHAIRMAN.

STATEMENT OF THE HONORABLE MICHAEL BILIRAKIS
BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER
AND
THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
SEPTEMBER 13, 1994
HEARING ON H.R. 4800 AND 4814
TEXAS AND CENTRAL MIDWEST
LOW-LEVEL RADIOACTIVE WASTE COMPACTS

MR. CHAIRMAN,

I COMMEND THE CHAIRMEN FOR THE TIMELINESS OF THIS
HEARING. THE TIME LEFT IN THE SESSION IS GROWING
INCREASINGLY SHORT. HOWEVER, TEXAS, MAINE, VERMONT,
ILLINOIS, AND KENTUCKY HAVE DONE THEIR PART TO BEGIN TO

**COMPLY WITH THE LOW-LEVEL RADIOACTIVE WASTE POLICY ACT,
AND IT IS NOW TIME FOR CONGRESS TO DO ITS PART.**

**IF WE FIND THAT THESE STATES HAVE COMPLIED WITH THE
TERMS OF THE ACT, I HAVE FAITH THAT WE WILL REWARD THEM
WITH PROMPT APPROVALS OF THE TEXAS COMPACT AND THE
CHANGES TO THE CENTRAL MIDWEST COMPACT.**

**AS THE LAST NATIONAL LOW-LEVEL WASTE REPOSITORY IN
BARNWELL, SOUTH CAROLINA, CLOSED ITS DOORS WASTE FROM
OUTSIDE THE SOUTHEASTERN COMPACT, THE IMPORTANCE OF
DEALING WITH THESE ISSUES HAS GROWN. UNTIL REGIONAL OR
STATE DISPOSAL FACILITIES ARE CONSTRUCTED, LOW-LEVEL**

WASTE WILL CONTINUE TO PILE UP AT THOUSANDS OF HOSPITALS, LABORATORIES, INDUSTRIAL SITES, AND NUCLEAR POWER PLANTS. THIS IS UNACCEPTABLE.

THE STATES REQUESTED, AND HAVE RECEIVED, RESPONSIBILITY FOR THE DIFFICULT TASK OF SITING AND OVERSEEING LOW-LEVEL WASTE DISPOSAL FACILITIES. OUR RESPONSIBILITY IS TO AVOID IMPEDING THIS PROCESS. THE BEST EVIDENCE THAT THE PROCESS SET FORTH IN THE LOW-LEVEL RADIOACTIVE WASTE POLICY ACT IS WORKING WILL BE THE APPROVAL, BEFORE THE END OF THIS CONGRESS, OF THE TEXAS COMPACT AND THE AMENDMENTS TO THE CENTRAL MIDWEST COMPACT.

THANK YOU, MR. CHAIRMEN.

**Opening Statement
Hon. J. Dennis Hastert
Joint Hrg/Energy & Power &
Energy & Mineral Resources Subcommittees
September 13, 1994**

Chairmen Lehman and Sharp, thank you for holding this hearing today on a topic of importance to my state of Illinois, as well as Kentucky and those states which comprise the Texas compact.

As those present today are aware, under the Low-Level Radioactive Waste Policy Act, states are responsible for the disposal of low-level radioactive waste that is generated within their borders. States are authorized to satisfy this responsibility either individually, or preferably, through regional interstate compacts.

In 1984, Illinois entered into an agreement with Kentucky, known as the Central Midwest Compact. Subsequently, in 1986, Congress consented to this compact. Since that time, Illinois and Kentucky have sought and received approval from their legislatures for minor amendments to their original compact. The states of Illinois and Kentucky are now seeking Congressional approval for these minor modifications and clarifications. The proposed changes are consistent with federal law and do not violate the Interstate Commerce Clause.

As a member from Illinois and a cosponsor of H.R. 4814, which provides for Congressional approval of these changes, I encourage my colleagues on the Energy and Power Subcommittee as well as the members of the Energy and Mineral Resources Subcommittee to support

this legislation. It is important that we pass this bill. Of particular significance, H.R. 4814 would allow Illinois and Kentucky to sufficiently address concerns related to "orphan waste" that should be the responsibility of another state or compact.

Likewise, we need to consent to the Texas compact, H.R. 4800, to enable those states to proceed with developing a disposal facility that is acceptable to their communities.

Failure to pass these bills would be a disservice to the citizens in these states. Let's act responsibly and support the legislation before us today.

SAM JOHNSON
30 DISTRICT, TEXAS

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Congress of the United States
House of Representatives
Washington, DC 20515-4303

September 21, 1994

The Honorable Richard H. Lehman
U.S. House of Representatives
1226 Longworth
Washington, DC 20515-0518

Dear Representative Lehman: *RHL*

I am writing to express my strong support for H.R. 4800, the Texas Low-Level Radioactive Waste Disposal Compact Consent Act. An important compromise has been reached between the states of Texas, Vermont and Maine regarding the removal and shipment of low-level waste to Texas. This legislation represents that compromise and adequately protects Texas from having to accept unwanted low-level waste from other parts of the country.

