

Background Paper 83-10

LOW-LEVEL RADIOACTIVE WASTE COMPACT

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LOW-LEVEL RADIOACTIVE WASTE COMPACT

I. INTRODUCTION

During the last 4 years, there has been continued public interest in the problems associated with the commercial low-level radioactive waste disposal facility near Beatty, Nevada. Several incidents involving transporters of waste and the discovery of waste canisters outside the perimeter of the site created an outcry for closure of the facility. Some Nevadans have suggested that as a nominal generator of low-level radioactive waste, Nevada need not be the Nation's dumping ground. Thus, Nevada has become involved in establishing regional compacts for the disposal of low-level radioactive waste.

Commercially generated low-level radioactive waste was disposed in the Atlantic and Pacific Oceans prior to the placement of a moratorium on the issuance of new licenses for sea disposal by the United States Atomic Energy Commission (AEC) in June 1960. Interim storage of low-level radioactive waste was provided at two federal laboratories, but the establishment of commercial disposal sites was encouraged when the sea disposal moratorium was adopted. Thus, Beatty, Nevada, became the first commercial site to be licensed by the AEC in September 1962. Five other commercial sites for the disposal of low-level radioactive waste were licensed between 1962 and 1971. They included Maxey Flats, Kentucky, in 1962; West Valley, New York, in 1963; Hanford, Washington, in 1965; Sheffield, Illinois, in 1967; and Barnwell, South Carolina, in 1971. After August 1963, federal burial grounds were no longer available for commercial use.

Only three of the six commercial sites remain open in 1983. West Valley closed in March 1975; Maxey Flats, in June 1976; and Sheffield, in March 1978. Although the three remaining sites have been capable of handling the disposal of the Nation's low-level radioactive waste, temporary closure of two of the three sites, Beatty and Hanford, in October 1979 underscored the need to establish additional disposal facilities immediately. Furthermore, the governors of South Carolina and Washington served notice of their intent to fix or reduce their volumes of waste disposal after 1980.

II. REGIONAL COMPACTS FOR THE DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

On a national and then regional basis, state legislators and governors began discussing options to deal with the low-level waste disposal problem. The forming of regional compacts for managing low-level radioactive waste evolved as the best solution to the problem of the limited existing facilities. These compacts could also provide, it was believed, for the reduction of safety risks associated with transcontinental shipments of commercial low-level radioactive waste.

At the urging of governors and state legislatures, Congress adopted Public Law (P.L.) 96-573, the Low-Level Radioactive Waste Policy Act of 1980, in December 1980. The law authorizes states to join together in compact agreements. The law also permits compact states to exclude low-level radioactive waste generated by other states after 1986.

The formation of regions was loosely based on proximity, but also on economic feasibility (sufficient waste volume to sustain a site) and geographic compatibility. A variety of groupings with multiple overlap emerged, but ultimately, 47 states have grouped themselves into six regions: Central, Midwest, Northeast, Northwest, Rocky Mountain and Southeast. California, Texas and West Virginia are not currently affiliated with any compact region. Table I lists regions and member states, and figure 1 illustrates the information in table I. Compacts have been drafted in all but the Northeast region where negotiations continue. Although Nevada has not yet adopted a compact, a number of states have already adopted their respective regional compacts (see table I) and some already await congressional approval. The six compacts have the following features in common:¹

- In regard to the Low-Level Radioactive Waste Policy Act of 1980, P.L. 96-573, the party states recognize that low-level radioactive waste is a state responsibility and that this best can be accomplished through formation of regional compacts;
- The purpose of the compacts is to promote the health and safety of the citizens of the region and to provide a cooperative framework for the management of low-level radioactive waste;

TABLE 1.

LOW-LEVEL RADIOACTIVE WASTE COMPACT REGIONS AND STATUS OF COMPACT LEGISLATION, MARCH 1983

<u>CENTRAL</u>	<u>MIDWEST</u>	<u>NORTHEAST²</u>	<u>NORTHWEST³</u>	<u>ROCKY MOUNTAIN</u>	<u>SOUTHEAST⁴</u>	<u>UNAFFILIATED</u>
Arkansas-e	Illinois	Connecticut	Alaska	Arizona	Alabama-e	California
Kansas-e	Indiana-i	Delaware	Hawaii-e	Colorado-e	Florida-e	Texas
Louisiana-e	Iowa-i	Maine-e	Idaho-e	Nevada-i	Georgia-e	West Virginia ⁵
Nebraska-i	Kentucky	Maryland	Montana-i	New Mexico-i	Mississippi-e	
Oklahoma-i	Michigan-e	Massachusetts	Oregon-e	Wyoming-e	North Carolina	
	Minnesota-i	New Hampshire	Utah-e		South Carolina-e	
	Missouri-i	New Jersey	Washington-e		Tennessee-e	
	North Dakota-r	New York			Virginia-i	
	Ohio	Pennsylvania				
	South Dakota-i	Rhode Island				
	Wisconsin-i ¹	Vermont				

Key

e - compact enacted; i - compact bill introduced; r - compact legislation rejected.

NOTES

1. Three compact bills have been introduced: one for membership in the Midwest compact, a second for membership in the Central states compact, and a third to create a single member compact for Wisconsin.
2. Northeast compact negotiations were completed in mid-February 1983 and thus little time has ensued to allow for bill introductions. Maine passed legislation in 1982 calling for adoption of a Northeast compact on low-level radioactive waste.
3. The Northwest compact has been forwarded to Congress for its approval.
4. The southeastern states indicated in the table had adopted a compact in 1982. The site host state South Carolina, however, decided to amend the compact after the states' adoption. Therefore, new compact legislation containing the amendments will have to be adopted by the southeastern states for their compact to become effective.
5. West Virginia along with Delaware, Kentucky, Maryland, and Virginia comprised the Mid-Atlantic states compact negotiating group until recently. Delaware and Maryland had eligibility in the Northeast compact and have chosen to join it. Virginia is petitioning for membership in the Southeast compact while Kentucky maintains eligibility in the Midwest compact and North Carolina in the Southeast compact. Thus the Mid-Atlantic group disbanded leaving West Virginia unaffiliated since it did not have multiple eligibility.

