

# Compact Exercise of Import/Export Authority

over

# Commercial Low-Level Radioactive Waste

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for the Midwest Interstate Low-Level Radioactive Waste Commission*

# **Appalachian States Low-Level Radioactive Waste Compact**

## **Import Authority**

The Appalachian States Low-Level Radioactive Waste Commission currently has no policies, bylaws, rules, or resolutions concerning the import of low-level radioactive waste into the region.

## **Export Authority**

The Appalachian Commission has adopted an export policy that provides authorization for generators to export low-level radioactive waste from the region without prior commission approval.

The Appalachian States Low-Level Radioactive Waste Commission controls the export of all low-level radioactive waste generated within the Compact region as provided under Article 4 of the Appalachian States Low-Level Radioactive Waste Compact Consent Act (P.L. 100-319). Until the Commission directs otherwise, low-level radioactive waste may be exported from the region without prior approval of the Commission. Without limiting the generality of the foregoing, all the generators of low-level radioactive waste within the Compact region are authorized and encouraged to dispose of low-level radioactive waste at any facility licensed under the Atomic Energy Act, as amended.

*—Export Policy, as amended on July 27, 1995.*

# **Central Interstate Low-Level Radioactive Waste Compact**

## **Import Authority**

The Central Interstate Low-Level Radioactive Waste Commission currently has no policies, bylaws, rules, or resolutions concerning the import of low-level radioactive waste into the region.

## **Export Authority**

The Central Commission has adopted rules that require generators to obtain authorization from the commission prior to exporting low-level radioactive waste from the region.

Any person seeking the authorization of the Commission pursuant to Article III, Section g., of the Compact to export waste which was generated within the region to a location outside the region shall submit an application to export waste to the Commission's Executive Director.

—Rule 1.1 of “Rules of the Central Interstate Low-Level Radioactive Waste Commission,” as amended on June 21, 1994.

Detailed waste export application procedures are contained in Rule 1 of “Rules of the Central Interstate Low-Level Radioactive Waste Commission.” The rule includes a provision requiring persons seeking export authorization to pay an application fee.

## **Legal Challenge to Import and Export Authority**

The commission's authority over the import and export of low-level radioactive waste was challenged in a lawsuit filed by the State of Nebraska in the U.S. District Court for the District of Nebraska in August 1997. At issue in the litigation was whether or not the compact provides the host state with veto authority over import and export applications. On November 23, 1998, the district court issued an order finding that the compact does not provide the host state with veto authority over export applications. The court declined to address the related issue of host state authority to veto import applications because no actual controversy exists as no such applications are pending. The court's decision has been appealed to the U.S. Court of Appeals for the Eighth Circuit.

# Central Midwest Interstate Low-Level Radioactive Waste Compact

## Import Authority

In May 1999, the Central Midwest Interstate Low-Level Radioactive Waste Commission adopted a *Regional Management Plan* “to ensure the safe and efficient management of waste generated within the region.” The plan includes discussion of various issues concerning the import of low-level radioactive waste into the region and identifies the following commission policies:

### *Limiting Access to the Regional Disposal Facility for Imported LLRW*

**It is the Commission’s policy to prohibit access to the regional LLRW disposal facility for imported LLRW.**

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### *Import for Disposal at Facilities Other than the Regional Facility of Below Regulatory Concern Wastes*

**Except as provided in this Regional Management Plan or as expressly authorized by the Commission, the Compact’s prohibition against disposal of waste within the region other than at a regional facility shall apply notwithstanding any declaration by the federal government or any state that any radioactive material is exempt from any regulatory control.**

—page 26

### *Limiting the Import of Technologically Enhanced Naturally-Occurring Radioactive Materials (TENORM) Waste into the Region for Disposal*

**It is the Commission’s policy to prohibit the import of TENORM waste with concentrations equal to or greater than 5 pCi/g into the region for disposal.**

—page 31

### *Limiting Access to Treatment or Storage Facilities for Imported LLRW*

**The Commission’s policy is to prohibit access to LLRW treatment or storage facilities for imported LLRW, except as authorized under an agreement or contract entered into by the Commission subject to the provisions of the Compact.**

—page 18

## *Limiting the Import of TENORM Waste into the Region for Treatment*

It is the Commission's policy to prohibit access to treatment facilities for imported TENORM wastes, except as authorized under an agreement or contract entered into by the Commission subject to the provisions of the Compact.