As you know, 1980 saw the congressional enactment of the Low-Level Radioactive Waste Policy Act which instructed each state to take responsibility for the disposal of low-level radioactive waste. Several years later, in the Low-Level Radioactive Waste Policy Amendments Act of 1985, Congress further encouraged the states to enter into compacts for the efficient management of all low-level radioactive waste disposal.

After negotiating for a considerable amount of time, the Texas Legislature overwhelmingly approved the Texas compact to comply with this mandate. H.R. 4800 represents Texas policy towards the compact itself. It does not consider specific concerns about site selection -- nor should this be a federal concern.

I respectfully ask that you favorably consider H.R. 4800 and support its prompt approval. Not only will the states involved benefit, but the disposal laws that Congress has already approved will continue to move forward.

Sincerely,

Sam
SAM JOHNSON
Member of Congress

JACK FIELDS
8th District, Texas

COMMITTEE ON
ENERGY AND
COMMERCE
COMMITTEE ON
MERCHANT MARINE
AND FISHERIES

Congress of the United States
House of Representatives • Washington, DC 20515-4308

September 12, 1994

The Honorable Richard H. Lehman
United States House of Representatives
Washington, DC 20515

Dear Rick:

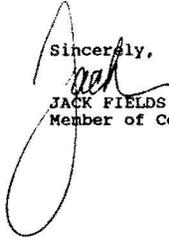
I would like to express my full support for H.R. 4800, the "Texas Low-Level Radioactive Waste Disposal Compact Consent Act." This bill is the subject of tomorrow's joint hearing before the Energy and Commerce Subcommittee on Energy and Power and the Natural Resources Subcommittee on Energy and Mineral Resources.

As you know, this compact between the states of Texas, Vermont, and Maine has been approved by all three states. It also has the support of the University of Texas System which is the fourth largest generator of low-level radioactive waste in the state.

I appreciate your consideration and hope you will support expeditious passage of this bill. Enactment of H.R. 4800 would clearly benefit all three states involved.

With all best wishes, I am

Sincerely,


JACK FIELDS
Member of Congress

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Testimony of

**H.W. "Bud" Arrowsmith, President
Scientific Ecology Group, Inc. (SEG)**

before the

**United States House of Representatives
Committee on Natural Resources
Committee on Energy and Commerce
Subcommittees on Energy and Mineral Resources, and
Energy and Power**

September 13, 1994

Chairman Lehman, Chairman Sharp, and Members of the Subcommittees on Energy and Natural Resources and Energy and Power. I am pleased to be here with you today to share some of our views on H.R. 4814.

Approximately 85% of the commercial low-level waste in the nation is now being processed by SEG. This is in addition to an increasing amount of waste that SEG processes that originates from the U.S. Department of Energy and the U.S. Department of Defense. To put that waste volume in perspective, the large amount of waste that SEG processes every year would fill the Waste Isolation Pilot Plant (WIPP) WITHOUT processing, in just two and a half years.

SEG has achieved the distinction of being the industry leader in the management and processing of low-level radioactive waste. The business basis of our company has been to develop and utilize new waste management technologies. We offer safe, economic solutions by providing advanced waste management services to commercial generators of low-level radioactive waste. Commercial nuclear utilities, research laboratories, and hospitals are all generators of this waste. More recently we began to use some of the same technologies to address DOE and DOD clean-up issues.

Although there are many issues that I could talk about relative to our nation's current policies on the management of low-level waste. I would like to focus on three particular issues that arise in the context of the legislation you are considering today. These issues are "unrestricted transport of radioactive waste for treatment and processing at regional waste treatment centers"; "additional requirements for waste tracking," and "the orphan waste concept". This Committee is considering legislation that would ensure that compact regions and states can control and track waste transported for processing and to assure that only their waste is returned for disposal. While performing this task, Congress must not create legislation that conflicts with waste generators rights, by allowing local, state, and regional compacts to impose transportation restrictions or unreasonable waste tracking requirements. Unreasonable transportation or tracking restrictions could make it impossible for the generator to have the best and safest processing procedures applied to their waste because existing processing centers are located in other states.

