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PUBLIC HEARING

before

SENATE ENERGY AND ENVIRONMENT COMMITTEE  
ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE

on

Senate Bill 3217 and Assembly Bill 3256

(Northeast Interstate Low-Level Radioactive Waste Management Compact)

Held:  
April 18, 1983  
Assembly Chamber  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

**New Jersey State Library**

Senator Daniel J. Dalton, Chairman  
Senator Nicholas LaRocca, Vice Chairman  
Senator John F. Russo  
Senator James R. Hurley

Assemblyman Raymond Lesniak, Chairman  
Assemblyman Anthony S. Marsella, Vice Chairman  
Assemblyman Thomas A. Pankok  
Assemblyman John O. Bennett  
Assemblyman Elliott F. Smith

ALSO PRESENT:

Mark O. Smith, Research Associate  
Office of Legislative Services  
Aide, Assembly Agriculture and Environment Committee

Mark T. Connelly, Research Associate  
Office of Legislative Services  
Aide, Senate Energy and Environment Committee

Norman Miller, Team Supervisor  
Office of Legislative Services

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SENATE, No. 3217

STATE OF NEW JERSEY

INTRODUCED, MARCH 30, 1983

By Senator DALTON

Referred to Committee on Energy and Environment

AN ACT concerning the management and disposal of low-level radioactive waste, enacting and entering this State into the Northeast Interstate Low-Level Radioactive Waste Management Compact, supplementing Title 13 of the Revised Statutes, and providing an appropriation therefor.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. This act shall be known and may be cited as "The Northeast  
2 Interstate Low-Level Radioactive Waste Management Compact  
3 Act."

1 2. The State of New Jersey enacts and enters into the Northeast  
2 Interstate Low-Level Radioactive Waste Management Compact  
3 with all jurisdictions legally joining therein, which compact is  
4 substantially as follows:

ARTICLE I. POLICY AND PURPOSE

1 There is created the Northeast Interstate Low-Level Radioactive  
2 Waste Management Compact. The party states recognize that the  
3 Congress has declared that each state is responsible for providing  
4 for the availability of capacity, either within or outside its borders,  
5 for disposal of low-level radioactive waste generated within its  
6 borders, except for waste generated as a result of atomic energy  
7 defense activities of the federal government, as defined in the  
8 "Low-Level Radioactive Waste Policy Act," Pub. L. 96-573 (42  
9 U. S. C. § 2021 b. et seq.), hereinafter referred to as "the act,"  
10 or federal research and development activities. They also recog-  
11 nize that the management of low-level radioactive waste is handled

12 most efficiently on a regional basis. The party states further recog-  
13 nize that the Congress of the United States, by enacting the act  
14 has provided for and encouraged the development of regional low-  
15 level radioactive waste compacts to manage such waste. The party  
16 states recognize that the long-term, safe and efficient management  
17 of low-level radioactive waste generated within the region requires  
18 that sufficient capacity to manage the waste be properly provided.

19 In order to promote the health and safety of the region, it is the  
20 policy of the party states to: enter into a regional low-level radio-  
21 active waste management compact as a means of facilitating an  
22 interstate cooperative effort, provide for proper transportation of  
23 low-level waste generated in the region, minimize the number of  
24 facilities required to effectively and efficiently manage low-level  
25 radioactive waste generated in the region, encourage the reduction  
26 of the amounts of low-level waste generated in the region, distribute  
27 the costs, benefits, and obligations of proper low-level radioactive  
29 waste management equitably among the party states, and ensure  
30 the environmentally sound and economical management of low-  
31 level radioactive waste.

#### ARTICLE II. DEFINITIONS

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

3 a. "Commission" means the Northeast Interstate Low-Level  
4 Radioactive Waste Commission established pursuant to Article IV  
5 of this compact;

6 b. "Custodial agency" means the agency of the government  
7 designated to act on behalf of the government owner of the regional  
8 facility;

9 c. "Disposal" means the isolation of low-level radioactive waste  
10 from the biosphere inhabited by man and his food chains;

11 d. "Facility" means a parcel of land, together with the struc-  
12 tures, equipment and improvements thereon or appurtenant  
13 thereto, which is used or is being developed for the treatment,  
14 storage or disposal of low-level waste, but shall not include on-site  
15 treatment or storage by a generator;

16 e. "Generator" means a person who produces or processes low-  
17 level waste, but does not include persons who only provide a ser-  
18 vice by arranging for the collection, transportation, treatment,  
19 storage or disposal of wastes generated outside the region;

20 f. "High-level waste" means (1) the highly radioactive material  
21 resulting from the reprocessing of spent nuclear fuel, including  
22 liquid waste produced directly in reprocessing and any solid ma-  
23 terial derived from that liquid waste that contains fission products.

24 in sufficient concentration; and (2) any other highly radioactive  
25 material determined by the federal government as requiring per-  
26 manent isolation;

27 g. "Host state" means a party state in which a regional facility  
28 is located or being developed;

29 h. "Institutional control" means the continued observation,  
30 monitoring, and care of the regional facility following transfer of  
31 control of the regional facility from the operator to the custodial  
32 agency;

33 i. "Low-level waste" means radioactive waste that (1) is neither  
34 high-level waste nor transuranic waste, nor spent nuclear fuel, nor  
35 by-product material as defined in section 11e (2) of the Atomic  
36 Energy Act of 1954 as amended; and (2) is classified by the federal  
37 government as low-level waste, consistent with existing law; but  
38 does not include waste generated as a result of atomic energy  
39 defense activities of the federal government, as defined in Pub. L.  
40 96-573, or federal research and development activities;

41 j. "Party state" means any state which is a signatory party in  
42 good standing to this compact;

43 k. "Person" means an individual, corporation, business enter-  
44 prise or other legal entity, either public or private and their legal  
45 successors;

46 l. "Post-closure observation and maintenance" means the con-  
47 tinued monitoring of a closed regional facility to ensure the integ-  
48 rity and environmental safety of the site through compliance with  
49 applicable licensing and regulatory requirements; prevention of  
50 unwarranted intrusion, and correction of problems;

51 m. "Region" means the entire area of the party states;

52 n. "Regional facility" means a facility as defined in this section  
53 which has been designated or accepted by the commission;

54 o. "State" means a state of the United States, the District of  
55 Columbia, the Commonwealth of Puerto Rico, the Virgin Islands  
56 or any other territory subject to the laws of the United States;

57 p. "Storage" means the holding of waste for treatment or  
58 disposal;

59 q. "Transuranic waste" means waste material containing radio-  
60 nuclides with an atomic number greater than 92 which are excluded  
61 from shallow land burial by the federal government;

62 r. "Treatment" means any method, technique or process, in-  
63 cluding storage for decay, designed to change the physical, chemical  
64 or biological characteristics or composition of any waste in order  
65 to render the waste safer for transport or disposal, amenable for  
66 recovery, convertible to another usable material or reduced in  
67 volume;

68 s. "Waste" means low-level radioactive waste as defined in this  
69 section;

70 t. "Waste management" means the storage, treatment, trans-  
71 portation, and disposal, where applicable, of waste.

#### ARTICLE III. RIGHTS AND OBLIGATIONS

1 a. There shall be provided within the region one or more regional  
2 facilities which, together with such other facilities as may be made  
3 available to the region, will provide sufficient capacity to manage  
4 all wastes generated within the region.

5 (1) Regional facilities shall be entitled to waste generated within  
6 the region, unless otherwise provided by the commission. To the  
7 extent regional facilities are available, no waste generated within  
8 a party state shall be exported to facilities outside the region unless  
9 the exportation is approved by the commission and the affected  
10 host state(s).

11 (2) After January 1, 1986, no person shall deposit at a regional  
12 facility waste generated outside the region, and further, no regional  
13 facility shall accept waste generated outside the region, unless ap-  
14 proved by the commission and the affected host state(s).

15 b. The rights, responsibilities and obligations of each party state  
16 to this compact are as follows:

17 (1) Each party state shall have the right to have all wastes  
18 generated within its borders managed at regional facilities, and  
19 shall have the right of access to facilities made available to the  
20 region through agreements entered into by the commission pur-  
21 suant to Article IV i. (11). The right of access by a generator  
22 within a party state to any regional facility is limited by the  
23 generator's adherence to applicable state and federal laws and  
24 regulations and the provisions of this compact.

25 (2) To the extent not prohibited by federal law, each party state  
26 shall institute procedures which will require shipments of low-level  
27 waste generated within or passing through its borders to be con-  
28 sistent with applicable federal packaging and transportation regu-  
29 lations and applicable host state packaging and transportation  
30 regulations for management of low-level waste; provided, however,  
31 that these practices shall not impose unreasonable, burdensome  
32 impediments to the management of low-level waste in the region.  
33 Upon notification by a host state that a generator, shipper, or car-  
34 rier within the party state is in violation of applicable packaging  
35 or transportation regulations, the party state shall take appro-  
36 priate action to ensure that the violations do not recur.

37 (3) Each party state may impose reasonable fees upon gener-

38 ators, shippers, or carriers to recover the cost of inspections and  
39 other practices under this compact.

40 (4) Each party state shall encourage generators within its  
41 borders to minimize the volume of waste requiring disposal.

42 (5) Each party state has the right to rely on the good faith  
43 performance by every other party state of acts which ensure the  
44 provision of facilities for regional availability and their use in a  
45 manner consistent with this compact.

46 (6) Each party state shall provide, to the commission any data  
47 and information necessary for the implementation of the commis-  
48 sion's responsibilities, and shall establish the capability to obtain  
49 any data and information necessary to meet its obligation as herein  
50 defined.

51 (7) Each party state shall have the capability to host a regional  
52 facility in a timely manner and to ensure the post-closure observa-  
53 tion and maintenance, and institutional control of any regional  
54 facility within its borders.

55 (8) No nonhost party state shall be liable for any injury to  
56 persons or property resulting from the operation of a regional  
57 facility or the transportation of waste to a regional facility; how-  
58 ever, if the host state itself is the operator of the regional facility,  
59 its liability shall be that of any private operator.

60 c. The rights, responsibilities and obligations of a host state are  
61 as follows:

62 (1) To the extent not prohibited by federal law, a host state shall  
63 ensure the timely development and the safe operation, closure,  
64 post-closure observation and maintenance, and institutional control  
65 of any regional facility within its borders.

66 (2) In accordance with procedures established in Articles V and  
67 IX, the host state shall provide for the establishment of a reasona-  
68 ble structure of fees sufficient to cover all costs related to the  
69 development, operation, closure, post-closure observation and  
70 maintenance, and institutional control of a regional facility. It  
71 may also establish surcharges to cover the regulatory costs, in-  
72 centives, and compensation associated with a regional facility;  
73 provided, however, that without the express approval of the com-  
74 mission, no distinction in fees or surcharges shall be made between  
75 persons of the several states party to this compact.

76 (3) To the extent not prohibited by federal law, a host state may  
77 establish requirements and regulations pertaining to the manage-  
78 ment of waste at a regional facility; provided, however, that the  
79 requirements shall not impose unreasonable impediments to the  
80 management of low-level waste within the region. Nor may a host

81 state or a subdivision impose any restrictive requirements on the  
82 siting or operation of a regional facility that, alone or as a whole,  
83 they serve as unreasonable barriers or prohibitions to the siting  
84 or operation of the facility.

85 (4) Each host state shall submit to the commission annually a  
86 report concerning each operating regional facility within its  
87 borders. The report shall contain projections of the anticipated  
88 future capacity and availability of the regional facility, a financial  
89 audit of its operation, and other information as may be required  
90 by the commission; and in the case of regional facilities in institu-  
91 tional control or otherwise no longer operating, the host states  
92 shall furnish information as may be required on the facilities still  
93 subject to their jurisdiction.

94 (5) A host state shall notify the commission immediately if any  
95 exigency arises which requires the permanent, temporary, or pos-  
96 sible closure of any regional facility located therein at a time earlier  
97 than projected in its most recent annual report to the commission.  
98 The commission may conduct studies, hold hearings, or take such  
99 other measures to ensure that the actions taken are necessary and  
100 compatible with the obligations of the host state under this compact.

#### ARTICLE IV. THE COMMISSION

1 a. There is created the Northeast Interstate Low-Level Radio-  
2 active Waste Commission. The commission shall consist of one  
3 member from each party state to be appointed by the Governor  
4 according to procedures of each party state, except that a host state  
5 shall have two members during the period that it has an operating  
6 regional facility. The Governor shall notify the commission in  
7 writing of the identity of the member and one alternate, who may  
8 act on behalf of the member only in the member's absence.

9 b. Each commission member shall be entitled to one vote. No  
10 action of the commission shall be binding unless a majority of the  
11 total membership cast their vote in the affirmative.

12 c. The commission shall elect annually from among its members  
13 a presiding officer and such other officers as it deems appropriate.  
14 The commission shall adopt and publish, in convenient form, rules  
15 and regulations as are necessary for due process in the performance  
16 of its duties and powers under this compact.

17 d. The commission shall meet at least once a year and shall also  
18 meet upon the call of the presiding officer, or upon the call of a  
19 party state member.

20 e. All meetings of the commission shall be open to the public  
21 with reasonable prior public notice. The commission may, by

22 majority vote, close a meeting to the public for the purpose of con-  
23 sidering sensitive personnel or legal matters. All commission  
24 actions and decisions shall be made in open meetings and appro-  
25 priately recorded. A roll call vote may be required upon request  
26 of any party state or the presiding officer.

27 f. The commission may establish such committees as it deems  
28 necessary.

29 g. The commission may appoint, contract for, and compensate  
30 limited staff as it determines necessary to carry out its duties and  
31 functions. The staff shall serve at the commission's pleasure  
32 irrespective of the civil service, personnel or other merit laws of  
33 any of the party states or the federal government and shall be com-  
34 pensated from funds of the commission.

35 h. The commission shall adopt an annual budget for its opera-  
36 tions.

37 i. The commission shall have the following duties and powers:

38 (1) The commission shall receive and act on the application of  
39 a nonparty state to become an eligible state in accordance with  
40 Article VII e.

41 (2) The commission shall receive and act on the application of  
42 an eligible state to become a party state in accordance with Article  
43 VII b.

44 (3) The commission shall submit an annual report to and other-  
45 wise communicate with the governors and the presiding officer of  
46 each body of the legislature of the party states regarding the  
47 activities of the commission.

48 (4) Upon request of party states, the commission shall mediate  
49 disputes which arise between the party states regarding this com-  
50 pact.

51 (5) The commission shall develop, adopt and maintain a regional  
52 management plan to ensure safe and effective management of waste  
53 within the region, pursuant to Article V.

54 (6) The commission may conduct legislative or adjudicatory  
55 hearings, and require reports, studies, evidence and testimony as  
56 are necessary to perform its duties and functions.

57 (7) The commission shall establish by regulation, after public  
58 notice and opportunity for comment, procedural regulations as  
59 deemed necessary to ensure efficient operation, the orderly gather-  
60 ing of information, and the protection of the rights of due process  
61 of affected persons.

62 (8) In accordance with the procedures and criteria set forth in  
63 Article V, the commission shall accept a host state's proposed  
64 facility as a regional facility.

65 (9) In accordance with the procedures and criteria set forth in  
66 Article V, the commission may designate, by a two-thirds vote, host  
67 states for the establishment of needed regional facilities. The  
68 commission shall not exercise this authority unless the party states  
69 have failed to voluntarily pursue the development of these  
70 facilities.

71 (10) The commission may require of and obtain from party  
72 states, eligible states seeking to become party states, and non-party  
73 states seeking to become eligible states, data and information  
74 necessary for the implementation of commission responsibilities.

75 (11) The commission may enter into agreements with any person,  
76 state, regional body, or group of states for the importation of waste  
77 into the region and for the right of access to facilities outside the  
78 region for waste generated within the region. This authorization  
79 to import requires a two-thirds majority vote of the commission,  
80 including an affirmative vote of the representatives of the host  
81 state in which any affected regional facility is located. This shall  
82 be done only after the commission and the host state have made an  
83 assessment of the affected facilities' capability to handle these  
84 wastes and of relevant environmental, economic, and public health  
85 factors, as defined by the appropriate regulatory authorities.

86 (12) The commission may, upon petition, grant an individual  
87 generator or group of generators in the region the right to export  
88 wastes to a facility located outside the region. A grant of right shall  
89 be for a period of time and amount of waste and on such other  
90 terms and conditions as determined by the commission and ap-  
91 proved by the affected host states.

92 (13) The commission may appear as an intervenor or party in  
93 interest before any court of law, federal, state or local agency,  
94 board or commission that has jurisdiction over the management of  
95 wastes. The authority to intervene or otherwise appear shall be  
96 exercised only after a two-thirds vote of the commission. In order  
97 to represent its views, the commission may arrange for any expert  
98 testimony, reports, evidence or other participation as it deems  
99 necessary.

100 (14) The commission may impose sanctions, including but not  
101 limited to, fines, suspension of privileges or revocation of the mem-  
102 bership of a party state in accordance with Article VII. The com-  
103 mission shall have the authority to revoke, in accordance with  
104 Article VII g., the membership of a party state that creates un-  
105 reasonable barriers to the siting of a needed regional facility or  
106 refuses to accept host state responsibilities upon designation by  
107 the commission.

108 (15) The commission shall establish by regulation criteria for  
109 and shall review the fee and surcharge systems in accordance with  
110 Articles V and IX.

111 (16) The commission shall review the capability of party states  
112 to ensure the siting, operation, post-closure observation and  
113 maintenance, and institutional control of any facility within its  
114 borders.

115 (17) The commission shall review the compact legislation every  
116 five years prior to federal congressional review provided for in the  
117 act, and may recommend legislative action.

118 (18) The commission has the authority to develop and provide  
119 to party states rules, regulations and guidelines as it deems appro-  
120 priate for the efficient, consistent, fair and reasonable implementa-  
121 tion of the compact.

122 j. There is hereby established a commission operating account.  
123 The commission is authorized to expend moneys from the account  
124 for the expenses of any staff and consultants designated under  
125 section g. of this article and for official commission business.  
126 Financial support for the commission account shall be provided as  
127 follows:

128 (1) Each eligible state, upon becoming a party state, shall pay  
129 \$70,000.00 to the commission, which shall be used for administrative  
130 costs of the commission.

131 (2) The commission shall impose a "commission surcharge" per  
132 unit of waste received at any regional facility as provided in  
133 Article V.

134 (3) Until such time as at least one regional facility is in opera-  
135 tion and accepting waste for management, or to the extent that  
136 revenues under paragraphs (1) and (2) of this section are un-  
137 available or insufficient to cover the approved annual budget of the  
138 commission, each party state shall pay an apportioned amount of  
139 the difference between the funds available and the total budget in  
140 accordance with the following formula:

141 (a) 20% in equal shares;

142 (b) 30% in the proportion that the population of the party  
143 state bears to the total population of all party states, according  
144 to the most recent United States census;

145 (c) 50% in the proportion that the waste generated for  
146 management in each party state bears to the total waste  
147 generated for management in the region for the most recent  
148 calendar year in which reliable data are available, as deter-  
149 mined by the commission.

150 k. The commission shall keep accurate accounts of all receipts

151 and disbursements. An independent certified public accountant  
152 shall annually audit all receipts and disbursements of commission  
153 accounts and funds and submit an audit report to the commission.  
154 The audit report shall be made a part of the annual report of the  
155 commission required by Article IV i. (3).

156 l. The commission may accept, receive, utilize and dispose for  
157 any of its purposes and functions any donations, loans, grants of  
158 money, equipment, supplies, materials and services, conditional or  
159 otherwise, from any state or the United States or any subdivision  
160 or agency thereof, or interstate agency, or from any institution,  
161 person, firm or corporation. The nature, amount and condition, if  
162 any, attendant upon any donation, loan, or grant accepted pursuant  
163 to this paragraph, together with the identity of the donor, grantor,  
164 or lender, shall be detailed in the annual report of the commission.  
165 The commission shall by rule establish guidelines for the acceptance  
166 of donations, loans, grants of money, equipment, supplies, materials  
167 and services. This shall provide that no donor, grantor or lender  
168 may derive unfair or unreasonable advantage in any proceeding  
169 before the commission.

170 m. The commission herein established is a body corporate and  
171 politic, separate and distinct from the party states and shall be so  
172 liable for its own actions. Liabilities of the commission shall not be  
173 deemed liabilities of the party states, nor shall members of the  
174 commission be personally liable for action taken by them in their  
175 official capacity.

176 (1) The commission shall not be responsible for any costs or  
177 expenses associated with the creation, operation, closure, post-  
178 closure observation and maintenance, and institutional control of  
179 any regional facility, or any associated regulatory activities of the  
180 party states.

181 (2) Except as otherwise provided herein, this compact shall not  
182 be construed to alter the incidence of liability of any kind for any  
183 act, omission, or course of conduct. Generators, shippers and  
184 carriers of wastes, and owners and operators of sites shall be liable  
185 for their acts, omissions, conduct, or relationships in accordance  
186 with all laws relating thereto.

187 n. The United States district courts in the District of Columbia  
188 shall have original jurisdiction of all actions brought by or against  
189 the commission. Any such action initiated in a state court shall be  
190 removed to the designated United States district court in the  
191 manner provided by Act of June 25, 1948 as amended (28 U. S. C.  
192 § 1446). This section shall not alter the jurisdiction of the United  
193 States Court of Appeals for the District of Columbia Circuit to

194 review the final administrative decisions of the commission as set  
195 forth in the paragraph below.

196 o. The United States Court of Appeals for the District of  
197 Columbia Circuit shall have jurisdiction to review the final admin-  
198 istrative decisions of the commission:

199 (1) Any person aggrieved by a final administrative decision may  
200 obtain review of the decision by filing a petition for review within  
201 60 days after the commission's final decision.

202 (2) In the event that review is sought of the commission's  
203 decision relative to the designation of a host state, the Court of  
204 Appeals shall accord the matter an expedited review, and, if the  
205 court does not rule within 90 days after a petition for review has  
206 been filed, the commission's decision shall be deemed to be affirmed.

207 (3) The courts shall not substitute their judgment for that of  
208 the commission as to the decisions of policy or weight of the evi-  
209 dence on questions of fact. The court may affirm the decision of the  
210 commission or remand the case for further proceedings if it finds  
211 that the petitioner has been aggrieved because the finding, in-  
212 ferences, conclusions or decisions of the commission are:

213 (a) In violation of the Constitution of the United States;

214 (b) In excess of the authority granted to the commission  
215 by this compact;

216 (c) Made upon unlawful procedure to the detriment of any  
217 person;

218 (d) Arbitrary or capricious or characterized by abuse of  
219 discretion or clearly unwarranted exercise of discretion.

220 (4) The commission shall be deemed to be acting in a legislative  
221 capacity except in those instances where it decides, pursuant to its  
222 rules and regulations, that its determinations are adjudicatory in  
223 nature.

#### ARTICLE V. HOST STATE SELECTION AND DEVELOPMENT AND OPERATION OF REGIONAL FACILITIES

1 a. The commission shall develop, adopt, maintain, and implement  
2 a regional management plan to ensure the safe and efficient man-  
3 agement of waste within the region. The plan shall include the  
4 following:

5 (1) A current inventory of all generators within the region;

6 (2) A current inventory of all facilities within the region, in-  
7 cluding information on the size, capacity, location, specific waste  
8 being handled, and projected useful life of each facility;

9 (3) Consistent with considerations for public health and safety  
10 as defined by appropriate regulatory authorities, a determination  
11 of the type and number of regional facilities which are presently

12 necessary and projected to be necessary to manage waste generated  
13 within the region;

14 (4) Reference guidelines, as defined by appropriate regulatory  
15 authorities, for the party states for establishing the criteria and  
16 procedures to evaluate locations for regional facilities.