—page 18

In addition, the Central Midwest Commission has adopted bylaws which address the import of low-level radioactive waste into the region.

### Article III, Section 2. Agreements Regarding Use of Facilities

The Commission may enter into an agreement with any person, state, or group of states for the right to use facilities in the region for waste generated outside the region ... The Commission may also enter into an agreement to allow waste described in Article VII(a)(6) of the Compact to be treated, stored, or disposed of at regional facilities. The agreements are subject to approvals or revocations by party states as provided in Article III(i) of the Compact.

### Article IX, Section 4. Authorizing Access to Regional Facilities

Authorizing the use of regional facilities for waste generated outside the region requires the affirmative vote of all voting members of the Commission from the host state in which the facility is located.

—Excerpted from “Bylaws of the Central Midwest Interstate Low-Level Radioactive Waste Commission,” as amended on November 30, 1995.

The Central Midwest Commission has entered into bilateral agreements for access to treatment and storage facilities with the following states and compacts:

- Commonwealth of Massachusetts
- Midwest Compact
- Northeast Compact
- Rocky Mountain Compact
- Southeast Compact
- Southwestern Compact

The agreements are effective until December 31, 2001.

## **Export Authority**

The *Regional Management Plan* also includes discussion of various issues concerning the export of low-level radioactive waste from the region and identifies the following commission policies:

### *Limiting Exports of LLRW Prior to the Opening of the Regional Disposal Facility*

**The Commission's policy is to allow the unrestricted export of LLRW until the regional LLRW disposal facility begins operation.**

—page 16

### *Limiting Exports of LLRW for Disposal After the Regional Disposal Facility Becomes Operational*

**The Commission's policy is to prohibit the export of LLRW for disposal after the regional LLRW disposal facility begins operation.**

—page 17

### *Limiting the Export of TENORM Waste from the Region for Disposal Prior to the Opening of the Regional Disposal Facility*

**It is the Commission's policy to allow the unrestricted export of TENORM waste.**

—page 29

### *Limiting the Export of TENORM Waste from the Region for Disposal After the Opening of the Regional Disposal Facility*

**The Commission's policy is to prohibit the export of TENORM waste in concentrations equal to or greater than 2,000 pCi/g for disposal after the regional LLRW disposal facility begins operation.**

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### *Limiting the Export of LLRW for Treatment After the Regional Disposal Facility Becomes Operational*

**The Commission's policy is to allow the export of LLRW for treatment after the regional LLRW disposal facility begins operation, subject to the approvals required in the Compact.**

—page 17

*Limiting the Export of TENORM Waste from the Region for Treatment*

**The Commission's policy is to allow the export of TENORM waste for treatment after the regional LLRW disposal facility begins operation, subject to the provisions of the Compact.**

—page 30

*In addition, the Central Midwest Commission bylaws address the export of low-level radioactive waste from the region.*

**Article III, Section 2. Agreements Regarding Use of Facilities**

**The Commission may enter into an agreement with any person, state, or group of states for the right to use facilities in the region for waste generated outside the region and for the right to use facilities outside the region for waste generated within the region ...**

—Excerpted from “Bylaws of the Central Midwest Interstate Low-Level Radioactive Waste Commission,” as amended on November 30, 1995.

**Use of Non-Regional Facilities**

**The *Regional Management Plan* includes discussion of various issues concerning the use of non-regional facilities for the management of low-level radioactive waste from the region and identifies the following commission policies:**

*Disposal of LLRW at Facilities in the Region Other than the Regional Disposal Facility*

**The Commission's policy is to allow LLRW generated within the region and containing exempt quantities or exempt concentrations of radionuclides as specified in the current radiation control regulations of the party states, to be disposed of at facilities other than the regional LLRW disposal facility.**

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**The Commission's policy is to allow LLRW generated within the region to be disposed of at facilities other than the regional LLRW disposal facility provided that such disposal is approved by the party state under the general scope of its radiation control authority and regulations.**

—page 25

# Midwest Interstate Low-Level Radioactive Waste Compact

## Import Authority

The Midwest Interstate Low-Level Radioactive Waste Commission currently has no policies, bylaws, rules, or resolutions concerning the import of low-level radioactive waste into the region.