Over the past several years, at our facility in Oak Ridge, we have invested over \$100 million to put into place several unique technologies that are now being used for the safe and cost effective treatment of low-level waste. These technologies include an Ultra-Compactor™, which is the largest of its kind in the world, the only two commercially licensed incinerators for low-level waste, and the only metal recycling facility in the United States that is licensed to process radioactive scrap metal. -

In addition to our existing processing and treatment capabilities, SEG has developed or has obtained access to several new, unique technologies and processes designed to produce a safer, more durable environmentally compatible waste form. These technologies include vitrification, which is the encapsulation of waste in glass; steam reformation, a process for destroying the

organic components of waste that is both radioactive and hazardous; and Catalytic Extraction Processing, a proprietary technology developed by Molten Metal Technology, Inc., a commercial partner of SEG, which has been shown to be effective in significantly reducing the volume of certain types of radioactive and hazardous waste. SEG has invested millions of dollars in these technologies with the expectation that any customer in any location would be able to take advantage of having these technologies applied to the treatment and processing of their waste.

Herein lies our major concern with H.R. 4814. It is our belief, as well as the belief of many in our industry, that by giving the State of Illinois, or any other state for that matter, the authority to approve whether treatment can occur outside its particular boundaries or outside the compact regions of which it is part, it could prevent waste generators and the public from receiving the benefit of treatment technologies that will produce a safer, more environmentally compatible waste form. The "Low-Level Radioactive Waste Amendments Act of 1985", enabled the states to organize themselves into compact districts, as a way of addressing their needs to dispose of waste. I do not believe that it was ever the intent of the designers of this "Act" that authority would be extended to states or compact regions to restrict the transportation of waste for treatment.

It is our belief that by giving the states such broad authority, Congress may unintentionally be working against what all of us want to achieve; which is to establish radioactive burial sites that will safely store radioactive waste until it is no longer hazardous. The use of the advanced waste processing techniques discussed earlier provides waste forms that are 1000 times less likely to damage the environment during the controlled storage period. In addition, these advanced techniques can decontaminate or recycle some of the waste which totally eliminates these materials from the waste stream.

We do not have a problem with the current law that restricts disposal within a Compact to that waste which originates from states within that Compact. We do, however, take issue with policy that could restrict the import and export of waste from a compact region for treatment. If other Compact Districts are able to adopt provisions similar to H.R. 4814, you may very well create a condition where in all the waste processing would need to be done within the compact boundaries that would severely reduce the processing options for the waste from that region. In order for the safest and best technology to be applied to this waste, private industry, or the states, would have to establish treatment facilities that would duplicate and that which is already available at the present regional processing centers. But the economics of establishing new treatment facilities are such that private industry, waste generators, and the public simply cannot afford to build new, comprehensive treatment facilities in every compact district. I do not believe any of us want such a situation, because it will mean that waste will be disposed of in a form that does not have the highest environmental performance.

We would also like to comment on the issue of waste tracking which we believe is driving the MidWest Compact to request the proposed changes. We understand and support the State of Illinois' desire for the assurance that only their waste and the radioisotopes within their waste be returned to them after it is processed. In this regard, we currently maintain waste for processing in separate batches from each state or compact region and currently account for that

waste very accurately. The concept of waste tracking is not new, and has been required by the NRC in various forms for many years. We believe that the existing waste tracking system our company has developed will provide the necessary information for Illinois and other states to assure themselves that the waste it ships and receives will be exactly the same waste.

Finally, with regard to the State of Illinois concern that they may become the permanent home for waste that was sent to the region for processing, we do not believe that Congress must take any action. The State of Tennessee currently has processing facilities which processes more than 90% of the radioactive waste in the United States. The State has protected itself against becoming the permanent home for "orphan" waste that comes into Tennessee, for processing, by placing certain legal requirements in the Radioactive Material Licenses of its waste processing licensees. These legal requirements require companies like SEG to require each waste generator, compact region, and state to certify that they will allow the waste to be returned in a processed or unprocessed condition before SEG can accept any waste from that waste generator. This procedure has been in operation for three years and has worked perfectly.

I would like to conclude my remarks by asking this committee to assure that H.R. 4814 will not modify the original intent of the 1985 Low-Level Radioactive Waste Amendments Act with regard to the unrestricted transportation of radioactive waste for the purposes of processing. I believe that the committee could accomplish this by approving Chairman Lehman's proposed amendment which assures that the original intent of the Low-Level Radioactive Waste Policy Amendments Act is still the controlling legislation. I would also like to ask the committee to ensure that any new tracking requirements imposed by this legislation be reasonable and efficient and not be allowed to restrict the flow of waste out of the compact regions for processing. I have included in my written testimony, letters from other industrial segments that support the views I have presented here today.

Thank you for the opportunity to present these views to you today. I would be happy to answer any questions members of the committee may have.

ADDITIONAL COMMENTS BY SEG ON H.R. 4814

Congress currently has an opportunity to clarify its position on a significant question related to the powers of interstate compacts for low-level radioactive waste disposal. The issue concerns the extent of compact authorities to limit access to waste treatment and processing facilities. This issue has been raised in connection with the amendments to the Central-Midwest compact, which are now before Congress. Among other provisions, these amendments contain terms that attempt to make more explicit the authority claimed by the compact commission to limit access to waste management facilities, in the same manner that the compact will be able to limit access to its regional disposal facility.