17 b. The commission shall develop and adopt criteria and proce-  
18 dures for reviewing a party state which volunteers to host a re-  
19 gional facility within its borders. These criteria shall be developed  
20 with public notice and shall include the following factors: the  
21 capability of the volunteering party state to host a regional facility  
22 in a timely manner and to ensure its post-closure observation and  
23 maintenance, and institutional control; and the anticipated eco-  
24 nomic feasibility of the proposed facility.

25 (1) Any party state may volunteer to host a regional facility  
26 within its borders. The commission may set terms and conditions  
27 to encourage a party state to volunteer to be the first host state.

28 (2) Consistent with the review required above, the commission  
29 shall, upon a two-thirds affirmative vote, designate a volunteering  
30 party state to serve as a host state.

31 c. If all regional facilities required by the regional management  
32 plan are not developed pursuant to section b., or upon notification  
33 that an existing facility will be closed, or upon determination that  
34 an additional regional facility is or may be required, the commis-  
35 sion shall convene to consider designation of a host state.

36 (1) The commission shall develop and adopt procedures for  
37 designating a party state to be a host state for a regional facility.  
38 The commission shall base its decision on the following criteria:

39 (a) the health, safety and welfare of citizens of the party  
40 states as defined by the appropriate regulatory authorities;

41 (b) the environmental, economic, and social effects of a re-  
42 gional facility on the party states;

43 The commission shall also base its decision on the following  
44 criteria:

45 (c) economic benefits and costs;

46 (d) the volumes and types of waste generated within each  
47 party state;

48 (e) the minimization of waste transportation; and

49 (f) the existence of regional facilities within the party states.

50 (2) Following its established criteria and procedures, the com-  
51 mission shall designate by a two-thirds affirmative vote a party  
52 state to serve as a host state. A current host state shall have the  
53 right of first refusal for a succeeding regional facility.

54 (3) The commission shall conduct such hearings and studies, and

55. take such evidence and testimony as is required by its approved  
56. procedures prior to designating a host state. Public hearings shall  
57. be held upon request in each candidate host state prior to final  
58. evaluation and selection.

59. (4) A party state which has been designated as a host state  
60. by the commission and which fails to fulfill its obligations as a host  
61. state may have its privileges under the compact suspended or  
62. membership in the compact revoked by the commission.

63. d. Each host state shall be responsible for the timely identifica-  
64. tion of a site and the timely development and operation of a re-  
65. gional facility. The proposed facility shall meet geologic, environ-  
66. mental and economic criteria which shall not conflict with applicable  
67. federal and host state laws and regulations.

68. (1) To the extent not prohibited by federal law, a host state may  
69. regulate and license any facility within its borders.

70. (2) To the extent not prohibited by federal law, a host state shall  
71. ensure the safe operation, closure, post-closure observation and  
72. maintenance, and institutional control of a facility, including ade-  
73. quate financial assurances by the operator and adequate emer-  
74. gency response procedures. It shall periodically review and report  
75. to the commission on the status of the post-closure and institutional  
76. control funds and the remaining useful life of the facility.

77. (3) A host state shall solicit comments from each party state  
78. and the commission regarding the siting, operation, financial as-  
79. surances, closure, post-closure observation and maintenance, and  
80. institutional control of a regional facility.

81. e. A host state intending to close a regional facility within its  
82. borders shall notify the commission in writing of its intention and  
83. the reasons therefor.

84. (1) Except as otherwise provided, notification shall be given to  
85. the commission at least five years prior to the scheduled date of  
86. closure.

87. (2) A host state may close a regional facility within its borders  
88. in the event of an emergency or if a condition exists which con-  
89. stitutes a substantial threat to public health and safety. A host  
90. state shall notify the commission in writing within three days of  
91. its action and shall, within 30 working days, show justification  
92. for the closing.

93. (3) In the event that a regional facility closes before an addi-  
94. tional or new facility becomes operational, the commission shall  
95. make interim arrangements for the storage or disposal of waste  
96. generated within the region until such time that a new regional  
97. facility is operational.

98 f. Fees and surcharges shall be imposed equitably upon all users  
99 of a regional facility, based upon criteria established by the com-  
100 mission.

101 (1) A host state shall, according to its lawful administrative  
102 procedures, approve fee schedules to be charged to all users of  
103 the regional facility within its borders. Except as provided herein,  
104 the fee schedules shall be established by the operator of a regional  
105 facility, under applicable state regulations, and shall be reason-  
106 able and sufficient to cover all costs related to the development,  
107 operation, closure, post-closure observation and maintenance, in-  
108 stitutional control of the regional facility. The host state shall  
109 determine a schedule for contributions to the post-closure observa-  
110 tion and maintenance, and institutional control funds. The fee  
111 schedules shall not be approved unless the commission has been  
112 given reasonable opportunity to review and make recommendations  
113 on the proposed fee schedules.

114 (2) A host state may, according to its lawful administrative  
115 procedures, impose a state surcharge per unit of waste received  
116 at any regional facility within its borders. The state surcharge  
117 shall be in addition to the fees charged for waste management.  
118 The surcharge shall be sufficient to cover all reasonable costs as-  
119 sociated with administration and regulation of the facility. The  
120 surcharge shall not be established unless the commission has been  
121 provided reasonable opportunity to review and make recommenda-  
122 tions on the proposed state surcharge.

123 (3) The commission shall impose a commission surcharge per  
124 unit of waste received at any regional facility. The total moneys  
125 collected shall be adequate to pay the costs and expenses of the  
126 commission and shall be remitted to the commission on a timely  
127 basis as determined by the commission. The surcharge may be  
128 increased or decreased as the commission deems necessary.

129 (4) Nothing hereing shall be construed to limit the ability of  
130 the host state, or the political subdivision in which the regional  
131 facility is situated, to impose surcharges for purposes including,  
132 but not limited to, host community compensation and host com-  
133 munity development incentives. The surcharges shall be reason-  
134 able and shall not be imposed unless the commission has been  
135 provided reasonable opportunity to review and make recom-  
136 mendations on the proposed surcharge. A surcharge may be re-  
137 covered through the approved fee and surcharge schedules pro-  
138 vided for in this section.

## ARTICLE VI. OTHER LAWS AND REGULATIONS

- 1 a. Nothing in this compact shall be construed to abrogate or  
2 limit the regulatory responsibility or authority of the United States  
3 Nuclear Regulatory Commission or of an Agreement State under  
4 Section 274 of the Atomic Energy Act of 1954, as amended.
- 5 b. The laws or portions of those laws of a party state that are  
6 not inconsistent with this compact remain in full force.
- 7 c. Nothing in this compact shall make unlawful the continued  
8 development and operation of any facility already licensed for  
9 development or operation on the date this compact becomes  
10 effective.
- 11 d. No judicial or administrative proceeding pending on the  
12 effective date of the compact shall be affected by the compact.
- 13 e. Except as provided for in Article III b. (2) and c. (3), this  
14 compact shall not affect the relations between and the respective  
15 internal responsibilities of the government of a party state and  
16 its subdivisions.
- 17 f. The generation, treatment, storage, transportation, or disposal  
18 of waste generated by the atomic energy defense activities of the  
19 federal government as defined in Pub. L. 96-573, or federal research  
20 and development activities are not affected by this compact
- 21 g. To the extent that the rights and powers of any state or  
22 political subdivision to license and regulate any facility within its  
23 borders and to impose taxes, fees, and surcharges on the waste  
24 managed at that regional facility do not operate as an unreasonable  
25 impediment to the transportation, treatment or disposal of waste,  
26 the rights and powers shall not be diminished by this compact.
- 27 h. No party state shall enact any law or regulation or attempt to  
28 enforce any measure which is inconsistent with this compact. These  
29 measures may provide the basis for the commission to suspend or  
30 terminate a party state's membership and privileges under this  
31 compact.
- 32 i. All laws and regulations, or parts thereof of any party state or  
33 subdivision or instrumentality thereof which are inconsistent with  
34 this compact are repealed and declared void. Any legal right,  
35 obligation, violation or penalty arising under these laws or regula-  
36 tions prior to the enactment of this compact, or not in conflict with  
37 it, shall not be affected.
- 38 j. Subject to Article III c. (2), no law or regulation of a party  
39 state or subdivision or instrumentality thereof may be applied so  
40 as to restrict or make more costly or inconvenient access to any  
41 regional facility by the generators of another party state than for  
42 the generators of the state where the facility is situated.

43 k. No law, ordinance, or regulation of any party state or any  
44 subdivision or instrumentality thereof shall prohibit, suspend, or  
45 unreasonably delay, limit or restrict the operation of a siting or  
46 licensing agency in the designation, siting, or licensing of a  
47 regional facility. Any such provision in existence at the time of  
48 ratification of this compact is repealed.

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

1 a. The initially eligible parties to this compact shall be the 11  
2 states of Connecticut, Delaware, Maine, Maryland, Massachusetts,  
3 New Hampshire, New Jersey, New York, Pennsylvania, Rhode  
4 Island, and Vermont. Initial eligibility will expire June 30, 1984.

5 b. Each state eligible to become a party state to this compact  
6 shall be declared a party state upon enactment of this compact into  
7 law by the state, repeal of all statutes or statutory provisions that  
8 pose unreasonable impediments to the capability of the state to  
9 host a regional facility in a timely manner, and upon payment of  
10 the fees required by Article IV j. (1). An eligible state may be-  
11 come a party to this compact by an executive order by the governor  
12 of the state and upon payment of the fees required by Article IV j.  
13 (1). However, any state which becomes a party state by executive  
14 order shall cease to be a party state upon the final adjournment  
15 of the next general or regular session of its legislature, unless this  
16 compact has by then been enacted as a statute by the state and all  
17 statutes and statutory provisions that conflict with the compact  
18 have been repealed.

19 c. The compact shall become effective in a party state upon  
20 enactment by that state. It shall not become initially effective in  
21 the region until enacted into law by three party states and consent  
22 given to it by the Congress.

23 d. The first three states eligible to become party states to this  
24 compact which adopt this compact into law as required in Article  
25 VII b. shall immediately, upon the appointment of their commission  
26 members, constitute themselves as the Northeast Interstate Low-  
27 Level Radioactive Waste Commission. They shall cause legislation  
28 to be introduced in the Congress which grants the consent of the  
29 Congress to this compact, and shall do those things necessary to  
30 organize the commission and implement the provisions of this  
31 compact.

32 (1) The commission shall be the judge of the qualifications of  
33 the party states and of its members and of their compliance with  
34 the conditions and requirements of this compact and of the laws  
35 of the party states relating to the enactment of this compact.

36 (2) All succeeding states eligible to become party states to this  
37 compact shall be declared party states pursuant to the provisions  
38 of section b. of this article.

39 e. Any state not expressly declared eligible to become a party  
40 state to this compact in section a. of this article may petition the  
41 commission to be declared eligible. The commission may establish  
42 such conditions as it deems necessary and appropriate to be met  
43 by a state requesting eligibility as a party state to this compact  
44 pursuant to the provisions of this section, including a public hearing  
45 on the application. Upon satisfactorily meeting such conditions  
46 and upon the affirmative vote of two-thirds of the commission,  
47 including the affirmative vote of the representatives of the host  
48 states in which any affected regional facility is located, the petition-  
49 ing state shall be eligible to become a party state to this compact  
50 and may become a party state in the same manner as those states  
51 declared eligible in section a. of this article.

52 f. No state holding membership in any other regional compact  
53 for the management of low-level radioactive waste may become  
54 a member of this compact.

55 g. Any party state which fails to comply with the provisions of  
56 this compact or to fulfill its obligations hereunder may have its  
57 privileges suspended or, upon a two-thirds vote of the commission,  
58 after full opportunity for hearing and comment, have its member-  
59 ship in the compact revoked. Revocation shall take effect one year  
60 from the date the affected party state receives written notice from  
61 the commission of its action. All legal rights of the affected party  
62 state established under this compact shall cease upon the effective  
63 date of revocation, except that any legal obligations of that party  
64 state arising prior to revocation will not cease until they have  
65 been fulfilled. As soon as practicable after a commission decision  
66 suspending or revoking party state status, the commission shall  
67 provide written notice of the action and a copy of the resolution  
68 to the governors and the presiding officer of each body of the state  
69 legislatures of the party states, and to chairmen of the appropriate  
70 committees of the Congress.

71 h. Any party state may withdraw from this compact by repealing  
72 its authorization legislation, and all legal rights under this compact  
73 of the party state cease upon repeal. However, no withdrawal shall  
74 take effect until five years after the Governor of the withdrawing  
75 state has given notice in writing of the withdrawal to the com-  
76 mission and to the governor of each party state. No withdrawal  
77 shall affect any liability already incurred by or chargeable to a  
78 party state prior to that time.

79 (1) Upon receipt of the notification, the commission shall, as  
80 soon as practicable, provide copies to the governors and the pre-  
81 siding officer of each body of the state legislatures of the party  
82 states, and to the chairmen of the appropriate committees of the  
83 Congress.

84 (2) A regional facility in a withdrawing state shall remain  
85 available to the region for five years after the date the commission  
86 receives written notification of the intent to withdraw or until the  
87 prescheduled date of closure, which ever occurs first.

88 i. This compact may be terminated only by the affirmative action  
89 of the Congress or by the repeal of all laws enacting the compact  
90 in each party state. The Congress may by law withdraw its consent  
91 every five years after the compact takes effect.

92 (1) The consent given to this compact by the Congress shall  
93 extend to any future admittance of new party states under sections  
94 b. and e. of this article.

95 (2) The withdrawal of a party state from this compact under  
96 section h. or the revocation of a state's membership in this compact  
97 under section g. of this article shall not affect the applicability of  
98 the compact to the remaining party states.

#### ARTICLE VIII. PENALTIES

1 a. Each party state, consistent with federal and host state  
2 regulations and laws, shall enforce penalties against any person  
3 not acting as an official of a party state for violation of this compact  
4 in the party state. Each party state acknowledges that the shipment  
5 to a host state of waste packaged or transported in violation of  
6 applicable laws and regulations can result in the imposition of  
7 sanctions by the host state. These sanctions may include, but are  
8 not limited to, suspension or revocation of the violator's right of  
9 access to the facility in the host state.

10 b. Without the express approval of the commission, it shall be  
11 unlawful for any person to dispose of any low-level waste within  
12 the region except at a regional facility; provided, however, that  
13 this restriction shall not apply to waste which is permitted by  
14 applicable federal or state regulations to be discarded without  
15 regard to its radioactivity.

16 c. Unless specifically approved by the commission and affected  
17 host state(s) pursuant to Article IV, it shall be a violation of this  
18 compact for: (1) any person to deposit at a regional facility waste  
19 not generated within the region; (2) any regional facility to accept  
20 waste not generated within the region; and (3) any person to export  
21 from the region waste generated within the region.

22 d. Primary responsibility for enforcing the provisions of the law  
23 will rest with the affected state or states. The commission, upon a  
24 two-thirds vote of its members, may bring action to seek enforce-  
25 ment or appropriate remedies against violators of the provisions  
26 and regulations for this compact as provided for in Article IV.

#### ARTICLE IX. COMPENSATION PROVISIONS

1 a. The responsibility for ensuring compensation and clean-up  
2 during the operational and post-closure periods rests with the host  
3 state, as set forth herein.

4 (1) The host state shall ensure the availability of funds and  
5 procedures for compensation of injured persons, including facility  
6 employees, and property damage, except any possible claims for  
7 diminution of property values, due to the existence and operation  
8 of a regional facility, and for clean-up and restoration of the facility  
9 and surrounding areas.

10 (2) The state may satisfy this obligation by requiring bonds,  
11 insurance, compensation funds, or any other means or combination  
12 of means, imposed either on the facility operator or assumed by  
13 the state itself, or both. Nothing in this article alters the liability  
14 of any person or governmental entity under applicable state and  
15 federal laws.

16 b. The commission shall provide a means of compensation for  
17 persons injured or property damaged during the institutional  
18 control period due to the radioactive and waste management nature  
19 of the regional facility. This responsibility may be met by a special  
20 fund, insurance, or other means.

21 (1) The commission is authorized, at its discretion, to impose a  
22 waste management surcharge, to be collected by the operator or  
23 owner of the regional facility; to establish a separate insurance  
24 entity, formed by but separate from the commission itself, but  
25 under such terms and conditions as it decides, and exempt from  
26 state insurance regulations; to contract with this company or other  
27 entity for coverage; or to take any other measures, or combination  
28 of measures, to implement the goals of this section.

29 (2) The existence of this fund or other means of compensation  
30 shall not imply any liability by the commission, the non-host party  
31 states, or any of their officials and staff, which are exempted from  
32 liability by other provisions of this compact. Claims or suits for  
33 compensation shall be directed against the fund, the insurance  
34 company, or other entity, unless the commission, by regulation,  
35 directs otherwise.

36 c. Notwithstanding any other provisions, the commission fund,

37 insurance, or other means of compensation shall also be available  
38 for third party relief during the operational and post-closure  
39 periods, as the commission may direct, but only to the extent that  
40 no other funds, insurance, tort compensation, or other means are  
41 available from the host state or other entities, under section a. of  
42 this Article or otherwise; provided, that this commission contribu-  
43 tion shall not apply to clean-up or restoration of the regional  
44 facility and its environs during the operational and post-closure  
45 period.

46 d. The liability of the commission's fund, insurance entity, or  
47 any other means of compensation shall be limited to the amount  
48 currently contained therein; provided that the commission may set  
49 some lower limit to ensure the integrity and availability of the  
50 fund or other entity for liability.

#### ARTICLE X. SEVERABILITY AND CONSTRUCTION

1 The provisions of this compact shall be severable, and if any  
2 phrase, clause, sentence or provision of this compact is declared  
3 by a federal court of competent jurisdiction to be contrary to the  
4 Constitution of the United States or the applicability thereof to  
5 any government, agency, person or circumstance is held invalid,  
6 the validity of the remainder of this compact and the applicability  
7 thereof to any other government, agency, person or circumstance  
8 shall not be affected thereby. The provisions of this compact shall  
9 be liberally construed to give effect to the purposes thereof.

1 3. There is appropriated from the General Fund to the North-  
2 east Interstate Low-Level Radioactive Waste Commission created  
3 in Article IV of the Northeast Interstate Low-Level Radioactive  
4 Waste Management Compact, as set forth in section 2 of this act,  
5 the sum of \$70,000.00, to fulfill New Jersey's obligation as a party  
6 state for the initial administrative costs of the commission pur-  
7 suant to Article IV, section j., paragraph (1) of that compact.

1 4. This act shall take effect immediately, but shall remain in-  
2 operative until the Northeast Interstate Low-Level Waste Manage-  
3 ment Compact is enacted and entered into by at least two other  
4 jurisdictions.

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#### STATEMENT

This measure would enact the Northeast Interstate Low-Level Radioactive Waste Management Compact, and enter New Jersey as a party state therein. The compact would be formally established upon the enactment of substantially identical legislation by at least two of the other eligible northeastern states, and the subsequent ratification of this compact by Congress.

The impetus behind this bill was the enactment by the federal government of the "Low-Level Radioactive Waste Policy Act," Pub. L. 96-573 (42 U. S. C. § 2021 b. et seq.) which as of January 1, 1986 makes each state responsible for providing disposal capacity for the low-level radioactive waste generated within its borders, except waste generated as a result of atomic energy defense activities or federal research and development activities.

During the 1950's, low-level radioactive waste, materials that had been contaminated with relatively short-lived radioactive elements or radionuclides produced as a result of the use of radioactive materials in medical diagnosis and treatment, research, industrial processes, and electrical power generation, but not spent fuel, were disposed of at federally-owned and operated sites, or into the oceans. Since the 1960's New Jersey, along with the other states, has been transporting the low-level radioactive waste generated within its borders to one of the commercially owned and operated, federally-licensed disposal sites, only three of which remain operational today. The increasing volumes of low-level radioactive waste being generated, the accident at Three Mile Island, the increasing number of violations of packaging and transportation regulations governing radioactive waste, the temporary closing of the existing facilities in the States of Washington and Nevada, a phased 50% reduction in the volume of waste received at the South Carolina facility, and a State of Washington initiative to ban out-of-state waste have all been factors motivating the establishment of the new federal policy.

While requiring that each state provide for the disposal of all low-level radioactive wastes generated within its borders, the federal "Low-Level Radioactive Waste Policy Act" endorsed the concept of regional solutions to the problem. It encouraged the joint participation of the states of a region to enter compacts to site and operate regional facilities by authorizing compact states to refuse to accept wastes from non-compact states, which they would otherwise be constitutionally barred from doing.

The Northeast Interstate Low-Level Radioactive Waste Management Compact embodied in this bill is designed to provide the legal framework for a cooperative regional approach to meeting state responsibilities under the federal act, and to assure the proper, safe, and efficient management and disposal of these wastes.

## MAJOR PROVISIONS

1. The compact requires the party states individually and through the regional commission comprising their representatives, to provide for the timely establishment of a regional facility by one of their number, and the commitment of party states and the commission to a coordinated regional approach to low-level radioactive waste management. It implicitly pledges the good faith of the State to meet its obligations under the compact.

2. The compact establishes the Northeast Interstate Low-Level Radioactive Waste Commission as an advisory and coordinative body to administer the compact. The commission's role is to ensure that the states' collective interests are considered in the siting, development, and management of a regional facility, and that the member states comply with the compact.

3. The compact establishes a process for selecting a state to host a facility, though the siting, development and management of that facility would remain under the jurisdiction of that state, consistent with federal law.

4. The compact sets forth the terms and conditions under which a state joins or withdraws from the compact. Reflecting the contractual nature of the charter, it provides for penalties and sanctions, including revocation of membership for states which fail to meet their agreed upon obligations.

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ASSEMBLY, No. 3256

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1983

By Assemblyman BENNETT

AN ACT concerning the management and disposal of low-level radioactive waste, enacting and entering this State into the Northeast Interstate Low-Level Radioactive Waste Management Compact, supplementing Title 13 of the Revised Statutes, and providing an appropriation therefor.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. This act shall be known and may be cited as "The Northeast  
2 Interstate Low-Level Radioactive Waste Management Compact  
3 Act."

1 2. The State of New Jersey enacts and enters into the Northeast  
2 Interstate Low-Level Radioactive Waste Management Compact  
3 with all jurisdictions legally joining therein, which compact is  
4 substantially as follows:

ARTICLE I. POLICY AND PURPOSE

1 There is created the Northeast Interstate Low-Level Radioactive  
2 Waste Management Compact. The party states recognize that the  
3 Congress has declared that each state is responsible for providing  
4 for the availability of capacity, either within or outside its borders,  
5 for disposal of low-level radioactive waste generated within its  
6 borders, except for waste generated as a result of atomic energy  
7 defense activities of the federal government, as defined in the  
8 "Low-Level Radioactive Waste Policy Act," Pub. L. 96-573 (42  
9 U. S. C. § 2021 b. et seq.), hereinafter referred to as "the act,"  
10 or federal research and development activities. They also recog-  
11 nize that the management of low-level radioactive waste is handled

12 most efficiently on a regional basis. The party states further recog-  
 13 nize that the Congress of the United States, by enacting the act  
 14 has provided for and encouraged the development of regional low-  
 15 level radioactive waste compacts to manage such waste. The party  
 16 states recognize that the long-term, safe and efficient management  
 17 of low-level radioactive waste generated within the region requires  
 18 that sufficient capacity to manage the waste be properly provided.