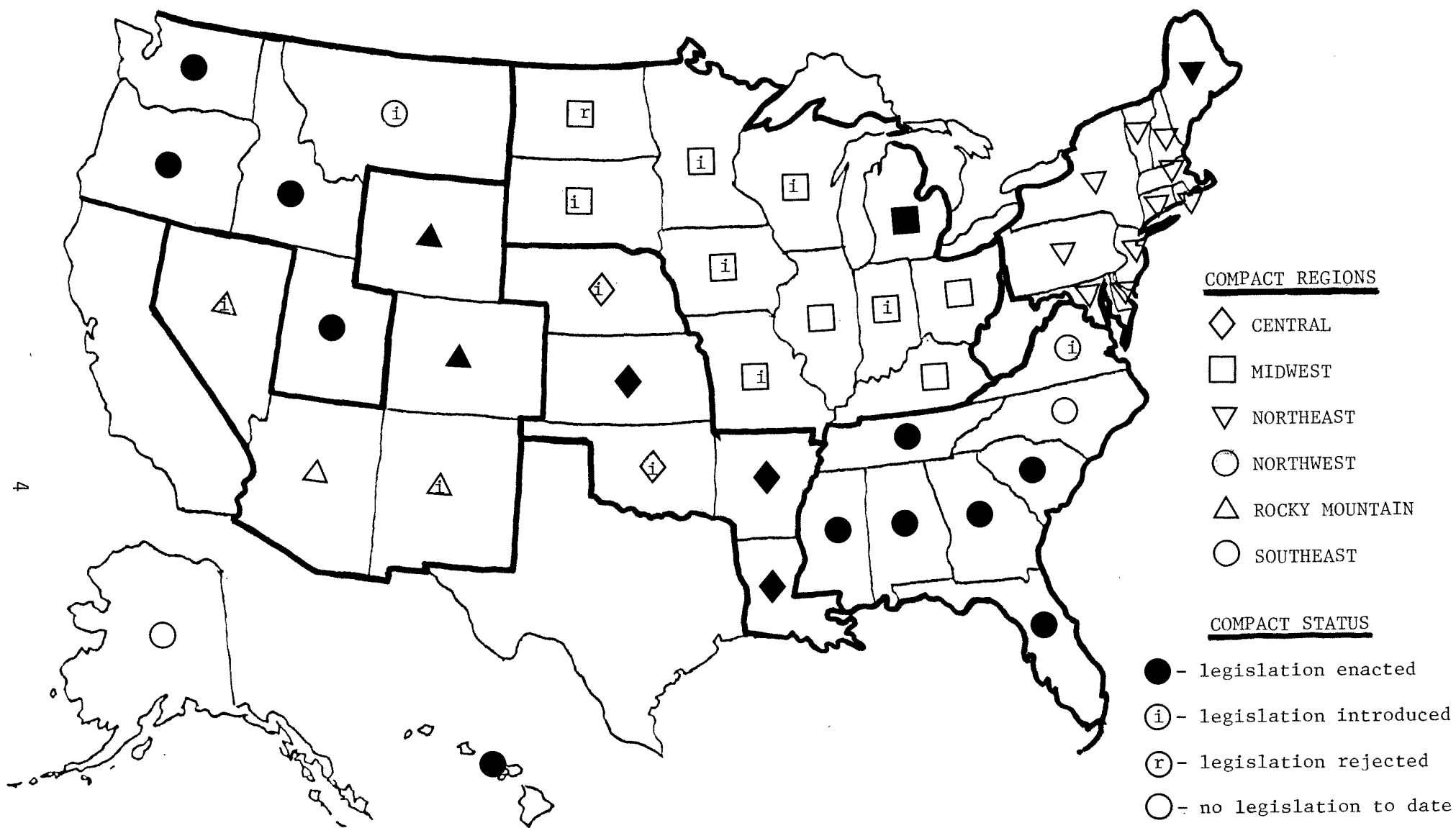


FIGURE 1. LOW-LEVEL RADIOACTIVE WASTE COMPACT REGIONS AND STATUS OF COMPACT LEGISLATION

- Member states are required to have access to regional facilities;
- The compacts must not affect military activities of the U.S. Department of Energy or any federal research efforts;
- The provisions of the compacts are severable, meaning that if any part of a compact is held invalid by the courts, the rest of the compact will remain in effect; and
- The compact is for the purpose of managing low-level radioactive waste. Management includes storage, treatment, and disposal.

With the exception of the Northwest compact, the compacts stipulate that their governing bodies have the authority or responsibility to:

- Meet at least once a year;
- Hire a staff;
- Adopt an annual budget and bylaws;
- Submit an annual report to the presiding officers of the legislatures and governors of the member states; and
- Appear as an intervenor in a judicial or regulatory proceeding on behalf of party states.

III. PROVISIONS OF THE ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT

The general provisions of the Rocky Mountain Low-Level Radioactive Waste Compact are summarized below. This summary is adapted from a National Conference of State Legislatures' (NCSL) background paper.² The Colorado enabling legislation, which contains the full text of the compact, appears in appendix A. Although the form and content of enabling legislation need not conform among compact states, the text of the compact must.