Basis for the Conflict

The 1980 Low-Level Radioactive Waste Policy Act and the Low-Level Radioactive Waste Policy Amendments Act of 1985 were enacted by Congress to address a growing problem in the availability and distribution of disposal capacity for low-level radioactive waste. The private sector had been unable in the decade prior to the enactment of these laws to establish any new disposal sites. Many at that time believed that direct state action was needed in order to ensure that new disposal sites would be developed within a reasonable time frame. This background is fairly well known and is undisputed.

While Congress was thinking in terms of waste "disposal" compacts, and taking testimony from states and other interested parties regarding the disposal issue, most of the compacts introduced for ratification contained authorities that went beyond the development of new disposal capacity. Many compact provisions encroached into areas traditionally addressed through the Atomic Energy Act and its Agreement State amendments, and into broader areas traditionally protected by laws guaranteeing the free flow of interstate commerce. One compact, the Rocky Mountain, even contains regulatory authorities over the management of naturally-occurring radioactive materials, an issue distinct from the disposal of low-level radioactive waste.

Recognizing the potential for confusion, Congress added Section 4 to the Low-Level Radioactive Waste Policy Amendments Act, which was supposed to settle any conflicts that might arise between the compact authorities and existing federal authorities in favor of the federal authorities. Section 4d(b)(4), for example, states:

Except as expressly provided in (this title), nothing contained in (this title) or any compact may be construed to limit the applicability of any Federal law

or diminish or otherwise impair the jurisdiction of any Federal agency..."

In addition, the terms of Congressional approval to each of the compacts grants Congressional consent "subject to the provisions of the Low-Level Radioactive Waste Policy Act, as amended." Moreover, Congressional approval "is granted only for so long as the regional commission, committee, or board established in the compact complies with all of the provisions of such Act."

Taken together, these caveats clearly express Congress' concern that interstate compact organizations constrain their activities to the problem that had been the subject of controversy for the previous several years -- the lack of disposal capacity for low-level radioactive waste. In crafting these disclaimers, Congress was aware that each of the compacts contained anomalies that were potentially inconsistent with the federal policy and attempted to resolve the dilemma in a way that would allow the compact process to go forth without having to remand each and every issue back to the states.

Public Policy Considerations

The Central-Midwest Compact, for one, has claimed that the power to limit access to waste treatment and processing facilities within its borders is a necessary adjunct to the development and operation of a disposal facility. They are concerned that waste treatment facilities in the region might accept waste from outside the region, then be unable to ship the contaminated treatment residue back to the customer. In this case, they would be stuck with responsibility to dispose of the waste.

I believe that this problem can be more easily and effectively addressed through existing authorities granted through the Atomic Energy Act Agreement State program to state agencies that set license conditions for waste treatment facilities. Tennessee, for example, has avoided the problem of inheriting residue from its large waste treatment centers by requiring its treatment centers to enter contracts with its customers for the return of such waste residue. This is a more focussed and much less sweeping way to address the potential problem than dividing the nation into nine or ten waste management regions and authorizing interstate compact organizations wide-ranging powers to regulate the interstate movement of waste.

With waste treatment and processing, there has been no history of capacity problems parallel to the problem with the number and distribution of disposal facilities. In fact, the success of the private sector in establishing and operating waste processing centers has stood in contrast to the lack of success of interstate compact organizations in establishing new disposal facilities. There is simply no compelling public policy reason

for Congress now to subdivide the nation into tiny regions for the treatment and processing of low-level radioactive waste.

Conclusions

The benefits, if any, of giving compact commissions broad authority to control access to waste treatment facilities (other than disposal facilities) are far outweighed by the unnecessary disruption this might cause to the waste processing industry and those who benefit from its services.

In voting to approve the amendments to the Central-Midwest Compact, I reiterate my belief that Congress did not intend to empower compact organizations to exercise authorities to regulate interstate commerce beyond access to regional disposal facilities for low-level radioactive waste, or to engage in regulatory activities that have traditionally been granted through the Agreement State amendments to the Atomic Energy Act. I vote to approve the amendments to the Central-Midwest Compact subject to the same caveats set forth in all the preceding legislation on compacts.



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September 9, 1994

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President
Scientific Ecology Group
1560 Bear Creek Road
Oak Ridge, TN 37830

Dear Mr. Arrowsmith:

It has recently come to our attention that some regulator groups are using the compacting process allowed by the 1985 Low-Level Amendments Act to limit the transfer into and out of these compacts for not only disposal, but most significantly for temporary storage and/or treatment.

The 1985 amendments act requires the states to form compacts or to go it alone in providing proper disposal for low-level radioactive waste (LLRW). Presently, the Appalachian States Compact users of radioactive materials and those who generate LLRW are faced with an indefinite and extended period of interim storage.