19 In order to promote the health and safety of the region, it is the  
 20 policy of the party states to: enter into a regional low-level radio-  
 21 active waste management compact as a means of facilitating an  
 22 interstate cooperative effort, provide for proper transportation of  
 23 low-level waste generated in the region, minimize the number of  
 24 facilities required to effectively and efficiently manage low-level  
 25 radioactive waste generated in the region, encourage the reduction  
 26 of the amounts of low-level waste generated in the region, distribute  
 27 the costs, benefits, and obligations of proper low-level radioactive  
 29 waste management equitably among the party states, and ensure  
 30 the environmentally sound and economical management of low-  
 31 level radioactive waste.

#### ARTICLE II. DEFINITIONS

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

3 a. "Commission" means the Northeast Interstate Low-Level  
 4 Radioactive Waste Commission established pursuant to Article IV  
 5 of this compact;

6 b. "Custodial agency" means the agency of the government  
 7 designated to act on behalf of the government owner of the regional  
 8 facility;

9 c. "Disposal" means the isolation of low-level radioactive waste  
 10 from the biosphere inhabited by man and his food chains;

11 d. "Facility" means a parcel of land, together with the struc-  
 12 tures, equipment and improvements thereon or appurtenant  
 13 thereto, which is used or is being developed for the treatment,  
 14 storage or disposal of low-level waste, but shall not include on-site  
 15 treatment or storage by a generator;

16 e. "Generator" means a person who produces or processes low-  
 17 level waste, but does not include persons who only provide a ser-  
 18 vice by arranging for the collection, transportation, treatment,  
 19 storage or disposal of wastes generated outside the region;

20 f. "High-level waste" means (1) the highly radioactive material  
 21 resulting from the reprocessing of spent nuclear fuel, including  
 22 liquid waste produced directly in reprocessing and any solid ma-  
 23 terial derived from that liquid waste that contains fission products

24 in sufficient concentration; and (2) any other highly radioactive  
25 material determined by the federal government as requiring per-  
26 manent isolation;

27 g. "Host state" means a party state in which a regional facility  
28 is located or being developed;

29 h. "Institutional control" means the continued observation,  
30 monitoring, and care of the regional facility following transfer of  
31 control of the regional facility from the operator to the custodial  
32 agency;

33 i. "Low-level waste" means radioactive waste that (1) is neither  
34 high-level waste nor transuranic waste, nor spent nuclear fuel, nor  
35 by-product material as defined in section 11e (2) of the Atomic  
36 Energy Act of 1954 as amended; and (2) is classified by the federal  
37 government as low-level waste, consistent with existing law; but  
38 does not include waste generated as a result of atomic energy  
39 defense activities of the federal government, as defined in Pub. L.  
40 96-573, or federal research and development activities;

41 j. "Party state" means any state which is a signatory party in  
42 good standing to this compact;

43 k. "Person" means an individual, corporation, business enter-  
44 prise or other legal entity, either public or private and their legal  
45 successors;

46 l. "Post-closure observation and maintenance" means the con-  
47 tinued monitoring of a closed regional facility to ensure the integ-  
48 rity and environmental safety of the site through compliance with  
49 applicable licensing and regulatory requirements; prevention of  
50 unwarranted intrusion, and correction of problems;

51 m. "Region" means the entire area of the party states;

52 n. "Regional facility" means a facility as defined in this section  
53 which has been designated or accepted by the commission;

54 o. "State" means a state of the United States, the District of  
55 Columbia, the Commonwealth of Puerto Rico, the Virgin Islands  
56 or any other territory subject to the laws of the United States;

57 p. "Storage" means the holding of waste for treatment or  
58 disposal;

59 q. "Transuranic waste" means waste material containing radio-  
60 nuclides with an atomic number greater than 92 which are excluded  
61 from shallow land burial by the federal government;

62 r. "Treatment" means any method, technique or process, in-  
63 cluding storage for decay, designed to change the physical, chemical  
64 or biological characteristics or composition of any waste in order  
65 to render the waste safer for transport or disposal, amenable for  
66 recovery, convertible to another usable material or reduced in  
67 volume;

68 s. "Waste" means low-level radioactive waste as defined in this  
69 section;

70 t. "Waste management" means the storage, treatment, trans-  
71 portation, and disposal, where applicable, of waste.

#### ARTICLE III. RIGHTS AND OBLIGATIONS

1 a. There shall be provided within the region one or more regional  
2 facilities which, together with such other facilities as may be made  
3 available to the region, will provide sufficient capacity to manage  
4 all wastes generated within the region.

5 (1) Regional facilities shall be entitled to waste generated within  
6 the region, unless otherwise provided by the commission. To the  
7 extent regional facilities are available, no waste generated within  
8 a party state shall be exported to facilities outside the region unless  
9 the exportation is approved by the commission and the affected  
10 host state(s).

11 (2) After January 1, 1986, no person shall deposit at a regional  
12 facility waste generated outside the region, and further, no regional  
13 facility shall accept waste generated outside the region, unless ap-  
14 proved by the commission and the affected host state(s).

15 b. The rights, responsibilities and obligations of each party state  
16 to this compact are as follows:

17 (1) Each party state shall have the right to have all wastes  
18 generated within its borders managed at regional facilities, and  
19 shall have the right of access to facilities made available to the  
20 region through agreements entered into by the commission pur-  
21 suant to Article IV i. (11). The right of access by a generator  
22 within a party state to any regional facility is limited by the  
23 generator's adherence to applicable state and federal laws and  
24 regulations and the provisions of this compact.

25 (2) To the extent not prohibited by federal law, each party state  
26 shall institute procedures which will require shipments of low-level  
27 waste generated within or passing through its borders to be con-  
28 sistent with applicable federal packaging and transportation regu-  
29 lations and applicable host state packaging and transportation  
30 regulations for management of low-level waste; provided, however,  
31 that these practices shall not impose unreasonable, burdensome  
32 impediments to the management of low-level waste in the region.  
33 Upon notification by a host state that a generator, shipper, or car-  
34 rier within the party state is in violation of applicable packaging  
35 or transportation regulations, the party state shall take appro-  
36 priate action to ensure that the violations do not recur.

37 (3) Each party state may impose reasonable fees upon gener-

38 ators, shippers, or carriers to recover the cost of inspections and  
39 other practices under this compact.

40 (4) Each party state shall encourage generators within its  
41 borders to minimize the volume of waste requiring disposal.

42 (5) Each party state has the right to rely on the good faith  
43 performance by every other party state of acts which ensure the  
44 provision of facilities for regional availability and their use in a  
45 manner consistent with this compact.

46 (6) Each party state shall provide, to the commission any data  
47 and information necessary for the implementation of the commis-  
48 sion's responsibilities, and shall establish the capability to obtain  
49 any data and information necessary to meet its obligation as herein  
50 defined.

51 (7) Each party state shall have the capability to host a regional  
52 facility in a timely manner and to ensure the post-closure observa-  
53 tion and maintenance, and institutional control of any regional  
54 facility within its borders.

55 (8) No nonhost party state shall be liable for any injury to  
56 persons or property resulting from the operation of a regional  
57 facility or the transportation of waste to a regional facility; how-  
58 ever, if the host state itself is the operator of the regional facility,  
59 its liability shall be that of any private operator.

60 c. The rights, responsibilities and obligations of a host state are  
61 as follows:

62 (1) To the extent not prohibited by federal law, a host state shall  
63 ensure the timely development and the safe operation, closure,  
64 post-closure observation and maintenance, and institutional control  
65 of any regional facility within its borders.

66 (2) In accordance with procedures established in Articles V and  
67 IX, the host state shall provide for the establishment of a reasona-  
68 ble structure of fees sufficient to cover all costs related to the  
69 development, operation, closure, post-closure observation and  
70 maintenance, and institutional control of a regional facility. It  
71 may also establish surcharges to cover the regulatory costs, in-  
72 centives, and compensation associated with a regional facility;  
73 provided, however, that without the express approval of the com-  
74 mission, no distinction in fees or surcharges shall be made between  
75 persons of the several states party to this compact.

76 (3) To the extent not prohibited by federal law, a host state may  
77 establish requirements and regulations pertaining to the manage-  
78 ment of waste at a regional facility; provided, however, that the  
79 requirements shall not impose unreasonable impediments to the  
80 management of low-level waste within the region. Nor may a host

81 state or a subdivision impose any restrictive requirements on the  
82 siting or operation of a regional facility that, alone or as a whole,  
83 they serve as unreasonable barriers or prohibitions to the siting  
84 or operation of the facility.

85 (4) Each host state shall submit to the commission annually a  
86 report concerning each operating regional facility within its  
87 borders. The report shall contain projections of the anticipated  
88 future capacity and availability of the regional facility, a financial  
89 audit of its operation, and other information as may be required  
90 by the commission; and in the case of regional facilities in institu-  
91 tional control or otherwise no longer operating, the host states  
92 shall furnish information as may be required on the facilities still  
93 subject to their jurisdiction.

94 (5) A host state shall notify the commission immediately if any  
95 exigency arises which requires the permanent, temporary, or pos-  
96 sible closure of any regional facility located therein at a time earlier  
97 than projected in its most recent annual report to the commission.  
98 The commission may conduct studies, hold hearings, or take such  
99 other measures to ensure that the actions taken are necessary and  
100 compatible with the obligations of the host state under this compact.

#### ARTICLE IV. THE COMMISSION

1 a. There is created the Northeast Interstate Low-Level Radio-  
2 active Waste Commission. The commission shall consist of one  
3 member from each party state to be appointed by the Governor  
4 according to procedures of each party state, except that a host state  
5 shall have two members during the period that it has an operating  
6 regional facility. The Governor shall notify the commission in  
7 writing of the identity of the member and one alternate, who may  
8 act on behalf of the member only in the member's absence.

9 b. Each commission member shall be entitled to one vote. No  
10 action of the commission shall be binding unless a majority of the  
11 total membership cast their vote in the affirmative.

12 c. The commission shall elect annually from among its members  
13 a presiding officer and such other officers as it deems appropriate.  
14 The commission shall adopt and publish, in convenient form, rules  
15 and regulations as are necessary for due process in the performance  
16 of its duties and powers under this compact.

17 d. The commission shall meet at least once a year and shall also  
18 meet upon the call of the presiding officer, or upon the call of a  
19 party state member.

20 e. All meetings of the commission shall be open to the public  
21 with reasonable prior public notice. The commission may, by

22 majority vote, close a meeting to the public for the purpose of con-  
23 sidering sensitive personnel or legal matters. All commission  
24 actions and decisions shall be made in open meetings and appro-  
25 priately recorded. A roll call vote may be required upon request  
26 of any party state or the presiding officer.

27 f. The commission may establish such committees as it deems  
28 necessary.

29 g. The commission may appoint, contract for, and compensate  
30 limited staff as it determines necessary to carry out its duties and  
31 functions. The staff shall serve at the commission's pleasure  
32 irrespective of the civil service, personnel or other merit laws of  
33 any of the party states or the federal government and shall be com-  
34 pensated from funds of the commission.

35 h. The commission shall adopt an annual budget for its opera-  
36 tions.

37 i. The commission shall have the following duties and powers:

38 (1) The commission shall receive and act on the application of  
39 a nonparty state to become an eligible state in accordance with  
40 Article VII e.

41 (2) The commission shall receive and act on the application of  
42 an eligible state to become a party state in accordance with Article  
43 VII b.

44 (3) The commission shall submit an annual report to and other-  
45 wise communicate with the governors and the presiding officer of  
46 each body of the legislature of the party states regarding the  
47 activities of the commission.

48 (4) Upon request of party states, the commission shall mediate  
49 disputes which arise between the party states regarding this com-  
50 pact.

51 (5) The commission shall develop, adopt and maintain a regional  
52 management plan to ensure safe and effective management of waste  
53 within the region, pursuant to Article V.

54 (6) The commission may conduct legislative or adjudicatory  
55 hearings, and require reports, studies, evidence and testimony as  
56 are necessary to perform its duties and functions.

57 (7) The commission shall establish by regulation, after public  
58 notice and opportunity for comment, procedural regulations as  
59 deemed necessary to ensure efficient operation, the orderly gather-  
60 ing of information, and the protection of the rights of due process  
61 of affected persons.

62 (8) In accordance with the procedures and criteria set forth in  
63 Article V, the commission shall accept a host state's proposed  
64 facility as a regional facility.

65. (9) In accordance with the procedures and criteria set forth in  
66. Article V, the commission may designate, by a two-thirds vote, host  
67. states for the establishment of needed regional facilities. The  
68. commission shall not exercise this authority unless the party states  
69. have failed to voluntarily pursue the development of these  
70. facilities.

71. (10) The commission may require of and obtain from party  
72. states, eligible states seeking to become party states, and non-party  
73. states seeking to become eligible states, data and information  
74. necessary for the implementation of commission responsibilities.

75. (11) The commission may enter into agreements with any person,  
76. state, regional body, or group of states for the importation of waste  
77. into the region and for the right of access to facilities outside the  
78. region for waste generated within the region. This authorization  
79. to import requires a two-thirds majority vote of the commission,  
80. including an affirmative vote of the representatives of the host  
81. state in which any affected regional facility is located. This shall  
82. be done only after the commission and the host state have made an  
83. assessment of the affected facilities' capability to handle these  
84. wastes and of relevant environmental, economic, and public health  
85. factors, as defined by the appropriate regulatory authorities.

86. (12) The commission may, upon petition, grant an individual  
87. generator or group of generators in the region the right to export  
88. wastes to a facility located outside the region. A grant of right shall  
89. be for a period of time and amount of waste and on such other  
90. terms and conditions as determined by the commission and ap-  
91. proved by the affected host states.

92. (13) The commission may appear as an intervenor or party in  
93. interest before any court of law, federal, state or local agency,  
94. board or commission that has jurisdiction over the management of  
95. wastes. The authority to intervene or otherwise appear shall be  
96. exercised only after a two-thirds vote of the commission. In order  
97. to represent its views, the commission may arrange for any expert  
98. testimony, reports, evidence or other participation as it deems  
99. necessary.

100. (14) The commission may impose sanctions, including but not  
101. limited to, fines, suspension of privileges or revocation of the mem-  
102. bership of a party state in accordance with Article VII. The com-  
103. mission shall have the authority to revoke, in accordance with  
104. Article VII g., the membership of a party state that creates un-  
105. reasonable barriers to the siting of a needed regional facility or  
106. refuses to accept host state responsibilities upon designation by  
107. the commission.

108 (15) The commission shall establish by regulation criteria for  
109 and shall review the fee and surcharge systems in accordance with  
110 Articles V and IX.

111 (16) The commission shall review the capability of party states  
112 to ensure the siting, operation, post-closure observation and  
113 maintenance, and institutional control of any facility within its  
114 borders.

115 (17) The commission shall review the compact legislation every  
116 five years prior to federal congressional review provided for in the  
117 act, and may recommend legislative action.

118 (18) The commission has the authority to develop and provide  
119 to party states rules, regulations and guidelines as it deems appro-  
120 priate for the efficient, consistent, fair and reasonable implementa-  
121 tion of the compact.

122 j. There is hereby established a commission operating account.  
123 The commission is authorized to expend moneys from the account  
124 for the expenses of any staff and consultants designated under  
125 section g. of this article and for official commission business.  
126 Financial support for the commission account shall be provided as  
127 follows:

128 (1) Each eligible state, upon becoming a party state, shall pay  
129 \$70,000.00 to the commission, which shall be used for administrative  
130 costs of the commission.

131 (2) The commission shall impose a "commission surcharge" per  
132 unit of waste received at any regional facility as provided in  
133 Article V.

134 (3) Until such time as at least one regional facility is in opera-  
135 tion and accepting waste for management, or to the extent that  
136 revenues under paragraphs (1) and (2) of this section are un-  
137 available or insufficient to cover the approved annual budget of the  
138 commission, each party state shall pay an apportioned amount of  
139 the difference between the funds available and the total budget in  
140 accordance with the following formula:

141 (a) 20% in equal shares;

142 (b) 30% in the proportion that the population of the party  
143 state bears to the total population of all party states, according  
144 to the most recent United States census;

145 (c) 50% in the proportion that the waste generated for  
146 management in each party state bears to the total waste  
147 generated for management in the region for the most recent  
148 calendar year in which reliable data are available, as deter-  
149 mined by the commission.

150 k. The commission shall keep accurate accounts of all receipts

151 and disbursements. An independent certified public accountant  
152 shall annually audit all receipts and disbursements of commission  
153 accounts and funds and submit an audit report to the commission.  
154 The audit report shall be made a part of the annual report of the  
155 commission required by Article IV i. (3).

156 l. The commission may accept, receive, utilize and dispose for  
157 any of its purposes and functions any donations, loans, grants of  
158 money, equipment, supplies, materials and services, conditional or  
159 otherwise, from any state or the United States or any subdivision  
160 or agency thereof, or interstate agency, or from any institution,  
161 person, firm or corporation. The nature, amount and condition, if  
162 any, attendant upon any donation, loan, or grant accepted pursuant  
163 to this paragraph, together with the identity of the donor, grantor,  
164 or lender, shall be detailed in the annual report of the commission.  
165 The commission shall by rule establish guidelines for the acceptance  
166 of donations, loans, grants of money, equipment, supplies, materials  
167 and services. This shall provide that no donor, grantor or lender  
168 may derive unfair or unreasonable advantage in any proceeding  
169 before the commission.

170 m. The commission herein established is a body corporate and  
171 politic, separate and distinct from the party states and shall be so  
172 liable for its own actions. Liabilities of the commission shall not be  
173 deemed liabilities of the party states, nor shall members of the  
174 commission be personally liable for action taken by them in their  
175 official capacity.

176 (1) The commission shall not be responsible for any costs or  
177 expenses associated with the creation, operation, closure, post-  
178 closure observation and maintenance, and institutional control of  
179 any regional facility, or any associated regulatory activities of the  
180 party states.

181 (2) Except as otherwise provided herein, this compact shall not  
182 be construed to alter the incidence of liability of any kind for any  
183 act, omission, or course of conduct. Generators, shippers and  
184 carriers of wastes, and owners and operators of sites shall be liable  
185 for their acts, omissions, conduct, or relationships in accordance  
186 with all laws relating thereto.

187 n. The United States district courts in the District of Columbia  
188 shall have original jurisdiction of all actions brought by or against  
189 the commission. Any such action initiated in a state court shall be  
190 removed to the designated United States district court in the  
191 manner provided by Act of June 25, 1948 as amended (28 U. S. C.  
192 § 1446). This section shall not alter the jurisdiction of the United  
193 States Court of Appeals for the District of Columbia Circuit to

194 review the final administrative decisions of the commission as set  
195 forth in the paragraph below.

196 o. The United States Court of Appeals for the District of  
197 Columbia Circuit shall have jurisdiction to review the final admin-  
198 istrative decisions of the commission.

199 (1) Any person aggrieved by a final administrative decision may  
200 obtain review of the decision by filing a petition for review within  
201 60 days after the commission's final decision.

202 (2) In the event that review is sought of the commission's  
203 decision relative to the designation of a host state, the Court of  
204 Appeals shall accord the matter an expedited review, and, if the  
205 court does not rule within 90 days after a petition for review has  
206 been filed, the commission's decision shall be deemed to be affirmed.

207 (3) The courts shall not substitute their judgment for that of  
208 the commission as to the decisions of policy or weight of the evi-  
209 dence on questions of fact. The court may affirm the decision of the  
210 commission or remand the case for further proceedings if it finds  
211 that the petitioner has been aggrieved because the finding, in-  
212 ferences, conclusions or decisions of the commission are:

213 (a) In violation of the Constitution of the United States;

214 (b) In excess of the authority granted to the commission  
215 by this compact;

216 (c) Made upon unlawful procedure to the detriment of any  
217 person;

218 (d) Arbitrary or capricious or characterized by abuse of  
219 discretion or clearly unwarranted exercise of discretion.

220 (4) The commission shall be deemed to be acting in a legislative  
221 capacity except in those instances where it decides, pursuant to its  
222 rules and regulations, that its determinations are adjudicatory in  
223 nature.

#### ARTICLE V. HOST STATE SELECTION AND DEVELOPMENT AND OPERATION OF REGIONAL FACILITIES

1 a. The commission shall develop, adopt, maintain, and implement  
2 a regional management plan to ensure the safe and efficient man-  
3 agement of waste within the region. The plan shall include the  
4 following:

5 (1) A current inventory of all generators within the region;

6 (2) A current inventory of all facilities within the region, in-  
7 cluding information on the size, capacity, location, specific waste  
8 being handled, and projected useful life of each facility;

9 (3) Consistent with considerations for public health and safety  
10 as defined by appropriate regulatory authorities, a determination  
11 of the type and number of regional facilities which are presently

12 necessary and projected to be necessary to manage waste generated  
13 within the region;

14 (4) Reference guidelines, as defined by appropriate regulatory  
15 authorities, for the party states for establishing the criteria and  
16 procedures to evaluate locations for regional facilities.

17 b. The commission shall develop and adopt criteria and proce-  
18 dures for reviewing a party state which volunteers to host a re-  
19 gional facility within its borders. These criteria shall be developed  
20 with public notice and shall include the following factors: the  
21 capability of the volunteering party state to host a regional facility  
22 in a timely manner and to ensure its post-closure observation and  
23 maintenance, and institutional control; and the anticipated eco-  
24 nomic feasibility of the proposed facility.

25 (1) Any party state may volunteer to host a regional facility  
26 within its borders. The commission may set terms and conditions  
27 to encourage a party state to volunteer to be the first host state.

28 (2) Consistent with the review required above, the commission  
29 shall, upon a two-thirds affirmative vote, designate a volunteering  
30 party state to serve as a host state.

31 c. If all regional facilities required by the regional management  
32 plan are not developed pursuant to section b., or upon notification  
33 that an existing facility will be closed, or upon determination that  
34 an additional regional facility is or may be required, the commis-  
35 sion shall convene to consider designation of a host state.

36 (1) The commission shall develop and adopt procedures for  
37 designating a party state to be a host state for a regional facility.  
38 The commission shall base its decision on the following criteria:

39 (a) the health, safety and welfare of citizens of the party  
40 states as defined by the appropriate regulatory authorities;

41 (b) the environmental, economic, and social effects of a re-  
42 gional facility on the party states;

43 The commission shall also base its decision on the following  
44 criteria:

45 (c) economic benefits and costs;

46 (d) the volumes and types of waste generated within each  
47 party state;

48 (e) the minimization of waste transportation; and

49 (f) the existence of regional facilities within the party states.

50 (2) Following its established criteria and procedures, the com-  
51 mission shall designate by a two-thirds affirmative vote a party  
52 state to serve as a host state. A current host state shall have the  
53 right of first refusal for a succeeding regional facility.

54 (3) The commission shall conduct such hearings and studies, and

55 take such evidence and testimony as is required by its approved  
56 procedures prior to designating a host state. Public hearings shall  
57 be held upon request in each candidate host state prior to final  
58 evaluation and selection.

59 (4) A party state which has been designated as a host state  
60 by the commission and which fails to fulfill its obligations as a host  
61 state may have its privileges under the compact suspended or  
62 membership in the compact revoked by the commission.

63 d. Each host state shall be responsible for the timely identifica-  
64 tion of a site and the timely development and operation of a re-  
65 gional facility. The proposed facility shall meet geologic, environ-  
66 mental and economic criteria which shall not conflict with applicable  
67 federal and host state laws and regulations.