Structure and Responsibilities of the Board. Each party state is provided one member on the board, and each state has one vote. A majority of the total number of votes on

the board is necessary for action by the board. Under special circumstances, the board may conduct business by telephone. The board has the power to sue and to impose civil penalties for certain violations of compact provisions. The board must make available information on low-level radioactive waste management technologies and problems through its members to party states and to the public. It may also develop a low-level radioactive waste management plan. The board is required to maintain an inventory of generators and regional facilities, including their size and capacity, and must ascertain the need for regional facilities on a continuing basis. It is required to develop contingency plans should any regional facility be closed.

Eligibility. Eligible states are Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming. California had been included in preliminary negotiations, but was eliminated due to the large volume of waste it generates. It has sufficient volume to have its own economically feasible disposal facility. Utah was not only eligible to join the Rocky Mountain compact, but also the Northwest compact, and chose to join the Northwest compact in 1982. Other states may become eligible to join the Rocky Mountain compact by the unanimous consent of the board.

An eligible state may become a party state by legislative enactment of the compact or by executive order of its governor that adopts this compact. When a state joins by executive order, but the legislature fails to enact the compact during the first general session thereafter, the state will no longer be a party state.

The compact will take effect when it has been ratified by the legislatures of two eligible states. Colorado adopted the compact in 1982. New Mexico considered compact legislation in 1982 but did not enact it. In 1983, a New Mexico bill has again been introduced, and bills have also been introduced in Wyoming and Nevada (Senate Bill 184).

Site Selection. The compact requires that a regional facility must be opened and operating in a party state other than Nevada within 6 years after the compact becomes law in Nevada and one other state. Each party state that is expected to generate 20 percent or more of the low-level radioactive waste generated within the region has an obligation to become a host state. Because Nevada generates less than 1 percent of the region's waste, it is not expected to be a host again if the compact is adopted. Colorado, which

presently generates about 60 percent of the region's waste, is preparing to become the first host state. A siting process was enacted by the 1982 Colorado legislature and is being vigorously pursued. A site could become operational in the late 1980's, at which time the Beatty low-level waste facility would permanently close. Based on projected volumes of waste, Arizona will be the next host state, provided it joins the compact.³

In seeking to fulfill its obligation to become a host state, a party state must:

- Cause a regional facility to be developed on a timely basis; and
- Ensure, through state or applicable federal law, that public health and safety will be protected and preserved in the siting, design, development, licensure, operation, closure, decommissioning, and long-term care.

Within 90 days of a request by a party state, the board must approve or disapprove a regional facility to be located in that state. Approval of the proposed facility is contingent upon there being a sufficient demand to render operation of the facility economically feasible without endangering the economic feasibility of other regional facilities and upon showing that the proposed facility will have sufficient capacity to serve the needs of the region for a reasonable number of years.

The prospective host state is required, by the compact, to solicit comments from the other party states regarding siting, design, development, licensure, operation, closure, decommissioning, and perpetual care of the regional facility and to report annually to the board projections of future capacity and availability of regional facilities in the state.

Once a state has served as a host state, it is not obligated to serve as a host state again until each of the other obligated party states has fulfilled its obligation.

Penalties for Failure to Become a Host State. For failing to carry out obligations under the compact, a party state may be excluded by a two-thirds vote of the member states.

Regulatory Enforcement by Member States. Each party state is required to adopt and enforce procedures for low-level

radioactive waste originating within its borders regarding packaging and transportation requirements. These procedures may include, but are not limited to:

- Periodic inspections of packaging and shipping practices of generators;
- Periodic inspection of waste containers while in custody of carriers; and
- Appropriate enforcement actions with respect to violations.⁴

Party states must maintain an inventory of all generators within their borders and may also impose more stringent regulations than those required by the compact.

Rates, Fees and Financial Requirements. The compact provides that the board is required to impose a volume-based surcharge to pay for the costs and expenses of the board. A host state may impose a similar surcharge, which must be approved by the board. These moneys may be used for any purpose authorized by state law, including the costs of licensure and regulatory activities related to the regional facility; a decommissioning and perpetual care fund; and local impact assistance.

If a host state notifies a party state that a person in that state has violated applicable packaging, shipping or transportation requirements, the party state must take appropriate action. This action may include requiring that a bond be posted by the violator to pay the cost of repackaging at the regional facility and may require that future shipments be inspected. A party state may impose fees to recover the cost of enforcement practices mentioned above.

Membership Fee. Upon legislative enactment of the compact, states will be required to pay \$70,000 to the board to support its activities prior to the collection of the surcharge.

Import and Export of Waste. After January 1, 1986, waste generated in party states must be managed at regional facilities unless the board grants an authorization to export them. The board, under the provisions of the compact, may also authorize the importation of out-of-region wastes after January 1, 1986, if the host state gives approval.

In order to fulfill these obligations, member states would have to inspect U.S. Nuclear Regulatory Commission (NRC) licenses, such as nuclear power plants. In comments supplied to one of the drafters of this compact, the NRC indicated that this could be resolved through an agreement between the NRC and each state in the compact. This mechanism can be used by both agreement and nonagreement states.

Withdrawal from the Compact. A state may withdraw from the compact by legislation repealing its enactment, such withdrawal cannot take effect for 2 years. If a host state withdraws, the regional facility in that state must remain available for 5 years. The exception to this requirement is the Beatty site, another concession of the compact to Nevada.

IV. CONCESSIONS TO NEVADA

As negotiated, the Rocky Mountain Low-Level Radioactive Waste Compact provides several concessions for Nevada. These have been alluded to in the above discussion and are restated below.