ACURI is a trade association representing the interests of 1,200 licensees and permit-holders within the Appalachian States (Delaware, Maryland, Pennsylvania, and West Virginia). We support any methodology that can safely, effectively and efficiently manage and disposal of LLRW.

ACURI, however, does take issue with the concept of limiting or restricting in any manner the shipment of waste for treatment or storage into or outside of the respective state or compact.

Services of national processors including specialized technologies such as incineration, vitrification, compaction, and other treatments of waste streams and forms can now be safely accomplished at centralized high capital facilities such as SEG. Our members have reflected a need for such services. At our Fifth Annual Meeting in Harrisburg, Pennsylvania on August 25-26, 1994, our members commented on some vital services such as:

- Incineration of biological and medical pathological waste



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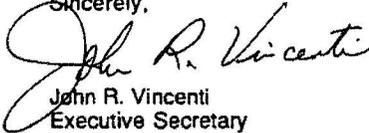
Mr. W. H. Arrowsmith
Page 2
September 9 , 1994

- Incineration of oils and liquids to reduce future environmental pollution.
- The storage treated waste managed by professionals versus local storage by generators that may be faced with inadequate space or monitoring equipment/personnel.
- Treatment to neutralize of acids/basics, prevents leaching and ensures long term (hundreds of years) stability of waste which if untreated causes subsidence, early decay, rust, and presents hazards in untreated forms which affect our environment .

Our list could be further expanded and explained, but in lieu of such for now, let us state that we emphatically oppose any restrictions to waste management treatment, processing or customer services that can pose national health hazard and jeopardizes future environmental pollution.

We hope you will pass our comments on to the Congressional sub-committee considering this matter.

Sincerely,



John R. Vincenti
Executive Secretary

cc: Technical Advisory Committee
ACURI Board of Directors

Academic Component Institutions:
 The University of Texas at Arlington
 The University of Texas at Austin
 The University of Texas at Brownsville
 The University of Texas at Dallas
 The University of Texas at El Paso
 The University of Texas-Pan American
 The University of Texas at the Permian Basin
 The University of Texas at San Antonio
 The University of Texas Institute of Texas, Commerce at San Antonio
 The University of Texas at Tyler



Health Component Institutions:
 The University of Texas Southwestern Medical Center at Dallas
 The University of Texas Medical Branch at Galveston
 The University of Texas Health Science Center at Houston
 The University of Texas Health Science Center at San Antonio
 The University of Texas M.D. Anderson Cancer Center
 The University of Texas Health Center at Tyler

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Testimony Submitted by The University of Texas System to the
 House Energy and Commerce Subcommittee on Energy and Power
 on Approval of the Inter-State Compact Among Texas,
 Maine and Vermont for Construction of the Texas
 Low-level Radioactive Waste Disposal Facility
 September 15, 1994
 Washington, D.C.

The University of Texas System (UT) engages in important research and medical activities which depend on low-level radioactive materials at its fifteen academic and health institutions. Therefore, the UT System supports the effort by Texas to find a responsible long-term solution to low-level radioactive waste (LLW) by constructing a permanent disposal facility. Congressional ratification of the compact agreement among Texas, Maine, and Vermont would be an important step in the State's ability to accomplish that goal.

UT generates LLW from the use of radioactive materials in research and in nuclear medicine. Radioactive materials are an essential part of biomedical research into illnesses such as AIDS, cancer and Alzheimer's disease and is used extensively in developing new drugs. In addition, radioactive materials are used to diagnose illnesses, i.e., the use of tracers to detect coronary artery disease and lung and bone scans to detect blood clots or cancer. They are used to treat diseases such as cancer and thyroid conditions.

According to the Texas Low-Level Radioactive Waste Disposal Authority, UT is the fourth largest generator of LLW in Texas, accounting for approximately 5% of the total volume. Approximately 23% of the LLW sent to the proposed disposal facility will be generated by UT and other medical research and health care facilities. The UT System currently generates about 250 55-gallon drums of dry, solid LLW annually based on 1993 figures. The 1993 volume represents a decrease in the amount of waste produced in previous years due to successful waste minimization efforts. The amount of waste produced is expected to remain constant for the near term. Any further reductions from

waste minimization are likely to be offset by increased LLW from research and medical activities.

1. Why should Texas build a LLW disposal facility? Under the 1985 *Low-Level Radioactive Waste Policy Act Amendments*, each state must provide for disposal of its own LLW. Texas should be praised for its leadership role in planning for the future. Under state legislation authorizing the disposal facility, 80% of the LLW will come from Texas with a maximum of 20% from other compact member states. The compact agreement with Vermont and Maine limits the amount of waste and number of other states that can send LLW to Texas.