68 (1) To the extent not prohibited by federal law, a host state may  
69 regulate and license any facility within its borders.

70 (2) To the extent not prohibited by federal law, a host state shall  
71 ensure the safe operation, closure, post-closure observation and  
72 maintenance, and institutional control of a facility, including ade-  
73 quate financial assurances by the operator and adequate emer-  
74 gency response procedures. It shall periodically review and report  
75 to the commission on the status of the post-closure and institutional  
76 control funds and the remaining useful life of the facility.

77 (3) A host state shall solicit comments from each party state  
78 and the commission regarding the siting, operation, financial as-  
79 surances, closure, post-closure observation and maintenance, and  
80 institutional control of a regional facility.

81 e. A host state intending to close a regional facility within its  
82 borders shall notify the commission in writing of its intention and  
83 the reasons therefor.

84 (1) Except as otherwise provided, notification shall be given to  
85 the commission at least five years prior to the scheduled date of  
86 closure.

87 (2) A host state may close a regional facility within its borders  
88 in the event of an emergency or if a condition exists which con-  
89 stitutes a substantial threat to public health and safety. A host  
90 state shall notify the commission in writing within three days of  
91 its action and shall, within 30 working days, show justification  
92 for the closing.

93 (3) In the event that a regional facility closes before an addi-  
94 tional or new facility becomes operational, the commission shall  
95 make interim arrangements for the storage or disposal of waste  
96 generated within the region until such time that a new regional  
97 facility is operational.

98 f. Fees and surcharges shall be imposed equitably upon all users  
99 of a regional facility, based upon criteria established by the com-  
100 mission.

101 (1) A host state shall, according to its lawful administrative  
102 procedures, approve fee schedules to be charged to all users of  
103 the regional facility within its borders. Except as provided herein,  
104 the fee schedules shall be established by the operator of a regional  
105 facility, under applicable state regulations, and shall be reason-  
106 able and sufficient to cover all costs related to the development,  
107 operation, closure, post-closure observation and maintenance, in-  
108 stitutional control of the regional facility. The host state shall  
109 determine a schedule for contributions to the post-closure observa-  
110 tion and maintenance, and institutional control funds. The fee  
111 schedules shall not be approved unless the commission has been  
112 given reasonable opportunity to review and make recommendations  
113 on the proposed fee schedules.

114 (2) A host state may, according to its lawful administrative  
115 procedures, impose a state surcharge per unit of waste received  
116 at any regional facility within its borders. The state surcharge  
117 shall be in addition to the fees charged for waste management.  
118 The surcharge shall be sufficient to cover all reasonable costs as-  
119 sociated with administration and regulation of the facility. The  
120 surcharge shall not be established unless the commission has been  
121 provided reasonable opportunity to review and make recommenda-  
122 tions on the proposed state surcharge.

123 (3) The commission shall impose a commission surcharge per  
124 unit of waste received at any regional facility. The total moneys  
125 collected shall be adequate to pay the costs and expenses of the  
126 commission and shall be remitted to the commission on a timely  
127 basis as determined by the commission. The surcharge may be  
128 increased or decreased as the commission deems necessary.

129 (4) Nothing hereing shall be construed to limit the ability of  
130 the host state, or the political subdivision in which the regional  
131 facility is situated, to impose surcharges for purposes including,  
132 but not limited to, host community compensation and host com-  
133 munity development incentives. The surcharges shall be reason-  
134 able and shall not be imposed unless the commission has been  
135 provided reasonable opportunity to review and make recom-  
136 mendations on the proposed surcharge. A surcharge may be re-  
137 covered through the approved fee and surcharge schedules pro-  
138 vided for in this section.

## ARTICLE VI. OTHER LAWS AND REGULATIONS

- 1 a. Nothing in this compact shall be construed to abrogate or  
2 limit the regulatory responsibility or authority of the United States  
3 Nuclear Regulatory Commission or of an Agreement State under  
4 Section 274 of the Atomic Energy Act of 1954, as amended.
- 5 b. The laws or portions of those laws of a party state that are  
6 not inconsistent with this compact remain in full force.
- 7 c. Nothing in this compact shall make unlawful the continued  
8 development and operation of any facility already licensed for  
9 development or operation on the date this compact becomes  
10 effective.
- 11 d. No judicial or administrative proceeding pending on the  
12 effective date of the compact shall be affected by the compact.
- 13 e. Except as provided for in Article III b. (2) and c. (3), this  
14 compact shall not affect the relations between and the respective  
15 internal responsibilities of the government of a party state and  
16 its subdivisions.
- 17 f. The generation, treatment, storage, transportation, or disposal  
18 of waste generated by the atomic energy defense activities of the  
19 federal government as defined in Pub. L. 96-573, or federal research  
20 and development activities are not affected by this compact
- 21 g. To the extent that the rights and powers of any state or  
22 political subdivision to license and regulate any facility within its  
23 borders and to impose taxes, fees, and surcharges on the waste  
24 managed at that regional facility do not operate as an unreasonable  
25 impediment to the transportation, treatment or disposal of waste,  
26 the rights and powers shall not be diminished by this compact.
- 27 h. No party state shall enact any law or regulation or attempt to  
28 enforce any measure which is inconsistent with this compact. These  
29 measures may provide the basis for the commission to suspend or  
30 terminate a party state's membership and privileges under this  
31 compact.
- 32 i. All laws and regulations, or parts thereof of any party state or  
33 subdivision or instrumentality thereof which are inconsistent with  
34 this compact are repealed and declared void. Any legal right,  
35 obligation, violation or penalty arising under these laws or regula-  
36 tions prior to the enactment of this compact, or not in conflict with  
37 it, shall not be affected.
- 38 j. Subject to Article III c. (2), no law or regulation of a party  
39 state or subdivision or instrumentality thereof may be applied so  
40 as to restrict or make more costly or inconvenient access to any  
41 regional facility by the generators of another party state than for  
42 the generators of the state where the facility is situated.

43 k. No law, ordinance, or regulation of any party state or any  
44 subdivision or instrumentality thereof shall prohibit, suspend, or  
45 unreasonably delay, limit or restrict the operation of a siting or  
46 licensing agency in the designation, siting, or licensing of a  
47 regional facility. Any such provision in existence at the time of  
48 ratification of this compact is repealed.

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

1 a. The initially eligible parties to this compact shall be the 11  
2 states of Connecticut, Delaware, Maine, Maryland, Massachusetts,  
3 New Hampshire, New Jersey, New York, Pennsylvania, Rhode  
4 Island, and Vermont. Initial eligibility will expire June 30, 1984.

5 b. Each state eligible to become a party state to this compact  
6 shall be declared a party state upon enactment of this compact into  
7 law by the state, repeal of all statutes or statutory provisions that  
8 pose unreasonable impediments to the capability of the state to  
9 host a regional facility in a timely manner, and upon payment of  
10 the fees required by Article IV j. (1). An eligible state may be-  
11 come a party to this compact by an executive order by the governor  
12 of the state and upon payment of the fees required by Article IV j.  
13 (1). However, any state which becomes a party state by executive  
14 order shall cease to be a party state upon the final adjournment  
15 of the next general or regular session of its legislature, unless this  
16 compact has by then been enacted as a statute by the state and all  
17 statutes and statutory provisions that conflict with the compact  
18 have been repealed.

19 c. The compact shall become effective in a party state upon  
20 enactment by that state. It shall not become initially effective in  
21 the region until enacted into law by three party states and consent  
22 given to it by the Congress.

23 d. The first three states eligible to become party states to this  
24 compact which adopt this compact into law as required in Article  
25 VII b. shall immediately, upon the appointment of their commission  
26 members, constitute themselves as the Northeast Interstate Low-  
27 Level Radioactive Waste Commission. They shall cause legislation  
28 to be introduced in the Congress which grants the consent of the  
29 Congress to this compact, and shall do those things necessary to  
30 organize the commission and implement the provisions of this  
31 compact.

32 (1) The commission shall be the judge of the qualifications of  
33 the party states and of its members and of their compliance with  
34 the conditions and requirements of this compact and of the laws  
35 of the party states relating to the enactment of this compact.

36 (2) All succeeding states eligible to become party states to this  
37 compact shall be declared party states pursuant to the provisions  
38 of section b. of this article.

39 e. Any state not expressly declared eligible to become a party  
40 state to this compact in section a. of this article may petition the  
41 commission to be declared eligible. The commission may establish  
42 such conditions as it deems necessary and appropriate to be met  
43 by a state requesting eligibility as a party state to this compact  
44 pursuant to the provisions of this section, including a public hearing  
45 on the application. Upon satisfactorily meeting such conditions  
46 and upon the affirmative vote of two-thirds of the commission,  
47 including the affirmative vote of the representatives of the host  
48 states in which any affected regional facility is located, the petition-  
49 ing state shall be eligible to become a party state to this compact  
50 and may become a party state in the same manner as those states  
51 declared eligible in section a. of this article.

52 f. No state holding membership in any other regional compact  
53 for the management of low-level radioactive waste may become  
54 a member of this compact.

55 g. Any party state which fails to comply with the provisions of  
56 this compact or to fulfill its obligations hereunder may have its  
57 privileges suspended or, upon a two-thirds vote of the commission,  
58 after full opportunity for hearing and comment, have its member-  
59 ship in the compact revoked. Revocation shall take effect one year  
60 from the date the affected party state receives written notice from  
61 the commission of its action. All legal rights of the affected party  
62 state established under this compact shall cease upon the effective  
63 date of revocation, except that any legal obligations of that party  
64 state arising prior to revocation will not cease until they have  
65 been fulfilled. As soon as practicable after a commission decision  
66 suspending or revoking party state status, the commission shall  
67 provide written notice of the action and a copy of the resolution  
68 to the governors and the presiding officer of each body of the state  
69 legislatures of the party states, and to chairmen of the appropriate  
70 committees of the Congress.

71 h. Any party state may withdraw from this compact by repealing  
72 its authorization legislation, and all legal rights under this compact  
73 of the party state cease upon repeal. However, no withdrawal shall  
74 take effect until five years after the Governor of the withdrawing  
75 state has given notice in writing of the withdrawal to the com-  
76 mission and to the governor of each party state. No withdrawal  
77 shall affect any liability already incurred by or chargeable to a  
78 party state prior to that time.

79 (1) Upon receipt of the notification, the commission shall, as  
80 soon as practicable, provide copies to the governors and the pre-  
81 siding officer of each body of the state legislatures of the party  
82 states, and to the chairmen of the appropriate committees of the  
83 Congress.

84 (2) A regional facility in a withdrawing state shall remain  
85 available to the region for five years after the date the commission  
86 receives written notification of the intent to withdraw or until the  
87 prescheduled date of closure, which ever occurs first.

88 i. This compact may be terminated only by the affirmative action  
89 of the Congress or by the repeal of all laws enacting the compact  
90 in each party state. The Congress may by law withdraw its consent  
91 every five years after the compact takes effect.

92 (1) The consent given to this compact by the Congress shall  
93 extend to any future admittance of new party states under sections  
94 b. and e. of this article.

95 (2) The withdrawal of a party state from this compact under  
96 section h. or the revocation of a state's membership in this compact  
97 under section g. of this article shall not affect the applicability of  
98 the compact to the remaining party states.

#### ARTICLE VIII. PENALTIES

1 a. Each party state, consistent with federal and host state  
2 regulations and laws, shall enforce penalties against any person  
3 not acting as an official of a party state for violation of this compact  
4 in the party state. Each party state acknowledges that the shipment  
5 to a host state of waste packaged or transported in violation of  
6 applicable laws and regulations can result in the imposition of  
7 sanctions by the host state. These sanctions may include, but are  
8 not limited to, suspension or revocation of the violator's right of  
9 access to the facility in the host state.

10 b. Without the express approval of the commission, it shall be  
11 unlawful for any person to dispose of any low-level waste within  
12 the region except at a regional facility; provided, however, that  
13 this restriction shall not apply to waste which is permitted by  
14 applicable federal or state regulations to be discarded without  
15 regard to its radioactivity.

16 c. Unless specifically approved by the commission and affected  
17 host state(s) pursuant to Article IV, it shall be a violation of this  
18 compact for: (1) any person to deposit at a regional facility waste  
19 not generated within the region; (2) any regional facility to accept  
20 waste not generated within the region; and (3) any person to export  
21 from the region waste generated within the region.

22 d. Primary responsibility for enforcing the provisions of the law  
23 will rest with the affected state or states. The commission, upon a  
24 two-thirds vote of its members, may bring action to seek enforce-  
25 ment or appropriate remedies against violators of the provisions  
26 and regulations for this compact as provided for in Article IV.

#### ARTICLE IX. COMPENSATION PROVISIONS

1 a. The responsibility for ensuring compensation and clean-up  
2 during the operational and post-closure periods rests with the host  
3 state, as set forth herein.

4 (1) The host state shall ensure the availability of funds and  
5 procedures for compensation of injured persons, including facility  
6 employees, and property damage, except any possible claims for  
7 diminution of property values, due to the existence and operation  
8 of a regional facility, and for clean-up and restoration of the facility  
9 and surrounding areas.

10 (2) The state may satisfy this obligation by requiring bonds,  
11 insurance, compensation funds, or any other means or combination  
12 of means, imposed either on the facility operator or assumed by  
13 the state itself, or both. Nothing in this article alters the liability  
14 of any person or governmental entity under applicable state and  
15 federal laws.

16 b. The commission shall provide a means of compensation for  
17 persons injured or property damaged during the institutional  
18 control period due to the radioactive and waste management nature  
19 of the regional facility. This responsibility may be met by a special  
20 fund, insurance, or other means.

21 (1) The commission is authorized, at its discretion, to impose a  
22 waste management surcharge, to be collected by the operator or  
23 owner of the regional facility; to establish a separate insurance  
24 entity, formed by but separate from the commission itself, but  
25 under such terms and conditions as it decides, and exempt from  
26 state insurance regulations; to contract with this company or other  
27 entity for coverage; or to take any other measures, or combination  
28 of measures, to implement the goals of this section.

29 (2) The existence of this fund or other means of compensation  
30 shall not imply any liability by the commission, the non-host party  
31 states, or any of their officials and staff, which are exempted from  
32 liability by other provisions of this compact. Claims or suits for  
33 compensation shall be directed against the fund, the insurance  
34 company, or other entity, unless the commission, by regulation,  
35 directs otherwise.

36 c. Notwithstanding any other provisions, the commission fund,

37 insurance, or other means of compensation shall also be available  
38 for third party relief during the operational and post-closure  
39 periods, as the commission may direct, but only to the extent that  
40 no other funds, insurance, tort compensation, or other means are  
41 available from the host state or other entities, under section a. of  
42 this Article or otherwise; provided, that this commission contribu-  
43 tion shall not apply to clean-up or restoration of the regional  
44 facility and its environs during the operational and post-closure  
45 period.

46 d. The liability of the commission's fund, insurance entity, or  
47 any other means of compensation shall be limited to the amount  
48 currently contained therein; provided that the commission may set  
49 some lower limit to ensure the integrity and availability of the  
50 fund or other entity for liability.

#### ARTICLE X. SEVERABILITY AND CONSTRUCTION

1 The provisions of this compact shall be severable, and if any  
2 phrase, clause, sentence or provision of this compact is declared  
3 by a federal court of competent jurisdiction to be contrary to the  
4 Constitution of the United States or the applicability thereof to  
5 any government, agency, person or circumstance is held invalid,  
6 the validity of the remainder of this compact and the applicability  
7 thereof to any other government, agency, person or circumstance  
8 shall not be affected thereby. The provisions of this compact shall  
9 be liberally construed to give effect to the purposes thereof.

1 3. There is appropriated from the General Fund to the North-  
2 east Interstate Low-Level Radioactive Waste Commission created  
3 in Article IV of the Northeast Interstate Low-Level Radioactive  
4 Waste Management Compact, as set forth in section 2 of this act,  
5 the sum of \$70,000.00, to fulfill New Jersey's obligation as a party  
6 state for the initial administrative costs of the commission pur-  
7 suant to Article IV, section j., paragraph (1) of that compact.

1 4. This act shall take effect immediately, but shall remain in-  
2 operative until the Northeast Interstate Low-Level Waste Manage-  
3 ment Compact is enacted and entered into by at least two other  
4 jurisdictions.

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#### STATEMENT

This measure would enact the Northeast Interstate Low-Level Radioactive Waste Management Compact, and enter New Jersey as a party state therein. The compact would be formally established upon the enactment of substantially identical legislation by at least two of the other eligible northeastern states, and the subsequent ratification of this compact by Congress.

The impetus behind this bill was the enactment by the federal government of the "Low-Level Radioactive Waste Policy Act," Pub. L. 96-573 (42 U. S. C. § 2021 b. et seq.) which as of January 1, 1986 makes each state responsible for providing disposal capacity for the low-level radioactive waste generated within its borders, except waste generated as a result of atomic energy defense activities or federal research and development activities.

During the 1950's, low-level radioactive waste, materials that had been contaminated with relatively short-lived radioactive elements or radionuclides produced as a result of the use of radioactive materials in medical diagnosis and treatment, research, industrial processes, and electrical power generation, but not spent fuel, were disposed of at federally-owned and operated sites, or into the oceans. Since the 1960's New Jersey, along with the other states, has been transporting the low-level radioactive waste generated within its borders to one of the commercially owned and operated, federally-licensed disposal sites, only three of which remain operational today. The increasing volumes of low-level radioactive waste being generated, the accident at Three Mile Island, the increasing number of violations of packaging and transportation regulations governing radioactive waste, the temporary closing of the existing facilities in the States of Washington and Nevada, a phased 50% reduction in the volume of waste received at the South Carolina facility, and a State of Washington initiative to ban out-of-state waste have all been factors motivating the establishment of the new federal policy.

While requiring that each state provide for the disposal of all low-level radioactive wastes generated within its borders, the federal "Low-Level Radioactive Waste Policy Act" endorsed the concept of regional solutions to the problem. It encouraged the joint participation of the states of a region to enter compacts to site and operate regional facilities by authorizing compact states to refuse to accept wastes from non-compact states, which they would otherwise be constitutionally barred from doing.

The Northeast Interstate Low-Level Radioactive Waste Management Compact embodied in this bill is designed to provide the legal framework for a cooperative regional approach to meeting state responsibilities under the federal act, and to assure the proper, safe, and efficient management and disposal of these wastes.

MAJOR PROVISIONS

1. The compact requires the party states individually and through the regional commission comprising their representatives, to provide for the timely establishment of a regional facility by one of their number, and the commitment of party states and the commission to a coordinated regional approach to low-level radioactive waste management. It implicitly pledges the good faith of the State to meet its obligations under the compact.

2. The compact establishes the Northeast Interstate Low-Level Radioactive Waste Commission as an advisory and coordinative body to administer the compact. The commission's role is to ensure that the states' collective interests are considered in the siting, development, and management of a regional facility, and that the member states comply with the compact.

3. The compact establishes a process for selecting a state to host a facility, though the siting, development and management of that facility would remain under the jurisdiction of that state, consistent with federal law.

4. The compact sets forth the terms and conditions under which a state joins or withdraws from the compact. Reflecting the contractual nature of the charter, it provides for penalties and sanctions, including revocation of membership for states which fail to meet their agreed upon obligations.

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## I N D E X

	<u>Page</u>
Assemblyman John O. Bennett District 12	1
Senator Daniel J. Dalton District 4	8
George J. Tyler Assistant Commissioner Department of Environmental Protection	9 & 1x
Edward Lloyd Executive Director New Jersey Public Interest Research Group	23
Donald Schutz Chairman Ad Hoc Committee on Low-Level Radioactive Materials of the New Jersey Business and Industry Association	32
Patrick Logue Vice President and Director Government Relations New Jersey Hospital Association	34
Charlotte Callahan Vice President League of Women Voters of New Jersey	36 & 20x
Diane Walker Conservation Chair Sierra Club's New Jersey Chapter	39
William Halsey Legislative Representative New Jersey State Chamber of Commerce	41
Dr. Shepherd Bartnoff Executive Vice President Jersey Central Power and Light Company	43
Maureen Baskis Special Representative, Governmental Affairs for Public Service and Electric and Gas	49

**ASSEMBLYMAN RAYMOND LESNIAK (Chairman):** May I have your attention? This joint hearing of the Senate Energy and Environment Committee and the Assembly Agriculture and Environment Committee is now convened to hear testimony on A-3256, sponsored by Assemblyman Bennett, and S-3217, sponsored by Senator Dalton. We will hear from the sponsor of A-3256, Assemblyman Bennett.

**A S S E M B L Y M A N J O H N O. B E N N E T T:** Good morning. First, I would like to thank Assemblyman Lesniak, Chairman of the Agriculture and Environment Committee, and Senator Dalton, Chairman of the Energy and Environment Committee, for responding promptly to my request to jointly consider, at the earliest possible date, a public hearing and Committee meetings to consider this important legislation. With the legislative calendar crowded for the next few months, a summer break to follow, and elections in the fall, I think we must make maximum use of the time available to allow us to review and enact a measure such as A-3256, which I believe is in our State's best interest. Today we begin that process.

As the Governor's legislative representative on the Policy Working Group that developed this Interstate Compact, many months of negotiating and compromising were spent with similar groups from the other northeastern states, I can guarantee that every effort was made to assure that any regional facility for the disposal of low-level radioactive waste will be sited in a timely manner, in a secure place, and will be, to the extent possible, at a location that will minimize transportation of these radioactive materials. I can also assure that, while the document is not perfect, it reflects all of the major concerns that our group put forward at these discussions. New Jersey has gotten more than a fair shake in the compromises that necessarily had to be made.

The necessity to promptly get down to the matter of agreeing on the ground rules for a cooperative regional effort is compelling. As the members of the Committee are aware, after January 1, 1986, we will have to find some other place, or places, to send our low-level radioactive wastes, and other states in their own compacts are not going to be receptive. Similarly, our participation in a compact will permit us to exclude waste from outside our borders.

The necessity to do it promptly as well as responsibly has both practical and political rationales. If we clearly take the step of approving the Compact, we will not only keep this from becoming a campaign issue -- which it is not -- but we will motivate other eligible states to act decisively rather than forum-shopping to find what they feel will be best suited. We may also increase our influence on the shape of policy made pursuant to the agreement.

The Policy Working Group, of which I was a member, attempted to draft a document that can remain viable throughout the decades; not one that just meets an immediate impact, but one that can work with different state administrations and legal systems.

We consciously chose not to anticipate and resolve every problem which might emerge, and not to specify in detail how much the responsibility must be performed under the Compact.

As a single document which balances the interests of the sovereign states, the Federal government, and the region in low-level waste management, the Compact is designed to be the basic character of interstate and State/Federal relations. It sets forth the principal rights and responsibilities of the parties which become members and provides guidance for future individual and collective decisions of the states.

It is important for us to recognize the fact that the eleven states which make up the Northeast Compact are undergoing the most ambitious undertaking in interstate or regional approaches since nearly 225 years ago, when we set down to work on the Constitution of the United States.

We have had compacts with one state, New York/New Jersey Port Authority, or multi-states with the Delaware Valley Commission. We have never undertaken anything so far-reaching or involved as an eleven-state compact, which is what we are considering today. This Compact is now before the legislatures, or has been taken back for introduction in the legislatures of eleven states, the New England states as well as New York, Pennsylvania, New Jersey, Maryland and Delaware.

The ambitious undertaking to deal with a regional problem, as given the guidelines by the Federal government, is the challenge that has been put before this Committee today. We will review the provisions of the Compact in detail, to see if they afford us all of the required protections and maximize our benefits.

