

STATE OF COLORADO

EXECUTIVE CHAMBERS

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Richard D. Lamm
Governor

March 19, 1982

G. Wayne Kerr, Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Kerr:

Thank you for your letter of January 5, 1982, in which you provided the Nuclear Regulatory Commission's (NRC) comments on the Rocky Mountain Low-Level Radioactive Waste Compact. We greatly appreciate your quick response and your interest in sharing your ideas with us on the Compact. Following is the response of the Rocky Mountain States to your comments.

Article 2 - Definitions

1. The definition of disposal has been amended to read as follows: "disposal means the isolation of waste from the biosphere, with no intention of retrieval, such as by land burial." We believe that this reduces the intent problem which you raised, while retaining the flexibility to accommodate non-burial technologies should they be developed in the future.

2. The majority of the Rocky Mountain States concur that our definition of low-level radioactive waste should be retained, with some clarifying modifications. The majority of the states do not feel it is in the states' interest to adopt the federal definition per se. The definition agreed to by the majority of the Rocky Mountain States for inclusion in the Compact reads as follows:

"'Low-level waste' or 'waste' means radioactive waste, other than: (1) waste generated as a result of defense activities of the federal government or federal research and development activities; (2) high-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel or solids into which any such liquid waste has been converted; (3) waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram of waste material; (4) byproduct material as defined in Section 11 e. (2) of the 'Atomic Energy Act of 1954,' as amended on November 8, 1978; (5) wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for minerals other than radium;".

We believe that this definition is consistent with and does reasonably conform with both the intent and the specific definition contained in the

Low-Level Radioactive Waste Policy Act (PL 96-573). This definition has been retained in the Compact after careful consideration by the Rocky Mountain States. We believe that this definition is necessary for the compacting states to retain control over the types of waste which may be disposed of at a regional facility. The provision of Article 7, Section D, which establishes conditions for acceptance of waste other than that defined in the Compact as low-level waste, will allow the states to respond to exceptions to the definition while preserving the basic stability underlying the Compact. There are also constitutional and legal construction reasons for not adopting PL 96-573 verbatim. We believe that the inclusion of the terms "high-level waste," "spent nuclear fuel" and "transuranic waste" in the definition without defining those terms would have resulted in an unacceptably vague definition.

3. Article 2.H contains a definition of management which intentionally includes incineration.

Article 3 - Rights, Responsibilities, and Obligations

1. The Rocky Mountain States are hopeful that through the good faith efforts of the other states to develop a new regional facility, Nevada will be persuaded to allow the continued operation of the Beatty facility until the new facility is operational.

2. Article 3.C has been amended to specify that the 20 percent or more will be measured "in cubic feet, except as otherwise determined by the Board." This provision will allow flexibility to respond to changing waste generation profiles or other special factors.

3. The term "perpetual care" has been replaced with "long-term care" throughout the Compact.

4. Article 3.F(1) is intended only to encompass the 274i agreement. No other inspection or enforcement of NRC licensees is contemplated. We would, however, be interested in developing an agreement with the NRC to provide mandatory enforcement (with discretion) by NRC if non-compliance is discovered through a 274i agreement.

5. This error has been corrected.

Article 4 - Board Approval of Regional Facilities

1. The Board's approval of regional facilities is based solely on the two economic factors specified in Article 4.B. The Board will in no way duplicate or review the health and safety determinations made by an agreement state or the NRC in licensing a facility. Because of this limited review by the Board, we believe that a 90-day period is reasonable.

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Article 5 - Surcharges

1. The unit of waste upon which the surcharges are to be levied is not specified; however, it is expected that it will be based upon volume unless otherwise specified.

Article 6 - The Board

The term "private" low-level waste facilities has been eliminated. Article 6.0.5 is intended to compile an inventory of all low-level waste facilities in the region, for planning purposes.

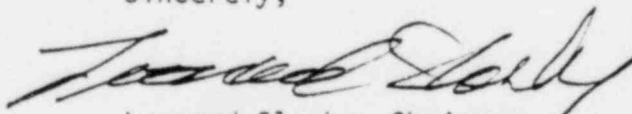
Enclosed is an updated copy of the Rocky Mountain Compact which contains a number of very minor changes in addition to those outlined above.

In conclusion, I would like to stress that this Compact has been very carefully negotiated by the Rocky Mountain States to provide the States with the security necessary for compacting while, at the same time, allowing flexibility to adjust to a field which is expected to change dramatically over the 20 to 50 years that the Compact will be important.

As the Compact is proceeding through the Colorado Legislature at this time, we would again appreciate a prompt response. If the NRC continues to have any significant concerns with the Rocky Mountain Compact, we would appreciate a meeting to discuss these concerns as soon as possible.

Again, we appreciate NRC's very constructive comments and we look forward to continuing working with you in meeting this important challenge.

Sincerely,



Leonard Slosky, Chairman
Rocky Mountain States
Compact Negotiation Group

cc: Charles Tedford
Ace Martelle
George Goldstein
Al Rickers
Walt Ackerman
Doug Larson

STATE OF COLORADO

Health, Environment
Welfare & Institutions

BY REPRESENTATIVE Spano;
also SENATOR Barnhill.

A BILL FOR AN ACT

- 1 CONCERNING LOW-LEVEL RADIOACTIVE WASTE, AND MAKING
2 APPROPRIATIONS IN RELATION THERETO.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides for the adoption of the Rocky Mountain low-level radioactive waste compact and implementing legislation.