2. What type of LLW does The University of Texas produce? Laboratory research and medical diagnosis and treatment creates LLW when ordinary materials come in contact with radioactive materials. Typical laboratory waste includes contaminated test tubes, glass containers, clothing such as shoes or gloves, paper towels and other dry, solid trash. UT health institutions also generate contaminated syringes, linens, paper products, and protective clothing worn by hospital personnel and patients.

3. Why does The University of Texas System need a waste disposal facility? Now that the disposal facility in Barnwell, South Carolina has closed its doors to Texas, UT has no place to dispose of its LLW. While UT is currently storing its wastes, this approach is not a long-term solution as it essentially turns storage facilities into disposal facilities. Disposal at a site that is carefully chosen, engineered for safety and protection, and operated by professionals solely dedicated to that purpose allows LLW to be permanently, centrally and consistently managed better than if it were indefinitely stored at the point of generation, often in urban areas.

In conclusion, radioactive materials used in research and medicine produce valuable health benefits to the people of Texas and the country. The UT System relies on the State of Texas to provide generators a safe, secure and permanent LLW disposal facility. UT also relies on the expertise of the Texas LLW Disposal Authority to make the proper siting, construction and operational decisions. The goals of protecting human health and the environment are best served by a well planned, central disposal facility, not numerous storage areas all around the State. Therefore, The University of Texas System supports the compact among Texas, Maine and Vermont.



NUCLEAR ENERGY INSTITUTE

Phillip Bayne
PRESIDENT AND
CHIEF EXECUTIVE OFFICER

September 22, 1994

The Honorable Richard H. Lehman
Chairman, Subcommittee on Energy and Mineral Resources
Committee on Natural Resources

The Honorable Philip R. Sharp
Chairman, Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen Lehman and Sharp:

I am writing to express the views of the Nuclear Energy Institute (NEI) on low-level waste legislation addressed at the September 13 joint hearing of the Subcommittees on Energy and Power and Energy and Mineral Resources.

HR 4800 would ratify a new interstate compact for the disposal of low-level radioactive waste generated in Texas, Maine and Vermont. The legislatures and governors of all three states have approved the terms of this compact agreement, which calls for the development of a single disposal facility for waste generated in the three states. This mutually beneficial arrangement helps these states meet their obligations under the Low-Level Radioactive Waste Policy Amendments Act, which encourages the formation of such compacts.

NEI strongly supports HR 4800. We believe that failure to ratify the Texas Compact would signal a lack of congressional commitment to federal low-level waste policy, and adversely impact disposal site development efforts of other compacts by creating the perception that Congress may revisit the Act in the future.

The second bill on which your panels heard testimony, HR 4814, would amend the Central Midwest Low-Level Radioactive Waste Compact. The proposed amendments include language that explicitly defines the compact's authority to limit

The Honorable Richard H. Lehman
The Honorable Philip R. Sharp
September 22, 1994
Page 2

access to commercial waste treatment facilities in much the same way that compacts can restrict access to regional disposal facilities. NEI believes that congressionally authorized restrictions on interstate access to waste treatment facilities would be contrary to the national interest and would exceed the powers that Congress originally gave interstate compacts in the Low-Level Radioactive Waste Policy Amendments Act. There is no credible evidence to suggest that expanded compact authority in this area would facilitate disposal site development efforts.

Treatment facilities provide substantial environmental benefits. Low-level radioactive waste generators rely heavily on their services. For instance, supercompaction and incineration of waste drastically reduce its volume and, in many cases, result in an environmentally preferable waste form. Also, lower disposal volumes mean lower disposal costs, a savings ultimately passed on to consumers. Commercial decontamination and laundry facilities remove radioactivity from objects, such as piping and clothing, allowing these materials to be reused or recycled rather than discarded as low-level waste. Commercial processes also allow metallic radioactive wastes to be melted and formed into components for use in applications that might otherwise require use of new uncontaminated metals. And further advances in waste processing technology are on the horizon.

The volume of low-level radioactive waste generated for disposal nationally has declined by well over 50 percent since Congress passed the Low-Level Radioactive Waste Policy Amendments Act in 1985 largely due to the availability of a few centralized waste treatment facilities. The private sector waste treatment industry, operating without interstate commerce restrictions, has a record of success in serving the national interest. In most cases, these treatment services would not be practical or economically viable if they had to be performed within each of the 10 compacts. Continued interstate access to treatment facilities is essential especially since waste generators rely on these facilities to reduce the amount of waste they must store on-site until the compacts develop new disposal facilities. (Low-level waste is now being stored at generator sites in 31 states, awaiting the development of new disposal facilities.)

