

Public Law 103-439
103d Congress

An Act

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

Nov. 2, 1994
[H.R. 4814]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Central Midwest
Interstate
Low-Level
Radioactive
Waste Compact
Amendments
Consent Act of
1994.
Illinois.
Kentucky.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Central Midwest Interstate Low-Level Radioactive Waste Compact Amendments Consent Act of 1994”.

SEC. 2. CONDITIONS OF CONSENT TO COMPACT AMENDMENTS.

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

Effective date.

(1) shall become effective on the date of the enactment of this Act;

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

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

SEC. 3. CONSENT OF CONGRESS TO COMPACT AMENDMENTS.

42 USC 2021d
note.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress is hereby given to amendments made by the States of Illinois and Kentucky to the Central Midwest Interstate Low-Level Radioactive Waste Compact, which compact was consented to by the Congress in section 224 of the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act (Public Law 99-240; 42 U.S.C. 2021 note). The amendments to which such consent is given are substantially as follows:

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

99 Stat. 1880.

“The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for managing such waste. The party states also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage such waste be properly provided.”

99 Stat. 1882.

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

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

99 Stat. 1883.

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

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

99 Stat. 1883.

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

“a) There is created the Central Midwest Interstate Low-Level Radioactive Waste Commission. Upon the eligible states becoming party states, the Commission shall consist of two voting Commissioners from each state eligible to be designated a host state under Article VI(b), one voting Commissioner from any other party state, and for each regional facility, one non-voting Commissioner who is an elected official of local government and a resident of the county where that regional facility is located. The Governor of each party state shall notify the Commission in writing of its Commissioners and any alternates.

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

99 Stat. 1884.

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

“d) The Commission shall meet at least once annually and shall also meet upon the call of any voting Commissioner.

“e) All meetings of the Commission and its designated committees shall be open to the public with reasonable advance notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all Commission actions and decisions shall be made in open meetings and appropriately recorded. A roll call may be required upon request of any voting Commissioner.”

99 Stat. 1884.

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

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

(7) Sections (i) and (j) of article III of the compact are amended to read as follows:

99 Stat. 1884,
1885.

“i) The Commission may:

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

“2) Enter into an agreement with any person to allow waste described in Article VII(a)(6) to be treated, stored, or disposed of at regional facilities. However, no such agreement shall be effective unless and until ratified by a law enacted by the host state of the regional facility to which the waste would be sent for treatment, storage, or disposal.

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

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

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

“6) Require that waste generated within the region be treated or stored at available regional facilities, subject to the limitations of Articles V(f), VII(a)(3) and VII(a)(6).

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

“8) Review the emergency closure of a regional facility, determine the appropriateness of that closure, and take whatever actions are necessary to ensure that the interests of the region are protected, provided that a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year that is less than 10 percent of the total volume recorded on such manifests for the region during the same year shall not be designated a host state or be required to store the region's waste. In determining the 10 percent exclusion, there shall not be included waste recorded on low-level radioactive waste manifests by a person whose principal business is providing a service by arranging for the collection, transportation, treatment, storage or disposal of such waste.

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

“10) Suspend the privileges or revoke the membership of a party state.

“j) The Commission shall:

“1) Submit within 10 days of its execution to the governor and the appropriate officers of the legislative body of the party state in which any affected facility is located a copy of any

agreement entered into by the Commission under Article III(i)(1), Article III(i)(2) or Article III(i)(3).

Reports.

"2) Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the Commission. The annual report shall include a description of the status of the activities taken pursuant to any agreement entered into by the Commission under Article III(i)(1), Article III(i)(2) or Article III(i)(3) and any violation of any provision thereof, and a description of the source, volume, activity, and current status of any waste from outside the region or waste described under Article VII(a)(6) that was treated, stored, or disposed of in the region in the previous year.

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

"4) Adopt and amend, as appropriate, a regional management plan that plans for the establishment of needed regional facilities.

"5) Adopt an annual budget."

99 Stat. 1886.

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

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

"p) Except as provided under Article III(n), Article III(o), Article VI(p) and Article VI(q), nothing in this compact alters liability for any action, omission, course of conduct or liability resulting from any causal or other relationships."

99 Stat. 1886,
1887.

(9) Sections (b) and (c) of article V of the compact are amended to read as follows:

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

"c) Party states or generators may negotiate for the right of access to a facility outside the region and may export waste outside the region subject to Commission approval under Article III(i)(4)."

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

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

99 Stat. 1887.

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

"b) If all regional facilities required by the regional management plan are not developed pursuant to Article VI(a), or upon notification that an existing regional facility will be closed, the Commission may designate a party state as a host state. A party state shall not be designated as a host state for any regional facility under

this Article VI(b) unless that state's total volume of waste recorded on low-level radioactive waste manifests for any year is more than 10% of the total volume recorded on such manifests for the region during the same year. In determining the 10% exclusion, there shall not be included waste recorded on low-level radioactive waste manifests by a person whose principal business is providing a service by arranging for the collection, transportation, treatment, storage or disposal of such waste, or waste described in Article VII(a)(6)."

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

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

"e) Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. The Commission may relieve a party state of this responsibility upon a showing by the requesting party state that no feasible potential regional facility site of the type it is designated to host exists within its borders or for other good cause shown and consistent with the purposes of this Compact."

