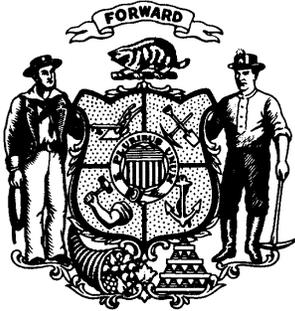


# State of Wisconsin



1995 Senate Bill 332

Date of enactment: **December 6, 1995**  
Date of publication\*: **December 20, 1995**

## 1995 WISCONSIN ACT 115

**AN ACT to repeal** 16.11 (2) (c), 16.11 (2) (j), 16.11 (3) (h) 1. and 2., 16.11 (3) (i) 1., 16.11 (3) (i) 3., 16.11 (3) (m), 16.11 (3) (n) 2., 16.11 (4) (b), 16.11 (6) (e), 16.11 (6) (h), 16.11 (6) (m), 16.11 (8) (a) and 16.11 (8) (c); **to renumber** 16.11 (2) (b), 16.11 (2) (m), 16.11 (2) (o), 16.11 (2) (p), 16.11 (2) (r), 16.11 (3) (h) 3., 16.11 (3) (h) 5., 16.11 (3) (i) 2., 16.11 (3) (i) 5., 16.11 (8) (d) and 16.11 (9) (d); **to renumber and amend** 16.11 (1) (a) 7., 16.11 (2) (d), 16.11 (2) (f), 16.11 (2) (g), 16.11 (2) (h), 16.11 (2) (i), 16.11 (2) (k), 16.11 (2) (L), 16.11 (2) (q), 16.11 (2) (s), 16.11 (3) (h) 4., 16.11 (3) (i) 4., 16.11 (3) (n) 1., 16.11 (4) (c), 16.11 (4) (d), 16.11 (4) (e), 16.11 (6) (d), 16.11 (6) (f), 16.11 (6) (i), 16.11 (6) (j), 16.11 (6) (k), 16.11 (8) (b), 16.11 (8) (e), 16.11 (8) (f) and 16.11 (9) (c); **to amend** 14.81 (2) (b), 14.81 (2) (c) 1., 14.81 (3) (intro.), 14.81 (3) (a), 16.11 (1) (a) (intro.), 16.11 (1) (a) 2., 16.11 (1) (a) 4., 16.11 (1) (a) 5., 16.11 (1) (a) 6., 16.11 (2) (a), 16.11 (3) (b) to (d), 16.11 (3) (g), 16.11 (3) (h) (intro.), 16.11 (3) (i) (intro.), 16.11 (3) (j) (intro.), 16.11 (3) (k), 16.11 (4) (intro.) and (a), 16.11 (5) (b), 16.11 (6) (title) and (a) to (c), 16.11 (7) (a) 3., 16.11 (7) (a) 6., 16.11 (7) (a) 7., 16.11 (7) (b) and (c), 16.11 (8) (title), 16.11 (8) (g), 16.11 (8) (h), 16.11 (9) (title), 16.11 (10), 16.115 (2), 16.12 (2), 16.13 and 144.463 (1); **to repeal and recreate** 16.11 (2) (e), 16.11 (2) (n), 16.11 (3) (h) 6., 16.11 (3) (j) 1. and 2., 16.11 (3) (o), 16.11 (5) (c), 16.11 (6) (g), 16.11 (6) (L), 16.11 (7) (a) 9., 16.11 (8) (i) and 16.11 (9) (b); and **to create** 14.81 (3) (f), 16.11 (1) (a) 7. and 8., 16.11 (2) (b), 16.11 (2) (d), 16.11 (2) (g), 16.11 (2) (i), 16.11 (2) (L), 16.11 (3) (h) 4., 16.11 (3) (h) 5., 16.11 (3) (h) 7., 16.11 (3) (i) 4., 16.11 (3) (i) 5. to 10., 16.11 (3) (j) 3., 16.11 (3) (n), 16.11 (3) (p) to (r), 16.11 (4) (b) 6., 16.11 (5) (f) and (g), 16.11 (6) (d), 16.11 (6) (f), 16.11 (6) (i), 16.11 (6) (n) to (t), 16.11 (7) (d) to (h), 16.11 (8) (e), 16.11 (8) (f), 16.11 (8) (j), 16.11 (9) (c) and 16.11 (9) (f) of the statutes; **relating to:** the midwest interstate low-level radioactive waste compact.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 14.81 (2) (b) of the statutes is amended to read:

14.81 (2) (b) Request the commission to conduct a public hearing on the draft ~~management~~ disposal plan under s. 16.11 (4) ~~(e)~~ (d).

**SECTION 2.** 14.81 (2) (c) 1. of the statutes is amended to read:

14.81 (2) (c) 1. The commission proposes to designate this state as a host state for a facility, as defined ~~under~~ in s. 16.11 (2) ~~(h)~~.

**SECTION 3.** 14.81 (3) (intro.) of the statutes is amended to read:

14.81 (3) (intro.) In negotiating and developing the bylaws, ~~management~~ disposal plan and other appropriate documents as a member of the commission, the commission member representing this state shall:

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

**SECTION 4.** 14.81 (3) (a) of the statutes is amended to read:

14.81 (3) (a) Promote this state's interest in including insurance requirements and an extended care and long-term liability fund as a part of the management disposal plan or other appropriate documents.

**SECTION 4m.** 14.81 (3) (f) of the statutes is created to read:

14.81 (3) (f) Promote the right of this state under s. 16.11 (5) (b) to have all low-level radioactive wastes generated within its borders, including low-level radioactive wastes generated at the La Crosse boiling water reactor constructed under section 109 of P.L. 87-315, disposed of at compact facilities, as defined in s. 16.11 (2) (d), or any noncompact facility made available by an agreement entered into under s. 16.11 (3) (h) 6.

**SECTION 5.** 16.11 (1) (a) (intro.) of the statutes is amended to read:

16.11 (1) (a) (intro.) There is created the midwest interstate low-level radioactive waste compact. The states party to this compact recognize that the congress of the United States, by enacting ~~the low-level radioactive waste policy act~~ "The Low-Level Radioactive Waste Policy Act", as amended by the "Low-Level Radioactive Waste Policy Amendments Act of 1985", 42 USC 2021b to 2021j, has provided for and encouraged the development of low-level radioactive waste compacts as a tool for managing disposing of such waste. The party states acknowledge that the congress declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the management disposal of low-level radioactive waste is handled most efficiently on a regional basis and that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage dispose of such waste be properly provided. It is the policy of the party states to enter into a regional low-level radioactive waste management disposal compact for the purpose of:

**SECTION 6.** 16.11 (1) (a) 2. of the statutes is amended to read:

16.11 (1) (a) 2. Providing sufficient facilities for the proper management disposal of low-level radioactive waste generated in the region;

**SECTION 7.** 16.11 (1) (a) 4. of the statutes is amended to read:

16.11 (1) (a) 4. Limiting the number of facilities required to effectively and efficiently manage dispose of low-level radioactive waste generated in the region;

**SECTION 8.** 16.11 (1) (a) 5. of the statutes is amended to read:

16.11 (1) (a) 5. Encouraging the source reduction of the amounts of low-level radioactive waste generated in the region and the environmentally sound treatment of waste that is generated to minimize the amount of waste to be disposed of;

**SECTION 9.** 16.11 (1) (a) 6. of the statutes is amended to read:

16.11 (1) (a) 6. Distributing Ensuring that the costs, benefits expenses, liabilities and obligations of successful low-level radioactive waste management equitably among the party states and among disposal are paid by generators and other persons who use regional compact facilities to manage dispose of their waste; and

**SECTION 10.** 16.11 (1) (a) 7. of the statutes is renumbered 16.11 (1) (a) 9. and amended to read:

16.11 (1) (a) 9. Ensuring the ecological and environmentally sound, economical management and secure disposal of low-level radioactive wastes.