NEI urges Congress to condition its approval of the Central Midwest Compact to ensure that the compact's authority to control the importation and exportation of low-level radioactive waste applies only to disposal, consistent with the Low-

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The Honorable Philip R. Sharp
September 22, 1994
Page 3

Level Waste Policy Amendments Act. We believe this will allow continued national success in waste processing and volume reduction, and permit the compacts to focus on their objective identified by Congress -- establishing new disposal capacity for low-level waste.

Sincerely,



Phillip Bayne

cc: Members, Subcommittee on Energy and Mineral Resources
Members, Subcommittee on Energy and Power

United Methodist Church
U S Public Interest Research Group
Southwest Network for Environmental and Economic Justice
Sierra Club Legal Defense Fund
Sierra Club
Save Sierra Blanca
Safe Energy Communication Council
Public Citizen Texas
Public Citizen's Critical Mass Energy Project
Physicians for Social Responsibility
Nuclear Information and Resource Service
Indigenous Environmental Network
Greenpeace
Environmental Action
Alert Citizens for Environmental Safety

September 12, 1994

Dear Representative *Zelman*:

We ask you to VOTE AGAINST H.R. 4800/S. 2222, the "Texas Low-Level Radioactive Waste Disposal Compact Consent Act" because it:

♦ sanctions what appears to be environmental racism that resulted in selecting a poor¹ Mexican American community² which does not want the dump³ and is already the location of one of the largest sewage sludge projects in the country.⁴ It is one of numerous proposed radioactive and hazardous facilities along the Mexican border.

Although the Compact does not expressly designate Hudspeth County, the Faslin Ranch near Sierra Blanca clearly has been chosen and a license has been submitted. The decision Congress now faces on Compact approval cannot be made in a vacuum, ignoring potentially serious environmental justice questions that have been raised about the site selection process. Congressional approval would make challenging the environmentally unjust procedures that have been carried out more difficult because additional out-of-state money, pressure and legal commitments will come to bear.

We caution Congress not to be complicit in what has become, whether intentional or not, a repulsive trend in this country of siting the most hazardous and undesirable facilities in poor communities with high percentages of people of color. Texas is second only to California, another proposed radioactive dump state, in the number of commercial hazardous waste facilities located in communities with above-national-average percent people of color.⁵

♦ appears to violate Title VI of the 1964 Civil Rights Act passed by Congress to prevent discriminatory activities and prohibiting use of federal money for programs that discriminate.⁶

- ◆ violates the 1983 La Paz Agreement with Mexico in which both countries agreed to cooperate to "...prevent, reduce and eliminate sources of pollution...which affect the border area..." The site, approximately 16 miles from the Rio Grande, is well within the "border area" (63 miles on each side of the border).
- ◆ potentially threatens the Rio Grande by permitting burial of long-lasting (hundreds to millions of years hazardous⁹), highly concentrated wastes (some can give a lethal dose in about 5 minutes⁹) in soil trenches destined to leak⁹ and requiring only 100 years of institutional control,¹⁰
- ◆ deals with intensely radioactive materials which, despite their classification as "low-level," are not low risk and include all the same elements as high-level waste from nuclear power and weapons. Nationally, nuclear power waste comprises the vast majority and medical waste consistently comprises less than one tenth of a percent of the radioactivity in so-called "low-level" waste.¹¹ For Maine and Vermont, 99.5% to 100% is from nuclear reactors¹² and lasts for centuries. In contrast, medical treatment and diagnosis wastes characteristically have tiny amounts of relatively low-concentrations of radioactivity with very short hazardous lives.¹³ Options other than burial with reactor waste are technically viable and need exploration.
- ◆ will result in thousands of miles of unnecessary transportation of dangerous radioactive materials including plutonium, cesium, and strontium from atomic power plants. Wastes will be trucked from Maine, Vermont, east Texas and, very likely, other locations, to the border area.
- ◆ opens the door to waste from all over the country, despite claims to the contrary. The Compact has numerous provisions¹⁴ for importing radioactive waste from more generators than those in Maine, Vermont and Texas. The Compact Commission (6 appointees from Texas and 1 each from the party states, not limited to Maine and Vermont), will have the power, by majority vote, to enter into such agreements.¹⁵ With a majority vote of the Compact Commission and the Texas legislature, other states may become party states. So, to claim that the Compact protects from other states dumping is misleading and false. It sets up the procedures for opening the dump to other states.
- ◆ has numerous loopholes in the provisions that are touted to limit out-of-compact waste volume to 20% of the amount Texas dumps. This is misleading because it is the amount of radioactivity that is of concern. There is no limit on the amount of radioactivity that can be imported into the proposed Texas dump. Wastes imported from non-party states via agreements are not subject to the limit. The limit is only an estimate based on a 50-year projection and it can be changed.¹⁶ It does not apply to wastes brought in for "processing." A major radioactive waste processor has entered into an option agreement¹⁷ to lease property neighboring the proposed dump, thus indicating

another possible avenue for unlimited volumes out-of-state waste going to Hudspeth County.