I thank all of those who come here to testify today to help us in this effort. I believe I would be remiss if I did not commend George Tyler, Assistant Commissioner of DEP, and Steve Kuhrtz of the DEP, who have worked with me, as well as Todd Caliguire of the Governor's staff, as we have moved ahead in our eighteen months of negotiations and meetings with the other ten states represented. Jeanette, who is Chairman of the Technical Subcommittee of the Policy Working Group is from New Jersey, and is available today to answer questions that may arise with respect to technical points.

The work that these individuals have done on this Compact is nothing short of spectacular, to show that the impact of New Jersey is indeed upon this Compact, and that while not every effort that we have put forward can say that we met with success, it is clearly one that I believe the State of New Jersey can live with, can function with, and can go a long way to ensuring the residents of the State of New Jersey that we will continue to protect them in the environment and the sanctity of the State's environment. Thank you very much.

At this point, I would like to resume my seat at the Committee table and allow Senator Dalton to make an opening remark.

ASSEMBLYMAN LESNIAK: Can you answer some questions first?

ASSEMBLYMAN BENNETT: I can try. Assistant Commissioner Tyler is available, as well as the technical people, who I think will be able to deal with any technical questions, but, I will be happy to try.

ASSEMBLYMAN LESNIAK: Just a few questions for our public hearing record. What is a low-level radioactive waste?

ASSEMBLYMAN BENNETT: Low-level radioactive waste, as per the definition, I think would be easiest to start with what it is not. It is not the spent nuclear fuel from a nuclear facility.

ASSEMBLYMAN LESNIAK: Where is that waste disposed of?

ASSEMBLYMAN BENNETT: Presently in our State, we are storing it on site with our nuclear facilities. That is a question that we are going to have to address ourselves, too, in the future. But, that is not dealt with, with this particular Compact.

ASSEMBLYMAN LESNIAK: So, everything that is not high-level radioactive waste is low-level, right?

ASSEMBLYMAN BENNETT: Right. Well, it is easier to explain it that way. Jeanette will be able to give you the exact statistics. In New Jersey, approximately 50% of the low-level radioactive waste comes from the cleanups at the nuclear facilities, where there are materials such as cloths and rags. The additional 50% comes from our industry, our research, our medical facilities and institutions in the State, all of which need a place to dispose of it. They are presently shipping it out of the State of New Jersey to one of the three sites remaining in the country that will not have to accept this after January of 1986.

ASSEMBLYMAN LESNIAK: How much of this waste does New Jersey produce?

ASSEMBLYMAN BENNETT: We are the tenth largest generator in the country and the fourth largest generator in the region. Approximately 4,000 cubic meters, on an annual basis, is generated by New Jersey. The Northeast is the largest generator of all the compacts in the country, and approximately 25% of the nation's low-level radioactive waste is generated within the Northeast Compact area.

ASSEMBLYMAN LESNIAK: What happens to New Jersey if we don't join the Compact and we don't pass this legislation?

ASSEMBLYMAN BENNETT: If New Jersey decides that they will not join the Compact, they are then deciding that they will in fact dispose of their low-level radioactive waste within their boundaries. But more importantly, if they decide to go alone, they are also opening the doors to every other state shipping it into their state. The reason for that is, that the interstate commerce protection that is waived by entering into a compact will not be waived, and you cannot exclude any other state or region's low-level waste, unless you are a member of a compact providing for your own.

ASSEMBLYMAN LESNIAK: How is the siting criteria established under the Compact?

ASSEMBLYMAN BENNETT: The Compact itself provides for broad siting criteria, which is to be considered by the Commission under Article V of the compact. The language that has been put in specifically says -- I believe it is page twelve of your legislation. "The Commission must deal with the health, safety and welfare of the citizens of the party states, as defined by the appropriate regulatory authorities; in addition, it has to provide for the environmental, economic, and social effects of a regional facility on the party states..."

It was important to the State of New Jersey that those two criteria should be put upfront. Admittedly, all criteria are to be weighed equally; however, those two we feel so strongly about are separated by an additional "The Commission shall also base its decision on the following criteria:" -- which is after those two criteria -- "provides for economic benefits and costs; the volumes and types of waste generated within each party state; the minimization of waste transportation; and, the existence of regional facilities within the party states."

The analogy that I use is one that I take a map of the region. I remove the state lines. It just happened that one of the papers had an advertisement which dealt with the eleven states in the Compact, calling the nation "the Golden Quarter." These happen to be the eleven states broken down.

In dealing with where the site should be located, the Commission will not deal with state boundaries; they will deal with the region as a whole. It is their determination to then apply the criteria to what will be the safest location to place the site. At that point, the state's boundaries are then superimposed on this map. The state where the location is, that is determined to meet the criteria best, is then responsible on its own and is designated as a host state. It is the responsibility of that individual state to then come forward with a site within its boundaries, which it feels is in the best interest of the citizens of its state. That site is subject

to a two-thirds approval vote by the Commission. So, the Commission will not deal with the specific siting, but they will deal with the designation of a host state, and they will do so by applying the criteria, regardless of state boundaries. Once the host state is determined, it then becomes incumbent on that host state to come forward with the best site within its boundaries.

ASSEMBLYMAN LESNIAK: What is the current state of the art, so to speak, for disposal of low-level radioactive waste?

ASSEMBLYMAN BENNETT: Where are we presently disposing of it?

ASSEMBLYMAN LESNIAK: What type of disposal facility are we talking about?

ASSEMBLYMAN BENNETT: Shallow ground, at this point, are the only licensed facilities that are given by the NRC to date. There is an experimental incineration in Maryland presently ongoing. The Compact itself does not specifically provide for that type of disposal which would be necessary, because hopefully, the Compact will last over hundreds of years, and as the state of science changes, it would be up to that. But, presently, the only licensed facilities are the shallow land.

ASSEMBLYMAN LESNIAK: What is the makeup of the Commission?

ASSEMBLYMAN BENNETT: The Commission is one member from each of the eleven states, with the host state being designated, being permitted to have two votes after the state is designated as a host state.

ASSEMBLYMAN LESNIAK: Are they appointed by the Governors?

ASSEMBLYMAN BENNETT: The Commission members will be appointed by the respective Governors in their individual states. The Commission members will serve without any remuneration, proposed budget.

ASSEMBLYMAN LESNIAK: Assemblyman, does the Commission have an eminent domain?

ASSEMBLYMAN BENNETT: The right to condemnation? No. Remember, the Commission itself will not be designating a specific site. The Commission will only be designating the host state. The sites will be the responsibility of the host state to determine. And

quite frankly, in New Jersey, it will require additional legislation to go through, to implement how we would go about our fighting, if New Jersey would be designated as the host state. That decision is not to be made today. It would have to be made in the future.

ASSEMBLYMAN LESNIAK: Hopefully it will not have to be made.

ASSEMBLYMAN BENNETT: Hopefully not. Although, I believe it would be encumbent on all states that they should-- Some of the states, Maryland, for instance, already have a siting commission in place. We have our S-1300 with respect to hazardous waste, but, it specifically excludes low-level radioactive waste in the S-1300 document. So hopefully we will not need to implement it. Perhaps the time would be before our host state is designated so that every state would be in a position to deal with the situation, if they were so designated as the host state.

ASSEMBLYMAN LESNIAK: Just one last question. Has any state precluded siting of a low-level radioactive disposal facility within its boundaries?

ASSEMBLYMAN BENNETT: By referendum, in last November's ballot, "Question 3" on the Massachusetts ballot was approved by the voters of Massachusetts, which would preclude any low-level waste disposal site being located within the confines of the Commonwealth. There was much discussion following that vote amongst the Policy Working Group, as to whether or not Massachusetts should immediately be expelled from any further consideration in the Compact.

That question was taken from the Policy Working Group, where we decided to send that to the eleven Governors as to how they felt they should best deal with that situation. It was determined that the State of Massachusetts would be given some time to work towards a resolution of the problems that "Question 3" posed to them.

If "Question 3" remains law in Massachusetts, and if Massachusetts specifically would not be available to have a low-level waste disposal site, due to statutory authority on their own books, they could not, in fact, become a member of this Compact; therefore, by their own actions, would have accepted the fact that they will have a site within their own confines that will not be able to exclude anyone

else's. It is almost a catch-22 situation that they got themselves into. Quite frankly, I feel that the question was one that was tremendously misunderstood by the voters and was combined on the ballot with a specific nuclear question. Perhaps they did more of a disservice to themselves in the state than they realized.

ASSEMBLYMAN LESNIAK: Thank you.

SENATOR DALTON: Are there any questions, Senators?

SENATOR RUSSO: I just want to compliment Assemblyman Bennett for being thoroughly prepared and for thoroughly understanding the problem, which is a complicated problem.

**SENATOR DANIEL J. DALTON:** I would like to make a very brief statement. I am glad to be here today. I am pleased that the two Committees, to which this important Compact has been referred, are meeting jointly to receive public comment on it and consider it. This will, no doubt, make the sometimes cumbersome legislative process, with which I am all too familiar with, a bit more expeditious, and make it more convenient for those who want to be heard on the relevant issues.

My presence here today, and especially my sponsorship of the Compact bill in the Senate, testifies not only to my conviction that we must take timely and responsible action in the area of siting low-level radioactive waste facilities, and to my conceptual approval of this Compact as a means to doing that, but also to my belief that this issue is genuinely non-partisan, and transcends politics. New Jersey is not only a major nuclear state, it is also a center for industrial and medical research, and host to probably more major pharmaceutical companies than any other state in the nation. These industries require, as part of their infrastructure, if you will, reasonably available sites to which to send their low-level waste products at reasonable prices. Just how important it is to the broad-based industrial sector of New Jersey is evident from the list of those who wish to testify today. I am glad, too, to see on the witness list environmentalists and representatives of other public interest groups who will no doubt help to assure that any plan we adopt has sufficient environmental safeguards.

I also want to take this opportunity to commend Assemblyman Bennett for the amount of time that he has spent -- I understand it has been a year and a half -- in a very conscientious and substantive way that he has attempted to address this issue. If there are any plaudits that should come out of this process, they belong to Assemblyman Bennett for his hard work.

ASSEMBLYMAN BENNETT: Thank you, Senator.

ASSEMBLYMAN LESNIAK: George Tyler, Assistant Commissioner of the Department of Environmental Protection.

G E O R G E J. T Y L E R: Good morning, Messrs. Chairmen and members of the Joint Committee. I would also like to add my thanks and appreciation to Assemblyman Bennett for his hard work, and also to echo his compliments for Director Kuhrtz and his staff in the Division of Environmental Quality. They did an extensive and very difficult job in bringing this Compact together to present to you this morning. I am also very pleased to see so many members of the Committee today. I think that is mute testimony to the importance and the significance of this Compact. I would like to thank you all for that, also.

You are here this morning to consider two pieces of legislation, A-3256 and S-3217, which authorize New Jersey to enter into an interstate compact for the disposal of low-level radioactive waste. This legislation is the culmination of one and one half years of meetings and negotiations between eleven northeastern states. I urge your favorable consideration of this legislation and recommend that New Jersey take advantage of this opportunity to cooperate with other states to solve a regional problem.

The safe and environmentally sound handling of radioactive waste is a moral imperative, an obligation government cannot afford to take lightly. Moreover, low-level radioactive waste is generated by a variety of processes that are important to the State's economy, including the pharmaceutical industry, manufacturing, medical and research activities, and electrical power generation. New Jersey has a high concentration of these industries, making the State a large generator of low-level radioactive waste. Among the northeastern states, New Jersey ranks as the fifth largest generator. It is among the top ten

producers of low-level waste in the nation. This Compact, if enacted, will enhance our efforts to ensure proper management of these wastes.

I would like to apologize in advance for being a little lengthy this morning. Obviously, I will not read the entire testimony. I will try to summarize it. But, I will go through some portions of it in detail to emphasize some of the important points.

Low-level radioactive wastes are industrial, medical, and research wastes that have been contaminated with a radioactive substance. These wastes typically contain only small amounts of radioactive elements. Wastes with higher concentrations of these elements are classified as transuranic or high-level wastes. The term "low-level radioactive waste" does not include spent fuel assemblies from nuclear power plants classified as high-level wastes or wastes from the mining and milling of uranium ore.

Like many other states, we are faced with increasing volumes of this type of waste. As I said, we have a particularly high concentration of industries that produce these wastes, including some of the largest pharmaceutical companies in the world; numerous facilities for diagnostic and therapeutic medical procedures; two nuclear power generating stations with three to four reactors; high-tech research and development companies and several sophisticated university research laboratories.

Our population density and our limited geologic suitability for land disposal make it especially important that we participate in a regional forum, where all variables can be considered in selecting the most environmentally sound disposal site.

Between 1962 and 1971, six shallow land burial sites for disposal of low-level radioactive waste were opened throughout the country by private firms, with the consent and encouragement of the host states. Under agreements with the Atomic Energy Commission and later with the Nuclear Regulatory Commission, state authorities regulated all but one of these facilities. The resulting system of regional low-level waste disposal sites served everyone's needs for several years.

However, in 1978, three of these sites had closed because of operational difficulties or exhaustion of available space. The remaining host states -- South Carolina, Nevada, and Washington -- were required to handle the full volume of commercial waste plus some waste generated by the Federal government. New Jersey now ships all of its waste to those three sites. The facility in South Carolina, the single site east of the Rockies, received 80% of the nation's low-level radioactive waste last year.

Obviously, those host states objected to that situation and brought the issue before Congress. And, in late 1980, Congress responded by passing the Low-Level Radioactive Waste Policy Act. This act basically makes each state responsible for handling commercial low-level radioactive waste generated within its borders; it also finds that regional sites are safe and cost-effective; it permits states to enter into compacts to establish and operate such regional sites; it provides that Congress must ratify those compacts, and then review them on five-year intervals; and, it also permits after January 1, 1986, those current regional disposal facilities to exclude wastes from non-compact states.

Therefore, since that law passed in 1980, nearly all the states in this country have been active in developing regional compacts for the management of radioactive waste. Regional compacts will hopefully eliminate the problem of one or two states having to host all of the waste from the nation. And, given the authority to exclude waste from non-compact states adds a sense of urgency to the deliberations that we have been engaged in for the past year and a half.

Finally, I think New Jersey would agree, that regional facilities have the benefit of drastically reducing both the costs and more importantly, the risks inherent in the present system of waste disposal. If nothing else, the regional facilities will end the unsound practice of transporting wastes from one end of the country to the other.

I would like to talk a little bit about the proposed Compact, although Assemblyman Bennett handled most of the key provisions in his response to the questions.

This proposed Compact that is before you today is intended to be a document that can remain viable for many years, and can be effective in eleven diverse state administrative and legal systems. The Policy Working Group formed by the Governors Association, deliberated and drafted this Compact, deliberately elected not to attempt to anticipate every problem which might emerge, nor to specify in great detail how each responsibility must be performed under the Compact. As a document which balances the interests of eleven sovereign states, the Federal government and the region in low-level waste management, this proposed Compact is designed as a basic charter of interstate and federal relations. It sets forth the principal rights and responsibilities of the states and provides guidance for future individual and collective decisions by the states.

The Compact is four basic provisions.

First, it establishes a Northeast Interstate Low-Level Radioactive Waste Commission; secondly, it sets forth the major roles and responsibilities of that Commission, in selecting the host state; third, it establishes a process for selecting the host state; and finally, it sets forth the terms and conditions under which a state can join or withdraw from the Compact.

Naturally, the most controversial sections of the proposed Compact revolved around the host state selection process. As Assemblyman Bennett noted, the criteria which provide broad parameters included: the health, safety and welfare of the citizens of the party states; the environmental, economic, and social effects of a regional facility; and in addition, the economic costs and benefits; the volumes of waste generated within each party state; the minimization of waste transportation; and, the existence of regional facilities within the party states.

As Assemblyman Bennett noted, New Jersey's representatives insisted upon highlighting the first two criteria, health, safety and welfare of the citizens and the environmental and social effects, above the other four, economic costs and benefits, volumes of waste generated, and the like.

The Regional Commission, which the Compact will establish, if passed, will operate as an administrative agency for the preliminary phase of low-level radioactive waste management in the region, and to ensure that the states' collective interests are considered in siting, developing, and managing a regional facility. Each state, as you heard, will have one member, with one vote, except for the host state, which will have two members and two votes.

One of the most important checks on any agency's power is adequate public participation. This has been a frequent suggestion by those members of the public who have attended Policy Working Group meetings and was voiced as a concern by New Jersey public interest groups as well.

The Compact requires open meetings of the Commission, public notice and public comment on the Commission procedures. It provides for public hearings on host state selection. It does not, however, spell out detailed procedures for this public participation, and this has been a criticism and possibly it might be construed as failure of the Compact.

We attempted to respond to this issue by more specifically outlining the public participating process in the "Report to the States," which serves as an Intent Document or a legislative history of the deliberations. That document will also be provided to you this morning.

I would like to point out several passages of the Intent Document which elaborate on the framework provided by the Compact.

The Intent Document indicates that the Commission must adopt, after public notice and opportunity for comment, operating rules and regulations. I think it is fair to state that in our discussions, we envisioned the Commission adopting a public participation procedure as one of those operating rules or regulations.

This Commission is not subject to the Federal Administrative Procedures Act, however, it is expected to adhere to the basic principles of the Administrative Procedures Act and the model administrative codes which address the publication of by-laws and organization, public review and participation in final orders, decisions, and the like.

In addition, the Intent Document discusses the 90-day limit that the Compact imposes for judicial review on Commission's decisions, especially the delegation of a host state. That has been criticized as insufficient and limiting. It was the intent of the Policy Working Group to expedite the judicial review process, and not in any way to preclude court consideration. I think that stating this as part of the legislative intent, especially given any constitutional problems that could arise from attempting to abridge court review of administrative agency decisions, this is a sufficient safeguard to hold that the 90-day review clause is exactly what it is intended to be, an attempt to expedite the process without abridgment of any right or responsibilities.

To join the Northeast Compact, New Jersey must pass the compact legislation, which you are considering today. We must also contribute a \$70,000 membership fee and assure that no existing state law would pose an unreasonable impediment to the State's capability to host a regional facility. If any exists, they will be repealed by the passage of this Compact.

The Attorney General's office is now reviewing the Compact to assure it is not inconsistent with other state laws. As you have heard, this provision was largely intended to deal with laws such as Massachusetts' "Question 3," which prohibits disposal of low-level radioactive waste without a referendum or outright bans on waste disposal.

Again as the report to the states notes, the host state is responsible for and empowered to regulate and license any facility sited pursuant to this Compact. We believe that the full range of environmental and public health protection laws we are fortunate to have enacted in New Jersey will be fully effective should New Jersey ever become a host state. We are awaiting the Attorney General's advice in this regard, but let me state that the proper site selection and environmental safeguards that those laws would compel are not only "not inconsistent" with this proposed Compact, but those goals were in fact specifically highlighted in the Compact and were frequently emphasized in the interstate negotiations.

We will next be looking at the need for any additional legislation to enhance New Jersey's ability to meet its obligations under the Compact. Of most significant concern is the possible need for siting authority which will spell out a process and provide for adequate public participation. Such legislation may be necessary to demonstrate New Jersey's ability to site a facility, even if we are not selected as the host state. In fact, it may be advisable to consider using the existing and excellent process already in place under the Hazardous Waste Facility Siting Act, S-1300, as the method of choice for dealing with low-level radioactive waste.

Once the Compact is approved by three states, those states are empowered to present it to Congress for ratification. It is important to continue the momentum that has begun to demonstrate to Congress and other regions our good faith in developing a regional facility. This is particularly important since those regions will be allowed to exclude waste from other regions after 1986. Although it is virtually impossible for the northeast to have an operating site by 1986, it is expected that cooperative arrangements can be made with other regions if we continue to demonstrate reasonable progress.

Finally, I urge that you consider this Compact as the end result of a dynamic process and much compromise among the eleven-state participants. As you evaluate the bills, please consider that this same language is being presented to eleven legislative bodies -- any amendments must be agreed to by all states. Nevertheless, if the testimony today or other relevant factors cause you to believe that technical amendments or other changes are necessary, we would be happy to convey those thoughts to the other northeastern states and seek their concurrence. Testimony you will hear concerning public participation safeguards for due process and site operator liability may prompt such action. If that is the case, however, it would be helpful if we fashioned a method to deal with such changes while the legislative process in New Jersey moves forward. In this way, we will be exhibiting our good faith to Congress and to the other northeastern states while addressing our citizens' concerns.

Again, I would like to thank you for your patience and attention, and apologize for the length of my remarks. I would be happy to respond to any questions you might have. I also understand that a session will be scheduled later in the day, so, my staff and I will be available at that time. Thank you very much.

SENATOR HURLEY: Director, your testimony on this Compact legislation presumes, then, that environmentally, or any other way, there are sites in regions in all eleven states.

MR. TYLER: Generally, that presumption was first enacted in the Low-Level Radioactive Waste Act by Congress. It presumes that there are available technical methods of dealing with low-level radioactive waste. I believe that is the case, and that there can be sites located for some methods in virtually any state in the nation and for other methods in a broad spectrum of states. Yes, I think you can find the site to deal with it.

SENATOR HURLEY: That is all I have.

SENATOR DALTON: George, can you just run through the time frame of the adoption of this Compact?

MR. TYLER: The end date set by Congress is January 1, 1986. That is the date by which Congress expects to ratify regional compacts, and permits in that Low-Level Radioactive Waste Act that those compacts can contain prohibitions on waste from non-compact states. What that translates into is, if the southeastern region or the northwestern region, which both have sites, have a compact ratified by Congress by January of 1986, then those regions can exclude all the waste from the northeast and from the rest of the nation as of that date.

New Jersey was represented before Congress in hearings held in early March. It seemed to be the clear intent of the Senate Judiciary Committee, which was holding those hearings, that the 1986 date be met. Being practical, and as our testimony stated, it can't be. The Compact process itself, the establishment of a commission, and then a site selection will probably take the better part of three years. So, it will be difficult, if not impossible, for us to meet that 1986 date. You have to add to that, after the site selection, the Nuclear Regulatory Commission and host state licensing processes, which would probably take an additional year.

SENATOR DALTON: George, I guess what I am trying to do is get a sense of when this Legislature must act. You seem to be indicating that it is as soon as possible.

MR. TYLER: There is a sense of urgency that we exhibit in the northeast, a sense of good faith to Congress. So -- as the Judiciary Committee basically stated -- if there is a forward movement, they will have no trouble working with host states and now exporting states from the northeast to make sure there are adequate waste disposal facilities. But, if there is no movement at all amongst the northeastern states, in other words, if none of their legislatures act, if there is no compact, if there is no siting process underway, then the Congress will be commensurately less sympathetic to our needs to dispose of waste, and might sanction a regional compact in the southeast or the northwest that shuts out, if you will, low-level radioactive waste from the rest of the nation. That was the message. I think it was a balanced message, and that is what I am trying to convey to you today. It said, "Move ahead and we will work with you; but don't do nothing and expect us to bail you out."

MR. KUHZRTZ: Senator, I would like to add another response to that question. There is in the Compact itself a deadline established, June, 1984, for those eleven states that are involved in the process, to maintain their initial eligibility. What that means is, if these states pass the legislation by June of 1984, they are essentially automatically considered members of the Compact. The reason that deadline was put in there was to keep states who are reluctant to get involved in this process from sitting back and waiting for the rest of the region to move forward and form a compact and start the host state site selection process, and then jump in at the last minute and not have to be partied to those activities. So, the Compact itself establishes a June, 1984 deadline.