**SECTION 11.** 16.11 (1) (a) 7. and 8. of the statutes are created to read:

16.11 (1) (a) 7. Ensuring that the obligations of low-level radioactive waste disposal that are the responsibility of the party states are shared equitably among them;

8. Ensuring that the party states that comply with the terms of this compact and fulfill their obligations under it share equitably in the benefits of the successful disposal of low-level radioactive waste; and

**SECTION 12.** 16.11 (2) (a) of the statutes is amended to read:

16.11 (2) (a) "Care" means the continued observation of a facility after ~~closure~~ closing for the purposes of detecting a need for maintenance, ensuring environmental safety and determining compliance with applicable licensure and regulatory requirements and includes the correction of problems which are detected as a result of that observation.

**SECTION 13.** 16.11 (2) (b) of the statutes is renumbered 16.11 (2) (c).

**SECTION 14.** 16.11 (2) (b) of the statutes is created to read:

16.11 (2) (b) "Close", "closed" or "closing" means that the compact facility with respect to which any of those terms is used has ceased to accept waste for disposal. "Permanently closed" means that the compact facility with respect to which the term is used has ceased to accept waste because it has operated for 20 years or a longer period of time as authorized by sub. (6) (i), its capacity has been reached, the commission has authorized it to close pursuant to sub. (3) (h) 7., the host state of such facility has withdrawn from the compact or had its membership revoked or this compact has been dissolved.

**SECTION 15.** 16.11 (2) (c) of the statutes is repealed.

**SECTION 16.** 16.11 (2) (d) of the statutes is renumbered 16.11 (2) (f) and amended to read:

16.11 (2) (f) “Disposal”, with regard to low-level radioactive waste, means the permanent isolation of that waste from the biosphere in a permanent facility designed for that purpose in accordance with the requirements established by the U.S. nuclear regulatory commission or the licensing agreement state.

**SECTION 17.** 16.11 (2) (d) of the statutes is created to read:

16.11 (2) (d) “Compact facility” means a waste disposal facility that is located within the region and that is established by a party state pursuant to the designation of that state as a host state by the commission.

**SECTION 18.** 16.11 (2) (e) of the statutes is repealed and recreated to read:

16.11 (2) (e) “Development” includes the characterization of potential sites for a waste disposal facility, siting of such a facility, licensing of such a facility, and other actions taken by a host state prior to the commencement of construction of such a facility to fulfill its obligations as a host state.

**SECTION 19.** 16.11 (2) (f) of the statutes is renumbered 16.11 (2) (h) and amended to read:

16.11 (2) (h) “Facility” means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which is or has been used or is being developed for the treatment, storage or disposal of low-level radioactive waste, which is being developed for that purpose or upon which the construction of improvements or installation of equipment is occurring for that purpose.

**SECTION 20.** 16.11 (2) (g) of the statutes is renumbered 16.11 (2) (j) and amended to read:

16.11 (2) (j) “Generator” means a person who first produces or possesses low-level radioactive waste, including, without limitation, any person who does so in the course of or incident to manufacturing, power generation, processing, waste treatment, waste storage, medical diagnosis and treatment, research or other industrial or commercial activity and who, to the extent required by law, is licensed by the U.S. nuclear regulatory commission or a party state, to produce or possess such waste. “Generator” does not include a person who provides a service by arranging for the collection, transportation, treatment, storage or disposal of wastes generated outside the region. If the person who first produced an item or quantity of waste cannot be identified, “generator” means the person first possessing the waste who can be identified.

**SECTION 21.** 16.11 (2) (g) of the statutes is created to read:

16.11 (2) (g) “Disposal plan” means the plan adopted by the commission for the disposal of waste within the region.

**SECTION 22.** 16.11 (2) (h) of the statutes is renumbered 16.11 (2) (k) and amended to read:

16.11 (2) (k) “Host state” means any state which is designated by the commission to host a regional compact facility or has hosted a compact facility.

**SECTION 23.** 16.11 (2) (i) of the statutes is renumbered 16.11 (2) (m) and amended to read:

16.11 (2) (m) “Low-level radioactive waste” or “waste” means radioactive waste that is not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in section 11e. (2) of the atomic energy act of 1954 and that is class A, B or C low-level radioactive waste as defined in 10 CFR 61.55, as that section existed on January 26, 1983. “Low-level radioactive waste” or “waste” does not include any such radioactive waste that is owned or generated by the U.S. department of energy or by the U.S. navy as a result of the decommissioning of its vessels; or as a result of any research, development, testing or production of any atomic weapon.

**SECTION 24.** 16.11 (2) (i) of the statutes is created to read:

16.11 (2) (i) “Final decision” means a final action of the commission determining the legal rights, duties or privileges of any person. “Final decision” does not include preliminary, procedural or intermediate actions by the commission, actions regulating the internal administration of the commission or actions of the commission to enter into or refrain from entering into contracts or agreements with vendors to provide goods or services to the commission.

**SECTION 25.** 16.11 (2) (j) of the statutes is repealed.

**SECTION 26.** 16.11 (2) (k) of the statutes is renumbered 16.11 (2) (o) and amended to read:

16.11 (2) (o) “Party state” means any eligible state which that enacts the this compact into law, pays any eligibility fee established by the commission, and has not withdrawn from this compact or had its membership in this compact revoked, provided that a state that has withdrawn from this compact or had its membership revoked again becomes a party state if it is readmitted to membership in this compact pursuant to sub. (8) (a). “Party state” includes any host state. “Party state” also includes any statutorily created administrative departments, agencies or instrumentalities of a party state, but does not include municipal corporations, regional or local units of government or other political subdivisions of a party state that are responsible for governmental activities on less than a statewide basis.

**SECTION 27.** 16.11 (2) (L) of the statutes is renumbered 16.11 (2) (p) and amended to read:

16.11 (2) (p) “Person” means any individual, corporation, association, business enterprise or other legal entity either public or private and any legal successor, representative, agent or agency of that individual, corporation, association, business enterprise or other legal entity. “Person” also includes the United States, states, political

subdivisions of states and any department, agency or instrumentality of the United States or a state.

**SECTION 28.** 16.11 (2) (L) of the statutes is created to read:

16.11 (2) (L) “Long-term care” means those activities taken by a host state after a compact facility is permanently closed to ensure the protection of air, land and water resources and the health and safety of all people who may be affected by the facility.

**SECTION 29.** 16.11 (2) (m) of the statutes is renumbered 16.11 (2) (q).

**SECTION 30.** 16.11 (2) (n) of the statutes is repealed and recreated to read:

16.11 (2) (n) “Operates”, “operational” or “operating” means that the compact facility with respect to which any of those terms is used accepts waste for disposal.

**SECTION 31.** 16.11 (2) (o) of the statutes is renumbered 16.11 (2) (r).

**SECTION 32.** 16.11 (2) (p) of the statutes is renumbered 16.11 (2) (s).

**SECTION 33.** 16.11 (2) (q) of the statutes is renumbered 16.11 (2) (t) and amended to read:

16.11 (2) (t) “Storage” means the temporary holding of waste ~~for treatment or disposal.~~

**SECTION 34.** 16.11 (2) (r) of the statutes is renumbered 16.11 (2) (u).

**SECTION 35.** 16.11 (2) (s) of the statutes is renumbered 16.11 (2) (v) and amended to read:

16.11 (2) (v) “Waste management”, ~~“manage waste”~~, “management of waste”, “management” or “managed” means the storage, ~~transportation~~, treatment or disposal of waste.