## Export Authority

The Midwest Compact Commission has adopted an export policy which provides authorization for generators to export low-level radioactive waste from the region without prior commission approval.

Resolved, That the Midwest Compact Commission authorizes export, from the Midwest Compact region, of low-level radioactive waste generated within the region, consistent with any terms or conditions precedent to the acceptance of such waste at out-of-region disposal, treatment, or processing facilities; and

Resolved, That export of such waste for disposal at facilities other than the Chem-Nuclear facility at Barnwell, South Carolina, or the Envirocare facility at Clive, Utah, shall be preceded by generator notification provided to the regional compact within which the receiving disposal facility is located, or to the state within which the receiving disposal facility is located if the state is not a member of a regional compact; and

Resolved, That this authorization remain in effect until modified by the Midwest Compact Commission.

—Excerpted from “Resolution re Reauthorization to Export from the Region Waste that was Generated within the Region,” June 26, 1997.

# **Northeast Interstate Low-Level Radioactive Waste Compact**

## **Import Authority**

The Northeast Interstate Low-Level Radioactive Waste Commission currently has no policies, bylaws, rules, or resolutions concerning the import of low-level radioactive waste into the region.

## **Export Authority**

The Northeast Commission has passed a resolution providing authorization for generators to export low-level radioactive waste from the region without prior commission approval.

Resolved, that the Commission approves the continued export of low-level radioactive waste generated within the Northeast Compact region under terms consistent with the “Low-Level Radioactive Waste Policy Amendments Act of 1985” and within the jurisdiction of the Commission; and

Resolved, that the Commission’s approval of waste exportation remain in effect unless rescinded by the Commission.

—Excerpted from “Resolution: Exportation of Low-Level Radioactive Waste Generated within the Northeast Compact Region,” December 10, 1998.

# **Northwest Interstate Compact on Low-Level Radioactive Waste Management**

## **Import Authority**

*Allowing Access for Out-of-Region Generators to the Envirocare of Utah Facility*

The Northwest Interstate Compact on Low-Level Radioactive Waste Management has passed a resolution that provides access for out-of-region generators to the disposal facility operated by Envirocare of Utah.

**BE IT HEREBY RESOLVED AND ORDERED THAT:**

1. Low-level radioactive mixed waste, as defined in federal and/or state law is allowed access to the Envirocare of Utah, Inc. facility in the Northwest Interstate Compact region.
2. Low-level radioactive waste (as defined in Public Law 99-240) as allowed under, and regulated by the terms of, the radioactive materials license of Envirocare of Utah, Inc. as determined by the State of Utah, is allowed access to the Envirocare of Utah, Inc. facility in the Northwest Interstate Compact region.
3. While the Compact allows the above described wastes access to the licensed Envirocare of Utah, Inc. facility in the Northwest Interstate Compact region, in accordance with Article V of the Compact, Utah retains the right to specifically approve each disposal arrangement before the waste is allowed access to the licensed Envirocare of Utah, Inc. facility ...
5. It is the intent of the [Northwest Compact] Committee that only those wastes approved by the compact of origin (including the Northwest Compact) be allowed. For states unaffiliated with a compact, state approval for export is required to the extent states can exercise such approval. This Resolution and Order shall constitute an arrangement under Article V of the Compact statute with any unaffiliated state or compact that approves waste for export to the Envirocare of Utah, Inc. facility ...
7. The Northwest Interstate Compact retains the right to modify or rescind this authorization at any time. The Compact Executive Director shall monitor progress of other compacts and states in siting low-level radioactive waste disposal facilities under Public Law 99-240. At three-year intervals, the Compact Committee shall evaluate such progress with regard to access to the Envirocare of Utah, Inc. facility.

