MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT
Act 460 of 1982

AN ACT entering into the midwest interstate low-level radioactive waste compact.

History: 1982, Act 460, Imd. Eff. Dec. 30, 1982.

The People of the State of Michigan enact:

3.751 Midwest interstate low-level radioactive waste compact; form.

Sec. 1. The midwest interstate low-level radioactive waste compact is enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I. POLICY AND PURPOSE

There is created the Midwest Interstate Low-Level Radioactive Waste Compact.

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b to 2021d), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for managing such waste. The party states acknowledge that the Congress has declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage such waste be properly provided.

a. It is the policy of the party states to enter into a regional low-level radioactive waste management compact for the purpose of:

1. Providing the instrument and framework for a cooperative effort;

2. Providing sufficient facilities for the proper management of low-level radioactive waste generated in the region;

3. Protecting the health and safety of the citizens of the region;

4. Limiting the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region;

5. Encouraging the reduction of the amounts of low-level radioactive waste generated in the region;

6. Distributing the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states, and among generators and other persons who use regional facilities to manage their waste; and

7. Ensuring the ecological and economical management of low-level radioactive wastes.

b. Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. Expeditious enforcement of federal rules, regulations and laws;

2. Imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and

3. Timely inspection of their licensees to determine their compliance with these rules, regulations and laws.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "Care" means the continued observation of a facility after closure for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and including the correction of problems which are detected as a result of that observation.

b. "Commission" means the Midwest Interstate Low-Level Radioactive Waste Commission.

c. "Decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.

d. "Disposal" means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

e. "Eligible state" means a state qualified to be a party state to this compact as provided in Article VIII.

f. "Facility" means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which is used or is being developed for the treatment, storage or disposal of low-level radioactive waste.

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g. "Generator" means any person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity and who, to the extent required by law, is licensed by the U.S. Nuclear Regulatory Commission or a party state, to produce or possess such waste. Generator does not include a person who provides a service by arranging for the collection, transportation, treatment, storage or disposal of wastes generated outside the region.

h. "Host state" means any state which is designated by the Commission to host a regional facility.

i. "Low-level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

j. "Management plan" means the plan adopted by the Commission for the storage, transportation, treatment and disposal of waste within the region.

k. "Party state" means any eligible state which enacts the compact into law.

l."Person" means any individual, corporation, business enterprise or other legal entity either public or private and any legal successor, representative, agent or agency of that individual, corporation, business enterprise, or legal entity.

m. "Region" means the area of the party states.

n. "Regional facility" means a facility which is located within the region and which is established by a party state pursuant to designation of that state as a host state by the Commission.

o. "Site" means the geographic location of a facility.

p. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

q. "Storage" means the temporary holding of waste for treatment or disposal.

r. "Treatment" means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.

s. "Waste management" means the storage, transportation, treatment, or disposal of waste.

ARTICLE III. THE COMMISSION

a. There is hereby created the Midwest Interstate Low-Level Radioactive Waste Commission. The Commission consists of one voting member from each party state. The Governor of each party state shall notify the Commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each Commission member shall be the responsibility of the member's respective state.

b. Each Commission member is entitled to one vote. No action of the Commission is binding unless a majority of the total membership cast their vote in the affirmative.

c. The Commission shall elect annually from among its members a chairperson. The Commission shall adopt and publish, in convenient form, bylaws, and policies which are not inconsistent with this compact, including procedures which substantially conform with the provisions of federal law on administrative procedure compiled at 5 U.S.C. 500 to 559 in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d. The Commission shall meet at least once annually and shall also meet upon the call of the chairperson or a Commission member.

e. All meetings of the Commission shall be open to the public with reasonable advance notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all Commission actions and decisions shall be made in open meetings and appropriately recorded.

f. The Commission may establish advisory committees for the purpose of advising the Commission on any matters pertaining to waste management.

g. The office of the Commission shall be in a party state. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the Commission.

h. The Commission may:

1. Enter into an agreement with any person, state, or group of states for the right to use regional facilities

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for waste generated outside of the region and for the right to use facilities outside the region for waste generated within the region. The right of any person to use a regional facility for waste generated outside of the region requires an affirmative vote of a majority of the Commission, including the affirmative vote of the member of the host state in which any affected regional facility is located.