Provides that boards of county commissioners would designate sites for facilities to manage low-level radioactive waste until July 1, 1983. In the event that no such designation is made or proposed, the department of health is authorized to prepare an alternative plan for a facility, which plan must be submitted to the general assembly for review and approval.

Provides penalties for violations relating to the disposal and management of low-level radioactive waste.

Makes appropriations for implementation of the act.

-
- 3 Be it enacted by the General Assembly of the State of Colorado:

- 4 SECTION 1. Article 50 of title 24, Colorado Revised
5 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW
6 PART, to read:

- 7 PART 22

- 8 ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT

1 facilities for the proper and efficient management of
2 low-level radioactive waste generated within the region while
3 preventing unnecessary and uneconomic proliferation of such
4 facilities; to encourage reduction of the volume of low-level
5 radioactive waste requiring disposal within the region; to
6 restrict management within the region of low-level radioactive
7 waste generated outside the region; to distribute the costs,
8 benefits and obligations of low-level radioactive waste
9 management equitably among the party states; and by these
10 means to promote the health, safety and welfare of the
11 residents within the region.

12 ARTICLE 2

13 DEFINITIONS

14 As used in this compact, unless the context clearly
15 indicates otherwise:

16 A. "Board" means the Rocky Mountain low-level
17 radioactive waste board;

18 B. "Carrier" means a person who transports low-level
19 waste;

20 C. "Disposal" means the isolation of waste from the
21 biosphere, with no intention of retrieval, such as by land
22 burial;

23 D. "Facility" means any property, equipment or structure
24 used or to be used for the management of low-level waste;

25 E. "Generate" means to produce low-level waste;

26 F. "Host state" means a party state in which a regional

ARTICLE 3

RIGHTS, RESPONSIBILITIES AND OBLIGATIONS

A. There shall be regional facilities sufficient to manage the low-level waste generated within the region. At least one regional facility shall be open and operating in a party state other than Nevada within six years after this compact becomes law in Nevada and in one other state.

B. Low-level waste generated within the region shall be managed at regional facilities without discrimination among the party states; provided, however, that a host state may close a regional facility when necessary for public health or safety.

C. Each party state which, according to reasonable projections made by the board, is expected to generate ~~twenty in cubic feet except as otherwise determined by the~~ percent or more of the low-level waste generated within the region has an obligation to become a host state in compliance with subsection D of this article.

D. A host state, or a party state seeking to fulfill its obligation to become a host state, shall:

(1) Cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in Article 4 before allowing site preparation or physical construction to begin;

(2) Ensure by its own law, consistent with any applicable federal law, the protection and preservation of

1 public health and safety in the siting, design, development,
2 licensure or other regulation, operation, closure,
3 decommissioning and long-term care of the regional facilities
4 within the state;

5 (3) Subject to the approval of the board, ensure that
6 charges for management of low-level waste at the regional
7 facilities within the state are reasonable;

8 (4) Solicit comments from each other party state and the
9 board regarding siting, design, development, licensure or
10 other regulation, operation, closure, decommissioning and
11 long-term care of the regional facilities within the state and
12 respond in writing to such comments;

13 (5) Submit an annual report to the board which contains
14 projections of the anticipated future capacity and
15 availability of the regional facilities within the state,
16 together with other information required by the board; and

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

22 E. Once a party state has served as a host state, it
23 shall not be obligated to serve again until each other party
24 state having an obligation under subsection C of this article
25 has fulfilled that obligation. Nevada, already being a host
26 state, shall not be obligated to serve again as a host state

1 until every other ~~party~~ party state has so served.

2 F. Each party state:

3 (1) Agrees to adopt and enforce procedures requiring
4 low-level waste shipments originating within its borders and
5 destined for a regional facility to conform to ~~appropriate~~
6 packaging and transportation requirements and regulations.

7 Such procedures shall include but are not limited to:

8 (a) Periodic inspections of packaging and shipping
9 practices;

10 (b) Periodic inspections of waste containers while in
11 the custody of carriers; and

12 (c) Appropriate enforcement actions with respect to
13 violations;

14 (2) Agrees that after receiving notification from a host
15 state that a person in the party state has violated ~~appropriate~~
16 packaging, shipping or transportation requirements or
17 regulations, it shall take appropriate action to ensure that
18 violations do not recur. Appropriate action may include but
19 is not limited to the requirement that a bond be posted by the
20 violator to pay the cost of repackaging at the regional
21 facility and the requirement that future shipments be
22 inspected;

23 (3) May impose fees to recover the cost of the practices
24 provided for in paragraphs (1) and (2) of this subsection;

25 (4) Shall maintain an inventory of all generators within
26 the state that may have low-level waste to be managed at a

1 regional facility; and

2 (5) May impose requirements or regulations more
3 stringent than those required by this subsection.

4 ARTICLE 4

5 BOARD APPROVAL OF REGIONAL FACILITIES

6 A. Within ninety days after being requested to do so by
7 a party state, the board shall approve or disapprove a
8 regional facility to be located within that state.

9 B. A regional facility shall be approved by the board if
10 and only if the board determines that:

11 (1) There will be, for the foreseeable future,
12 sufficient demand to render operation of the proposed facility
13 economically feasible without endangering the economic
14 feasibility of operation of any other regional facility; and

15 (2) The facility will have sufficient capacity to serve
16 the needs of the region for a reasonable period of years.