SENATOR DALTON: What are the activities of the other ten states within this region? Are they moving forward? Have they had public hearings on the proposed legislation?

MR. TYLER: I can report to you on four states. The State of Maryland has passed the legislation as is before you in both houses. I

believe one house, the Assembly, in the State of Vermont passed this bill. What were the other two, Steve?

MR. KUERTZ: Connecticut and Rhode Island.

MR. TYLER: Connecticut and Rhode Island are both considering the bill at this time. It has been introduced in those states. I don't know if it has passed.

SENATOR DALTON: So, Maryland has gone through at least the legislative process--

MR. TYLER: Yes. It is on the Governor's desk in Maryland.

SENATOR DALTON: It is on the Governor's desk. Okay.

ASSEMBLYMAN LESNIAK: So, if we were to amend this bill, Maryland would have to amend their law, too.

MR. TYLER: Yes, they would.

ASSEMBLYMAN LESNIAK: Are there any administrative costs to the State of New Jersey with this bill?

MR. TYLER: Yes. The bill provides for \$70,000 for our "membership fee" and the Regional Commission. That would provide initial operating funds for the Commission until such time as the Compact process is moved forward. Once a compact is formally established, we would be seeking, I think, appropriations for the next two, three, or four years, whatever it takes, to have a facility sited and operating. It is then anticipated that those funds would be one, payed back to the states out of the disposal fees; and, two, the Commission would then operate with some sort of a surcharge on disposal fees.

ASSEMBLYMAN LESNIAK: Are there any economical benefits to the whole State in the bill itself, as we did with hazardous waste siting?

MR. TYLER: Steve, why don't you address that?

MR. KUERTZ: Yes. The Compact does include in the provisions for the host state to establish surcharges which was intended to provide for compensation to the local communities, to help them with improving various parts of their infrastructure, or whatever their social and economic costs may be imposed on the host community. Also, the surcharges -- I believe George may have answered this -- in the fee

are intended to cover the full regulatory costs of the state agencies that will be involved themselves.

ASSEMBLYMAN LESNIAK: The surcharges would only be able to go for specific purposes. Is that correct?

MR. KUHZTZ: That is correct. They would have to be identified and approved by the Commission. However, there are no specific purposes spelled out in the Compact. It is just a general provision that allows the host state to include that.

ASSEMBLYMAN LESNIAK: Okay. But, the Commission would have to approve it. In other words, a state could not impose a tax on a disposal facility. Is that correct? Would they be precluded from imposing its own surcharge or its own tax?

MR. KUHZTZ: The state would not be precluded from imposing its own surcharge on the generators within its own orders.

ASSEMBLYMAN LESNIAK: The facility itself. The disposal facility itself. Would the Commission have to approve any act of the state?

MR. KUHZTZ: The Commission has a fairly general oversight role. They are not required to actually approve the fee structure that is laid out by the host state. They are required to have opportunity to comment and review that fee structure. The only way the Commission could actually overturn the host state's fee structure, is to make a finding that the host state is not operating in good faith and setting up undue obstacles and barriers to the facility.

ASSEMBLYMAN LESNIAK: Okay. Are there any questions?

ASSEMBLYMAN SMITH: Mr. Chairman, if I may, I have a question. Commissioner Tyler, you mentioned the siting act that is in place now as a possibility for a vehicle, if we were to site here in New Jersey. Is there any reason why you can see that is not a possibility by including in their direction the low-level waste issue also? In other words, we can amend that legislation to include it rather than exclude it, as it does now.

MR. TYLER: That would be my "almost off the cuff" recommendation. I think that process, which is still evolving, has been an excellent one thus far. It would seem to me that it would be

redundant to have another siting authority and another siting commission.

ASSEMBLYMAN SMITH: That was my point. I feel that they do have a responsibility, a direction, and a mandate, and they should be included in this rather than creating another body, which would be another expense to us, here in New Jersey.

The second area that I would like you to address, if you would, is the area of existing laws which might be existing in New Jersey. Has the Attorney General reviewed that, and where is he with that so we can put together an omnibus bill to take those kinds of things out of the arena in this particular issue?

MR. TYLER: It is under review now. Frankly, I would be surprised if there is anything that specifically needs to be repealed. I might be wrong, but it is our prelegal judgment that the environmental, public health and safety laws that we have in the State are not aboard anything; they merely provide conditions and caveats under which certain kinds of operations must go forward. In fact, that is exactly the kind of safeguard that the Compact envisions and encourages. So, they wouldn't be inconsistent. There might be some trivial statute that we are not sure of, but I don't think so.

ASSEMBLYMAN SMITH: The other thing that was brought to my mind is, I assume, because this has moved ahead in the various states involved, that there is nothing in our particular Constitution that would prohibit us from entering into a compact of this type.

MR. TYLER: That is one of the things we asked the Attorney General to look at, the constitutionality of this thing. New Jersey is a member of various other compacts. Generically, I know it can be done. The question would be, if there is something specific in this legislation that is law. As far as I know, there isn't.

ASSEMBLYMAN SMITH: Because that would be a major stumbling block to get a constitutional referendum on the ballot. It would be timely and so forth to make that happen also. I think we are going in the right direction. The more streamlined we can make it to use the things that are in place, I am all in favor of that. I think the siting commission would be one. Hopefully we won't have a site in New

Jersey, but if it should come to pass, I think that is where it should be.

ASSEMBLYMAN LESNIAK: Vice Chairman Marsella?

ASSEMBLYMAN MARSELLA: Yes. What is the criteria of becoming a host state? Who actually chooses the host state, the Commission or the Federal government?

MR. TYLER: The Commission must review the criteria set forth in the Compact, develop it in more detailed form -- much as a state legislature adopts a general provision and then a regulatory agency flushes that out with specifics -- and then the commission would have to apply it to the eleven states in the region.

The criteria area: First, the health, safety, and welfare of the citizens of the host state, as defined by the appropriate regulatory authorities -- that includes both Federal and the host state regulatory authorities; the environmental, economic, and social effects of a regional facility on the state; and, the Commission must, in addition, base its decision on the economic benefits and costs, the volumes and types of waste generated within each state, the minimization of waste transportation; and the preexistence of regional facilities. So, it has those six statutory criteria to flush out with regulatory criteria, and then apply in the host states selection process.

The host state would then engage in its own siting process, select an individual site, and then license that site pursuant to both Federal Nuclear Regulatory Commission requirements and its independent or conjunctive state requirements.

SENATOR DALTON: Senator LaRocca?

SENATOR LaROCCA: Am I correct in saying that we are sort of bound and stuck by the proposition that, "All eleven states must adopt this compact, and the act itself have no amendments whatsoever?" And, if there are amendments, it has to go through the legislative process of getting an amendment, and then the amendments have to be approved by all the other eleven states?

MR. TYLER: You are correct. All eleven states must approve any amendments. But, that does not mean that you are bound by the

specific language before you. As I said, we were willing to take any technical or substantive amendments that the committees would like back to the northeastern states for consideration. I urged your consideration of the cumbersome process, but nevertheless, certainly if there are important changes, we will go back and make them. It is possible that other states may have changes.

SENATOR LaROCCA: Have you received any feelings as to the other states, whether they have any proposed amendments?

MR. TYLER: At this point, that is a question I asked as recently as Friday. There are none, but we will continue as this bill moves through the legislative process to ask that question and keep you advised.

SENATOR LaROCCA: The reason I asked that question is, that is a very cumbersome process with the deadline date of June, 1984. Getting eleven states to agree is really a great stumbling block, procedurally. The only example that I can give is the Port Authority bill, with New York on the waterfront. I worked hard with colleagues in the Senate and the Assembly to make sure that there were no amendments to the New York bill, because we wanted to get the project off the ground. We solved the amendment process in the form of collateral agreements in the Governor's Executive Order, and so forth. But, when I appeared in New York, in trying to get the New York Legislature to consider the same point, "Look, we did it. Let's hurry up. Things are at stake. We have deadlines." I appeared before the Assembly Subcommittee on this problem four months ago. They are getting nowhere. I have been advised that it will take another month before they will get to it. They have their own other problems. I tell them, "Look, if you amend it, then it has to come back to the New Jersey Legislature, in both houses." Then they ask me the \$64.00 question, "Would you be able to have that persuasive influence to get them to act fast in either house?" I told them, "Of course, I couldn't guarantee that, but I would do my best." I am just thinking of getting eleven states to do that before June, 1984. June, 1984 is a problem. I would like you to bring back the message to them, that if it is a good bill -- there are problems with every bill -- maybe pass it

without any amendments to at least to get the ball rolling. There are other methods where you can accomplish it. Thank you.

MR. TYLER: Thank you, Senator.

SENATOR DALTON: Thank you, Commissioner Tyler.

MR. TYLER: One final point, Assemblyman. The Commission on Radiation Protection, which is an agency in but not of -- or something like that -- a department, asked that I offer their testimony this morning. I have a letter from Chairman Weiss to the Commissioner transmitting that testimony. I would like to submit that for the record.

ASSEMBLYMAN LESNIAK: Thank you. I now call Ed Lloyd from PIRG to testify.

EDWARD LLOYD: Thank you, Mr. Chairman. I would like to thank both Committees for expeditiously holding this joint hearing.

My name is Ed Lloyd. I am Executive Director of the New Jersey Public Interest Research Group. I have also served for about the last year as an environmental representative on the Advisory Committee to the Department. I would like to add my congratulations and thanks to the representatives from New Jersey who serve on the Policy Working Group. I know they have worked long and hard to bring this Compact to the point that it is today, and I know that many of their recommendations have been accepted in the compromises made by the Policy Working Group.

I am relieved that regional cooperation on the issue of low-level radioactive waste is an appropriate and a laudible way to deal with this problem. We do have specific concerns with this legislation, which I would like to present to you.

I would like to go through the list and recommend that this Committee and this Legislature indicate to the Policy Working Group some of these concerns. I think there is an attempt in the Intent Document to clarify a lot of these concerns, but as I will discuss a little bit later, I am afraid that the Intent Document -- I reviewed it thoroughly over the weekend -- seems to raise more questions than answers. That is a concern, as to what the impact and role and the authority of the Intent Document would be, vis-a-vis the legislation.

Let me move to some specific concerns. The 90-day limit on a court's ability to rule on a complaint brought to the court, challenging the decision of the Commission is a major concern that we have. Frankly, I believe that clause in the Compact is unconstitutional. What the clause says is, if the court does not rule in 90 days, the Commission's decision is affirmed. I don't believe that if an aggrieved party comes to the court with a complaint, a legitimate complaint, that that party's rights can be waived simply by the failure of the court to act. I understand and agree with the interest of the Policy Working Group in assuring expedited consideration of any appeal, and I think that should remain in the Compact. But, I believe that the 90-day rule goes too far. I think we should also be aware that Congress may not accept that provision as putting an unconstitutional barrier upon the courts.

The second area of concern is the article in the Compact which basically calls for the repeal of inconsistent State laws. I think it is appropriate that the Attorney General give these Committees a detailed and formal report as to what, if any, laws in this State would automatically be repealed by the passage of this legislation. It is also important to note that in passing legislation, the Legislature is deeming the legislation consistent with our State Constitution. I believe we should also ask the Attorney General for an opinion. I understand that those opinions have been asked for. I would hope that we would have a formal response from the Attorney General before the Committee is prepared to act.

Unfortunately, there are no criteria in the Compact for determining consistency with its policy, and that criteria is developed by the Commission, so there really is no way to thoroughly judge exactly what the impact of repeal and what the impact of consistency will be until the Commission adopts such criteria. There is, of course, the general statutory language in the Compact that says that all provisions will be liberally construed, so that conceivably, a law that may not be consistent can be found inconsistent, and we may not, in passing this Compact, be aware of that at this point.

Another area of concern that has been presented to the Policy Working Group, although I don't think it is adequately dealt with in the Compact, is that of public participation. In the Compact itself, there is no requirement that the host state have a hearing on the siting of this facility. We think that would be fundamental to the Compact. The Compact and states entering into it should, at a minimum, require that there be a public hearing on the siting of a facility.

Furthermore, there is no guarantee in the Compact of the procedures that will be carried out under the Compact for any of the roles that the Commission must undertake. We would suggest that the APA, the Federal Administrative Procedure Act, be specifically and explicitly included in the Compact and government procedures of the Commission. The procedures under the APA have been long established. We have decades of experience of what the rights and responsibilities of various parties are under those rules. We think they should be included in this Compact.

As it is now, the Commission is free to set up its own rules. There are simply no guarantees as to the public participation and the processes that will be used by the Commission. We think a very simple way to remedy that problem is to include the APA, which we have experience with and we know what it means, in terms of administrative process.

We applaud New Jersey's role and the Policy Working Group as a whole, for designating explicit criteria for the selection of a host state, and we are happy that the environmental criteria ranks high in those criteria. Unfortunately, we were not able to get any higher ranking for that criteria than any others.

I would point out, though, in the Compact, if a state were a volunteer to host a site, that state would not necessarily have to comply with those criteria. The criteria only applies to the designation of a host state by the Commission. We would recommend that there be an explicit requirement, that if a state comes forward to volunteer, that that state be required to observe the same criteria as the Commission would have observed in designating that state.

Furthermore, there are no specific criteria requiring that the best available technology be used for waste disposal. We think that this ought to be included in the Compact, that any effort on the part of the northeast should use the best available technology to control radioactive waste.

One of the major goals of handling this problem, regionally, is that we will create a Regional Management Plan to deal with the question of radioactive waste. Unfortunately, though, in that Plan, there is no requirement or incentive to give the states an ability or an incentive to reduce the volume or reduce the source of radioactive waste. We think this could be an important part of the Plan. It could reduce the need for facilities in the future and could reduce the size of a facility needed now.

Finally, the Management Plan may well be and is indeed a major Federal action, which may require an Environmental Impact Statement under the National Environmental Policy Act. We think that this should be made explicit in the bill. That is, as the Regional Management Plan is developed, the Environmental Impact Statement should be developed to go along with it. This would assure that alternative methods of disposal are studied in the development of the Management Plan, which is another thing that we have recommended.

With respect to the question of liability for accidents occurring, both at the site and in the development of the site, we believe that the process established by this Legislature in the hazardous waste siting area, S-1300, should be followed here. That is, where there is a provision in S-1300, strict liability will be applied to the operations of those facilities. We believe that in this Compact, the State should agree that strict liability should also be applied to these facilities. Any damage that could occur from the operation of this facility should be third parties, who may be injured by such damage should be protected thoroughly by this legislation.

The legislation talks in detail about establishing an insurance fund for any liability that could occur. We applaud that recommendation, but, there is no criteria in the Compact for assuring that those funds will be adequate. We would like to make the

Commission have some authority to make sure that the host state has adequate insurance funds.

The Intent Document, at least the draft, is an 80-page document that attempted to clarify a lot of the questions raised by the bill. As I pointed out earlier, though, I think it raises more questions than answers. There is a real question in my mind as to what the legal impact of that Intent Document is. One way to clarify the legal impact is specifically reference the Intent Document in the legislation. But, before that can be done, I think those ambiguities have to be solved. I would like to just point out a few of them, and we would be happy to work with the Committee and staff on other ambiguities that I have discovered.

One that was very apparent in reading through the document was, when the host state is designated, the host state is to get a second vote on the Commission. In the Intent Document, however, it says that if there is a split vote in the host state, that vote is to be an affirmative vote. I can't tell you what that means, whether that means that that host state still only has one vote and it is split among two people, or what the impact of that is.

I believe the intent of the Working Group was that the state has two votes and those votes could be split. But, the Intent Document clouds that area.

The Intent Document says that the Commission meetings will be open, and that public comment will be allowed at Commission meetings where appropriate. That "where appropriate" does not appear in the legislation itself.

There is a comment on the fees to be adopted by the host state on page 30 of the Intent Document that says that the Commission will establish non-binding criteria for fees to be adhered to by the state. Now, how you have non-binding criteria that are going to be adhered to, I don't know.

The Intent Document also says that the consistency regulations adopted by the Commission are to be advisory, but, in fact, they will be the standards on which state participation in the Compact is judged. So, they certainly will carry great weight.

Also, one of the remedies to a state that is not cooperating with the Compact is a suspension of its rights with regard to the facility, which is unclear from the language of either the Compact or the Intent Document as to whether you need a majority or two-thirds vote of the Commission to suspend a state. It is very clear that you need a two-thirds vote to revoke a state's membership.

It is also a concern that one of the remedies available to the Commission, at least listed in the Intent Document, is, that it may regulate the state's right to vote on the Commission. Conceivably, at least under the Intent Document, a state's right to vote can be taken away without its being suspended and without its being revoked.

These are some of the questions that have been raised in our minds in reviewing the document. We think the document is a good start. As I said, we want to support a regional approach to this. We think it does need work and it does need clarification. I would think that these kinds of questions are going to be raised in other legislatures as well. I don't underestimate the concern that getting eleven legislatures to agree to one document is going to be a difficult task. I think it is a task that we can do. I would hope that this Committee or these Committees could expeditiously as possible make recommendations to amendments that they think are warranted, so that the representatives from New Jersey can go back to the Policy Working Group, hopefully, to meet with other states who have done the same and work out some amendments that all states can agree on.

Thank you again for letting me testify today.

ASSEMBLYMAN LESNIAK: Assemblyman Bennett?

ASSEMBLYMAN BENNETT: Are you familiar with the Alaskan Pipeline legislation, that there was a time frame imposed by legislation on the courts?

MR. LLOYD: Yes, I am. I discussed that with the attorney who advised the Policy Working Group. As you know, the Alaskan Pipeline controversy went on for years, both in Congress and in the courts. I think there were certainly thorough reviews at many levels, legislative, administrative, and judicial. I am aware of that within the legislation. I don't know that that legislation has ever been

tested in court. Certainly, there was never a situation where a party's rights were waived because of failure of a court to act. In spite of the fact that it was in that legislation, I think a very fair case can be made that where that 90-day limitation to be applied to a grief party, it would ultimately be found unconstitutional.

ASSEMBLYMAN BENNETT: It's not so much the time frame, as that portion of the legislation, which says that the decision would be affirmed, that you are more concerned with?

MR. LLOYD: Absolutely. The time frame is something that we-- It could be done, and we support it. It is the conclusion at the end of that time a court does not act. Some party's rights will have been waived.

ASSEMBLYMAN BENNETT: Of course, the argument on the other side was simply that the failure of a court to act could, in making a decision, tie up the complete Commission and the entire eleven-state region for an indefinite period. They are trying to do a balancing between the rights of whichever individual state or group that is going against the Commission's decision, with the overall decision to keep the process going for an eleven-state process, that is what the Policy Working Group toiled with. I understand your point. I completely agree with the concept, that we don't want inaction to result in anything affirmative, but I would like to continue to be able to see us, if the background is there, to impose some time frame. I don't want the courts to block either the individual or single party arguing against the Commission, or, in fact, tie up the Commission's hands for too long a period of time. So, I see where your point is coming from.

MR. LLOYD: I agree with the Policy Working Group's concern about expedited review. Nobody wants to see this tied up in the courts. I think we may just have to look to other mechanisms to do that. It may mean that an immediate appeal would be granted if the court does not act in 90 days. That kind of language might be more appropriate for the Compact.

ASSEMBLYMAN BENNETT: In Article 6 of the other laws and regulations, Subsection b, it specifically says, "The laws or portions of those laws" -- this is from the Compact -- "of a party state that

are not inconsistent with this Compact remain in full force." I believe that section would have to be read in conjunction with the repeal section that you raised a concern with. Perhaps that would help to alleviate some of the problems.

We have had our legislative staff, as you are aware, attempt to see what laws, if any, would be repealed in part or portion thereof, and the request has been to the Attorney General, who to date, we are now awaiting a full report, either our staff or the Attorney General's staff have been unable to find anything specifically that would be affected by this. The concern that overriding environmental bills would be repealed. I think we are protected, but the only portion that would be in conflict would be that--

MR. LLOYD: I understand that. I discussed this with the Attorney General's office last week. I think it is important for this Committee to have some formal statement from the Attorney General's office to that effect, if that is their final conclusion, or, perhaps the Committee could make such a statement in reporting the bill to the Legislature.

The other language that I have sort of toyed with in this area is, maybe with specific language saying, any laws inconsistent with this Compact would be repealed, only to the extent that they are inconsistent with this Compact, and only to the extent that they apply to low-level radioactive waste facilities.

ASSEMBLYMAN BENNETT: That is the exact language that New Jersey's position was to get in. We were not successful in getting that exact language put in.

MR. LLOYD: Maybe we could put that language in the Intent Document.

ASSEMBLYMAN BENNETT: That is what we tried to do.

MR. LLOYD: Oh, you couldn't get it in the Intent Document?

ASSEMBLYMAN BENNETT: We were not able to. That is the exact language that we tried to get.

MR. LLOYD: Then perhaps a formal opinion from the Attorney General and a formal statement from this Committee; at least put New Jersey on record as to what its intent is as to repealer under this section.

ASSEMBLYMAN BENNETT: Do you understand that the specific reason why the criteria for the specific site and specific guidelines for the public participation in the siting is not in the Compact? Not because it was overtly left out, but because the responsibility for the respective siting within the host state is the host state's responsibility. There were some of us who quite frankly felt that the Commission should be more powerful. There are those who feel that the Commission should be less powerful than it is. There was a balancing as to which direction we should go with the proponents of allowing the siting to be left within the host state, subject to the approval of the Commission, that the host state's responsibility would be to build in that participation. The designation of the host state provides not only for the public participation in general, but upon the request, requires that the hearing must be held in that host state, being so duly designated.

Once that designation is done, that participation then directs over to that host state, where it would be incumbent, for instance, if it was New Jersey, then I am sure -- at least the members of these two Committees -- would want to build in the public participation as has been built in with S-1300 in the past. But, that war has been left to the individual states, as opposed to the Compact.

MR. LLOYD: I understand that, and I am confident that if New Jersey were to be the host state, that we would have a process that has full public participation. I would recommend -- I think it has been discussed this morning -- that were we to set up a process, I think that the S-1300 process is an appropriate one.

Our concern is, though, that in this Compact, we have agreed to public hearing and notice, and to due process in a number of sections, and that that could be a minimal requirement placed upon any host state, without developing the specific procedures that that state should be required to follow. All I am suggesting is, a requirement for notice and public hearing be made as part of the Compact to be imposed upon the host state. As to what procedures beyond that, I think we have to leave that to the host state. But, a minimal requirement of a public hearing and notice, I don't think goes too far in the Compact.

ASSEMBLYMAN BENNETT: I have no further questions.

ASSEMBLYMAN LESNIAK: Thank you. We will now hear from Don Schutz, Chairman, New Jersey Business and Industry Associations Committee on Low-Level Radioactive Materials.

**D O N A L D S C H U T Z:** Senator Dalton, Assemblyman Lesniak, members of the Senate Committee on Energy and Environment and the Assembly Committee on Agriculture and Environment, good morning. My name is Donald Schutz. I am Chairman of the Ad Hoc Committee on Low-Level Radioactive Materials of the New Jersey Business and Industry Association. On behalf of NJBIA's more than 12,000 business and industry members statewide, we appreciate this opportunity to present our views with regard to "The Northeast Interstate Low-Level Radioactive Waste Management Compact Act" which is before you today.