2. Approve the disposal of waste generated within the region at a facility other than a regional facility.

3. Appear as an intervenor or party in interest before any court of law or any federal, state or local agency, board or commission in any matter related to waste management. In order to represent its views, the Commission may arrange for any expert testimony, reports, evidence or other participation.

4. Review the emergency closure of a regional facility, determine the appropriateness of that closure, and take whatever actions are necessary to ensure that the interests of the region are protected.

5. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

6. Suspend the privileges or revoke the membership of a party state by a two-thirds vote of the membership in accordance with Article VIII.

i. The Commission shall:

1. Receive and act on the petition of a nonparty state to become an eligible state.

2. Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the Commission.

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

4. Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to Article IV, a regional management plan which designates host states for the establishment of needed regional facilities.

5. Adopt an annual budget.

j. Funding of the budget of the Commission shall be provided as follows:

1. Each state, upon becoming a party state, shall pay $50,000 or $1,000 per cubic meter of waste shipped from that state in 1980, whichever is lower, to the Commission which shall be used for the administrative costs of the Commission;

2. Each state hosting a regional facility shall levy surcharges on all users of the regional facility based upon its portion of the total volume and characteristics of wastes managed at that facility. The surcharges collected at all regional facilities shall:

(a) Be sufficient to cover the annual budget of the Commission; and

(b) Represent the financial commitments of all party states to the Commission; and

(c) Be paid to the Commission, provided, however, that each host state collecting surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the Commission.

k. The Commission shall keep accurate accounts of all receipts and disbursements. The Commission shall contract with an independent certified public accountant to annually audit all receipts and disbursements of Commission funds, and to submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by this Article.

l. The Commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States (or any subdivision or agency thereof), or interstate agency, or from any institution, person, firm or corporation. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the Commission together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Commission.

m. The Commission is not liable for any costs associated with any of the following:

1. The licensing and construction of any facility,

2. The operation of any facility,

3. The stabilization and closure of any facility,

4. The care of any facility,

5. The extended institutional control, after care of any facility, or

6. The transportation of waste to any facility.

n. 1. The Commission is a legal entity separate and distinct from the party states and is liable for its actions as a separate and distinct legal entity. Liabilities of the Commission are not liabilities of the party states. Members of the Commission are not personally liable for actions taken by them in their official capacity.

2. Except as provided under sections m. and n.1. of this article, nothing in this compact alters liability for any act, omission, course of conduct or liability resulting from any causal or other relationships.

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o. Any person aggrieved by a final decision of the Commission may obtain judicial review of such decision in any court of competent jurisdiction by filing in such court a petition for review within 60 days after the Commission's final decision.

ARTICLE IV. REGIONAL MANAGEMENT PLAN

The Commission shall adopt a regional management plan designed to ensure the safe and efficient management of waste generated within the region. In adopting a regional waste management plan the Commission shall:

a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region;

b. Develop and consider policies promoting source reduction of waste generated within the region;

c. Develop and adopt procedures and criteria for identifying a party state as a host state for a regional facility. In developing these criteria, the Commission shall consider all the following:

1. The health, safety, and welfare of the citizens of the party states.

2. The existence of regional facilities within each party state.

3. The minimization of waste transportation.

4. The volumes and types of wastes generated within each party state.

5. The environmental, economic, and ecological impacts on the air, land and water resources of the party states.

d. Conduct such hearings, and obtain such reports, studies, evidence and testimony required by its approved procedures prior to identifying a party state as a host state for a needed regional facility;

e. Prepare a draft management plan, including procedures, criteria and host states, including alternatives, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the Commission shall conduct a public hearing in that state prior to the adoption of the management plan. The management plan shall include the Commission's response to public and party state comment.