17 ARTICLE 5

18 SURCHARGES

19 A. The board shall impose a "compact surcharge" per unit
20 of waste received at any regional facility. The surcharge
21 shall be adequate to pay the costs and expenses of the board
22 in the conduct of its authorized activities and may be
23 increased or decreased as the board deems necessary.

24 B. A host state may impose a "state surcharge" per unit
25 of waste received at any regional facility within the state.
26 The host state may fix and change the amount of the state

1 surcharge subject to approval by the board. Money received
2 from the state surcharge may be used by the host state for any
3 purpose authorized by its own law, including but not limited
4 to costs of licensure and regulatory activities related to the
5 regional facility, reserves for decommissioning and long-term
6 care of the regional facility and local impact assistance.

7 ARTICLE 6

8 THE BOARD

9 A. The "Rocky Mountain low-level radioactive waste
10 ~~board~~ which shall not be an agency or instrumentality of any party
state,
board is created.

11 B. The board shall consist of one member from each party
12 state. Each party state shall determine how and for what term
13 its member shall be appointed, and how and for what term any
14 alternate may be appointed to perform that member's duties on
15 the board in the member's absence.

16 C. Each party state is entitled to one vote. A majority
17 of the board constitutes a quorum. Unless otherwise provided
18 in this compact, a majority of the total number of votes on
19 the board is necessary for the board to take any action.

20 D. The board shall meet at least once a year and
21 otherwise as its business requires. Meetings of the board may
22 be held in any place within the region deemed by the board to
23 be reasonably convenient for the attendance of persons
24 required or entitled to attend and where adequate
25 accommodations may be found. Reasonable public notice and
26 opportunity for comment shall be given with respect to any

1 meeting; provided, however, that nothing in this subsection
2 shall preclude the board from meeting in executive session
3 when seeking legal advice from its attorneys or when
4 discussing the employment, discipline, or termination of any
5 of its employees.

6 E. The board shall pay necessary travel and reasonable
7 per diem expenses of its members, alternates and advisory
8 committee members.

9 F. The board shall organize itself for the efficient
10 conduct of its business. It shall adopt and publish rules
11 consistent with this compact regarding its organization and
12 procedures. In special circumstances the board, with
13 unanimous consent of its members, may take actions by
14 telephone; provided, however, that any action taken by
15 telephone shall be confirmed in writing by each member within
16 thirty days. Any action taken by telephone shall be noted in
17 the minutes of the board.

18 G. The board may use for its purposes the services of
19 any personnel or other resources which may be offered by any
20 party state.

21 H. The board may establish its offices in space provided
22 for that purpose by any of the party states or, if space is
23 not provided or is deemed inadequate, in any space within the
24 region selected by the board.

25 I. Consistent with available funds, the board may
26 contract for necessary personnel services and may employ such

1 staff as it deems necessary to carry out its duties. Staff
2 shall be employed without regard for the personnel, civil
3 service or merit system laws of any of the party states and
4 shall serve at the pleasure of the board. The board may
5 provide appropriate employee benefit programs for its staff.

6 J. The board shall establish a fiscal year which
7 conforms to the extent practicable to the fiscal years of the
8 party states.

9 K. The board shall keep an accurate account of all
10 receipts and disbursements. An annual audit of the books of
11 the board shall be conducted by an independent certified
12 public accountant, and the audit report shall be made a part
13 of the annual report of the board.

14 L. The board shall prepare and include in the annual
15 report a budget showing anticipated receipts and disbursements
16 for the ensuing year.

17 M. Upon legislative enactment of this compact, each
18 party state shall appropriate seventy thousand dollars
19 (\$70,000) to the board to support its activities prior to the
20 collection of sufficient funds through the compact surcharge
21 imposed pursuant to subsection A of article 5 of this compact.

22 N. The board may accept any donations, grants,
23 equipment, supplies, materials or services, conditional or
24 otherwise, from any source. The nature, amount and condition,
25 if any, attendant upon any donation, grant or other resources
26 accepted pursuant to this subsection, together with the

1 identity of the donor or grantor, shall be detailed in the
2 annual report of the board.

3 0. In addition to the powers and duties conferred upon
4 the board pursuant to other provisions of this compact, the
5 board:

6 (1) Shall submit communications to the governors and to
7 the presiding officers of the legislatures of the party states
8 regarding the activities of the board, including an annual
9 report to be submitted by December 15;

10 (2) May assemble and make available to the governments
11 of the party states and to the public through its members
12 information concerning low-level waste management needs,
13 technologies and problems;

14 (3) Shall keep a current inventory of all generators
15 within the region, based upon information provided by the
16 party states;

17 (4) Shall keep a current inventory of all regional
18 facilities, including information on the size, capacity,
19 location, specific wastes capable of being managed and the
20 projected useful life of each regional facility;

21 (5) May keep a current inventory of all low-level waste
22 facilities in the region, based upon information provided by
23 the party states;

24 (6) Shall ascertain on a continuing basis the needs for
25 regional facilities and capacity to manage each of the various
26 classes of low-level waste;

1 (7) May develop a regional low-level waste management
2 plan;

3 (8) May establish such advisory committees as it deems
4 necessary for the purpose of advising the board on matters
5 pertaining to the management of low-level waste;