In 1980, Congress passed the "Low-Level Radioactive Waste Policy Act" which provides that after January 1, 1986, those states with a low-level waste disposal plan in place will be authorized to refuse to accept low-level radioactive wastes from other states who may or may not have such a plan. As the eight largest producer of such wastes in the country, the problem of disposal for New Jersey is considerable. If New Jersey has no plan in place by 1986, licensees for the possession of low-level radioactive materials may be foreclosed from disposing of low-level radioactive wastes out of state as they are presently accustomed to doing. Instead, New Jersey would be mandated to develop disposal capability within its own borders.

A state may meet its obligation to have a plan either by enacting a plan of its own or by entering into a regional plan with neighboring states. Therefore, to provide for the proper disposal of low-level radioactive wastes, the State of New Jersey has, under the auspices of the Conference of Northeastern Governors, in cooperation with ten other states in the northeast, participated in the formulation of the Northeast Interstate Low-Level Radioactive Waste Management Compact. This compact requires the approval of each of the participating states and is now before your Committees for consideration in the form of Senate Bill 3217 and Assembly Bill 3256.

We would like to take this opportunity to commend the New Jersey Legislature, particularly the bill sponsors, Assemblyman Bennett and Senator Dalton, for being leaders in this area by making New Jersey one of the first four of the eleven compact states to consider such approval legislation.

Our Committee was formed by New Jersey Business and Industry Association in response to the 1980 Federal act and the work undertaken by the CONEG Low-Level Radioactive Waste Policy Working Group. Our membership consists of a broad spectrum of generators and members of the general business community including the New Jersey Hospital Association, New Jersey Dental Labs Association, New Jersey Petroleum Council, Chemical Industry Council of New Jersey, New Jersey Pharmaceutical Association, Pharmaceutical Manufacturers Association, Soap and Detergent Association, New Jersey Physical Therapy Association, New Jersey State Chamber of Commerce, Public Service Electric and Gas Company, Jersey Central Power & Light Company, New Jersey Chapter American College of Nuclear Medicine, Shipping Container Institute, Allied Corporation, Radiation Therapy Department, Monmouth Medical Center, New Jersey Bell Telephone Company, and the New Jersey Dental Association.

Since our formation more than a year ago, we have actively followed the development of the Management Compact. We have contributed to the drafting of the Compact by offering comments during the public participation portions of the CONEG deliberations and through representation on the Low-Level Radioactive Waste Advisory Committee of the New Jersey Department of Environmental Protection. We applaud DEP for its efforts in opening the state process to input from diverse interests by creating this advisory committee composed of representatives from industry, local government, academia, and the public interest and environmental sectors.

Through the knowledge gained by our monitoring of and participation in the formulation of the Compact, we are satisfied that it will properly address public health and safety, our ability to provide essential services, and the economic requirements of a workable system. We urge, therefore, that it be brought into law as expeditiously as possible.

Time is of the essence because of the date for regionalization set by Congress. While we should not move in haste, the necessity for avoiding disruption of our health care, bio-medical research, industrial and power generation systems is clear, and we must put into place the mechanism for properly managing the low-level radioactive wastes generated by these activities. Both as Chairman of the NJBIA committee, and as one who is a licensed shipper and processor of such wastes, I have developed an intimate awareness of the chaotic situation that develops in a broad spectrum of our economy when disposal services are withdrawn.

In assessing the importance of the Compact legislation, it is important to understand the vital role that even small quantities of low-level radioactive materials play in the delivery of necessary health care services and a wide variety of high technology research and industrial processes. In New Jersey's much heralded quest for attracting and retaining high technology enterprise, it is essential that the State demonstrate a capability for managing low-level radioactive waste efficiently, effectively, and with due regard for public health and safety.

As representatives of those essential services and of the knowledge derived from scientific research, we endorse the Compact legislation. We believe that it establishes the mechanism for moving ahead in a responsible and environmentally acceptable way and urge that you vote to release S-3217 and A-3256 from your Committees.

Thank you for your consideration of our views.

ASSEMBLYMAN LESNIAK: Thank you very much for your testimony. Next, we will hear from the representative of the New Jersey Hospital Association.

PATRICK LOGUE: Good afternoon, members of the Committee. I am Patrick Logue, Vice President and Director of Governmental Relations for the New Jersey Hospital Association. I am here to lend support to S-3217 and A-3256, bills which would begin the process of entering New Jersey into a compact among northeastern states to provide a framework for a cooperative regional approach to dispose of low-level radioactive waste.

The New Jersey Hospital Association, which represents all of the hospitals in New Jersey, is vitally interested in this matter. Radioisotopes are used for diagnostic purposes in over sixty-five hospitals in this State for therapeutic treatments in thirty-five hospitals, and virtually 95% of all the hospitals in the State have nuclear medicine programs of some degree.

Radioimmunoassay is used in the hospital laboratory to test for drug levels such as digoxin, used in cardiac care, or to test thyroid hormone levels in such tests as T3, T4, TSHH, or 3T4. The serum pregnancy test uses radioisotopes. And, although there are methods being developed to tag chemicals without using radioactivity, these experimental alternatives are now too costly for wide use.

Nuclear medicine departments in hospitals use materials in tests for which there are no substitutes yet developed. Technetium 99M is used in 90% to 95% of the brain, bone and liver scans that are done. It is a relatively innocuous radioactive material, with a half length of six hours. This means that in sixty hours, the material reduces to a factor of one thousandth of its radioactivity.

Hospitals hold, log, and store some radioactive materials in locked, isolated basement rooms until they decay, and then these materials are disposed of. However, this process has its limits, since cesium 130, a radium substitute with a thirty-year half life, used for uterine cancer treatments, would have to sit in a hospital basement for 300 to 400 years before it was decayed to that point.

Cobalt 60, used primarily to treat head and neck cancers, is delivered to the hospital and replaced every five years. The company which delivers and replaces cobalt must have a site to discard the slugs of cobalt, which are removed. If this service became unavailable, hospitals themselves would become low-level radioactive dump-sites.

Hospitals which maintain active nuclear medicine programs perform as many as forty or more procedures a day. A single hospital in the course of a year may do 10,000 or more procedures using radioactive isotopes. This translates into perhaps a half million procedures throughout the State a year.

To use radioactive isotopes as a diagnostic tool, or in the treatment of cancers, we must also be able to dispose of contaminated wastes resulting from their preparation and use.

As you know, there is no low-level radioactive waste site in the State of New Jersey at present. All wastes of this type must be disposed of in either South Carolina or Washington State. Those waste sites may be closed to New Jersey waste generators, as a result of the Low-Level Radioactive Policy Act, as early as the beginning of 1986. It is imperative that New Jersey, along with her sister northeastern states, press forward to establish a northeast compact, such as is proposed by these bills under consideration today.

In conclusion, although hospitals may represent a proportionately small generator segment, hospitals and the Association, nevertheless, are concerned with the development of a safe and efficient system to dispose of these wastes.

We commend the sponsors of these bills and the members of these two Committees for addressing this issue, and stand ready to assist in any way that we can. Thank you.

ASSEMBLYMAN LESNIAK: Thank you, Patrick. Are there any questions? (no response) Thank you. We will hear from the representative of the League of Women Voters. Will two of you be testifying?

CHARLOTTE CALLAHAN: No. I will be doing the testimony, and Mrs. Singher will be back in a second. She is here to answer questions, if you have any.

I am Charlotte Callahan, and I am Vice President of the League of Women Voters of New Jersey. We would like to thank the Committee Chairs for calling this hearing so timely, and Assemblyman Bennett for the immense amount of work that he has put into this matter, and to both Assemblyman Bennett and Senator Dalton for the sponsorship of these bills.

Along with the other Leagues in the Northeast Region, the League of Women Voters of New Jersey has followed the development of this Compact from its infancy. The eleven state Leagues involved are now in the process of reaching concurrence on the Compact. In New

Jersey, we are pleased to support A-3256 and S-3217 while indicating some of our concerns as expressed in the following statement drafted by all the state Leagues involved.

The League of Women Voters supports the Northeast Low-Level Radioactive Waste Compact, which provides a framework for the cooperative management and disposal of low-level waste generated in the eleven-state region. This Compact establishes a process designed to ensure that in the future the low level wastes of this region, which make up about 40% of the nation's total, will be managed and disposed of in a manner to protect public health and the environment.

The League recognizes that this is not a perfect document. Under the negotiation process which produced the Compact, compromises were made to meet State concerns. As the Compact is further discussed and evaluated, we would anticipate that perhaps changes will be made, but we feel they should not unduly delay full ratification and implementation, but that they would provide for a safer and more effective means of achieving environmentally sound management and disposal of low-level wastes.

We support the Compact as presented. However, we do have some areas of concern. Changes which might be made which we would support would include the following:

Improvement of opportunities for public participation in all Commission, legislative, and policy making activities, including the adjudicatory process.

Clarification of the broad provision for closed door executive sessions for sensitive "legal" matters.

Provision that specific Commission decisions be subject to possible adjudicatory processes, e.g., designation of host state; acceptance of host state's proposed facility; imposition of sanctions against party states; determination of inconsistency of party state laws or regulations; revocation of party state membership; and determination of qualifications of party states.

Provision for opportunity for full judicial review including right of the court to reverse Commission decisions in addition to the right to affirm or remand.

Removal of the 90-day deadline for action now imposed on the court and substitution that a ruling be made on an expedited basis.

Clarification of site selection process by requiring macroscreening by USGS or other independent group to rule out unsuitable areas.

Provision that host state should not be designated a second time until all other environmentally suitable party states have served.

Provision that the Compact is effective and the Commission is able to act only after congressional approval.

Provision of a uniform system of liability that is equitable and adequate to ensure that sufficient funds will be available for clean-up and for compensation during operation and after closure.

I would like to add that two years ago, in response to direction from our members, the New Jersey Leagues embarked upon a study of the transport and disposal of radioactive wastes. In furtherance of this program, we held conferences with speakers from industry, academia, the environmental movement, and State and federal government; workshops for our local League leaders; and, prepared an eight-page publication on the subject. I have copies for you. From this study, our members developed the following consensus position which is the guide for League action:

The League of Women Voters of New Jersey supports regional decision making in the disposal of low-level radioactive wastes. A regional commission should choose disposal site or sites for low-level radioactive waste. Commission members should be appointed by the Governors. Public health and the protection of the environment in perpetuity should be the primary considerations in the choice of sites.

In structuring fees for low-level radioactive waste disposal, the League believes that the fee must balance both environmental protection costs and economic considerations, with greater weight given to protecting the environment. The cost of perpetual care of the disposal site is a matter of great concern to the League members. The League believes that the financial burden for perpetual care should be charged to those institutions and industries using the disposal site. However, the League recognizes that in the long run, the responsibility for perpetual care may eventually have to be assumed by the government.

We thank you for the opportunity to be heard. We urge your approval of the Compact.

ASSEMBLYMAN LESNIAK: Are there any questions?

ASSEMBLYMAN BENNETT: Is that testimony available for us? I started to write some of it down. (Witness hands Assemblyman written statement) Thank you so much. That will be great.

MS. CALLAHAN: Thank you very much.

ASSEMBLYMAN LESNIAK: Our next witness is Diane Walker, representing the Sierra Club.

**D I A N E W A L K E R:** Thank you for the opportunity to testify on A-3256 and S-3217, the Northeast Interstate Low-Level Radioactive Waste Management Compact. My name is Diane Graves Walker. I am Conservation Chair for the Sierra Club's New Jersey Chapter.

The Sierra Club's Northeast Regional Conservation Committee, which is the Club entity that helps develop policies on regional issues, is meeting in Boston on April 23rd to develop our region's policy on this Compact. We support the regional approach to solving this problem, and commend the efforts made so far by New Jersey, but, we oppose moving this legislation at this time.

I would like to submit for the record the concerns of the draft Compact legislation, raised by the Sierra Club and others who felt that the Compact legislation has been completed too hastily.

I have eleven points here and then an additional one that we would like to express. Our concerns are:

One, the proceedings of the Commission are not subject to the Federal Administrative Procedures Act. Public access to the Commission is severely limited;

Two, the Commission's decision may be appealed, but if the court does not act within 90 days, the appeal is dropped;

Three, the Compact does not contain any provisions creating incentives for source reduction, or even a requirement for states to prepare a plan for reducing the generation of low-level radioactive waste within their borders;

Four, because the Commission is a regional form of government, it is incompatible with the existing State and Federal constitu-

tional structures. Furthermore, because the Commission requires that administrative and legislative roles and opportunity for judicial appeal is limited, the concept of separation of powers is completely violated;

Five, the Compact does not place the standard of best technical criteria in choosing disposal method and site, a clear priority over the interests of expedience and economics;

Six, the Compact does not provide for the contingency of passing responsibility over to the Federal government in the case of failure of the Commission and the states to deal with the site's specific problems;

Seven, the Compact does not contain a clear commitment to study alternative disposal methods to shallow land burial;

Eight, the Commission may accept money from any source, including low-level radioactive waste generators, transporters and site operators;

Nine, the Compact makes no provision for liability claims for remedial cleanup costs during the operational phase of the facility. This responsibility is left to the host state and the site operator, but there is no guarantee that either party will have the financial resources to meet these claims. Other liability mechanisms are inadequate;

Ten, the Compact requires that member states repeal laws which are inconsistent with the Compact, but fails to provide any criteria for judging inconsistency. Furthermore, since three states conform a compact by approving the draft, conceivably, the first three states to join can judge their own laws to be consistent, then go on to pass judgment on the laws of states attempting to enter the Compact later on;

Eleven, the Compact fails to internalize the Commission's cost of operation.

Further, A-3256 and S-3217 should require that the subsequent host state legislation specify an open public process for developing detailed siting criteria and for the site selection process, similar to the provisions in New Jersey's major Hazardous Waste Facility Siting

Act, and including but not limited to an advisory group, such as the group that New Jersey has established.

Like the Hazardous Waste Facility Siting, this issue is volatile and complex and needs public trust in the decision makers and in the process. It is essential that the public know what is going on, understand the issues, and participate in the process.

Recognizing this, Assemblyman Bennett has submitted an article for New Jersey Sierrans May/June issue. He describes his article as an "initial step" in the process and in the deliberations that need to take place. We welcome his information outreach, and look forward to discussions leading to legislation we can support.

I would like to go back to the question that was raised earlier to George Tyler, about whether or not S-1300, or now Chapter 279, should be amended. His off the cuff comment was, yes, it could be. My off the cuff comment would be, I think we would oppose amending that legislation, but rather, build a new piece of legislation similar to it.

The New Jersey Chapter urges that New Jersey's proposed legislation not be moved at this time. Thank you.

ASSEMBLYMAN BENNETT: Do you have that list of your concerns?

MS. WALKER: I only have what we took out of our New England Sierra Club Newsletter. It is going to be included in our next newsletter, and I will send you copies as soon as it is printed. This is the only thing that I have at this time.

ASSEMBLYMAN SMITH: Maybe we could get a copy before she leaves?

MS. WALKER: Also, this does not include our comment on the S-1300 process.

ASSEMBLYMAN LESNIAK: Thank you. William Halsey, State Chamber of Commerce.

W I L L I A M H A L S E Y: Good morning, Mr. Chairman, members of the Joint Committee. My name is Bill Halsey, and I am Legislative Representative for the New Jersey State Chamber of Commerce. I would like to take this opportunity to compliment Assemblyman Bennett, Senator Dalton, and the Kean Administration for addressing this important issue in a professional and timely fashion.

Moreover, the Department of Environmental Protection is to be commended for opening up the dialogue on this process to a diversified group of interested parties, and taking these views into consideration and representing New Jersey in the Compact deliberations.

Mr. Chairman, New Jersey has a particularly high concentration of industries and institutions that produce low-level radioactive waste, due to the fact that we have some of the largest pharmaceutical companies, hospitals and medical centers which perform numerous diagnostic and therapeutic medical procedures, as well as university research laboratories, and a number of high tech R & D companies, which generate this low-level radioactive waste within New Jersey.

Indeed, New Jersey ranks eighth in the country, in terms of the total volume of low-level radioactive waste generated, and is the fifth largest generator in the northeast.

ASSEMBLYMAN LESNIAK: We just dropped two.

MR. HALSEY: To ten?

ASSEMBLYMAN LESNIAK: Yes.

MR. HALSEY: Okay. Top ten. As has been mentioned, if New Jersey does not join a compact, we would be forced to dispose of our own low-level radioactive waste within our borders, and would be unable to refuse waste generated from other states.

Regional compacts have been determined to be a cost-effective method of waste disposal. This is due to the fact that regional facilities would have the benefit of drastically reducing transportation costs and risks inherent in the present system of waste disposal. Practice of transporting waste from one end of the country to another would be ended.

Finally, Mr. Chairman, New Jersey has a high population density and few areas geologically suited for land disposal of low-level radioactive waste. This fact makes it all the more important to participate in a regional forum, where all variables can be considered in selecting the best sites for the region.

We therefore, respectfully urge the Legislature to pass this legislation, sponsored by Assemblyman Bennett and Senator Dalton, as being in the best interest of New Jersey's citizens. Thank you very much.

ASSEMBLYMAN LESNIAK: Thank you, Bill. Unless there are other people here to testify, and please, if there are, come up and put your name on the list, is Doctor Shepherd Bartnoff, former President of JCP&L.

D R. S H E P H E R D B A R T N O F F: Mr. Chairman and members of the Committee, I am not Executive Vice President of JCP&L. I did serve for many years as President of that company, but about a year ago, I moved to the position of Executive Vice President of General Public Utilities, of which Jersey Central Power and Light Company is a subsidiary. My interest in this, of course, is very great. This is one of the reasons why I am testifying on behalf of Jersey Central. I am also the Director of the GPU Nuclear Corporation, which is now in Jersey Central, the operators of the Oyster Creek Nuclear Generating Station, the oldest of the nuclear facilities in New Jersey, now having been in operation for some fourteen years.

After all the witnesses that have been here today, anything I would say I think would be repetitive and redundant. Nevertheless, I will be a little bit repetitive, if only to emphasize some of these points, and to indicate how they are important to us as a company and to the State.

As Assemblyman Bennett pointed out in his introductory remarks, this may be the first time since the founding of the Constitution that a number of states, of this number, eleven, have come together for a common purpose in a compact of this type. We recognize the eighteen months of hard work that was conducted by the Policy Working Group of CONEG, the Coalition of Northeastern Governors, to produce the Compact that you have before you, a compact in which New Jersey has taken a leadership role. We have had at least one representative from our system who has not only closely monitored the development of the Compact, but has attended the Policy Working Group meetings. He and others in our company have offered encouragement, support Assemblyman Bennett, and advice on various provisions of the Compact.

Amongst other things -- I don't believe this has been mentioned before -- we highly commend CONEG for conducting the

negotiations that lead to this Compact in the public forum, with ample provision during each session for public comments. This is not something that was done merely by a small group without provision and indeed without invitation for participation from all groups in the community.

To repeat what has been said before, we commend the Jersey delegation to CONEG and to the Policy Working Group, and the staff that has supported that delegation. It has made significant contributions to the overall policy development and preparation of the document.

We feel the Compact is extremely well formulated. It will serve the best interest of the people of New Jersey. This is important, because this Legislature will not have the opportunity to change the Compact provisions easily. Although, as has been indicated by many of the witnesses today, there will be opportunities to do this, perhaps, in ways that have been done in other such compacts. Senator LaRocca mentioned some mechanism for making changes to the compacts.

In this respect, I would heartily endorse the approach and the attitude that was taken by the witness for the League of Women Voters, in which the urging was to endorse the Compact now, to pass the legislation, and then work within the framework that is set in the establishment of the Commission, in the selection by the Commission of whatever needs to be done in the future, for making some of the improvements and for satisfying some of the concerns, which I feel are legitimate, that have been brought up concerning the Compact. Some, if we were to go into a long discussion, which I hope we won't, I find of less urgency.

So, we support the Compact in general, for the same reasons that others have. It will provide a basis for a long-term solution to the low-level radioactive waste disposal problem. In addition, we feel the regional approach is the best of the available options. A significant portion of the expense of the disposal facility is in the site development and the startup. This, irrespective of the volume of low-liquid level waste will be stored at that facility. And, a single site will minimize these startup and development costs, and give us the advantage of the economy's scale and, of course, a single site would be easier to manage.

Then, as has been repeatedly pointed out, if we do not join the Compact, the Federal Low-Level Waste Policy Act will require us to build some type of disposal facility, and, as one of the witnesses -- I believe it may have been Assemblyman Bennett -- pointed out, the interstate commerce laws may prevent us from excluding out-of-state wastes from such a New Jersey facility. We don't believe this is in the best interest.

So, although we do have until June of 1984 to pass these bills and ratify the Compact, we in Jersey Central and General Public Utilities recommend prompt action, so that the work of siting a facility can begin now. Federal law, as we have heard over and over, will exclude New Jersey wastes, may exclude New Jersey wastes from existing disposal facilities after 1985. Siting, startup, of the disposal facilities is not done overnight. It is conservatively estimated that this may take probably a minimum of four years. So, we are already behind schedule.

We feel New Jersey can best respond to this problem by taking rapid action on these bills, and by continuing to play a leadership role in the overall effort. In other words, the time for action is now, and we urge the ratification of the proposed legislation.

ASSEMBLYMAN LESNIAK: Doctor, if I may, what about the problem of high-level radioactive waste? Do you anticipate that that is going to have to be dealt with very soon?

DR. BARTNOFF: I anticipate that the problem of high-level radioactive waste will have to be dealt with, and is being dealt with, though perhaps not as expeditiously as many of us would like to see it done. As Assemblyman Bennett indicated, this is not an item under consideration in the proposed legislation.

ASSEMBLYMAN LESNIAK: I understand, but it is not often when you get somebody with your experience before this Committee. I thought I would seek your views on that.

DR. BARTNOFF: I think the overall question of disposal of high-level radioactive waste is one which was well under way for some type of a long-term solution, was held back a bit during the last presidential administration, and has now become active again. Within

the past year there has been Federal action on looking for tests of disposal methods. This is beginning, and, this will need to be done; otherwise, what we will have will be defacto, a storage site everywhere where we have a nuclear facility.

Now, the places that come most to public attention are, of course, such locations as Oyster Creek in New Jersey, which, with the exception of a very small amount of the high-level waste that has been generated, now has retained that on site. What does not come to public attention as frequently nor as vividly is that for the long-term treatment of the high-level waste that comes from what we might call the "non-electric generating programs," the military programs, the submarine programs, the weapons programs, compared with the amount of high-level waste that will require long-term disposal by the power industry, is only a small fraction. But, the problem is there, whether it is for the much larger picture or for the smaller picture.

Now, other nations have, of course, proceeded in taking action on this, action which I think -- I am somewhat knowledgeable on this -- could be applicable to our nation. Some of the European nations propose to have the waste disposed of by a method called vitrification, others by making ceramics out of it. Vitrification means taking high-level wastes, incorporating them, and making them part of a glass-like substance that is highly resistant to corrosion, erosion, breakage, any kind of dispersal into the environment, putting this into stainless steel or other containment, and then either burial or some kind of permanent surveillance.

There is a final point I would like to make on this, and then leave you with the thought that there is movement in this direction, and that it is a problem that is not technically as great as some of the newspaper articles that you read, might lead you to believe. That is, the overall volume of high-level radioactive waste which comes from the spent fuel of nuclear power plants is a very small volume. It is not if you should take in the course of a lifetime of power plants such as Oyster Creek, the high-level component of the spent fuel that is generated during the thirty, forty years of a lifetime. Safe storage for that could be provided in an amazingly small amount of space. I

have heard numbers. I have never measured the size of this room, but the size of this chamber in which we are sitting would be more than sufficient. Now, of course, this would mean an extraction of that and the condensation.