**SECTION 36.** 16.11 (3) (b) to (d) of the statutes are amended to read:

16.11 (3) (b) Each commission member is entitled to one vote. ~~No~~ Except as otherwise specifically provided in this compact, an action of the commission is binding ~~unless if~~ a majority of the total membership ~~cast their~~ cast its vote in the affirmative. A party state may direct its member or alternate member of the commission how to vote or not to vote on matters before the commission.

(c) The commission shall elect annually from among its members a chairperson. The commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact, including procedures for the use of binding arbitration under sub. (6) (o) and procedures which substantially conform with the provisions of the federal administrative procedure act “The Federal Administrative Procedure Act”, 5 USC 500 to 559, in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

(d) The commission shall meet at least once annually and shall also meet upon the call of the chairperson or a any other commission member.

**SECTION 37.** 16.11 (3) (g) of the statutes is amended to read:

16.11 (3) (g) The office of the commission shall be in a party state. The commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall have the responsibilities and authority delegated to it by the commission in its bylaws. The staff shall serve at the commission’s pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the commission.

**SECTION 38.** 16.11 (3) (h) (intro.) of the statutes is amended to read:

16.11 (3) (h) (intro.) The commission may do any or all of the following:

**SECTION 39.** 16.11 (3) (h) 1. and 2. of the statutes are repealed.

**SECTION 40.** 16.11 (3) (h) 3. of the statutes is renumbered 16.11 (3) (h) 1.

**SECTION 41.** 16.11 (3) (h) 4. of the statutes is renumbered 16.11 (3) (h) 2. and amended to read:

16.11 (3) (h) 2. Review ~~the~~ any emergency ~~closure~~ closing of a ~~regional compact~~ regional compact facility, determine the appropriateness of that ~~closure~~ closing and take whatever lawful actions are necessary to ensure that the interests of the region are protected.

**SECTION 42.** 16.11 (3) (h) 4. of the statutes is created to read:

16.11 (3) (h) 4. Approve the disposal of naturally occurring and accelerator produced radioactive material at a compact facility. The commission shall not approve the acceptance of such material without first making an explicit determination of the effect of the new waste stream on the compact facility’s maximum capacity. Such approval requires the affirmative vote of a majority of the commission, including the affirmative vote of the member from the host state of the compact facility that would accept the material for disposal. Any such host state may, at any time, rescind its vote granting the approval and, thereafter, additional naturally occurring and accelerator produced radioactive material shall not be disposed of at a compact facility unless the disposal is again approved. All provisions of this compact apply to the disposal of naturally occurring and accelerator produced radioactive material that has been approved for disposal at a compact waste facility pursuant to this subdivision.

**SECTION 43.** 16.11 (3) (h) 5. of the statutes is renumbered 16.11 (3) (h) 3.

**SECTION 44.** 16.11 (3) (h) 5. of the statutes is created to read:

16.11 (3) (h) 5. Enter into contracts in order to perform its duties and functions as provided in this compact.

**SECTION 45.** 16.11 (3) (h) 6. of the statutes is repealed and recreated to read:

16.11 (3) (h) 6. When approved by the commission, with the member from each host state in which an affected compact facility is operating or being developed or constructed voting in the affirmative, enter into agreements to do any of the following:

a. Import, for disposal within the region, waste generated outside the region.

b. Export, for disposal outside the region, waste generated inside the region.

c. Dispose of waste generated within the region at a facility within the region that is not a compact facility.

**SECTION 46.** 16.11 (3) (h) 7. of the statutes is created to read:

16.11 (3) (h) 7. Authorize a host state to permanently close a compact facility located within its borders earlier than otherwise would be required by sub. (6) (i). Such a closing requires the affirmative vote of a majority of the commission, including the affirmative vote of the member from the state in which the affected compact facility is located.

**SECTION 47.** 16.11 (3) (i) (intro.) of the statutes is amended to read:

16.11 (3) (i) (intro.) The commission shall do all of the following:

**SECTION 48.** 16.11 (3) (i) 1. of the statutes is repealed.

**SECTION 49.** 16.11 (3) (i) 2. of the statutes is renumbered 16.11 (3) (i) 1.

**SECTION 50.** 16.11 (3) (i) 3. of the statutes is repealed.

**SECTION 51.** 16.11 (3) (i) 4. of the statutes is renumbered 16.11 (3) (i) 2. and amended to read:

16.11 (3) (i) 2. Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to sub. (4), a regional management disposal plan which designates host states for the establishment of needed regional compact facilities.

**SECTION 52.** 16.11 (3) (i) 4. of the statutes is created to read:

16.11 (3) (i) 4. Establish and implement a procedure for determining the capacity of a compact facility. The capacity of a compact facility shall be established as soon as reasonably practical after the host state of the facility is designated and shall not be changed thereafter without the consent of the host state. The capacity of a compact facility shall be based on the projected volume or radioactive characteristics, or both, of the waste to be disposed of at the facility during the period set forth in sub. (6) (i).

**SECTION 53.** 16.11 (3) (i) 5. of the statutes is renumbered 16.11 (3) (i) 3.

**SECTION 54.** 16.11 (3) (i) 5. to 10. of the statutes are created to read:

16.11 (3) (i) 5. Provide a host state with funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.

6. Establish and implement procedures for making payments from the remedial action fund provided for in par. (p).

7. Establish and implement procedures to investigate any complaint jointed in by 2 or more party states regarding another party state's performance of its obligations under this compact.

8. Adopt policies promoting source reduction and the environmentally sound treatment of waste in order to minimize the amount of waste to be disposed of at compact facilities.

9. Establish and implement procedures for obtaining information from generators regarding the volume and characteristics of waste projected to be disposed of at compact facilities and regarding generator activities with respect to source reduction, recycling and treatment of waste.

10. Prepare annual reports regarding the volume and characteristics of waste projected to be disposed of at compact facilities.

**SECTION 55.** 16.11 (3) (j) (intro.) of the statutes is amended to read:

16.11 (3) (j) (intro.) Funding of ~~the budget of~~ for the commission shall be provided as follows:

**SECTION 56.** 16.11 (3) (j) 1. and 2. of the statutes are repealed and recreated to read:

16.11 (3) (j) 1. When no compact facility is operating, the commission may assess fees to be collected from generators of waste in the region. The fees shall be reasonable and equitable. The commission shall establish and implement procedures for assessing and collecting the fees. The procedures may allow the assessing of fees against less than all generators of waste in the region; provided that if fees are assessed against less than all generators of waste in the region, generators paying the fees shall be reimbursed the amount of the fees, with reasonable interest, out of the revenues of operating compact facilities.

2. When a compact facility is operating, funding for the commission shall be provided through a surcharge collected by the host state as part of the fee system provided for in sub. (6) (j). The surcharge to be collected by the host state shall be determined by the commission and shall be reasonable and equitable.

**SECTION 57.** 16.11 (3) (j) 3. of the statutes is created to read:

16.11 (3) (j) 3. In the aggregate, the fees or surcharges, as the case may be, shall be no more than is necessary to:

- a. Cover the annual budget of the commission.
- b. Provide a host state with the funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.
- c. Provide moneys for deposit in the remedial action fund established pursuant to par. (p).
- d. Provide moneys to be added to an inadequately funding long-term care fund as provided in sub. (6) (o).