—Excerpted from “Seconded Amended Resolution & Order,” November 9, 1998.

*Allowing Access for Rocky Mountain Generators to the Northwest Compact's Benton County (Richland) Facility*

The Northwest Compact has passed a resolution authorizing the disposal, treatment, and storage of low-level radioactive waste generated in the Rocky Mountain Compact region at the Northwest Compact's regional facility.

NOW, THEREFORE, BE IT HEREBY RESOLVED AND AFFIRMED that, as of January 1, 1993, the Northwest Compact's regional facility in Benton County, Washington, shall accept for treatment, storage, or disposal only low-level radioactive waste which falls into one or more of the following categories:

1. waste generated in one of the Northwest Compact's party states;
2. waste generated in one of the Rocky Mountain Compact's party states and transported, treated, stored and/or disposed of consistent with the Agreement between the Northwest Compact and the Rocky Mountain Compact;
3. waste which is the subject of a specific agreement previously or hereafter approved by the Northwest Compact committee and consistent with the terms of such agreement and with the Northwest Compact and with applicable federal and state law.

—Excerpted from "Resolution of the Northwest Interstate Compact on Low-Level Radioactive Waste Management," December 10, 1992.

The resolution references an agreement between the Northwest and Rocky Mountain Compacts that sets forth the terms under which Rocky Mountain waste may be deposited at the Northwest Compact's regional facility.

2. Access. Subject to the provisions of paragraphs 3 and 4, below, commencing January 1, 1993, at the Benton County facility, the Committee shall accept for disposal low-level waste generated in the Rocky Mountain States ("Rocky Mountain waste") on the same terms and conditions and subject to the same restrictions as waste generated within the Northwest States. Nothing in this agreement shall be construed to require the acceptance of waste other than waste generated in Colorado, New Mexico, and Nevada, nor shall anything in this agreement be construed to require the acceptance of waste which would not be accepted for disposal if generated within the Northwest states.

3. **Volume Limitation.** Nothing in this agreement shall require the Northwest States to accept for disposal at the Richland facility more than 6,000 cubic feet of Rocky Mountain Waste per year, without the consent of the State of Washington and the Committee. To allow for growth in the Rocky Mountain States, the volume limitation contained in this paragraph shall be increased by 3% per year beginning in 1994. Further, to the extent that the Rocky Mountain States do not utilize all of the disposal capacity to which they are entitled under this agreement in any year, up to 2,000 cubic feet per year of the unused capacity may be carried forward and utilized in the subsequent two year period ...

*—Excerpted from “Agreement to Accept Rocky Mountain Waste,”  
September 30, 1992.*

The agreement was subsequently modified to exclude Naturally-Occurring and Accelerator-Produced Radioactive Material (NARM) from the volume limitations imposed therein.

Notwithstanding any other provision of this contract, NARM waste which is generated in the Rocky Mountain states shall not be subject to the volume restrictions contained in paragraph 3 of the Contract.

*—Excerpted from “Amendment to the Contract Between the Rocky Mountain Low-Level Radioactive Waste Board and the Northwest Compact Committee,”  
January 19, 1995.*

#### *Limitation on Authority to Enter into Agreements for Import of Waste into Washington*

The Revised Code of Washington prohibits the Washington representative to the Northwest Commission from approving the import of low-level radioactive waste to the Benton County facility except under specific circumstances.

After 1992, the Washington representative may approve access to the state’s facility only for the states currently members of the Rocky Mountain compact or states which generate less than one thousand cubic feet of waste annually and are contiguous with a state which is a member of the Northwest Compact.

*—Excerpted from the Revised Code of Washington, Section 43.145.020,  
1994 edition.*

#### **Export Authority**

The Northwest Compact does not have authority over the export of low-level radioactive waste from its region and has therefore not adopted or passed any associated policies, bylaws, rules, or resolutions.