6 (9) May contract as it deems appropriate to accomplish
7 its duties and effectuate its powers, ~~subject to its projected available~~ but no contract made by resources
8 the board shall bind any party state;

9 (10) Shall make suggestions to appropriate officials of
10 the party states to ensure that adequate emergency response
11 programs are available for dealing with any exigency that
12 might arise with respect to low-level waste transportation or
13 management;

14 (11) Shall prepare contingency plans, with the
15 cooperation and approval of the host state, for management of
16 low-level waste in the event any regional facility should be
17 closed;

18 (12) May examine all records of operators ~~of~~ ^{of} regional
19 facilities pertaining to operating costs, profits or the
20 assessment or collection of any charge, fee or surcharge;

21 (13) Shall have the power to sue; and

22 (14) When authorized by unanimous vote of its members,
23 may intervene as of right in any administrative or judicial
24 proceeding involving low-level waste.

25 ARTICLE 7

26 PROHIBITED ACTS AND PENALTIES

1 A. It shall be unlawful for any person to dispose of
2 low-level waste within the region, except at a regional
3 facility; provided, however, that a generator who, prior to
4 January 1, 1982, had been disposing of only his own waste on
5 his own property may, subject to applicable federal and state
6 law, continue to do so.

7 B. After January 1, 1986, it shall be unlawful for any
8 person to export low-level waste which was generated within
9 the region outside the region unless authorized to do so by
10 the board. In determining whether to grant such
11 authorization, the factors to be considered by the board shall
12 include, but not^{be} limited to, the following:

13 (1) The economic impact of the export of the waste on
14 the regional facilities;

15 (2) The economic impact on the generator of refusing to
16 permit the export of the waste; and

17 (3) The availability of a regional facility appropriate
18 for the disposal of the waste involved.

19 C. After January 1, 1986, it shall be unlawful for any
20 person to manage any low-level waste within the region unless
21 the waste was generated within the region or unless authorized
22 to do so both by the board and by the state in which said
23 management takes place. In determining whether to grant such
24 authorization, the factors to be considered by the board shall
25 include, but not^{be} limited to, the following:

26 (1) The impact of importing waste on the available

1 capacity and projected life of the regional facilities;

2 (2) The economic impact on the regional facilities; and

3 (3) The availability of a regional facility appropriate
4 for the disposal of the type of waste involved.

5 D. It shall be unlawful for any person to manage at a
6 regional facility any radioactive waste other than low-level
7 waste as defined in this compact, unless authorized to do so
8 both by the board and the host state. In determining whether
9 to grant such authorization, the factors to be considered by
10 the board shall include, but not be limited to, the following:

11 (1) The impact of allowing such management on the
12 available capacity and projected life of the regional
13 facilities;

14 (2) The availability of a facility appropriate for the
15 disposal of the type of waste involved;

16 (3) The existence of transuranic elements in the waste;
17 and

18 (4) The economic impact on the regional facilities.

19 E. Any person who ^{violates} ~~violates~~ subsection A or B of this
20 article shall be liable to the board for a civil penalty not
21 to exceed ten times the charges which would have been charged
22 for disposal of the waste at a regional facility.

23 F. Any person who violates subsection C or D of this
24 article shall be liable to the board for a civil penalty not
25 to exceed ten times the charges which were charged for
26 management of the waste at a regional facility.

1 G. The civil penalties provided for in subsections E and
2 F of this article may be enforced and collected in any court
3 of general jurisdiction within the region where necessary
4 ~~jurisdiction~~ jurisdiction is obtained by an appropriate proceeding
5 commenced on behalf of the board by the attorney general of
6 the party state wherein the proceeding is brought or by other
7 counsel authorized by the board. In any such proceeding, the
8 board, if it prevails, is entitled to recover reasonable
9 attorney's fees as part of its costs.

10 H. Out of any civil penalty collected for a violation of
11 subsection A or B of this article, the board shall pay to the
12 appropriate operator a sum sufficient in the judgement of the
13 board to compensate the operator for any loss of revenue
14 attributable to the violation. Such compensation may be
15 subject to state and compact surcharges as if received in the
16 normal course of the operator's business. The remainder of

17 the civil penalty collected shall be ~~allocated~~ ^{allocated} by the board. ^{In making such}
~~the board shall give first priority to the needs of the long-~~ ^{allocation,}
18 I. Any civil penalty collected for a violation of ^{term care}
19 subsection C or D of this article shall be ~~allocated~~ ^{allocated} by the ^{funds in the}
20 board. ^{region.} ~~In making such allocation, the board shall give first~~
21 ~~priority to the needs of the long-term care funds in the region~~

22 J. Violations of subsection A, B, C, or D of this
23 article may be enjoined by any court of general jurisdiction
24 within the region where necessary ~~jurisdiction~~ jurisdiction is
25 obtained in any appropriate proceeding commenced on behalf of
26 the board by the attorney general of the party state wherein
the proceeding is brought or by other counsel authorized by

1 the board. In any such proceeding, the board, if it prevails,
2 is entitled to recover reasonable attorney's fees as part of
3 its costs. ~~K. No state attorney general shall be required to bring any~~
4 ~~proceeding under any subsection of this article, except upon his consent.~~

ARTICLE 8

5 ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL
6 CONSENT, WITHDRAWAL, EXCLUSION

7 A. Arizona, Colorado, Nevada, New Mexico, Utah and
8 Wyoming are eligible to become parties to this compact. Any
9 other state may be made eligible by unanimous consent of the
10 board.