**SECTION 58.** 16.11 (3) (k) of the statutes is amended to read:

16.11 (3) (k) ~~The commission shall keep accurate accounts of all receipts and disbursements. Financial statements of the commission shall be prepared according to generally accepted accounting principles.~~ The commission shall contract with an independent certified public accountant to annually audit ~~all receipts and disbursements of commission funds its financial statements~~ and to submit an audit report to the commission. The audit report shall be made a part of the annual report of the commission required by this subsection.

**SECTION 59.** 16.11 (3) (m) of the statutes is repealed.

**SECTION 60.** 16.11 (3) (n) of the statutes is created to read:

16.11 (3) (n) Final decisions of the commission shall be made, and shall be subject to judicial review, in accordance with all of the following conditions:

1. Every final decision shall be made at an open meeting of the commission. Before making a final decision, the commission shall provide an opportunity for public comment on the matter to be decided. Each final decision shall be reduced to writing and shall set forth the commission's reasons for making the decision.

2. Before making a final decision, the commission may conduct an adjudicatory hearing on the proposed decision.

3. Judicial review of a final decision shall be initiated by filing a petition in the U.S. district court for the district in which the person seeking the review resides or in which the commission's office is located not later than 60 days after issuance of the commission's written decision. Concurrently with filing the petition for review with the court, the petitioner shall serve a copy of the petition on the commission. Within 5 days after receiving a copy of the petition, the commission shall mail a copy of it to each party state and to all other persons who have notified the commission of their desire to receive copies of such petitions. Any failure of the commission to so mail copies of the petition does not affect the jurisdiction of the reviewing court. Except as otherwise provided in this subdivision, standing to obtain judicial review of final decisions of the commission and the form and scope of the review are subject to and governed by [5 USC 706](#).

4. If a party state seeks judicial review of a final decision of the commission that does any of the following, the facts shall be subject to trial de novo by the reviewing

court unless trial de novo of the facts is affirmatively waived in writing by the party state:

- a. Imposes financial penalties on a party state.

- b. Suspends the right of a party state to have waste generated within its borders disposed of at a compact facility or at a noncompact facility made available to the region by an agreement entered into by the commission under par. (h) 6.

- c. Terminates the designation of a party state as a host state.

- d. Revokes the membership of a party state in this compact.

- e. Establishes the amounts of money that a party state that has withdrawn from this compact or had its membership in this compact revoked is required to pay under sub. (8) (e).

4m. Any trial de novo under subd. 4. of the facts shall be governed by the federal rules of civil procedure and the federal rules of evidence.

5. Preliminary, procedural or intermediate actions by the commission that precede a final decision are subject to review only in conjunction with review of the final decision.

6. Except as provided in subd. 5., actions of the commission that are not final decisions are not subject to judicial review.

**SECTION 61.** 16.11 (3) (n) 1. of the statutes is renumbered 16.11 (3) (m) and amended to read:

16.11 (3) (m) The commission is a legal entity separate and distinct from the party states ~~and is liable for its actions as a separate and distinct legal entity. Liabilities of the commission are not liabilities of the party states.~~ Members of the commission and its employees are not personally liable for actions taken by them in their official capacity. The commission is not liable or otherwise responsible for any costs, expenses or liabilities resulting from the development, construction, operation, regulation, closing or long-term care of any compact facility or any noncompact facility made available to the region by any contract or agreement entered into by the commission under par. (h) 6. Nothing in this paragraph relieves the commission of its obligations under this subsection or under contracts to which it is a party. Any liabilities of the commission are not liabilities of the party states.

**SECTION 62.** 16.11 (3) (n) 2. of the statutes is repealed.

**SECTION 63.** 16.11 (3) (o) of the statutes is repealed and recreated to read:

16.11 (3) (o) Unless approved by a majority of the commission, with the member from each host state in which an affected compact facility is operating or is being developed or constructed voting in the affirmative, no person shall do any of the following:

1. Import waste generated outside the region for management within the region.

2. Export waste generated within the region for disposal outside the region.

3. Manage waste generated outside the region at a facility within the region.

4. Dispose of waste generated within the region at a facility within the region that is not a compact facility.

**SECTION 64.** 16.11 (3) (p) to (r) of the statutes are created to read:

16.11 (3) (p) The commission shall establish a remedial action fund to pay the costs of reasonable remedial actions taken by a party state if an event results from the development, construction, operation, closing or long-term care of a compact facility that poses a threat to human health, safety or welfare or to the environment. The amount of the remedial action fund shall be adequate to pay the costs of all reasonably foreseeable remedial actions. A party state shall notify the commission as soon as reasonably practical after the occurrence of any event that may require the party state to take a remedial action. The failure of a party state to so notify the commission does not limit the rights of the party state under this paragraph. If the moneys in the remedial action fund are inadequate to pay the costs of reasonable remedial actions, the amount of the deficiency is a liability with respect to which generators shall provide indemnification under sub. (7) (g). Generators who provide the required indemnification have the rights of contribution provided in sub. (7) (g). This paragraph applies to any remedial action taken by a party state regardless of whether the party state takes the remedial action on its own initiative or because it is required to do so by a court or regulatory agency of competent jurisdiction.

(q) If the commission makes payment from the remedial action fund provided for in par. (p), the commission is entitled to obtain reimbursement under applicable rules of law from any person who is responsible for the event giving rise to the remedial action. Such reimbursement may be obtained from a party state only if the event giving rise to the remedial action resulted from the activities of that party state as a generator of waste.

(r) If this compact is dissolved, all moneys held by the commission shall be used first to pay for any ongoing or reasonably anticipated remedial actions. Any remaining moneys shall be distributed in a fair and equitable manner to those party states that have operating or closed compact facilities within their borders and shall be added to the long-term care funds maintained by those party states.

**SECTION 65.** 16.11 (4) (intro.) and (a) of the statutes are amended to read:

16.11 (4) (title) ARTICLE IV - REGIONAL MANAGEMENT DISPOSAL PLAN. (intro.) The commission shall adopt and periodically update a regional ~~management disposal~~ management disposal plan designed to ensure the safe and efficient management disposal of waste generated within the re-

gion. In adopting a regional waste management disposal plan the commission shall do all of the following:

(a) Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of ~~regional compact~~ facilities which are presently necessary and which are projected to be necessary to manage disposal of waste generated within the region;

**SECTION 66.** 16.11 (4) (b) of the statutes is repealed.

**SECTION 67.** 16.11 (4) (b) 6. of the statutes is created to read:

16.11 (4) (b) 6. The economic impacts on the party states.

**SECTION 68.** 16.11 (4) (c) of the statutes is renumbered 16.11 (4) (b), and 16.11 (4) (b) (intro.), 2., 4. and 5., as renumbered, are amended to read:

16.11 (4) (b) (intro.) Develop and adopt procedures and criteria for identifying a party state as a host state for a ~~regional compact~~ facility. In developing these criteria, the commission shall consider all of the following:

2. The existence of ~~regional compact~~ facilities within each party state.

4. The volumes and types of wastes projected to be generated within each party state.

5. The environmental, ~~economic and ecological~~ impacts on the air, land and water resources of the party states.

**SECTION 69.** 16.11 (4) (d) of the statutes is renumbered 16.11 (4) (c) and amended to read:

16.11 (4) (c) Conduct such hearings and obtain such reports, studies, evidence and testimony required by its approved procedures prior to identifying a party state as a host state for a needed ~~regional compact~~ facility;

**SECTION 70.** 16.11 (4) (e) of the statutes is renumbered 16.11 (4) (d) and amended to read:

16.11 (4) (d) Prepare a draft management disposal plan and any update thereof, including procedures, criteria and host states, ~~including alternatives~~, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the commission shall conduct a public hearing in that state prior to the adoption or update of the management disposal plan. The management disposal plan and any update thereof shall include the commission's response to public and party state comment.