# Rocky Mountain Low-Level Radioactive Waste Compact

## Import Authority

The Rocky Mountain Low-Level Radioactive Waste Board has adopted rules governing the import of low-level radioactive waste into the region. The rules require generators to obtain authorization from the Rocky Mountain Board prior to importing waste for management purposes. Waste import application procedures are contained in the rules. (See Rule 7 of “Rules of the Rocky Mountain Low-Level Radioactive Waste Board,” June 1, 1998.)

No importation of out-of-region waste can take place until an import permit is issued.

Applications for import of wastes for all types of management should be filed pursuant to this Rule 7. Management includes, but is not limited to: collection, consolidation, storage, storage for decay, treatment, and incineration. Board authorization is required for the importation of all waste regardless of whether or not it has been deregulated by the U.S. Nuclear Regulatory Commission or any state.

—Excerpted from Rule 7 of “Rules of the Rocky Mountain Low-Level Radioactive Waste Board,” June 1, 1998.

## **Export Authority**

*Agreement Allowing Access for Rocky Mountain Generators to the Northwest Compact's Benton County (Richland) Facility*

The Rocky Mountain and Northwest Compacts have entered into an agreement authorizing the disposal of low-level radioactive waste generated in the Rocky Mountain Compact region at the Northwest Compact's Benton County (Richland) facility. The agreement contains provisions setting forth the terms under which Rocky Mountain waste may be deposited at the Northwest Compact's facility.

2. **Access.** Subject to the provisions of paragraphs 3 and 4, below, commencing January 1, 1993, at the Benton County facility, the Committee shall accept for disposal low-level waste generated in the Rocky Mountain States ("Rocky Mountain waste") on the same terms and conditions and subject to the same restrictions as waste generated within the Northwest States. Nothing in this agreement shall be construed to require the acceptance of waste other than waste generated in Colorado, New Mexico, and Nevada, nor shall anything in this agreement be construed to require the acceptance of waste which would not be accepted for disposal if generated within the Northwest states.
3. **Volume Limitation.** Nothing in this agreement shall require the Northwest States to accept for disposal at the Richland facility more than 6,000 cubic feet of Rocky Mountain Waste per year, without the consent of the State of Washington and the [Northwest Compact] Committee. To allow for growth in the Rocky Mountain States, the volume limitation contained in this paragraph shall be increased by 3% per year beginning in 1994. Further, to the extent that the Rocky Mountain States do not utilize all of the disposal capacity to which they are entitled under this agreement in any year, up to 2,000 cubic feet per year of the unused capacity may be carried forward and utilized in the subsequent two year period ...

*—Excerpted from "Agreement to Accept Rocky Mountain Waste,"  
September 30, 1982.*

The agreement was subsequently modified to exclude Naturally-Occurring and Accelerator-Produced Radioactive Material (NARM) from the volume limitations imposed therein.

Notwithstanding any other provision of this contract, NARM waste which is generated in the Rocky Mountain states shall not be subject to the volume restrictions contained in paragraph 3 of the Contract.

—Excerpt from “Amendment to the Contract Between the Rocky Mountain Low-Level Radioactive Waste Board and the Northwest Compact Committee,”  
January 19, 1995..

#### *Rules Allowing Export of LLRW from the Region*

The Rocky Mountain Compact’s rules also govern the export of low-level radioactive waste from the region. The rules require generators to obtain authorization from the board prior to exporting waste for treatment, storage or disposal. Waste export application procedures are contained in the rules. (See Rule 6 of “Rules of the Rocky Mountain Low-Level Radioactive Waste Board,” June 1, 1998.)

No waste may be exported until an export permit is issued.

Export applications for land disposal of waste at facilities other than the Benton County, Washington facility should be filed pursuant to ... Rule 6[.1]. This includes wastes that are to be processed prior to shipment to land disposal facilities other than the Benton County, Washington facility. Applications for shipments of waste directly from the point of generation to the Benton County, Washington facility should be filed pursuant Rule 6.10. For wastes that are to be managed (e.g., processed/treated) prior to shipment to the Benton County, Washington facility, an application should be filed pursuant to Rule 6.20. Export applications for wastes that are to be managed (e.g., incinerated) without subsequent land disposal should also be filed pursuant to Rule 6.20.