11 B. An eligible state may become a party state by
12 legislative enactment of this compact or by executive order of
13 its governor adopting this compact; provided, however, a state
14 becoming a party by executive order shall cease to be a party
15 state upon adjournment of the first general session of its
16 legislature convened thereafter, unless before such
17 adjournment the legislature shall have enacted this compact.

18 C. This compact shall take effect when it has been
19 enacted by the legislatures of two eligible states. However,
20 subsections B and C of article 7 shall not take effect until
21 Congress has by law consented to this compact. Every five
22 years after such consent has been given, Congress may by law
23 withdraw its consent.

24 D. A state which has become a party state by legislative
25 enactment may withdraw by legislation repealing its enactment
26 of this compact; but no such repeal shall take effect until

1 two years after enactment of the repealing legislation. If
2 the withdrawing state is a host state, any regional facility
3 in that state shall remain available to receive low-level
4 waste generated within the region until five years after the
5 effective date of the withdrawal; provided, however, this
6 provision shall not apply to the existing facility in Beatty,
7 Nevada.

8 E. A party state may be excluded from this compact by a
9 two-thirds' vote of the members representing the other party
10 states, acting in a meeting, on the ground that the state to
11 be excluded has failed to carry out its obligations under this
12 compact. Such an exclusion may be terminated upon a
13 two-thirds' vote of the members acting in a meeting.

14 ARTICLE 9

15 CONSTRUCTION AND SEVERABILITY

16 A. The provisions of this compact shall be broadly
17 construed to carry out the purposes of the compact.

18 B. Nothing in this compact shall be construed to affect
19 any judicial proceeding pending on the effective date of this
20 compact.

21 C. If any part or application of this compact is held
22 invalid, the remainder, or its application to other
23 situations or persons, shall not be affected.

24 SECTION 2. Title 25, Colorado Revised Statutes 1973, as
25 amended, is amended BY THE ADDITION OF A NEW ARTICLE, to read:

26 ARTICLE 17

1 Low-level Radioactive Waste

2 25-17-101. Short title. This article shall be known and
3 may be cited as the "Low-level Radioactive Waste Act".

4 25-17-102. Legislative declaration. The general
5 assembly hereby finds and declares that the provisions of this
6 article are necessary for the state to fulfill its
7 responsibilities under the "Rocky Mountain Low-level
8 Radioactive Waste Compact" set forth in part 22 of article 60
9 of title 24, C. R. S. 1973.

10 25-17-103. Definitions. As used in this article, unless
11 the context otherwise requires:

12 (1) "Department" means the department of health.

13 (2) "Facility" means a low-level radioactive waste
14 facility ~~which is a facility~~ capable of serving as a regional
15 or management disposal site for low-level radioactive waste and which
16 complies with the provisions of the "Rocky Mountain Low-level
17 Radioactive Waste Compact" set forth in part 22 of article 60
18 of title 24, C.R.S. 1973.

19 (3) "Low-level radioactive waste" means radioactive
20 waste, other than: ~~that~~ ⁽¹⁾ generated as a result of defense
21 activities of the federal government or federal research and
22 development activities ~~which are~~ ⁽²⁾ high-level waste such
23 as irradiated reactor fuel, liquid waste from reprocessing
24 irradiated reactor fuel ~~or~~ ^{or} solids into which any such liquid
25 waste has been converted ~~or~~ ⁽³⁾ waste material containing
26 transuranic elements with contamination levels greater than

(4)
1 ten nanocuries per gram of waste material ~~or~~ byproduct
2 material as defined in Section 11 e. (2) of the "Atomic Energy
3 Act of 1954", as amended ~~on November 8, 1978; (5)~~ wastes from mining, milling, smelting,
4 similar processing of ore and mineral-bearing material primarily
25-17-104. Administration - application of other laws. for mineral
other than
5 (1) Except as otherwise provided in this article, the radium;
6 department shall be the agency responsible for administration
7 of this article on behalf of the state.

8 (2) Except as otherwise provided in this article, all
9 facilities shall be subject to the provisions on radiation
10 control set forth in part 1 of article 11 of this title and
11 the provisions on solid wastes disposal sites and facilities
12 set forth in part 1 of article 20 of title 30, C.R.S. 1973.
13 The disposal of low-level radioactive waste made pursuant to
14 this article is not subject to the provisions of part 2 of
15 article 11 of this title.

recommendation
16 25-17-105. Site designation by counties. (1) Prior to
17 any action by the department for the assessment and evaluation
18 of potential areas for a facility, under section 25-17-106,
19 the department shall first cooperate with and provide counties
20 in this state the opportunity to ~~designate~~ ^{recommend} facility sites
21 within their boundaries. In making such ~~designation~~ ^{recommendation}, the
22 board of county commissioners shall ~~meet~~ ^{consider} the factors set forth
23 in section 25-17-106 (1) (b) and shall provide reasonable
24 opportunity for public comment.

recommendation
25 (2) In making such ~~designation~~ ^{recommendation}, the board of county
26 commissioners shall also consider comments from the

1 department, the Rocky Mountain low-level radioactive waste
2 board, and the advisory committee established in section
3 25-17-109; except that the board of county commissioners shall
4 make the final determination as to ~~approval~~ ^{the} designation of
5 a facility site pursuant to part 1 of article 20 of title 30,
6 C.R.S. 1973.