1. Article 3 provides that each party state, which is expected to generate 20 percent or more in cubic feet of the low-level waste generated within the region, has an obligation to become a host state. Since Nevada is not likely to ever generate 20 percent of the region's low-level waste, Nevada will never be under obligation to be a host state again. Therefore, after the Beatty facility closes, compact membership will eliminate any future need for a Nevada low-level waste disposal facility.
2. Also, according to Article 3, once a party state has served as a host state, it is not obligated to serve again until each other party state having an obligation has fulfilled its obligation. Nevada, specifically, already being a host state, is not obligated to serve again as a host state until every other party state has served. Again, once the Beatty facility closes, no other Nevada facility will need to be opened as long as the compact is in effect.
3. Finally, Article 8 exempts the Beatty, Nevada, facility from remaining open until 5 years after the effective date of withdrawal from the compact if Nevada should choose to repeal the compact.

V. FOOTNOTES

1. Jordan, Julie M., Proposed Low-Level Radioactive Waste Management Interstate Compacts, National Conference of State Legislatures, Denver, Colorado, April 27, 1982.
2. Ibid.
3. Arizona low-level radioactive waste production is projected to surpass 20 percent of regionally generated waste due to its having three nuclear reactors coming on line in the next 10 years.
4. In order to fulfill these obligations, member states would have to inspect U.S. Nuclear Regulatory Commission licenses, such as nuclear power plants. In comments supplied to one of the drafters of this compact, NRC indicated that this could be resolved through an agreement between the NRC and each state in the compact. This mechanism can be used by both agreement and non-agreement states.

VI. SUGGESTED READING*

1. The Council of State Governments. Waste Management in the States, The Council of State Governments, Lexington, Kentucky, January 1982.
2. Jordan, J. M., and Melson, L. G. A Legislator's Guide to Low-Level Radioactive Waste Management, National Conference of State Legislatures, Denver, Colorado, May 1981.
3. Jordan, J., Jones, R., and Melson, G. Summary Report: Low-Level Radioactive Waste Management Workshops, May-June 1981, National Conference of State Legislatures.
4. Missouri Low-Level Radioactive Waste Task Force. Report and Recommendations on Low-Level Radioactive Waste Management, Missouri Low-Level Radioactive Waste Task Force, Jefferson City, Missouri, December 1982.
5. National Low-Level Waste Management Program. Managing Low-Level Radioactive Waste: A Proposed Approach, EG&G Idaho, Inc., Idaho Falls, Idaho, August 1980.
6. Northwest Interstate Compact on Low-Level Radioactive Waste Management, Chapter No. 124, Laws of 1981, State of Washington.
7. Parker, Kate. "Low-Level Radioactive Waste: States Move to Regulate Disposal," State Government News, May 1982, pp. 5-7.
8. Science Applications, Inc. Nevada State Briefing Book for Low-Level Radioactive Waste Management, EG&G Idaho, Inc., Idaho Falls, Idaho, July 1981.
9. Southern States Energy Board. Low-Level Radioactive Waste Management Regional Compact, Southern States Energy Board, Atlanta, Georgia, May 1981.
10. State Planning Council. Low-Level Radioactive Waste Management: A Regional Compact, State Planning Council on Radioactive Waste Management, Washington, D.C., 1981.

11. State Planning Council. Low-Level Radioactive Waste Management: Case Studies on Commercial Burial Sites, State Planning Council on Radioactive Waste Management, Washington, D.C., August 1981.
12. Task Force on Low-Level Radioactive Waste Disposal. Low-Level Waste: A Program for Action, National Governors' Association, Washington, D.C., August 1980.

*These and other publications pertaining to this subject are available for review in the legislative counsel bureau's research division library.

APPENDIX A

ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT

24-60-2201. Short title. This part 22 shall be known and may be cited as the "Low-level Radioactive Waste Act".

24-60-2202. Execution of compact. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado, which shall be known as the "Rocky Mountain Low-level Radioactive Waste Compact", with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE 1

FINDINGS AND PURPOSE

A. The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. Moreover, the party states find that the United States Congress, by enacting the "Low-level Radioactive Waste Policy Act" (P.L. 96-573), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

B. It is the purpose of the party states, by entering into an interstate compact, to establish the means for cooperative effort in managing low-level radioactive waste; to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities; to encourage reduction of the volume of low-level radioactive waste requiring disposal within the region; to restrict management within the region of low-level radioactive waste generated outside the region; to distribute the costs, benefits and obligations of low-level radioactive waste management equitably among the party states; and by these means to promote the health, safety and welfare of the residents within the region.

ARTICLE 2

DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise:

A. "Board" means the Rocky Mountain low-level radioactive waste board;

B. "Carrier" means a person who transports low-level waste;

C. "Disposal" means the isolation of waste from the biosphere, with no intention of retrieval, such as by land burial;

D. "Facility" means any property, equipment or structure used or to be used for the management of low-level waste;

E. "Generate" means to produce low-level waste;

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

G. "Low-level waste" or "waste" means radioactive waste, other than:

(1) Waste generated as a result of defense activities of the federal government or federal research and development activities;

(2) High-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

(3) Waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram of waste material;

(4) Byproduct material as defined in Section 11 e. (2) of the "Atomic Energy Act of 1954", as amended on November 8, 1978; or

(5) Wastes from mining, milling, smelting, or similar processing of ores and mineral-bearing material primarily for minerals other than radium;

H. "Management" means collection, consolidation, storage, treatment, incineration or disposal;

I. "Operator" means a person who operates a regional facility;

J. "Person" means an individual, corporation, partnership or other legal entity, whether public or private;

K. "Region" means the combined geographical area within the boundaries of the party states; and

L. "Regional facility" means a facility within any party state which either:

(1) Has been approved as a regional facility by the board; or

(2) Is the low-level waste facility in existence on January 1, 1982, at Beatty, Nevada.