**SECTION 71.** 16.11 (5) (b) of the statutes is amended to read:

16.11 (5) (b) ~~Each Except for waste attributable to radioactive material or waste imported into the region in order to render the material or waste amenable to transportation, storage, disposal or recovery, or in order to convert the waste or material to another usable material, or to reduce it in volume or otherwise treat it, each~~ party state has the right to have all wastes generated within its borders ~~managed disposed of~~ at ~~regional compact~~ facilities subject to the payment of all fees established by the

host state under sub. (6) (j) and to the provisions contained in sub. subs. (6) (L) and (s), (8) (d), (9) (e) (d) and (10). All party states have an equal right of access to any facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., subject to the provisions of subs. (6) (L) and (s), (8) (d) and (10).

**SECTION 72.** 16.11 (5) (c) of the statutes is repealed and recreated to read:

16.11 (5) (c) If a party state's right to have waste generated within its borders disposed of at compact facilities, or at any noncompact facility made available to the region by an agreement entered into by the commission under sub. (3) (h) 6., is suspended, no waste generated within its borders by any person shall be disposed of at any such facility during the period of the suspension.

**SECTION 73.** 16.11 (5) (f) and (g) of the statutes are created to read:

16.11 (5) (f) If, notwithstanding the sovereign immunity provision in sub. (7) (f) 1. and the indemnification provided for in subs. (3) (p), (6) (o) and (7) (g), a party state incurs a cost as a result of an inadequate remedial action fund or an exhausted long-term care fund, or incurs a liability as a result of an action described in sub. (7) (f) 1. and not described in sub. (7) (f) 2., the cost or liability shall be the pro rata obligation of each party state and each state that has withdrawn from this compact or had its membership in this compact revoked. The commission shall determine each state's pro rata obligation in a fair and equitable manner based on the amount of waste from each such state that has been or is projected to be disposed of at the compact facility with respect to which the cost or liability to be shared was incurred. No state shall be obligated to pay the pro rata obligation of any other state. The pro rata obligations provided for in this paragraph do not result in the creation of state debt. Rather, the pro rata obligations are contractual obligations that shall be enforced by only the commission or an affected party state.

(g) If the party states make payment pursuant to par. (f), the surcharge or fee provided for in sub. (3) (j) shall be used to collect the funds necessary to reimburse the party states for those payments. The commission shall determine the time period over which reimbursement shall take place.

**SECTION 74.** 16.11 (6) (title) and (a) to (c) of the statutes are amended to read:

16.11 (6) (title) ARTICLE VI – DEVELOPMENT AND OPERATION AND CLOSING OF COMPACT FACILITIES. (a) Any party state may volunteer to become a host state and the commission may designate that state as a host state upon a two-thirds vote of its members.

(b) If not all regional compact facilities required by the regional management disposal plan are not developed pursuant to par. (a) or upon notification that an existing

regional facility will be closed, the commission may designate a host state.

(c) Each party After a state is designated as a host state by the commission, the state is responsible for determining possible facility locations within its borders. The selection of a facility site shall not conflict with applicable federal and host state laws, regulations and rules not inconsistent with this compact and shall be based on factors including, but not limited to, geological, environmental and economic viability of possible facility locations the timely development and operation of the compact facility it is designated to host. The development and operation of the compact facility shall not conflict with applicable federal and host state laws, rules and regulations, provided that the laws, rules and regulations of a host state and its political subdivisions shall not prevent, nor shall they be applied so as to prevent, the host state's discharge of the obligation set forth in this paragraph. The obligation set forth in this paragraph is contingent upon the discharge by the commission of its obligation set forth in sub. (3) (i) 5.

**SECTION 75.** 16.11 (6) (d) of the statutes is renumbered 16.11 (6) (e) and amended to read:

16.11 (6) (e) Any party state designated as a host state may request the commission to relieve that state of the responsibility to serve as a host state. The Except as set forth in par. (d), the commission may relieve a party state of this its responsibility only upon a showing by the requesting party state that, based upon criteria established by the commission that are consistent with any applicable federal criteria, no feasible potential regional compact facility site of the type it is designated to host exists within its borders. A party state relieved of its host state responsibility shall repay to the commission any funds provided to that state by the commission for the development of a compact facility and also shall pay to the commission the amount the commission determines is necessary to ensure that the commission and the other party states do not incur financial loss as a result of the state being relieved of its host state responsibility. Any funds so paid to the commission with respect to the financial loss of the other party states shall be distributed forthwith by the commission to the party states that would otherwise incur the loss. In addition, until the state relieved of its responsibility is again designated as a host state and a compact facility is located in that state begins operating, it shall annually pay to the commission, for deposit in the remedial action fund, an amount the commission determines is fair and equitable in light of the fact the state has been relieved of the responsibility to host a compact facility but continues to enjoy the benefits of being a member of this compact.

**SECTION 76.** 16.11 (6) (d) of the statutes is created to read:

16.11 (6) (d) If a party state designated as a host state fails to discharge the obligations imposed upon it by par. (c), its host state designation may be terminated by a two-thirds vote of the commission with the member from the host state of any then-operating compact facility voting in the affirmative. A party state whose host state designation has been terminated has failed to fulfill its obligations as a host state and is subject to the provisions of sub. (8) (d).

**SECTION 77.** 16.11 (6) (e) of the statutes is repealed.

**SECTION 78.** 16.11 (6) (f) of the statutes is renumbered 16.11 (6) (h) and amended to read:

16.11 (6) (h) To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the ~~extended~~ long-term care of that facility.

**SECTION 79.** 16.11 (6) (f) of the statutes is created to read:

16.11 (6) (f) The host state shall select the technology for the compact facility. If requested by the commission, information regarding the technology selected by the host state shall be submitted to the commission for its review. The commission may require the host state to make changes in the technology selected by the host state if the commission demonstrates that the changes do not decrease the protection of air, land and water resources and the health and safety of all people who may be affected by the facility. If requested by the host state, any commission decision requiring the host state to make changes in the technology shall be preceded by an adjudicatory hearing in which the commission shall have the burden of proof.

**SECTION 80.** 16.11 (6) (g) of the statutes is repealed and recreated to read:

16.11 (6) (g) A host state may assign to a private contractor the responsibility, in whole or in part, to develop, construct, operate, close or provide long-term care for a compact facility. Assignment of such responsibility by a host state to a private contractor does not relieve the host state of any responsibility imposed upon it by this compact. A host state may secure indemnification from the contractor for any costs, liabilities and expenses incurred by the host state resulting from the development, construction, operation, closing or long-term care of a compact facility.

**SECTION 81.** 16.11 (6) (h) of the statutes is repealed.

**SECTION 82.** 16.11 (6) (i) of the statutes is renumbered 16.11 (6) (j) and amended to read:

16.11 (6) (j) A host state ~~may~~ shall establish a fee system ~~for of fees to be collected from the users of any regional compact facility within its borders.~~ The fee system, and the costs paid through the system, shall be reasonable and equitable. This ~~The fee system shall be subject to the commission's approval.~~ The fee system shall provide the host state with sufficient revenue to cover any pay costs associated with the compact facility in-

~~cluding, but not limited to, the planning, siting, licensure, operation, decommissioning, extended care and long-term liability associated with such facilities. This fee system may also include reasonable revenue beyond the costs incurred for the host state subject to approval by the commission. A host state shall submit an annual financial audit of the operation of the regional facility to the commission operation, closing, long-term care, debt service, legal costs, local impact assistance and local financial incentives. The fee system also shall be used to collect the surcharge provided in sub. (3) (j) 2.~~ The fee system ~~may~~ shall include incentives for source reduction and ~~may~~ shall be based on the hazard of the waste as well as the volume.