7 (3) Any person who proposes to operate a facility ~~proposing~~
8 ~~first~~ ^{first} certificate of designation
9 ~~shall apply for a permit~~ ^{shall apply for a} to the
10 board of county commissioners of the county in which the
11 proposed facility site is located. Such site and facility
12 shall be reviewed and approved by such board of county
13 commissioners prior to the issuance of any license pursuant
14 to part 1 of article 11 of this title.

15 (4) If no board of county commissioners in this state
16 ~~recommends~~ ^{recommends}
17 ~~designates~~ a facility site ~~exists~~ ^{exists} by July
18 1, 1983, the department may proceed to prepare its state-wide
19 assessment and evaluation and its alternative plan pursuant to
20 section 25-17-106.

21 25-17-106. State-wide assessment of facility sites.

22 (1) For the protection of the public health and safety and
23 without limiting or qualifying other applicable laws, rules,
24 regulations, standards, or limitations pertaining to the
25 control of radiation in this state, the department shall be
26 granted the following additional authority concerning
27 low-level radioactive waste:

28 (a) The department may acquire by gift, transfer, or
29 purchase any and all lands, buildings, and grounds reasonably
30 necessary for a regional low-level radioactive waste facility.

1 The department may also make such acquisition by the exercise
2 of the right of eminent domain pursuant to articles 1 to 7 of
3 title 38, C.R.S. 1973, only if such right is authorized by the
4 general assembly as provided in paragraph (e) of this
5 subsection (1).

6 (b) To insure that a suitable regional low-level
7 radioactive waste facility is established, the department
8 shall conduct a ~~statewide~~ ~~statewide~~ assessment and evaluation of
9 potential areas for the location of a facility. The
10 assessment and evaluation shall consider all applicable
11 federal and state laws and regulations and shall consider but
12 need not be limited to the following factors:

- 13 (I) Physical and chemical characteristics of strata;
- 14 (II) Surface and subsurface hydrology;
- 15 (III) Topography and drainage;
- 16 (IV) Meteorology and climatology;
- 17 (V) Demography (including population density near the
18 site);
- 19 (VI) Access routes and affected public roads;
- 20 (VII) Ecological impact;
- 21 (VIII) Relationship to local land use plans;
- 22 (IX) Ownership of real property.

23 (c) The department shall provide reasonable opportunity
24 for public comment during the assessment and evaluation and
25 shall afford interested persons an opportunity, at public
26 hearing, to submit data and views orally or in writing on the

1 potentially suitable areas. Subsequent to having conducted
2 the assessment and evaluation, the department shall identify
3 those areas determined as potentially suitable for a facility.

4 (d) The department shall not approve any facility for
5 the disposal of low-level radioactive waste outside of the
6 areas identified pursuant to this subsection (1) or an area
7 recommended
8 ~~designated~~ by a board of county commissioners under section
9 25-17-105 unless the site applicant demonstrates to the
10 satisfaction of the department that the proposed site is at
11 least as technically suitable as the areas identified pursuant
12 to this subsection (1).

13 (e) The department may, by lease or license, provide for
14 the operation of facilities for the implementation of the
15 purposes of this article and part 22 of article 60 of title
16 ~~designated pursuant to part I of article 20 of title~~ 30 ,
17 24, C.R.S. 1973. No facility may be licensed until ~~approved~~ C.R.S.
18 by the board of county commissioners of the county in which
19 the proposed facility is to be located. In the event that no
20 recommended or an application for
21 county has ~~designated~~ a facility site ~~and such site has~~ not been
22 submitted by January 1, 1985 has
23 ~~proposed by July 1, 1983~~, the department shall prepare an
24 alternative plan for facility development. Said alternative
25 plan shall be submitted to the general assembly no later than
26 1986
January 1, ~~1984~~, for review and approval. In the submission
of an alternative plan to the general assembly, the department
shall also request authority to use the right of eminent
domain to acquire a site for a facility.

(f) The department shall require the posting of a bond

1 or other surety by each licensee to assure the availability of
2 funds to the state in the event of accident, abandonment,
3 discontinuance of an operation, insolvency, or other inability
4 of a lessee or licensee to meet the requirements of the
5 department pursuant to article 11 of this title, in providing
6 for the safe operation, decommissioning, decontamination, and
7 reclamation of a facility, or any circumstance which results
8 in a potential radiation hazard.

9 25-17-107. State surcharge. (1) In addition to the
10 fees authorized by section 25-11-103, the following surcharges
11 shall be imposed on each licensed facility:

12 (a) The licensee shall be required to pay an annual fee
13 to the county or municipality in which the facility is
14 located, unless waived by the county or municipality. The
15 amount of the fee shall be established by mutual agreement of
16 the county or municipality and the licensee and may include,
17 but not be limited to, the actual direct costs of increased
18 burden on county or municipal services created by the
19 facility, including the improvement and maintenance of roads
20 and bridges, fire protection, law enforcement, monitoring by
21 county or municipal health officials, and emergency
22 preparation and response. The amount of the annual fee shall
23 not exceed two percent of the annual gross revenue received by
24 the facility and shall be reduced by the amount paid by the
25 facility as a payment in lieu of taxes ^{to county government} pursuant to section
26 25-11-103 (7) (c). No licensee shall commence operations at a

1 facility until the agreement for the annual fee is executed by
2 the county or municipality and the licensee or such fee is
3 waived by the county or municipality. In the event that the
4 licensee fails to comply with the terms of the executed
5 agreement, the board of county commissioners or the governing
6 body of the municipality may petition the department to
7 suspend the facility's license in the manner provided in
8 article 4 of title 24, C.R.S. 1973, until the agreement has
9 been fully complied with.