For these reasons, we urge that you give H.R. 4800/S. 2222 close scrutiny and a "No" vote.

Thank you.

Sincerely,

Jaydee Hanson
United Methodist Church

Anna Aurilio
US Public Interest Research Group

Richard Moore
Southwest Network for
Environmental and Economic Justice

Nathalie Walker
Sierra Club Legal Defense Fund, Inc.
Louisiana Office

Vivien Li
Sierra Club

Bill Addington
Save Sierra Blanca

Scott Denman
Safe Energy Communication Council

Tom Smith
Public Citizen Texas

Bill Magavern
Public Citizen's Critical Mass Energy Project

Robert Musil
Physicians for Social Responsibility

Diane D'Arrigo
Nuclear Information and Resource Service

Tom Goldtooth
Indigenous Environmental Network

Sherry Meddick
Greenpeace

David Lapp
Environmental Action

Sandra Griffin
Alert Citizens for Environmental Safety

¹ 1990 Census of Population and Housing, Hudspeth County, Texas, pg 1. Per capita income \$7,994.

² Neighbor, Howard D. "Low-Level Radioactive Dumpsiting in West Texas: Another Example of Texas Racism?" University of Texas at El Paso, delivery at WSSA/ABS Meeting, January 22, 1994, p.6: "65% of Hudspeth County population is Mexican American."

³ Telephone survey prepared for Texas Low Level Radioactive Waste Disposal Authority by K Associates, El Paso, TX, January 1992.

⁴ Salopek, Paul and David Sheppard, *El Paso Times*, "Desert-bound Waste: Poison or Promise?" June 14, 1992. "It will be the nation's largest effort to artificially fertilize desert rangeland with human waste." MERCO Joint Venture, an Oklahoma based waste handler is land spreading NY City sewage sludge in the same area as the proposed atomic waste site.

⁵ Goldman, Benjamin A. and Laura Fitton, "Toxic Wastes and Race Revisited," Center for Policy Alternatives, NAACP and United Church of Christ Commission for Racial Justice, 1994, p.11.

⁶ Carman, Neil J., Lone Star Chapter Sierra Club, "Civil Rights and Environmental Justice Executive Order applicability to proposed Low-Level Radioactive Waste Dump near Sierra Blanca, Texas" letter, June 24, 1994.

⁷ The hazardous life of a radioactive material is generally 10 to 20 half-lives, thousandth to millionth. The radioactive waste from atomic power plants that would go to Sierra Blanca includes plutonium-239 hazardous for 240,000 to 480,000 years, iodine-129 hazardous for 170 to 340 million years, cesium-135 hazardous for 20 to 40 million years, cesium-137 hazardous for 300 to 600 years, nickel 59 hazardous for 800,000 to 1.6 million years.

⁸ Cesium-137 can be present in "low-level" radioactive waste up to 4600 curies per cubic meter (NRC 10 CFR 61.55 "Waste Classification."), and that amount can deliver a lethal dose in approximately 5 minutes.

⁹ Nuclear Regulatory Commission (NRC) regulations 10 CFR 61.41 "Protection of the General Public from releases of radioactivity" allows "[c]oncentrations of radioactive material [to be]...released to the general environment in ground water, surface water, air, soil, plants, or animals" that results in doses up to 25 millirems/year to whole body and any organ but the thyroid which can receive 75 millirems/year. "Millirems are an expression of biological damage to tissue from ionizing radiation and not directly measurable. Such a standard is unenforceable, relying upon unverified computer modeling to predict, not guarantee, compliance.

¹⁰ NRC regulations 10 CFR 61.59(b) NRC "Institutional control. ...institutional controls may not be relied upon for more than 100 years..."

¹¹ DOE annual State-by-State Assessments of LLRW Shipped to and Received at Commercial Disposal Sites, 1985-1993.

¹² State-by-State Assessment of Low-Level Radioactive Wastes Received at Commercial Disposal Sites, DOE/LLW-181 (1993), DOE/LLW-152 (1992), DOE/LLW-132 (1991).

¹³ Hamilton, Minard, "Radioactive Waste: The Medical Factor," Nuclear Information and Resource Service, January 1993.

¹⁴ HR 4800/S 2222: Section 2.01(13) Texas, Maine and Vermont are only the "initial" party states; Section 3.05(6) Authority to "[e]nter into an agreement with any person, state regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal...;" Section 7.01 "Any other state may be made eligible for party status..."

¹⁵ HR 4800/S 2222: Section 3.05 (6).

¹⁶ HR 4800/S 2222: Section 7.09. compact expressly provides for contracting and compacting with more states.

¹⁷ "Option Agreement," The Scientific Ecology Group, Inc. and Cynthia Hoover, March 7, 1994.

ISBN 0-16-046255-X



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