**SECTION 83.** 16.11 (6) (i) of the statutes is created to read:

16.11 (6) (i) A host state shall accept waste for disposal for a period of 20 years from the date on which the compact facility in the host state becomes operational or until its capacity has been reached, whichever occurs first. At any time before the compact facility closes, the host state and the commission may enter into an agreement to extend the period during which the host state is required to accept such waste or to increase the capacity of the compact facility. Except as specifically authorized by par. (L) 4., the 20-year period shall not be extended, and the capacity of the facility shall not be increased, without the consent of the affected host state and the commission.

**SECTION 84.** 16.11 (6) (j) of the statutes is renumbered 16.11 (6) (k) and amended to read:

16.11 (6) (k) A host state shall ensure that a regional compact facility located within its borders ~~which that~~ is permanently closed is properly decommissioned. ~~A host state shall also provide for the care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured~~ cared for so as to ensure protection of air, land and water resources and the health and safety of all people who may be affected by the facility.

**SECTION 85.** 16.11 (6) (k) of the statutes is renumbered 16.11 (6) (m) and amended to read:

16.11 (6) (m) ~~A host state intending to close a regional facility located within its borders shall notify the commission in writing of its intention and the reasons. Notification shall be given to the commission at least 5 years prior to the intended date of closure. This paragraph compact shall not prevent an emergency closing of a regional compact facility by a host state to protect its air, land and water resources and the health and safety of its citizens. However, a all people who may be affected by the facility.~~ A host state ~~which that~~ has an emergency closing of a regional compact facility shall notify the commission in writing within 3 working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.

**SECTION 86.** 16.11 (6) (L) of the statutes is repealed and recreated to read:

16.11 (6) (L) The development of subsequent compact facilities shall be as follows:

1. No compact facility shall begin operating until the commission designates the host state of the next compact.

2. The following actions shall be taken by the state designated to host the next compact facility within the specified number of years after the compact facility it is intended to replace begins operation:

a. Within 3 years, enact legislation providing for the development of the next compact facility.

b. Within 7 years, initiate site characterization investigations and tests to determine licensing suitability for the next compact facility.

c. Within 11 years, submit a license application for the next compact facility that the responsible licensing authority deems complete.

2m. If a host state fails to take any of the actions under subd. 2. within the specified time, all waste generated by any person within that state shall be denied access to the then–operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., until the action is taken. Denial of access may be rescinded by the commission, with the member from the host state of the then–operating compact facility voting in the affirmative. A host state that fails to take any of these actions within the specified time has failed to fulfill its obligations as a host state and is subject to the provisions of par. (d) and sub. (8) (d).

3. Within 14 years after any compact facility begins operating, the state designated to host the next compact facility shall have obtained a license from the responsible licensing authority to construct and operate the compact facility that the state has been designated to host. If the license is not obtained within the specified time, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then–operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., until the license is obtained. The state designated to host the next compact facility shall have failed in its obligations as a host state and shall be subject to par. (d) and sub. (8) (d). In addition, at the sole option of the host state of the then–operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under par. (i) shall be denied access to the then–operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., until the license is obtained. Denial of access may be rescinded by the commission, with the member from the host state of the then–operating compact facility voting in the affirmative.

4. If 20 years after a compact facility begins operating the next compact facility is not ready to begin operating, the state designated to host the next compact facility shall have failed in its obligation as a host state and shall be subject to par. (d) and sub. (8) (d). If at the time the capacity of the then–operating compact facility has been reached, or 20 years after the facility began operating, whichever occurs first, the next compact facility is not ready to begin operating, the host state of the then–operating compact facility, without the consent of any other party state or the commission, may continue to operate the facility until a compact facility in the next host state is ready to begin operating. During any such period of continued operation of a compact facility, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then–operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6. In addition, during such period, at the sole option of the host state of the then–operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under par. (i) shall be denied access to the then–operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6. Denial of access may be rescinded by the commission, with the member from the host state of the then–operating compact facility voting in the affirmative. The provisions of this subdivision shall not apply if their application is inconsistent with an agreement between the host state of the then–operating compact facility and the commission as authorized in par. (i) or inconsistent with par. (p) or (q).

5. During any period that access is denied for waste disposal pursuant to subd. 2m., 3. or 4., the party state designated to host the next compact disposal facility shall pay to the host state of the then–operating compact facility an amount the commission determines is reasonably necessary to ensure that the host state, or any agency or political subdivision thereof, does not incur financial loss as a result of the denial of access.

6. The commission may modify any of the requirements contained in subds. 2., 2m. and 3. if it finds that circumstances have changed so that the requirements are unworkable or unnecessarily rigid or no longer serve to ensure the timely development of a compact facility. The commission may adopt such a finding by a two–thirds vote, with the member from the host state of the then–operating compact facility voting in the affirmative.

**SECTION 87.** 16.11 (6) (m) of the statutes is repealed.

**SECTION 88.** 16.11 (6) (n) to (t) of the statutes are created to read:

16.11 (6) (n) A party state that has fully discharged its obligations under par. (i) shall not again be designated a host state of a compact facility without its consent until

each party state has been designated to host a compact facility and has fully discharged its obligations under par. (i) or has been relieved under par. (e) of its responsibility to serve as a host state.

(o) Each host state of a compact facility shall establish a long-term care fund to pay for monitoring, security, maintenance and repair of the facility after it is permanently closed. The expenses of administering the long-term care fund shall be paid out of the fund. The fee system established by the host state that establishes a long-term care fund shall be used to collect moneys in amounts that are adequate to pay for all long-term care of the compact facility. The moneys shall be deposited into the long-term care fund. Except where the matter is resolved through arbitration, the amount to be collected through the fee system for deposit into the fund shall be determined through an agreement between the commission and the host state establishing the fund. Not less than 3 years, nor more than 5 years, before the compact facility it is designated to host is scheduled to begin operating, the host state shall propose to the commission the amount to be collected through the fee system for deposit into the fund. If, 180 days after such proposal is made to the commission, the host state and the commission have not agreed, either the commission or the host state may require the matter to be decided through binding arbitration. The method of administration of the fund shall be determined by the host state establishing the long-term care fund, provided that moneys in the fund shall be used only for the purposes set forth in this paragraph and shall be invested in accordance with the standards applicable to trustees under the laws of the host state establishing the fund. If, after a compact facility is closed, the commission determines the long-term care fund established with respect to that facility is not adequate to pay for all long-term care for that facility, the commission shall collect and pay over to the host state of the closed facility, for deposit into the long-term care fund, an amount determined by the commission to be necessary to make the amount in the fund adequate to pay for all long-term care of the facility. If a long-term care fund is exhausted and long-term care expenses for the facility with respect to which the fund was created have been reasonably incurred by the host state of the facility, those expenses are a liability with respect to which generators shall provide indemnification as provided in sub. (7) (g). Generators that provide indemnification shall have contribution rights as provided in sub. (7) (g).

(p) A host state that withdraws from the compact or has its membership revoked shall immediately and permanently close any compact facility located within its borders, except that the commission and a host state may enter into an agreement under which the host state may continue to operate, as a noncompact facility, a facility

within its borders that, before the host state withdrew or had its membership revoked, was a compact facility.