10 (b) Each licensee shall pay an additional surcharge of
11 one percent of gross revenue received by the facility. The
12 surcharge shall be paid quarterly, as accrued, to the
13 department, which shall credit all such receipts in the
14 general fund of the state.

15 25-17-108. Governor to appoint member to compact board.
16 The governor shall appoint, with the consent of the senate,
17 the Colorado member of the Rocky Mountain low-level
18 radioactive waste board, and such member shall serve at the
19 pleasure of the governor. Such member may, with the approval
20 of the governor, designate an alternate to represent this
21 state when such member is unable to serve. The member or
22 alternate, if any, shall receive no compensation for his
23 services but shall be reimbursed for actual and necessary
24 expenses incurred in the performance of his duties.

25 25-17-109. Colorado low-level radioactive waste advisory
26 committee. (1) There is hereby established the Colorado

1 low-level radioactive waste advisory committee, which shall
2 consist of thirteen members. One member shall be the Colorado
3 member of the Rocky Mountain low-level radioactive waste
4 board, who shall serve as the chairman. One member shall be
5 the executive director of the department of health or his
6 designee. One member shall be the director of the Colorado
7 geological survey or his designee. The other ten members of
8 the committee shall be appointed as follows:

9 (a) Three members shall be appointed by the president of
10 the senate. Such members shall serve at the pleasure of the
11 president of the senate.

12 (b) Three members shall be appointed by the speaker of
13 the house of representatives. Such members shall serve at the
14 pleasure of the speaker of the house of representatives.

15 (c) Four members shall be appointed by the governor.
16 Such members shall serve at the pleasure of the governor.

17 (2) Any vacancies in the committee shall be filled in
18 the same manner as the original appointments. The committee
19 shall meet on the call of its chairman but in any event shall
20 meet not less than once a year.

21 (3) The committee shall advise the department, the board
22 of county commissioners of each county designating or
23 proposing a facility site or having a facility, and the
24 Colorado member of the Rocky Mountain low-level radioactive
25 waste board on any matter relating to the implementation of
26 this article and any low-level radioactive waste matter of

1 state concern.

2 25-17-110. Coordination with other programs and
3 agencies. The department shall coordinate the low-level
4 radioactive waste program with all other programs within the
5 department and with other local, state, or federal agencies as
6 appropriate. For the purpose of administration and
7 enforcement of matters pertaining to transportation and
8 packaging as provided in this article, the department shall
9 coordinate its activities with those of the public utilities
10 commission.

11 25-17-111. Regulation of fees. (1) All rates, charges,
12 and classifications made, demanded, or received in the
13 operation of a licensed facility located in the state of
14 Colorado shall be just and reasonable. Every unjust or
15 unreasonable charge made, demanded, or received with respect
16 to such operation is prohibited.

17 (2) The power and authority is hereby vested in the
18 state board of health and it is hereby made the duty of the
19 board in promoting public health and safety to adopt necessary
20 rules and regulations to govern and regulate the rates,
21 charges, and classifications of every facility in this state
22 and to prevent unjust, unreasonable, and discriminatory rates,
23 charges, and classifications of every such facility.

24 (3) (a) Under such rules and regulations as the state
25 board of health may prescribe, any person operating a facility
26 in this state shall file with the state board of health, at

1 least sixty days prior to the proposed effective date and in
2 such form, and with such filing fee as the state board of
3 health may designate, proposed schedules showing all rates,
4 charges, and classifications collected or enforced or to be
5 collected or enforced. Such rates, when effective, shall be
6 posted and open to public inspection at the facility.

7 (b) The board shall make available for public inspection
8 the filing and supporting information and provide reasonable
9 public notice thereof.

10 (4) (a) Unless the board otherwise orders, no change
11 shall be made in any rate, charge, or classification collected
12 or enforced or to be collected or enforced by a facility
13 except after sixty days of filing with the board. All filings
14 shall be kept open for public inspection with new schedules
15 stating plainly the changes to be made in the schedules then
16 in force and the time when the changes will go into effect.

17 (b) The board shall not approve or disapprove a filing
18 without a public hearing. If the board does not disapprove or
19 schedule a hearing on a filing within sixty days of receipt by
20 the board, the filing shall automatically become effective.

21 (c) During the sixty-day review period, the board may
22 conclude that it is in the public interest to hold a public
23 hearing, or an interested person may request a public hearing
24 by so petitioning the board. Such hearings shall be held in
25 the manner provided in article 4 of title 24, C.R.S. 1973.

26 (5) (a) Whenever the board after a hearing upon its own

1 motion or upon petition finds, based upon the record and
2 investigation by the board, that the rates, charges, or
3 classifications collected or enforced or to be collected or
4 enforced by any facility are unjust, unreasonable,
5 discriminatory, or violative of any provision of law or that
6 such rates, charges, or classifications are insufficient, the
7 board shall determine the just, reasonable, or sufficient
8 rates, charges, classifications, rules, regulations, or
9 practices to be thereafter observed and in force and shall fix
10 the same by order of the board.