But, even if we were not to reprocess the fuel, but to leave it in the spent state, with all of the auxilliary components that are not the high-level radioactive waste, we are still dealing with a volume of material which, for requirements of storage space is quite small, small by any kinds of waste disposal standards where waste disposal facilities are required.

ASSEMBLYMAN LESNIAK: I would love to pursue this further, but I am afraid we can't.

MR. BARTNOFF: I would be happy to come down and speak with you about it sometime.

ASSEMBLYMAN LESNIAK: Thank you very much. Are there any questions? (no response)

SENATOR LaROCCA: I have just a comment to bring the point home. This happened in my home town the other day. I never realized that this could be a problem. One way of disposing waste is very easy, just dump it in your neighbor's backyard. I live on top of the Palisades, opposite the Lincoln Tunnel. The officials woke up the other day, and they were cleaning the Palisades, the cleaning people from Public Works. Everybody got involved. What do you with it? All of the engines came out. Trenton was notified. The helicopter went down. Nobody knew how to attack it.

The point is, it was driven home, get rid of it. Just dump it somewhere.

MR. BARTNOFF: Senator, the point you make is one I would like to comment on. We in the utility are often accused of being less than diligent in the pursuit of the very point you are trying to make. Nevertheless, we recognize that we are generators of certain wastes. This is essential in the production of electricity for our service area. It isn't only the radioactive. As you know, when we burn coal, we have problems of effluence from that coal. I would like you to know that we are concerned about our neighbor. I also live very near to the

Palisades. I know what you are talking about. In fact, just yesterday, I had the privilege of running in a foot race right there on Palisades Interstate Parkway, and with some pride, I could tell you that I finished. I didn't win a trophy, but I finished.

ASSEMBLYMAN LESNIAK: How long was the race?

MR. BARTNOFF: Ten K, a little over six miles. I would like to point out what I mean by this. In connection with radioactive waste -- something with the question that the Assemblyman asked, relative to the disposal of the high-level radioactive waste -- some years ago, in the General Public Utilities system, I had the position of Director of nuclear fuels. Part of my responsibility involved preparation for the ultimate disposal of the spent fuel. At that time, we thought there would be reprocessing. There were at least four groups that were interested and involved in either operating or building reprocessing facilities for spent nuclear fuel. We went out on competitive bids. We got bids. All but one of the bids took exception to a provision we had put into our specifications. That provision was, that the final "to be disposed of" material be in the solid as opposed to the liquid form. At that time, the final product of reprocessing was a high-level radioactive waste in liquid form.

We, at my insistence, put into our specs that this be in the solid form, because I felt this was a much more sensible thing to do. They took exception saying, once the radioactive waste leaves your site, it is our responsibility, not yours. My answer was, I don't care what the legal requirements are, we were the generator of the waste, and we have a responsibility to see to it that the final disposal is done in the safest way. And to my mind, having it as a solid, was safer than having it as a liquid. They said they couldn't do it. I said, fine, withdraw your bids. They changed their processes and put in their revised bids on the basis of solids. A few months later, the Federal government issued regulations requiring that this be done in the solid waste. So, we do have that concern, Senator.

ASSEMBLYMAN LESNIAK: Thank you, Doctor. Our last witness is from PSE&G. Is there anyone else interested in testifying? (no response)

**M A U R E E N B A S K I S:** Good afternoon. My name is Maureen Baskis. I am Special Representative, Governmental Affairs for Public Service Electric and Gas Company. With me today is our Regulatory Affairs group representative, and also the Utility Representative under the Department of Environmental Protection's Utility Low-Level Waste Advisory Group.

Public Service Electric and Gas Company welcomes the opportunity to appear before the joint hearing conducted by the Senate Energy and Environment Committee, and the Assembly Agriculture and Environment Committee, in support of the Northeast Interstate Low-Level Radioactive Waste Compact Act.

These bills, sponsored in the Senate by Senator Dalton, and in the Assembly by Assemblyman Bennett, provide a means for establishing a legal framework for New Jersey to become part of the regional effort to provide a safe and environmentally sound solution to the low-level waste disposal issue.

The need for a regional compact is clearly indicated by the Federal legislation enacted in 1980. If New Jersey does not become a part of the regional effort, it will have to develop and construct its own low-level radioactive waste disposal site.

Enactment of this legislation is a crucial step in the process of assuring that the nation and New Jersey's low-level radioactive waste is disposed of in a safe, environmentally sound, and in an efficient and equitable manner.

We commend Assemblyman Bennett both for his sponsorship of this legislation and for his time and effort as a participant in the CONEG's Policy Working Group. We also commend the DEP representatives and the Governor's Council representative. We commend both Senator Dalton as Chairman of the Senate Committee and Assemblyman Lesniak as Chairman of the Assembly Agriculture and Environment Committee for their prompt consideration of this very important legislation.

**ASSEMBLYMAN LESNIAK:** Thank you very much. Are there any questions? (no response) Okay. Thank you. Again, is there anyone else who wishes to testify? (no response) This public hearing is now

closed. With the consent of the Senate Committee, we will break for lunch and then have the Committee meetings on this bill.

**(Hearing Concluded)**

TESTIMONY ON A-3256 AND S-3217

Presented to:

THE ASSEMBLY COMMITTEE ON AGRICULTURE AND ENVIRONMENT

and the

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

April 18, 1983

New Jersey Department of  
Environmental Protection

## Introduction/Overview

Committee Members - My name is George J. Tyler, Assistant Commissioner of the New Jersey Department of Environmental Protection. I am pleased to be here this morning representing Commissioner Hughey. You are here today to consider two pieces of legislation, A-3256 and S-3217, which authorize New Jersey to enter into an interstate compact for the disposal of low level radioactive waste. This legislation is the culmination of one and one half years of meetings and negotiations between eleven northeastern states. I urge your favorable consideration of this legislation and recommend that New Jersey take advantage of this opportunity to cooperate with other states to solve a regional problem.

The safe and environmentally sound handling of radioactive waste is a moral imperative, in my opinion, and an obligation government cannot afford to take lightly. Moreover, low level radioactive waste is generated by a variety of processes that are important to the state's economy, including pharmaceutical manufacturing, medical and research activities, and electrical power generation. New Jersey has a high concentration of these industries, making the state a large generator of low level radioactive waste. Among the northeast states, New Jersey ranks as the fifth largest generator. It is among the top ten producers of low level waste in the United States. This compact, if enacted, will enhance our efforts to ensure proper management of such wastes.

What is low level radioactive waste?

Low level radioactive wastes are industrial, medical, and research wastes that have been contaminated with a radioactive substance. These wastes typically contain only small amounts of radioactive elements. Wastes with higher concentrations of these elements are classified as transuranic or high level wastes. The term low level radioactive waste does not include spent fuel assemblies from nuclear power plants classified as high level wastes or wastes from the mining and milling of uranium ore.

Low level wastes are produced in a variety of forms by medical research, academic institutions, industrial activities, commercial power reactors, and the defense and research facilities of the U.S. Government. Typically, these wastes include paper, used protective clothing, and discarded metal and glass equipment.

Like many other states, we are faced with increasing volumes of radioactive waste. New Jersey has a particularly high concentration of industries that produce low level radioactive waste: some of the largest pharmaceutical companies in the world; numerous facilities for diagnostic and therapeutic medical procedures which use radioactive materials; two nuclear power generating stations (3-4 reactors), high-tech research and development companies and sophisticated university research laboratories.

New Jersey's population density and limited geologic suitability for land disposal (burial) make it especially important that we participate in a regional forum where all variables can be considered in selecting the most environmentally sound disposal site.

### The Low Level Radioactive Waste Policy Act

Between 1962 and 1971, six shallow land burial sites for disposal of low level radioactive waste were opened around the country by private firms, with the consent and encouragement of the host states. Under agreements with the Atomic Energy Commission and later with the Nuclear Regulatory Commission, state authorities regulated all but one of these facilities. The resulting system of regional low level waste disposal sites served everyone's needs for several years.

By 1978, however, three of these sites had closed because of operational difficulties or exhaustion of available space. The remaining host states -- South Carolina, Nevada, and Washington -- were required to handle the full volume of commercial waste plus some waste generated by the Federal government. New Jersey now ships all of its waste to those three sites. The facility in South Carolina, the single site east of the Rockies, received 80 percent of the nation's waste.

Over time, the governors and legislatures of these three states became concerned that no new facilities were planned to

replace those that had closed. In the summer of 1979, governors of those states announced that their states would not indefinitely assume the full burden of the nation's low level waste disposal problems. They called for the establishment of additional low level waste disposal sites. They also expressed concern with the failure to regulate adequately the packaging and shipping of low level wastes. The governors called upon Federal authorities and generating states to make a greater effort to ensure that wastes were properly packaged and shipped to the disposal sites.

In the fall of 1979, the three governors began strict enforcement of shipping and packaging standards. The sites in Nevada and Washington were temporarily closed because of an unacceptable number of violations and the Governor of South Carolina announced that the volume of wastes accepted there would be reduced by 50 percent over a two-year period. These actions focused the attention of the nation on the need for developing additional low level waste disposal sites.

Government agencies, several associations, and a presidential review group evaluated the problem and made recommendations. In late 1980, Congress responded to this situation by passing the Low Level Radioactive Waste Policy Act. This act states that:

- . each state is responsible for the commercial low level radioactive waste generated within its borders;
  
- . regional disposal sites are the most safe and efficient option;

- . states may enter into compacts to establish and operate regional disposal sites;
- . compacts must be consented to by Congress and reviewed at five-year intervals; and
- . after January 1, 1986, regional disposal facilities operated under compacts may refuse to accept wastes from non-compact states.

### The Development of Compacts

Since 1980, nearly all the states have been active in developing regional compacts for the management of low level radioactive waste. Regional compacts will prevent the problem of one or two states having to host national disposal facilities. Furthermore, the authority to exclude wastes from outside a region has hastened the pace of negotiating compacts by the states of South Carolina, Washington, and Nevada, where disposal facilities already exist. These states are eager to see other states accept greater responsibility for their own wastes, and the regional compacts are a means of requiring other states to face this task.

Regional facilities would appear to be a cost-efficient method of waste disposal. Typically, only the volume of waste generated by more than a single state can readily balance the costly operation of a properly managed disposal facility.

Furthermore, regional facilities will have the benefit of drastically reducing both the costs and the risks inherent in the present system of waste disposal. Regional facilities would end the unsound practice of transporting wastes from one end of the country to the other.

### The Northeast Low Level Radioactive Waste Compact

As provided for in the federal Low Level Radioactive Waste Policy Act, New Jersey, New York, Pennsylvania, Delaware, Maryland, and the New England States through the Coalition of Northeast Governors have formed a policy working group to develop a compact which will lead to a regional disposal facility(s) for the northeast. The compact before you today in the form of A-3256 and S-3217 is the result of that work. It provides for regional disposal facilities for the exclusive use of states which enter the compact. Since there is no established disposal facility for low level radioactive waste in the Northeast United States, the legislation before you calls for the establishment of an Interstate Commission to address the issue of planning and siting a facility in our region.

New Jersey has been represented on the Coalition of Northeast Governors policy working group by myself, Assistant Counsel to the Governor Todd Caliguire, and Assemblyman John Bennett.

Other states were also represented by their legislatures, governor's office, and agency staff members. This deliberate selection of spokesmen with different perspectives resulted in

discussions which, while sometimes lengthy, ultimately resulted in the development of a better final product. Other regions of the country which did not use this approach later noted that input of different viewpoints would have improved the process.

This same process of negotiation is going on in five other regions of the country at this time. The southeast regional compact has already been introduced for ratification by the Congress and the northwest compact is not far behind. Thus, several other states have already approved legislation similar in impost to A-3256 and S-3217. As a result of recommendations from several public interest groups including the League of Women Voters, the northeast region made the process open to the public. This included advance notice of meetings, open meetings, and opportunities for public comment at each session.

Taking this concept one step further, New Jersey established an advisory group to provide feedback on the compact as it evolved. This group includes representatives from environmental, public interest, business and industrial groups.

The Department of Environmental Protection will recommend that this advisory body continue to operate as the process of implementing the Low Level Radioactive Waste Policy Act continues. The CONEG policy working group completed its final draft compact in late February 1983. Since then it has been introduced as legislation in Connecticut, Maryland (where it has passed both

houses), Rhode Island and New Jersey. As an interstate compact, the bills passed in each state must be identical to be binding. Moreover, to become effective it must be approved by the Congress.

### The Compact

This proposed compact is intended to be a document that can remain viable for many years and be effective in eleven diverse state administrative and legal systems. The policy working group deliberately elected not to attempt to anticipate every problem which might emerge, nor to specify in detail how each responsibility must be performed under the compact. As a document which balances the interests of eleven sovereign states, the federal government and the region in low level waste management, the proposed compact is designed as a basic charter of interstate and state/federal relations. It sets forth the principal rights and responsibilities of the states and provides guidance for future individual and collective decisions of the states.

The compact is intentionally not encumbered with detailed provisions which, if they became obsolete, could be changed only by legislative action in eleven states and then by the Congress. It is anticipated that the Commission created by this legislation will supplement the compact with rules, regulations, definitions, standards, and guidelines which can be altered to reflect changing realities. In addition, each state can adopt, as part of the compact, provisions stipulating how it will carry out its responsibilities under the compact.

The compact has four basic provisions:

- It sets forth the major roles, responsibilities, and obligations of the party states, the host states (where facilities are located), and the regional commission it establishes. The Commission's major responsibilities include timely development of a regional facility by a host state, and oversight for the implementation of a coordinated regional approach to low level waste management.
- The compact establishes the Northeast Interstate Low Level Radioactive Waste Commission to administer the compact. The Commission's role is to ensure that the states' collective interests are considered in the siting, development, and management of a regional facility. It has no operational or regulatory authority over a facility. Its regulatory authority is limited to ensuring that member states comply with the compact.
- The compact establishes a process for selecting a state to host a facility. It does not specify how a state would site, develop, and oversee management of a regional facility, thus leaving these tasks to state and federal law.
- The compact sets forth the terms and conditions under which a state joins or withdraws from the compact. Reflecting the contractual basis of such a charter, it provides for sanctions, including revocation of membership, for states which fail to meet their agreed upon obligations.

When analyzing the specific provisions of the compact, it might be helpful to view the potential impact on New Jersey from both perspectives namely as a potential "host" state in which a regional facility might be located, and as a "party" state which exports waste to a regional facility in another state.

Host State Selection: The basic principle in the interstate negotiations was to avoid intruding on an individual state's sovereignty. To this end, the legislation provides that the regional commission which administers the compact provisions will select a state that appears to best meet the criteria specified in the compact. The host state will then select a specific site and will be responsible for establishing its own procedure for site management, in accordance with federal law.

Throughout the discussions on site selection, there was a split between those states which generate a very small percentage of the region's waste, and the larger generating states. The "small" states favored a threshold provision which would exempt any state generating less than three percent of the region's waste from hosting a disposal facility. The representatives from New Jersey (which generates 12.6 percent of the region's waste) contended that this was inconsistent with our intention that any site selected meet the highest possible environmental and safety standards. This position was eventually embraced by the group as well as by the CONEG governors, and the threshold concept was rejected.

New Jersey's delegates were also instrumental in the drafting of criteria for host state selection. These criteria, which provide parameters for future detailed consideration of each states potential as a host, are:

- a. the health, safety, and welfare of citizens of the party states as defined by the appropriate regulatory authorities;
- b. the environmental, economic, and social effects of a regional facility on the party states;

The Commission shall also base its decision on the following criteria:

- c. economic benefits and costs;
- d. the volumes and types of waste generated within each party state;
- e. the mimimization of waste transportation; and
- f. the existence of regional facilities within the party states.

New Jersey's representatives insisted upon highlighting the first two criteria above the others. This is consistent with our overall approach to developing an equitable inter-

state agreement that does not sacrifice consideration of public health, safety, and welfare in an attempt to develop a politically popular document.

This same philosophy applies to consideration of a volunteer host state. At our insistence, any state volunteering to host a regional facility will be screened to assure that it meets the same criteria applied to a non-volunteer, and that it has the regulatory and institutional capability to host a facility.

Operation of the Regional Commission: The Regional Commission is established in the compact as the administrative agency for the preliminary phase of low level radioactive waste management in the region, and to ensure that the states' collective interests are considered in siting, developing, and managing a regional facility. Each state will have one member, with one vote, except for the host state which will have two members and two votes.

One of the important checks on the balance of the Commission's power is adequate public participation. This has been a frequent suggestion by those members of the public who have attended policy working group meetings and was voiced as a concern by New Jersey public interest groups as well.

The compact requires open meetings of the Commission, public notice and public comment on Commission procedures. It provides for public hearings on host state selection. It

does not, however, spell out detailed procedures for this public participation, and this has been criticized as a failure of the compact.

We attempted to respond to this issue by more specifically outlining public participation in the "Report to the States", the intent document which serves as a legislative history of policy working group deliberations on the compact. That intent document is being provided to you today along with copies of this testimony. I would like to point to several passages of the intent document which elaborate on the framework provided by the compact.

- the Commission must adopt (after public notice and opportunity for comment) operating rules and regulations to ensure its orderly operation and the protection of due process in carrying out its responsibilities.
- the policy working group, after much discussion, decided against use of the federal Administrative Procedures Act due to its rigid and detailed requirements which might not be appropriate for a Commission operating both as a policy making and adjudicatory body. However, the Commission is expected to adhere to those basic principles of the Administrative Procedures Act and the model state administrative codes which address publication of by-laws and organization; public

review and participation in final orders, decisions and opinions; notice of contested actions and opportunity for response, and appropriate judicial review of decisions.

- when acting as an adjudicatory body making findings of fact and conclusions of law, the Commission must observe due process to protect affected parties.
- rulemaking by the Commission is to be conducted to afford public notice and give interested parties an opportunity to participate.
- a 90-day limit is imposed for judicial review of the Commission's delegation of a host state, and has been criticized as insufficient and limiting. It was the intent of the policy working group to expedite the judicial review process, not in any way to preclude court consideration. The New Jersey delegation successfully moved this time period from 60 days to the 90 days now in the compact. If there is significant opposition to this timetable, we can explore an amendment with the policy working group.

Finally as I noted earlier, the proposed compact is not designed to spell out the detailed procedures to be followed by the Regional Commission. Rather it establishes a broad framework for operation.

The tone has been set by the compact and intent document. We are confident that the Commission's procedures will ensure full public participation and adequate forms of due process prevail in its workings.

Costs: The bills you are considering today provide a \$70,000 appropriation for New Jersey's contribution to the initial operating costs of the Regional Commission. Further appropriations may be necessary until such time as a site is operating and generating fees to cover these costs. New Jersey's share of future costs will be allocated on a formula which considers our population and volume of waste generated. A projected yearly contribution by New Jersey (prior to site selection) ranges from \$25,000, based on full participation by all eleven northeast states, to \$94,000 if only two other states join the compact.

After a site is operating, all costs will be covered by disposal fees including funds for host state regulatory programs, post closure, and institutional control funds. These fees are to be established by the operator and approved by the host state with comment by the Commission to assure that the fee structure is reasonable and equitable.

Technology: All operating commercial disposal sites now use shallow land burial. The compact does not specify any particular disposal method. The Commission is required to develop a regional management plan to assess the need for

facilities. This might include waste management facilities, such as incinerators or compacters. Additionally, the Commission is required to review the management plan periodically to assess state-of-the-art technology and changing patterns of waste generation in the region. As the compact provides, reduction of low level radioactive waste at the point of generation is a mandated goal for the party states and must be incorporated into any regional management schemes that are devised.

#### Conclusion: Next Steps

To join the Northeast Compact, New Jersey must pass the compact legislation which you are considering today, contribute its \$70,000 membership fee and assure that no existing state law would pose an unreasonable impediment to the state's capability to host a regional facility in a timely manner. If any exist, they will be repealed by the passage of this act.

The Attorney General's office is now reviewing the compact to assure it is not inconsistent with other state laws. This provision is largely intended to deal with laws such as the Massachusetts "Question 3" which prohibits disposal of low level radioactive waste without a referendum or outright bans on waste disposal.

Again as the report to the states notes, if the host state is responsible for and empowered to regulate and license any facility sited pursuant to this compact. We believe that the

full range of environmental and public health protection laws we are fortunate to have enacted in New Jersey will be fully effective should New Jersey ever become a host state. We are, as noted, awaiting the Attorney General's advice in this regard, but let me state that the proper site selection and environmental safeguards those laws would compel are not only "not inconsistent" with this proposed compact but those goals were in fact specifically highlighted in the compact and frequently emphasized in the interstate negotiations.

We will next be looking at the need for any additional legislation to enhance New Jersey's ability to meet its obligations under the compact. Of most significant concern is the possible need for siting authority which will spell out a process and provide for adequate public participation. Such legislation may be necessary to demonstrate New Jersey's ability to site a facility, even if we are not selected as the host state. In fact, it may be advisable to consider using the existing and excellent process already in place under the Hazardous Waste Facility Siting Act (S-1300) as the method of choices for dealing with low level radioactive waste.

Once the compact is approved by three states, those states are empowered to present it to Congress for ratification. It is important to continue the momentum that has begun to demonstrate to Congress and other regions our good faith in developing a regional facility. This is particularly important since those regions will be allowed to exclude waste from other regions after 1986. Although it is virtually impossible for the northeast to

have an operating site by 1986, it is expected that cooperative arrangements can be made with other regions if we continue to demonstrate reasonable progress.

Finally, I urge that you consider this compact as the end result of a dynamic process and much compromise among the eleven state participants. As you evaluate the bills, please consider that this same language is being presented to eleven legislative bodies -- any amendments must be agreed to by all states.

Nevertheless, if the testimony today or other relevant factors cause you to believe that technical amendments or other changes are necessary, we would be happy to convey those thoughts to the other northeastern states and seek their concurrence. Testimony you will hear concerning public participation safeguards for due process and site operator liability may prompt such action. If that is the case, however, it would be helpful if we fashioned a method to seek such changes while the legislative process in New Jersey moves forward. In this way, we will be exhibiting our good faith to the Congress and to the other northeastern states while addressing our citizens' concerns.

I would like to thank you for your patience and attention and apologize for the length of my remarks. The importance of the subject matter made it necessary to go into great detail. At this point, I would be happy to respond to any questions you might have.

Thank you.

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Corrections for New Jersey Issues, Radioactive Waste in New Jersey:

Page 1; "Low-Level Waste" paragraph 2, line 2 to read "waste in the northeast United States."

Page 3; The Transport of Radioactive Waste in New Jersey; line 5 should read as follows: "Postal Service. All commercial institutional radioactive waste generated"

Page 4; Route Monitoring (column two, last paragraph); lines 11, 12, 13 should read as follows: "Irradiated fuel shipments are to begin when a permanent burial site is established. (Most experts believe 1990 is realistic)"

Page 5; first column; line 6 should read as follows: "from Forked River to a laboratory in Ohio, via" also line 9 should read as follows: "BRP for the Oyster Creek Plant shipment because of its low"

Page 5; second column; Irradiated Fuel Transport Controversy; line 3 should read as follows: "permanent disposal sites for such materials has" (delete 'by 1986')

Page 7; New Jersey map: The Oyster Creek Plant should be located at Forked River south of the Forked River Plant. Near Atlantic City the symbols should have shown the cancelled site of a PSE&G off-shore nuclear power plant.

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