ARTICLE 3

RIGHTS, RESPONSIBILITIES AND OBLIGATIONS

A. There shall be regional facilities sufficient to manage the low-level waste generated within the region. At least one regional facility shall be open and operating in a party state other than Nevada within six years after this compact becomes law in Nevada and in one other state.

B. Low-level waste generated within the region shall be managed at regional facilities without discrimination among the party states; provided, however, that a host state may close a regional facility when necessary for public health or safety.

C. Each party state which, according to reasonable projections made by the board, is expected to generate twenty percent or more in cubic feet except as otherwise determined by the board of the low-level waste generated within the region has an obligation to become a host state in compliance with subsection D of this article.

D. A host state, or a party state seeking to fulfill its obligation to become a host state, shall:

(1) Cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in Article 4 before allowing site preparation or physical construction to begin;

(2) Ensure by its own law, consistent with any applicable federal law, the protection and preservation of public health and safety in the siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state;

(3) Subject to the approval of the board, ensure that charges for management of low-level waste at the regional facilities within the state are reasonable;

(4) Solicit comments from each other party state and the board regarding siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state and respond in writing to such comments;

(5) Submit an annual report to the board which contains projections of the anticipated future capacity and availability of the regional facilities within the state, together with other information required by the board; and

(6) Notify the board immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the board.

E. Once a party state has served as a host state, it shall not be obligated to serve again until each other party state having an obligation under subsection C of this article has fulfilled that obligation. Nevada, already being a host state, shall not be obligated to serve again as a host state until every other party state has so served.

F. Each party state:

(1) Agrees to adopt and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to packaging and transportation requirements and regulations. Such procedures shall include but are not limited to:

(a) Periodic inspections of packaging and shipping practices;

(b) Periodic inspections of waste containers while in the custody of carriers; and

(c) Appropriate enforcement actions with respect to violations;

(2) Agrees that after receiving notification from a host state that a person in the party state has violated packaging, shipping or transportation requirements or regulations, it shall take appropriate action to ensure that violations do not recur. Appropriate action may include but is not limited to the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected;

(3) May impose fees to recover the cost of the practices provided for in paragraphs (1) and (2) of this subsection;

(4) Shall maintain an inventory of all generators within the state that may have low-level waste to be managed at a regional facility; and

(5) May impose requirements or regulations more stringent than those required by this subsection.

ARTICLE 4

BOARD APPROVAL OF REGIONAL FACILITIES

A. Within ninety days after being requested to do so by a party state, the board shall approve or disapprove a regional facility to be located within that state.

B. A regional facility shall be approved by the board if and only if the board determines that:

(1) There will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility; and

(2) The facility will have sufficient capacity to serve the needs of the region for a reasonable period of years.

ARTICLE 5

SURCHARGES

A. The board shall impose a "compact surcharge" per unit of waste received at any regional facility. The surcharge shall be adequate to pay the costs and expenses of the board in the conduct of its authorized activities and may be increased or decreased as the board deems necessary.

B. A host state may impose a "state surcharge" per unit of waste received at any regional facility within the state. The host state may fix and change the amount of the state surcharge subject to approval by the board. Money received from the state surcharge may be used by the host state for any purpose authorized by its own law, including but not limited to costs of licensure and regulatory activities related to the regional facility, reserves for decommissioning and long-term care of the regional facility and local impact assistance.

ARTICLE 6

THE BOARD

A. The "Rocky Mountain low-level radioactive waste board", which shall not be an agency or instrumentality of any party state, is created.

B. The board shall consist of one member from each party state. Each party state shall determine how and for what term its member shall be appointed, and how and for what term any alternate may be appointed to perform that member's duties on the board in the member's absence.

C. Each party state is entitled to one vote. A majority of the board constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the board is necessary for the board to take any action.

D. The board shall meet at least once a year and otherwise as its business requires. Meetings of the board may be held in any place within the region deemed by the board to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment shall be given with respect to any meeting; provided, however, that nothing in this subsection shall preclude the board from meeting in executive session when seeking legal advice from its attorneys or when discussing the employment, discipline, or termination of any of its employees.

E. The board shall pay necessary travel and reasonable per diem expenses of its members, alternates and advisory committee members.

F. The board shall organize itself for the efficient conduct of its business. It shall adopt and publish rules consistent with this compact regarding its organization and procedures. In special circumstances the board, with unanimous consent of its members, may take actions by telephone; provided, however, that any action taken by telephone shall be confirmed in writing by each member within thirty days. Any action taken by telephone shall be noted in the minutes of the board.

G. The board may use for its purposes the services of any personnel or other resources which may be offered by any party state.

H. The board may establish its offices in space provided for that purpose by any of the party states or, if space is not provided or is deemed inadequate, in any space within the region selected by the board.

I. Consistent with available funds, the board may contract for necessary personnel services and may employ such staff as it deems necessary to carry out its duties. Staff shall be employed without regard for the personnel, civil service or merit system laws of any of the party states and shall serve at the pleasure of the board. The board may provide appropriate employee benefit programs for its staff.

J. The board shall establish a fiscal year which conforms to the extent practicable to the fiscal years of the party states.

K. The board shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the board shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the board.

L. The board shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

M. Upon legislative enactment of this compact, each party state shall appropriate seventy thousand dollars (\$70,000) to the board to support its activities prior to the collection of sufficient funds through the compact surcharge imposed pursuant to subsection A of article 5 of this compact.