ARTICLE V. RIGHTS AND OBLIGATIONS OF PARTY STATES

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Each party state has the right to have all wastes generated within its borders managed at regional facilities subject to the provisions contained in Article IX.c. All party states have an equal right of access to any facility made available to the region by any agreement entered into by the Commission pursuant to Article III.

c. Party states or generators may negotiate for the right of access to a facility outside the region and may export waste outside the region subject to Commission approval under Article III.

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this section shall be construed to require a party state to enter into any agreement with the U.S. Nuclear Regulatory Commission.

e. Each party state shall provide to the Commission any data and information the Commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the Commission.

ARTICLE VI. DEVELOPMENT AND OPERATION OF FACILITIES

a. Any party state may volunteer to become a host state, and the Commission may designate that state as a host state upon a two-thirds vote of its members.

b. If all regional facilities required by the regional management plan are not developed pursuant to section a., or upon notification that an existing regional facility will be closed, the Commission may designate a host state.

c. Each party state designated as a host state is responsible for determining possible facility locations within its borders. The selection of a facility site shall not conflict with applicable federal and host state laws, regulations and rules not inconsistent with this compact and shall be based on factors including, but not limited to, geological, environmental and economic viability of possible facility locations.

d. Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. The Commission may relieve a party state of this responsibility only upon a showing by the requesting party state that no feasible potential regional facility site of the type it is designated to host exists within its borders.

e. After a state is designated a host state by the Commission, it is responsible for the timely development and operation of a regional facility.

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f. To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the extended care of that facility.

g. The Commission may designate a party state as a host state while a regional facility is in operation if the Commission determines that an additional regional facility is or may be required to meet the needs of the region. The Commission shall make this designation following the procedures established under Article IV.

h. Designation of a host state is for a period of 20 years or the life of the regional facility which is established under that designation, whichever is longer. Upon request of a host state, the Commission may modify the period of its designation.

i. A host state may establish a fee system for any regional facility within its borders. The fee system shall be reasonable and equitable. This fee system shall provide the host state with sufficient revenue to cover any costs, including but not limited to the planning, siting, licensure, operation, decommissioning, extended care and long-term liability, associated with such facilities. This fee system may also include reasonable revenue beyond the costs incurred for the host state, subject to approval by the Commission. A host state shall submit an annual financial audit of the operation of the regional facility to the Commission. The fee system may include incentives for source reduction and may be based on the hazard of the waste as well as the volume.

j. A host state shall ensure that a regional facility located within its borders which is permanently closed is properly decommissioned. A host state shall also provide for the care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured.

k. A host state intending to close a regional facility located within its borders shall notify the Commission in writing of its intention and the reasons. Notification shall be given to the Commission at least five years prior to the intended date of closure. This section shall not prevent an emergency closing of a regional facility by a host state to protect its air, land and water resources and the health and safety of its citizens. However, a host state which has an emergency closing of a regional facility shall notify the Commission in writing within three working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.

l. If a regional facility closes before an additional or new facility becomes operational, waste generated within the region may be shipped temporarily to any location agreed on by the Commission until a regional facility is operational.

m. A party state which is designated as a host state by the Commission and fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the Commission.

ARTICLE VII. OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

1. Abrogates or limits the applicability of any act of Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

3. Prohibits any storage or treatment of waste by the generator on its own premises;

4. Affects any administrative or judicial proceeding pending on the effective date of this compact;

5. Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;

6. Affects the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the Secretary of the U.S. Department of Energy or successor agencies or federal research and development activities as described in section 31 of the Atomic Energy Act of 1954 (42 U.S.C. 2051); or

7. Affects the rights and powers of any party state or its political subdivisions to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders or affects the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

8. Requires a party state to enter into any agreement with the U.S. Nuclear Regulatory Commission.

9. Alters or limits liability of transporters of waste, owners and operators of sites for their acts, omissions, conduct or relationships in accordance with applicable laws.

b. For purposes of this compact, all state laws or parts of laws in conflict with this compact are hereby superseded to the extent of the conflict.

