



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 31, 1996

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, D.C. 20515-6115

Dear Mr. Chairman:

Thank you for providing the Commission the opportunity to comment on the revision of the Midwest Interstate Low-Level Radioactive Waste Compact. We are limiting our comments to provisions that we believe raise the most significant questions.

The revised compact expands the definition of "person" to include the United States. Since the revision defines "generator" to mean any person who first produces low-level radioactive waste, the liabilities that the compact seeks to place on generators in the compact region could apply to any Federal facility in the region that does not fall outside of the orbit of state responsibility. This may raise legal issues regarding Federal waiver of sovereign immunity, as well as a policy question for the Congress regarding the appropriateness of waiving the sovereign immunity of the United States other than by general legislation that applies to all compact states.

This definitional change becomes particularly important in light of the possible consequences of applying the indemnification provisions of the compact revision to Federal facilities. Under the proposed revision, if a generator fails to sign an agreement indemnifying a party state for certain liabilities (e.g., for damages to persons, property, or the environment resulting from a compact facility or any liability for "any other matter arising from" the compact), the compact disposal facility may not accept waste from the generator. Thus, if a Federal facility (e.g., a VA hospital) located in the region does not have the authority to sign an indemnity agreement as required by the revised compact, and therefore does not sign such an agreement, the facility's waste may not be accepted for disposal at a compact facility.

At the same time, shipment of a Federal facility's waste outside the region could be frustrated since waste generated within the compact region could not be exported outside the region for disposal without the approval of a majority of the Compact Commission and any host State. If this veto power over export were exercised against a Federal facility that does not sign an indemnity agreement, the result could be that the Federal facility would have little choice but to store its waste. The NRC believes that, in the long term, disposal of radioactive waste is preferable to storage because storage is more likely to raise potential health and safety issues. Even if the veto power were not used to prevent the export of a Federal facility's waste for disposal, the Federal facility would have the burden of finding a non-regional facility that would accept its waste, which is by no means assured, and it could incur greater costs for disposal. Consequently, regardless of how the

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pertinent compact provisions are applied, coverage of Federal generators under the revised compact could impose an added cost burden on the United States.

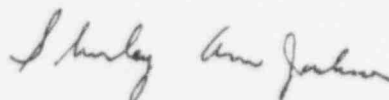
Further, because of the inclusion of the United States within the definition of "person," there are two other areas addressed by the revised Midwest Compact that may raise legal issues that have Government-wide ramifications. First, the revision allows penalties for violation of the compact to be levied against "any person", except an official of another state. Second, the revision contains provisions on judicial review and standards for judicial review that are more detailed and complex than those found in other compacts that have been ratified by the Congress. Given the possible broad implications of these provisions, we believe that it is appropriate for the NRC to defer to the Department of Justice regarding their potential significance.

In addition, the Low-Level Radioactive Waste Policy Act authorizes compacts to exclude waste coming from outside the compact region, but this authority extends explicitly only to disposal of waste. The revised Midwest Compact applies this to storage and treatment of low-level radioactive waste in addition to disposal. We recognize that this compact revision, if ratified, would not be the only compact to contain such an expansion of the Act's authority, but the extension of this authority to storage and treatment of waste does raise a policy question for consideration by the Congress; namely, whether general legislation would not be a more appropriate way to address authority related to such forms of waste management.

We assume that when introduced in the Congress, the bill for the ratification of the revised Midwest Compact will contain the language used in the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act (Title II of Public Law 99-240) and subsequent compact ratification legislation to condition Congress's consent. This language expressly states that the consent of the Congress is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, as amended, and is granted only for so long as the regional commission established in the compact complies with all of the provisions of the Act. Omission of this language could raise questions regarding the applicability of the Act's provisions to the Midwest Compact, since the bill will enact the entire compact anew. Making the Congressional consent for this Compact different from that for the other compacts would create an asymmetrical system and could lead to conflicts between regions. In the past, Congress has set a high priority on establishing a consistent set of rules under which the interstate compact system for low-level waste disposal would operate.

The Commission would be pleased to provide further information regarding this matter should you so desire.

Sincerely,



Shirley Ann Jackson

cc: Congressman Frank Pallone, Jr.
Office of Legal Counsel, DOJ