(q) If this compact is dissolved, the host state of any then-operating compact facility shall immediately and permanently close the facility, provided that a host state may continue to operate a compact facility or resume operating a previously closed compact facility, as a noncompact facility, subject to all of the following requirements:

1. The host state shall pay to the other party states the portion of the funds provided to that state by the commission for the development, construction, operation, closing or long-term care of a compact facility that is fair and equitable, taking into consideration the period of time the compact facility located in that state was in operation and the amount of waste disposed of at the facility, provided that a host state that has fully discharged its obligations under par. (i) shall not be required to make such payment.

2. The host state shall physically segregate waste disposed of at the facility after this compact is dissolved from waste disposed of at the facility before this compact is dissolved.

3. The host state shall indemnify and hold harmless the other party states from all costs, liabilities and expenses, including reasonable attorney fees and expenses, caused by operating the facility after this compact is dissolved, provided that this indemnification and hold-harmless obligation shall not apply to costs, liabilities and expenses resulting from the activities of a host state as a generator of waste.

4. Moneys in the long-term care fund established by the host state that are attributable to the operation of the facility before this compact is dissolved, and investment earnings thereon, shall be used only to pay the cost of monitoring, securing, maintaining or repairing that portion of the facility used for the disposal of waste before this compact is dissolved. Such moneys and investment earnings, and any moneys added to the long-term care fund through a distribution authorized by sub. (3) (r), also may be used to pay the cost of any remedial action made necessary by an event resulting from the disposal of waste at the facility before this compact is dissolved.

(r) Financial statements of a compact facility shall be prepared according to generally accepted accounting principles. The commission may require the financial statements to be audited on an annual basis by a firm of certified public accountants selected and paid by the commission.

(s) Waste may be accepted for disposal at a compact facility only if the generator of the waste has signed, and there is on file with the commission, an agreement to provide indemnification to a party state, or employe of that state, for all of the following:

1. Any cost of a remedial action described in sub. (3) (p) that, due to inadequacy of the remedial action fund, is not paid as set forth in that provision.

2. Any expense for long-term care described in par. (o) that, due to exhaustion of the long-term care fund, is not paid as set forth in that provision.

3. Any liability for damages to persons, property or the environment incurred by a party state, or employe of that state while acting within the scope of employment, resulting from the development, construction, operation, regulation, closing or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., or any other matter arising from this compact. The agreement also shall require generators to indemnify the party state or employe against all reasonable attorney fees and expenses incurred in defending any action for such damages. This indemnification shall not extend to liability based on any of the following:

a. The activities of the party states as generators of waste.

b. The obligations of the party states to each other and the commission imposed by this compact or other contracts related to the disposal of waste under this compact.

c. Activities of a host state or employes thereof that are grossly negligent or wilful and wanton.

(t) The agreement under par. (s) shall provide that the indemnification obligation of generators shall be joint and several, except that the indemnification obligation of the party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste that each state had disposed of at the compact facility giving rise to the liability. Such proration shall be calculated as of the date of the event giving rise to the liability. The agreement shall be in a form approved by the commission with the member from the host state of any then-operating compact facility voting in the affirmative. Among generators there shall be rights of contribution based on equitable principles and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule or regulation, provided that a party state that through its own activities did not generate any waste disposed of at the compact facility giving rise to the liability, an employe of such a party state and the commission shall have no such contribution obligation. The commission may waive the requirement that the party state sign and file such an indemnification agreement as a condition to being able to dispose of waste generated as a result of the party state's activities. Such a waiver shall not relieve a party state of the indemnification obligation imposed by sub. (7) (g).

**SECTION 89.** 16.11 (7) (a) 3. of the statutes is amended to read:

16.11 (7) (a) 3. Prohibits any ~~storage or treatment of waste by the generator from storing or treating~~, on its own premises, waste generated by it within the region;

**SECTION 90.** 16.11 (7) (a) 6. of the statutes is amended to read:

16.11 (7) (a) 6. Affects the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the secretary of the U.S. department of energy or successor agencies or federal research and development activities as defined described in 42 USC 2021; ~~or~~

**SECTION 91.** 16.11 (7) (a) 7. of the statutes is amended to read:

16.11 (7) (a) 7. Affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders ~~or affects the rights and powers of any party state or its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.~~

**SECTION 92.** 16.11 (7) (a) 9. of the statutes is repealed and recreated to read:

16.11 (7) (a) 9. Limits, expands or otherwise affects the authority of a state to regulate low-level radioactive waste classified by any agency of the U.S. government as “below regulatory concern” or otherwise exempt from federal regulation.

**SECTION 93.** 16.11 (7) (b) and (c) of the statutes are amended to read:

16.11 (7) (b) ~~For purposes of this compact, all state laws or parts of laws in conflict~~ If a court of the United States finally determines that a law of a party state conflicts with this compact are hereby superseded, this compact shall prevail to the extent of the conflict. The commission shall not commence an action seeking such a judicial determination unless commencement of the action is approved by a two-thirds vote of the membership of the commission.

(c) ~~No~~ Except as authorized by this compact, no law, rule or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

**SECTION 94.** 16.11 (7) (d) to (h) of the statutes are created to read:

16.11 (7) (d) Except as provided in par. (f) and sub. (3) (m), no provision of this compact shall be construed to eliminate or reduce in any way the liability or responsibility, whether arising under common law, statute, rule or regulation, of any person for penalties, fines or damages to persons, property or the environment resulting from the development, construction, operation, closing or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6.,

or any other matter arising from this compact. The provisions of this compact shall not alter otherwise applicable laws relating to compensation of employees for workplace injuries.

(e) Except as provided in 28 USC 1251 (a), the district courts of the United States have exclusive jurisdiction to decide cases arising under this compact. This paragraph does not apply to proceedings within the jurisdiction of state or federal regulatory agencies nor to judicial review of proceedings before state or federal regulatory agencies. This paragraph shall not be construed to diminish other laws of the United States conferring jurisdiction on the courts of the United States.

(f) For the purposes of activities pursuant to this compact, the sovereign immunity of party states and employees of party states shall be as follows:

1. A party state or employe thereof, while acting within the scope of employment, shall not be subject to suit or held liable for damages to persons, property or the environment resulting from the development, construction, operation, regulation, closing or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6. This applies whether the claimed liability of the party state or employe is based on common law, statute, rule or regulation.

2. The sovereign immunity granted in subd. 1. does not apply to any of the following:

a. Actions based upon the activities of the party states as generators of waste. With regard to those actions, the sovereign immunity of the party states shall not be affected by this compact.

b. Actions based on the obligations of the party states to each other and the commission imposed by this compact or other contracts related to the disposal of waste under this compact. With regard to those actions, the party states shall have no sovereign immunity.

c. Actions against a host state, or employe thereof, when the host state or employe acted in a grossly negligent or wilful and wanton manner.

(g) If in any action described in par. (f) 1. and not described in par. (f) 2. it is determined that, notwithstanding par. (f) 1., a party state, or employe of that state who acted within the scope of employment, is liable for damages or has liability for other matters arising under this compact as described in sub. (6) (s) 3., the generators who caused waste to be placed at the compact facility with respect to which the liability was incurred shall indemnify the party state or employe against that liability. Those generators also shall indemnify the party state or employe against all reasonable attorney fees and expenses incurred in defending against any such action. The indemnification obligation of generators under this paragraph shall be joint and several, except that the indemnification obligation of party states with respect to their activities as generators of waste shall not be joint and several, but instead shall

be prorated according to the amount of waste each state has disposed of at the compact facility giving rise to the liability. Among generators, there shall be rights of contribution based upon equitable principles and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule or regulation. A party state that through its own activities did not generate any waste disposed of at the compact facility giving rise to the liability, an employe of such a party state and the commission shall have no contribution obligation under this paragraph. This paragraph shall not be construed as a waiver of the sovereign immunity provided for in par. (f) 1.