c. No law, rule or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

ARTICLE VIII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

a. Eligible parties to this compact are the states of Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Virginia and

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Wisconsin. Eligibility terminates on July 1, 1984.

b. Any state not eligible for membership in the compact may petition the Commission for eligibility. The Commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the Commission, including the affirmative vote of all host states. Any state becoming eligible upon the approval of the Commission becomes a member of the compact in the same manner as any state eligible for membership at the time this compact enters into force.

c. An eligible state becomes a party state when the state enacts the compact into law and pays the membership fee required in Article III.j.1.

d. The Commission is formed upon the appointment of Commission members and the tender of the membership fee payable to the Commission by three party states. The Governor of the first state to enact this compact shall convene the initial meeting of the Commission. The Commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the Commission and implement the provision of this compact.

e. Any party state may withdraw from this compact by repealing the authorizing legislation but no withdrawal may take effect until five years after the governor of the withdrawing state gives notice in writing of the withdrawal to the Commission and to the governor of each party state. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. Any host state which grants a disposal permit for waste generated in a withdrawing state shall void the permit when the withdrawal of that state is effective.

f. Any party state which fails to comply with the terms of this compact or fails to fulfill its obligations may have its privileges suspended or its membership in the compact revoked by the Commission in accordance with Article III.h.6. Revocation takes effect one year from the date the affected party state received written notice from the Commission of its action. All legal rights of the affected party state established under this compact cease upon the effective date of revocation but any legal obligations of that party state arising prior to revocation continue until they are fulfilled. The chairperson of the Commission shall transmit written notice of a revocation of a party state's membership in the compact immediately following the vote of the Commission to the governor of the affected party state, all other governors of the party states and the Congress of the United States.

g. This compact becomes effective upon enactment by at least three eligible states and consent to this compact by Congress. The Congress shall have an opportunity to withdraw such consent every five years. Failure of the Congress to affirmatively withdraw its consent has the effect of renewing consent for an additional five year period. The consent given to this compact by the Congress shall extend to any future admittance of new party states under sections b. and c. of this article and to the power of the Commission to ban the shipment of waste from the region pursuant to Article III.

h. The withdrawal of a party state from this compact under section e. of this article or the suspension or revocation of a state's membership in this compact under section f. of this article does not affect the applicability of this compact to the remaining party states.

i. A state which has been designated by the Commission to be a host state has 90 days from receipt by the Governor of written notice of designation to withdraw from the compact without any right to receive refund of any funds already paid pursuant to this compact, and without any further payment. Withdrawal becomes effective immediately upon notice as provided in section e. of this article. A designated host state which withdraws from the compact after 90 days and prior to fulfilling its obligations shall be assessed a sum the Commission determines to be necessary to cover the costs borne by the Commission and remaining party states as a result of that withdrawal.

ARTICLE IX. PENALTIES

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. Unless otherwise authorized by the Commission pursuant to Article III.h. after January 1, 1986, it is a violation of this compact:

1. For any person to deposit at a regional facility waste not generated within the region;
2. For any regional facility to accept waste not generated within the region;
3. For any person to export from the region waste which is generated within the region; or
4. For any person to dispose of waste at a facility other than a regional facility.

c. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws, rules and regulations may result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

d. Each party state has the right to seek legal recourse against any party state which acts in violation of this

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compact.

ARTICLE X. SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

History: 1982, Act 460, Imd. Eff. Dec. 30, 1982.

Compiler's note: For establishment of Office of Low Level Radioactive Waste Management within the Department of Management and Budget and transfer of powers and duties of the Department of Public Health and Radioactive Waste Control Committee conferred by Act 190 of 1985 to the Office of Low Level Radioactive Waste Management, see E.R.O. Nos. 1987-1 and 1987-2, compiled at MCL 18.26 of the Michigan Compiled Laws.

3.752 Appointment of state's commission member and alternate by governor.

Section 2. The governor, with the advice and consent of the senate, shall appoint the state's commission member and an alternate.

History: 1982, Act 460, Imd. Eff. Dec. 30, 1982.

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