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

"l) A host state intending to close a regional facility located within its borders shall notify the Commission in writing of its intention and the reasons. Notification shall be given to the Commission at least five years prior to the intended date of closure. This Section shall not prevent an emergency closing of a regional facility by a host state to protect its air, land and water resources and the health and safety of its citizens. However, a host state which has an emergency closing of a regional facility shall notify the Commission in writing within 3 working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.

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

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

"o) The host state shall create an 'Extended Care and Long-Term Liability Fund' and shall allocate sufficient fee revenues, received pursuant to Article VI(i), to provide for the costs of:

"1) decommissioning and other procedures required for the proper closure of a regional facility;

"2) monitoring, inspection and other procedures required for the proper extended care of a regional facility;

"3) undertaking any corrective action or clean-up necessary to protect human health and the environment from radioactive releases from a regional facility; and

"4) compensating any person for medical and other expenses incurred from damages to human health, personal injuries suffered from damages to human health and damages or losses to real or personal property, and accomplishing any necessary corrective action or clean-up on real or personal property caused by radioactive releases from a regional facility; the host state may allocate monies in this Fund in amounts as it deems appropriate to purchase insurance or to make other similar financial protection arrangements consistent with the purposes of this Fund; this Article VI(n) shall in no manner limit the financial responsibilities of the site operator under Article VI(o), the party states under Article VI(p), or any person who sends waste to a regional facility, under Article VI(q).

"p) The operator of a regional facility shall purchase an amount of property and third-party liability insurance deemed appropriate by the host state, pay the necessary periodic premiums at all times and make periodic payments to the Extended Care and Long-Term Liability Fund as set forth in Article VI(n) for such amounts as the host state reasonably determines is necessary to provide for future premiums to continue such insurance coverage, in order to pay the costs of compensating any person for medical and other expenses incurred from damages to human health, personal injuries suffered from damages to human health and damages or losses to real or personal property, and accomplishing any necessary corrective action or clean-up on real or personal property caused by radioactive releases from a regional facility. In the event of such costs resulting from radioactive releases from a regional facility, the host state should, to the maximum extent possible, seek to obtain monies from such insurance prior to using monies from the Extended Care and Long-Term Liability Fund.

"q) All party states shall be liable for the cost of extended care and long-term liability in excess of monies available from the Extended Care and Long-Term Liability Fund, as set forth in Article VI(n) and from the property and third-party liability insurance as set forth in Article VI(o). A party state may meet such liability for costs by levying surcharges upon generators located in the party state. The extent of such liability shall be based on the proportionate share of the total volume of waste placed in the regional facility by generators located in each such party state. Such liability shall be joint and several among the party states with a right of contribution between the party states. However, this Section shall not apply to a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year that is less than 10% of the total volume recorded on such manifests for the region during the same year."

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

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

"q) Any person who sends waste from outside the region or waste described in Article VII(a)(6) for treatment, storage or disposal at a regional facility shall be liable for the cost of extended care and long-term liability of that regional facility in excess of the monies available from the Extended Care and Long-Term Liability Fund as set forth in Article VI(n) and from the property and third-party liability insurance as set forth in Article VI(o). The extent of the liability for the person shall be based on the propor-

tionate share of the total volume of waste sent by that person to the regional facility.”.

(18) Section (a)(6) of article VII of the compact is amended 99 Stat. 1890.
to read as follows:

“6) establishes any right to the treatment, storage or disposal at any facility in the region or provides any authority to prohibit export from the region of waste that is owned or generated by the United States Department of Energy, owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy, or owned or generated as the result of any research, development, testing or production of any atomic weapon; or”.

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

“d) No person who provides a service by arranging for collection, transportation, treatment, storage or disposal of waste from outside the region shall be allowed to dispose of any waste, regardless of origin, in the region unless specifically permitted under an agreement entered into by the Commission in accordance with the requirements of Article III(i)(1).”.

(20) Section (c) of article VIII of the compact is amended 99 Stat. 1891.
to read as follows:

“c) The Commission is formed upon the appointment of the Commissioners and the tender of the membership fee payable to the Commission by the eligible states. The Governor of Illinois shall convene the initial meeting of the Commission. The Commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the Commission and implement the provisions of this compact.”.

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

“e) This compact becomes effective July 1, 1984, or at any Effective date.
date subsequent to July 1, 1984, upon enactment by the eligible states. However, Article IX(b) shall not take effect until the Congress has by law consented to this compact. The Congress shall have an opportunity to withdraw such consent every 5 years. Failure of the Congress affirmatively to withdraw its consent has the effect of renewing consent for an additional 5 year period. The consent given to this compact by the Congress shall extend to the power of the region to ban the shipment of waste into the region pursuant to Article III(i)(1) and to prohibit exportation of waste generated within the region under Article III(i)(4).”.

(22) Section (b) of article IX of the compact is amended 99 Stat. 1891.
to read as follows:

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

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

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

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

“4) for any person to dispose of waste at a facility other than a regional facility;

“5) for any person to deposit at a regional facility waste described in Article VII(a)(6); or

“6) for any regional facility to accept waste described in Article VII(a)(6).”

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

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

Approved November 2, 1994.

LEGISLATIVE HISTORY—H.R. 4814 (S. 2369):

HOUSE REPORTS: No. 103-816, Pt. 1 (Comm. on Natural Resources).

CONGRESSIONAL RECORD, Vol. 140 (1994):

Oct. 3, considered and passed House.

Oct. 8, considered and passed Senate.