—Excerpted from Rule 6 of “Rules of the Rocky Mountain Low-Level Radioactive Waste Board,” June 1, 1998.

Rule 6.30 authorizes the export of sealed sources from the Rocky Mountain Compact region without the filing of an export application if the sources are to be returned to the manufacturers or suppliers of the item.

Rule 6[.30] authorizes the export of sealed sources from the region to the manufacturers or suppliers of the items. Thus, a specific export application and permit to return such items to the manufacturer or supplier is not necessary ...

There is no requirement that any sealed source be disposed. There is also no requirement that if a sealed source from the region is going to be disposed of, that the disposal must occur at the Benton County, Washington facility. The board's jurisdiction is limited to "waste." Hence, no export authorization is required for sealed sources that will continue to be used for their radiologic properties ...

Sealed sources may be exported from the region to the manufacturer or supplier thereof without additional authorization from the board.

—Excerpted from Rule 6.30 of "Rules of the Rocky Mountain Low-Level Radioactive Waste Board," June 1, 1998.

# **Southeast Compact for Low-Level Radioactive Waste Management**

## **Import Authority**

The Southeast Compact Commission for Low-Level Radioactive Waste Management currently has no policies, bylaws, rules, or resolutions concerning the import of low-level radioactive waste into the region.

## **Export Authority**

The Southeast Compact Commission has adopted an export policy that provides authorization for generators to export low-level radioactive waste from the region without prior commission approval.

The Southeast Compact Commission allows for the export of low-level radioactive waste until such time as another regional facility has been identified and ratifies and confirms the action of the staff prior to this date.

—*“Southeast Compact Commission Export Policy,” August 22, 1995.*

## **Southwestern Low-Level Radioactive Waste Compact**

### **Import Authority**

The Southwestern Low-Level Radioactive Waste Commission currently has no formal policies, bylaws, rules, or resolutions concerning the import of low-level radioactive waste into the region. However, at its second meeting on August 27, 1991, the Southwestern Commission considered requests from compacts and states to bring waste into California by joining the Southwestern Compact, contracting for disposal, and contracting for interim storage. The requests were denied by a motion that passed unanimously. After considerable debate, the commission then passed another motion by a vote of four to two—with the caveat that it not be binding on future commissions—stating that the commission would not accept any future requests for importation of non-compact waste to the planned low-level radioactive waste disposal facility in Ward Valley, California.

### **Export Authority**

The Southwestern Commission has adopted an export policy that requires generators to obtain authorization from the commission prior to exporting low-level radioactive waste from the region for disposal. Waste export application procedures are contained in the policy, and standardized forms are provided by the commission. (See “Policy of the Southwestern Low-Level Radioactive Waste Commission Regarding Exportation of Various Low-Level Radioactive Waste Streams,” February 6, 1998, and “Requirements for Exportation Petitions for Low-Level Radioactive Waste Disposal,” February 6, 1998.)

The Southwestern Commission’s export policy provides authorization for generators to export low-level radioactive waste for treatment outside of the region without prior commission approval. In addition, the policy provides authorization for generators to export low-level radioactive material from the region without prior commission approval if the sole purpose of the exportation is to process the material for recycling.

[I]n adopting this policy statement by at least a two-thirds vote, the Commission approves the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste if the sole purpose of the exportation is to process the material for recycling ...

[T]he Commission approves the export of low-level radioactive waste for treatment outside the region.

—Excerpted from “Policy of the Southwestern Low-Level Radioactive Waste Commission Regarding Exportation of Various Low-Level Radioactive Waste Streams,” February 6, 1998.

## **Texas Low-Level Radioactive Waste Disposal Compact**

### **Import Authority**

To date, Commissioners have not yet been appointed to the Texas Low-Level Radioactive Waste Disposal Compact Commission. Accordingly, no policies, bylaws, rules, or resolutions have been adopted concerning the import of low-level radioactive waste into the region.

### **Export Authority**

To date, Commissioners have not yet been appointed to the Texas Compact Commission. Accordingly, no policies, bylaws, rules, or resolutions have been adopted concerning the export of low-level radioactive waste from the region.

# Appendix