N. The board may accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source. The nature, amount and condition, if any, attendant upon any donation, grant or other resources accepted pursuant to this subsection, together with the identity of the donor or grantor, shall be detailed in the annual report of the board.

O. In addition to the powers and duties conferred upon the board pursuant to other provisions of this compact, the board:

(1) Shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the board, including an annual report to be submitted by December 15;

(2) May assemble and make available to the governments of the party states and to the public through its members information concerning low-level waste management needs, technologies and problems;

(3) Shall keep a current inventory of all generators within the region, based upon information provided by the party states;

(4) Shall keep a current inventory of all regional facilities, including information on the size, capacity, location, specific wastes capable of being managed and the projected useful life of each regional facility;

(5) May keep a current inventory of all low-level waste facilities in the region, based upon information provided by the party states;

(6) Shall ascertain on a continuing basis the needs for regional facilities and capacity to manage each of the various classes of low-level waste;

(7) May develop a regional low-level waste management plan;

(8) May establish such advisory committees as it deems necessary for the purpose of advising the board on matters pertaining to the management of low-level waste;

(9) May contract as it deems appropriate to accomplish its duties and effectuate its powers, subject to its projected available resources; but no contract made by the board shall bind any party state;

(10) Shall make suggestions to appropriate officials of the party states to ensure that adequate emergency response programs are available for dealing with any exigency that might arise with respect to low-level waste transportation or management;

(11) Shall prepare contingency plans, with the cooperation and approval of the host state, for management of low-level waste in the event any regional facility should be closed;

(12) May examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge;

(13) Shall have the power to sue; and

(14) When authorized by unanimous vote of its members, may intervene as of right in any administrative or judicial proceeding involving low-level waste.

ARTICLE 7

PROHIBITED ACTS AND PENALTIES

A. It shall be unlawful for any person to dispose of low-level waste within the region, except at a regional facility; provided, however, that a generator who, prior to January 1, 1982, had been disposing of only his own waste on his own property may, subject to applicable federal and state law, continue to do so.

B. After January 1, 1986, it shall be unlawful for any person to export low-level waste which was generated within the region outside the region unless authorized to do so by the board. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

- (1) The economic impact of the export of the waste on the regional facilities;
- (2) The economic impact on the generator of refusing to permit the export of the waste; and
- (3) The availability of a regional facility appropriate for the disposal of the waste involved.

C. After January 1, 1986, it shall be unlawful for any person to manage any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the board and by the state in which said management takes place. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

- (1) The impact of importing waste on the available capacity and projected life of the regional facilities;
- (2) The economic impact on the regional facilities; and
- (3) The availability of a regional facility appropriate for the disposal of the type of waste involved.

D. It shall be unlawful for any person to manage at a regional facility any radioactive waste other than low-level waste as defined in this compact, unless authorized to do so both by the board and the host state. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

- (1) The impact of allowing such management on the available capacity and projected life of the regional facilities;
- (2) The availability of a facility appropriate for the disposal of the type of waste involved;
- (3) The existence of transuranic elements in the waste; and
- (4) The economic impact on the regional facilities.

E. Any person who violates subsection A or B of this article shall be liable to the board for a civil penalty not to exceed ten times the charges which would have been charged for disposal of the waste at a regional facility.

F. Any person who violates subsection C or D of this article shall be liable to the board for a civil penalty not to exceed ten times the charges which were charged for management of the waste at a regional facility.

G. The civil penalties provided for in subsections E and F of this article may be enforced and collected in any court of general jurisdiction within the region where necessary jurisdiction is obtained by an appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

H. Out of any civil penalty collected for a violation of subsection A or B of this article, the board shall pay to the appropriate operator a sum sufficient in the judgement of the board to compensate the operator for any loss of revenue attributable to the violation. Such compensation may be subject to state and compact surcharges as if received in the normal course of the operator's business. The remainder of the civil penalty collected shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

I. Any civil penalty collected for a violation of subsection C or D of this article shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

J. Violations of subsection A, B, C, or D of this article may be enjoined by any court of general jurisdiction within the region where necessary jurisdiction is obtained in any appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

K. No state attorney general shall be required to bring any proceeding under any subsection of this article, except upon his consent.

ARTICLE 8

ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

A. Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming are eligible to become parties to this compact. Any other state may be made eligible by unanimous consent of the board.

B. An eligible state may become a party state by legislative enactment of this compact or by executive order of its governor adopting this compact; provided, however, a state becoming a party by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless before such adjournment the legislature shall have enacted this compact.

C. This compact shall take effect when it has been enacted by the legislatures of two eligible states. However, subsections B and C of article 7 shall not take effect until Congress has by law consented to this compact. Every five years after such consent has been given, Congress may by law withdraw its consent.

D. A state which has become a party state by legislative enactment may withdraw by legislation repealing its enactment of this compact; but no such repeal shall take effect until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal; provided, however, this provision shall not apply to the existing facility in Beatty, Nevada.

E. A party state may be excluded from this compact by a two-thirds' vote of the members representing the other party states, acting in a meeting, on the ground that the state to be excluded has failed to carry out its obligations under this compact. Such an exclusion may be terminated upon a two-thirds' vote of the members acting in a meeting.

ARTICLE 9

CONSTRUCTION AND SEVERABILITY

A. The provisions of this compact shall be broadly construed to carry out the purposes of the compact.

B. Nothing in this compact shall be construed to affect any judicial proceeding pending on the effective date of this compact.

C. If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

Source: L. 82, p. 394, § 1.