11 (b) The board has the power, after a hearing upon its
12 own motion or upon complaint, to investigate a single rate,
13 charge, classification, or practice or the entire schedule of
14 rates, charges, classifications, or practices of any facility
15 and to establish new rates, charges, classifications, or
16 practices in lieu thereof.

~~17 22 17-112. Civil penalties. (1) It is a violation of~~
~~18 this article for any person to dispose of low-level~~
~~19 radioactive waste within this state except at a licensed~~
~~20 facility; except that a generator of such waste who, prior to~~
~~21 January 1, 1982, had been disposing of only his own waste on~~
~~22 his own property may, subject to applicable federal and state~~
~~23 law, continue to do so.~~

~~24 (2) After January 1, 1982, it shall be a violation of~~
~~25 this article for any person to export out of this state~~
~~26 low-level radioactive waste which is generated within this~~

1 state, unless authorized to do so by the department. In
2 determining whether to grant such authorization, the factors
3 to be considered shall include, but not be limited to, the
4 following:

5 (a) The economic impact of the extent of the waste on
6 regional facilities;

7 (b) The economic impact on the generation of refusing to
8 permit the extent of the waste; and

9 (c) The availability of a regional facility appropriate
10 for the disposal of the waste involved.

11 (3) After January 1, 1996, it shall be a violation of
12 this article for any person to manage any hazardous
13 solid waste within this state unless the waste is
14 generated within the state or unless authorized to do so by
15 the department. In determining whether to grant such
16 authorization, the factors to be considered by the department
17 shall include, but not be limited to, the following:

18 (a) The impact of increasing waste on the capacity
19 capacity and projected life of regional facilities;

20 (b) The economic impact on regional facilities; and

21 (c) The availability of a regional facility appropriate
22 for the disposal of the type of waste involved.

23 (4) It is a violation of this article for any person to
24 manage at a facility any hazardous waste unless
25 such person is authorized to do so by the
26 department. In determining whether to grant such

~~1 authorization, the factors to be considered shall include, but~~
~~2 not be limited to, the following:~~

~~3 (a) The impact of allowing such management on the~~
~~4 available capacity and projected life of regional facilities;~~

~~5 (b) The availability of a facility appropriate for the~~
~~6 disposal of the type of waste involved;~~

~~7 (c) The existence of transuranic elements in the waste,~~
~~8 and~~

~~9 (d) The economic impact on regional facilities.~~

~~10 (5) Any person who violates subsection (1) or (2) of~~
~~11 this section shall be liable to the department for a civil~~
~~12 penalty not to exceed ten times the charges which would have~~
~~13 been charged for disposal of the waste at a facility.~~

~~14 (6) Any person who violates subsection (3) or (4) of~~
~~15 this section shall be liable to the department for a civil~~
~~16 penalty not to exceed ten times the charges which were charged~~
~~17 for management of the waste at a facility.~~

~~18 (7) The civil penalties provided for in subsections (5)~~
~~19 and (6) of this section may be enforced and collected in any~~
~~20 court of general jurisdiction where necessary personal~~
~~21 jurisdiction is obtained by an appropriate proceeding~~
~~22 commenced on behalf of the state by the attorney general. In~~
~~23 any such proceeding, the department, if it prevails, is~~
~~24 entitled to recover reasonable attorney fees as part of its~~
~~25 costs.~~

~~26 (8) Out of any civil penalty collected for a violation~~

~~1 of subsection (1) or (2) of this section, the person shall~~
~~2 pay to the facility, licensee a sum of \$10,000~~
~~3 of the department to compensate such licensee for any loss of~~
~~4 revenue attributable to the violation. Such compensation may~~
~~5 be subject to state surcharges as if incurred in the course~~
~~6 course of the facility's business. The amount of the civil~~
~~7 penalty collected shall be deposited by the department in~~
~~8 facility long-term care fund.~~

~~9 (2) Any civil penalty collected for a violation of~~
~~10 subsection (1) or (2) of this section shall be deposited by~~
~~11 the department in a facility long-term care fund.~~

12 SECTION 3. Appropriation. (1) There is hereby
13 appropriated, out of any moneys in the state treasury not
14 otherwise appropriated, for the fiscal year commencing July 1,
15 1982, to the department of health, the sum of _____
16 dollars (\$), or so much thereof as may be necessary for
17 the implementation of this act. The department of health
18 shall contract for services from the Colorado geological
19 survey to assist in the implementation of this act.

20 (2) There is hereby appropriated, out of any moneys in
21 the state treasury not otherwise appropriated, for the fiscal
22 year commencing July 1, 1982, to the department of health for
23 allocation to the Rocky Mountain low-level radioactive waste
24 board, the sum of seventy thousand dollars (\$70,000), or so
25 much thereof as may be necessary for discharge of the Rocky
26 Mountain low-level radioactive waste board's responsibilities

1 under this act. Such moneys shall remain available until
2 expended or until June 30, 1984, whichever is sooner.

3 SECTION 4. Effective date. This act shall take effect
4 July 1, 1982.

5 SECTION 5. Safety clause. The general assembly hereby
6 finds, determines, and declares that this act is necessary
7 for the immediate preservation of the public peace, health,
8 and safety.