24-60-2203. Legislative declaration. The general assembly hereby finds and declares that the provisions of this part 22 are necessary for the state to fulfill its responsibilities under the "Rocky Mountain Low-level Radioactive Waste Compact" set forth in section 24-60-2202.

Source: L. 82, p. 402, § 1.

24-60-2204. Definitions. As used in sections 24-60-2205 to 24-60-2212, unless the context otherwise requires:

(1) "Department" means the department of health.

(2) "Facility" means a low-level radioactive waste facility capable of serving as a regional disposal or management site for low-level radioactive waste and which complies with the provisions of the "Rocky Mountain Low-level Radioactive Waste Compact" set forth in section 24-60-2202.

(3) "Low-level radioactive waste" means radioactive waste, other than:

(a) Waste generated as a result of defense activities of the federal government or federal research and development activities;

(b) High-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

(c) Waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram of waste material;

(d) Byproduct material as defined in Section 11 e. (2) of the "Atomic Energy Act of 1954", as amended on November 8, 1978; or

(e) Wastes from mining, milling, smelting, or similar processing of ores and mineral-bearing material primarily for minerals other than radium.

Source: L. 82, p. 403, § 1.

24-60-2205. Administration - application of other laws. (1) Except as otherwise provided in this part 22, the department shall be the agency responsible for administration of this part 22 on behalf of the state.

(2) Except as otherwise provided in this part 22, all facilities shall be subject to the provisions on radiation control set forth in part 1 of article 11 of title 25, C.R.S. 1973, and the provisions on solid wastes disposal sites and facilities set forth in part 1 of article 20 of title 30, C.R.S. 1973. The disposal of low-level radioactive waste made pursuant to this part 22 is not subject to the provisions of part 2 of article 11 of title 25, C.R.S. 1973.

Source: L. 82, p. 403, § 1.

24-60-2206. Site recommendation by counties. (1) Prior to any action by the department for the assessment and evaluation of potential areas for a facility under section 24-60-2207, the department shall first cooperate with and provide counties in this state the opportunity to recommend facility sites within their boundaries. In making such recommendation, the board of county commissioners shall consider the factors set forth in section 24-60-2207 (1) (b) and shall provide reasonable opportunity for public comment.

(2) In making such recommendation, the board of county commissioners shall also consider comments from the department, the Rocky Mountain low-level radioactive waste board, and the advisory committee established in section 24-60-2210; except that the board of county commissioners shall make the final determination as to the designation of a facility site pursuant to part 1 of article 20 of title 30, C.R.S. 1973.

(3) Any person who proposes to operate a facility shall first apply, pursuant to part 1 of article 20 of title 30, C.R.S. 1973, for a certificate of designation to the board of county commissioners of the county in which the proposed facility site is located. Such site and facility shall be reviewed and approved by such board of county commissioners prior to the issuance of any license pursuant to part 1 of article 11 of title 25, C.R.S. 1973.

(4) If no board of county commissioners in this state recommends a facility site by January 1, 1984, the department may proceed to prepare its statewide assessment and evaluation and its alternative plan pursuant to section 24-60-2207.

Source: L. 82, p. 403, § 1.

24-60-2207. Statewide assessment of facility sites. (1) For the protection of the public health and safety and without limiting or qualifying other applicable laws, rules, regulations, standards, or limitations pertaining to the control of radiation in this state, the department shall be granted the following additional authority concerning low-level radioactive waste:

(a) The department may acquire by gift, transfer, or purchase any and all lands, buildings, and grounds reasonably necessary for a regional low-level radioactive waste facility.

(b) To ensure that a suitable regional low-level radioactive waste facility is established, the department shall conduct a statewide assessment and evaluation of potential areas for the location of a facility. The assessment and evaluation shall consider all applicable federal and state laws and regulations and shall consider but need not be limited to the following factors:

- (I) Physical and chemical characteristics of strata;
- (II) Surface and subsurface hydrology;
- (III) Topography and drainage;
- (IV) Meteorology and climatology;
- (V) Demography (including population density near the site);
- (VI) Access routes and affected public roads;
- (VII) Ecological impact;
- (VIII) Relationship to local land use plans;
- (IX) Ownership of real property.

(c) The department shall provide reasonable opportunity for public comment during the assessment and evaluation and shall afford interested persons an opportunity, at public hearing, to submit data and views orally or in writing on the potentially suitable areas. Subsequent to having conducted the assessment and evaluation, the department shall identify those areas determined as potentially suitable for a facility.

(d) The department shall not approve any facility for the disposal of low-level radioactive waste outside of the areas identified pursuant to this subsection (1) or an area recommended by a board of county commissioners under section 24-60-2206 unless the site applicant demonstrates to the satisfaction of the department that the proposed site is at least as technically suitable as the areas identified pursuant to this subsection (1).

(e) The department may, by lease or license, provide for the operation of facilities for the implementation of the purposes of this part 22. No facility may be licensed until designated pursuant to part 1 of article 20 of title 30, C.R.S. 1973, by the board of county commissioners of the county in which the proposed facility is to be located. In the event that no county has recommended a facility site or an application for such site has not been submitted by January 1, 1985, the department shall prepare an alternative plan for facility development. Said alternative plan shall be submitted to the general assembly no later than January 1, 1986, for review and approval. In the submission of an alternative plan to the general assembly, the department shall also request authority to acquire a site for a facility.

(f) The department shall require the posting of a bond or other surety by each licensee to assure the availability of funds to the state in the event of accident, abandonment, discontinuance of an operation, insolvency, or other inability of a lessee or licensee to meet the requirements of the department pursuant to article 11 of title 25, C.R.S. 1973, in providing for the safe operation, decommissioning, decontamination, and reclamation of a facility, or any circumstance which results in a potential radiation hazard.

Source: L. 82, p. 404, § 1.

24-60-2208. State surcharge. (1) In addition to the fees authorized by section 25-11-103, C.R.S. 1973, the following surcharges shall be imposed on each licensed facility:

(a) The licensee shall be required to pay an annual fee to the county or municipality in which the facility is located, unless waived by the county or municipality. The amount of the fee shall be established by mutual agreement of the county or municipality and the licensee and may include, but not be limited to, the actual direct costs of increased burden on county or municipal services created by the facility, including the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by county or municipal health officials, and emergency preparation and response. The amount of the annual fee shall not exceed two percent of the annual gross revenue received by the facility and shall be reduced by the amount paid by the facility as a payment in lieu of taxes to county government pursuant to section 25-11-103 (7) (c), C.R.S. 1973. No licensee shall commence operations at a facility until the agreement for the annual fee is executed by the county or municipality and the licensee or such fee is waived by the county or municipality. In the event that the licensee fails to comply with the terms of the executed agreement, the board of county commissioners or the governing body of the municipality may petition the department to suspend the facility's license in the manner provided in article 4 of this title until the agreement has been fully complied with.

(b) Each licensee shall pay an additional surcharge of one percent of gross revenue received by the facility. The surcharge shall be paid quarterly, as accrued, to the department, which shall credit all such receipts in the general fund of the state.

Source: L. 82, p. 405, § 1.

24-60-2209. Governor to appoint member to compact board. The governor shall appoint, with the consent of the senate, the Colorado member of the Rocky Mountain low-level radioactive waste board, and such member shall serve at the pleasure of the governor. The member shall receive no compensation for his services but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

Source: L. 82, p. 405, § 1.

24-60-2210. Colorado low-level radioactive waste advisory committee. (1) There is hereby established the Colorado low-level radioactive waste advisory committee, which shall consist of thirteen members. One member shall be the Colorado member of the Rocky Mountain low-level radioactive waste board, who shall serve as the chairman. One member shall be the executive director of the department of health or his designee. One member shall be the director of the Colorado geological survey or his designee. The other ten members of the committee shall be appointed as follows:

(a) Three members shall be appointed by the president of the senate. Such members shall serve at the pleasure of the president of the senate.

(b) Three members shall be appointed by the speaker of the house of representatives. Such members shall serve at the pleasure of the speaker of the house of representatives.

(c) Four members shall be appointed by the governor. Such members shall serve at the pleasure of the governor.

(2) Any vacancies in the committee shall be filled in the same manner as the original appointments. The committee shall meet on the call of its chairman but in any event shall meet not less than once a year.

(3) The committee shall advise the department, the board of county commissioners of each county designating or proposing a facility site or having a facility, and the Colorado member of the Rocky Mountain low-level radioactive waste board on any matter relating to the implementation of this part 22 and any low-level radioactive waste matter of state concern.

Source: L. 82, p. 406, § 1.

24-60-2211. Coordination with other programs and agencies. The department shall coordinate the low-level radioactive waste program with all other programs within the department and with other local, state, or federal agencies as appropriate. For the purpose of administration and enforcement of matters pertaining to transportation and packaging as provided in this part 22, the department shall coordinate its activities with those of the public utilities commission.

Source: L. 82, p. 406, § 1.

24-60-2212. Regulation of fees. (1) All rates, charges, and classifications made, demanded, or received in the operation of a licensed facility located in the state of Colorado shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received with respect to such operation is prohibited.

(2) The power and authority is hereby vested in the state board of health and it is hereby made the duty of the board in promoting public health and safety to adopt necessary rules and regulations to govern and regulate the rates, charges, and classifications of every facility in this state and to prevent unjust, unreasonable, and discriminatory rates, charges, and classifications of every such facility.

(3) (a) Under such rules and regulations as the state board of health may prescribe, any person operating a facility in this state shall file with the state board of health, at least sixty days prior to the proposed effective date and in such form and with such filing fee as the state board of health may designate, proposed schedules showing all rates, charges, and classifications collected or enforced or to be collected or enforced. Such rates, when effective, shall be posted and open to public inspection at the facility.

(b) The board shall make available for public inspection the filing and supporting information and provide reasonable public notice thereof.

(4) (a) Unless the board otherwise orders, no change shall be made in any rate, charge, or classification collected or enforced or to be collected or enforced by a facility except after sixty days of filing with the board. All filings shall be kept open for public inspection with new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect.

(b) The board shall not approve or disapprove a filing without a public hearing. If the board does not disapprove or schedule a hearing on a filing within sixty days of receipt by the board, the filing shall automatically become effective.

(c) During the sixty-day review period, the board may conclude that it is in the public interest to hold a public hearing, or an interested person may request a public hearing by so petitioning the board. Such hearings shall be held in the manner provided in article 4 of this title.

(5) (a) Whenever the board after a hearing upon its own motion or upon petition finds, based upon the record and investigation by the board, that the rates, charges, or classifications collected or enforced or to be collected or enforced by any facility are unjust, unreasonable, discriminatory, or violative of any provision of law or that such rates, charges, or classifications are insufficient, the board shall determine the just, reasonable, or sufficient rates, charges, classifications, rules, regulations, or practices to be thereafter observed and in force and shall fix the same by order of the board.

(b) The board has the power, after a hearing upon its own motion or upon complaint, to investigate a single rate, charge, classification, or practice or the entire schedule of rates, charges, classifications, or practices of any facility and to establish new rates, charges, classifications, or practices in lieu thereof.

Source: L. 82, p. 406, § 1.