(h) The sovereign immunity of a party state provided for in par. (f) 1. shall not be extended to any private contractor assigned responsibilities as authorized in sub. (6) (g).

**SECTION 95.** 16.11 (8) (title) of the statutes is amended to read:

16.11 (8) (title) ARTICLE VIII – ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, SUSPENSION OF ACCESS, ENTRY INTO FORCE, AND TERMINATION.

**SECTION 96.** 16.11 (8) (a) of the statutes is repealed.

**SECTION 97.** 16.11 (8) (b) of the statutes is renumbered 16.11 (8) (a) and amended to read:

16.11 (8) (a) Any state ~~not eligible for membership in the compact~~ may petition the commission for eligibility to be eligible for membership in the compact. The commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the commission, including the affirmative vote of all the member from each host states state in which a compact facility is operating or being developed or constructed. Any state becoming eligible upon the approval of the commission becomes a member of the compact ~~in the same manner as any state eligible for membership at the time this compact enters into force~~ when the state enacts this compact into law and pays the eligibility fee established by the commission.

**SECTION 98.** 16.11 (8) (c) of the statutes is repealed.

**SECTION 99.** 16.11 (8) (d) of the statutes is renumbered 16.11 (8) (b).

**SECTION 100.** 16.11 (8) (e) of the statutes is renumbered 16.11 (8) (c) and amended to read:

16.11 (8) (c) ~~Any~~ A party state that has fully discharged its obligations under sub. (6) (i), or has been relieved under sub. (6) (e) of its responsibilities to serve as a host state, may withdraw from this compact by repealing the authorizing legislation ~~but no withdrawal may take effect until 5 years after the governor of the withdrawing state gives notice in writing of the withdrawal to the commission and to the governor of each party state~~ and by receiving the unanimous consent of the commission. ~~Withdrawal does not affect any liability already~~

incurred by or chargeable to a party state prior to the time of such withdrawal. Any host state which grants a disposal permit for waste generated in a withdrawing state shall void the permit when the withdrawal of that state is effective takes effect on the date specified in the commission resolution consenting to withdrawal. All legal rights of the withdrawn state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of withdrawal, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in par. (e) continue until they are fulfilled.

**SECTION 101.** 16.11 (8) (e) of the statutes is created to read:

16.11 (8) (e) A party state that withdraws from this compact or has its membership in the compact revoked before it has fully discharged its obligations under sub. (6) forthwith shall repay to the commission the portion of the funds provided to that state by the commission for the development, construction, operation, closing or long-term care of a compact facility that the commission determines is fair and equitable, taking into consideration the period of time the compact facility located in that host state was in operation and the amount of waste disposed of at the facility. If at any time after a compact facility begins operating a party state withdraws from the compact or has its membership revoked, the withdrawing or revoked party state shall be obligated forthwith to pay to the commission the amount the commission determines would have been paid under the fee system established by the host state of the facility to dispose of at the facility the estimated volume of waste generated in the withdrawing or revoked party state that would have been disposed of at the facility from the time of withdrawal or revocation until the time the facility is closed. Any funds so paid to the commission shall be distributed by the commission to the persons who would have been entitled to receive the funds had they originally been paid to dispose of waste at the facility. Any person receiving such funds from the commission shall apply the funds to the purposes to which they would have been applied had they originally been paid to dispose of waste at the compact facility. In addition, a withdrawing or revoked party state forthwith shall pay to the commission an amount the commission determines to be necessary to cover all other costs and damages incurred by the commission and the remaining party states as a result of the withdrawal or revocation. This paragraph shall be construed and applied so as to eliminate any decrease in revenue resulting from withdrawal of a party state or revocation of a party state's membership, to eliminate financial harm to the remaining party states and to create an incentive for party states to continue as members of the compact and to fulfill their obligations.

**SECTION 102.** 16.11 (8) (f) of the statutes is renumbered 16.11 (8) (d) and amended to read:

16.11 (8) (d) Any party state which that fails to comply with the terms of this compact or fails to fulfill its obligations may have its privileges reasonable financial penalties imposed against it, the right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., suspended or its membership in the compact revoked by the commission in accordance with sub. (3) (h) 6 a two-thirds vote of the commission, provided that the membership of the party state designated to host the next compact facility shall not be revoked unless the member from the host state of any then-operating compact facility votes in the affirmative. Revocation takes effect one year from on the date the affected party state receives written notice from the commission of its action specified in the resolution revoking the party state's membership. All legal rights of the affected revoked party state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of revocation but any legal obligations of that party state arising prior to revocation under this compact, including, but not limited to, those set forth in par. (e), continue until they are fulfilled. The chairperson of the commission shall transmit written notice of a revocation of a party state's membership in the compact, suspension of a party state's waste disposal rights or imposition of financial penalties immediately following the vote of the commission to the governor of the affected party state, all other the governors of all the other party states and the congress of the United States.

**SECTION 103.** 16.11 (8) (f) of the statutes is created to read:

16.11 (8) (f) Any party state whose right to have waste generated within its borders disposed of at compact facilities is suspended by the commission shall pay to the host state of the compact facility to which access has been suspended the amount that the commission determines is reasonably necessary to ensure that the host state, or any political subdivision thereof, does not incur financial loss as a result of the suspension of access.

**SECTION 104.** 16.11 (8) (g) of the statutes is amended to read:

16.11 (8) (g) This compact becomes effective July 1, 1983, or at any date subsequent to July 1, 1983, upon enactment by at least 3 eligible states. However, sub. (9) (b) shall not take effect until the congress has by law consented to this compact. The congress shall have an opportunity to withdraw such consent every 5 years. Failure of the congress to affirmatively withdraw its consent has the effect of renewing consent for an additional 5-year

period and consent to this compact by the congress. The consent given to this compact by the congress shall extend to any future admittance of new party states under pars. (b) and (e) and to the power of the region to ban commission to regulate the shipment and disposal of waste from the region and disposal of naturally occurring and accelerator-produced radioactive material pursuant to sub. 3 this compact. Amendments to this compact are effective when enacted by all party states and, if necessary, consented to by the congress. To the extent required by section (4) (d) of "the low-level radioactive waste policy amendments act of 1985", every 5 years after this compact has taken effect, the congress by law may withdraw its consent.

**SECTION 105.** 16.11 (8) (h) of the statutes is amended to read:

16.11 (8) (h) The withdrawal of a party state from this compact under par. (e), the suspension of waste disposal rights, the termination of a party state's designation as a host state or the revocation of a state's membership in this compact under par. (f) does not affect the applicability of this compact to the remaining party states.

**SECTION 106.** 16.11 (8) (i) of the statutes is repealed and recreated to read:

16.11 (8) (i) This compact may be dissolved and the obligations arising under this compact may be terminated only as follows:

1. Through unanimous agreement of all party states expressed in duly enacted legislation.
2. Through withdrawal of consent to this compact by the congress under article 1, section 10, of the U.S. constitution, in which case dissolution shall take place 120 days after the effective date of the withdrawal of consent.

**SECTION 107.** 16.11 (8) (j) of the statutes is created to read:

16.11 (8) (j) Unless explicitly abrogated by the state legislation dissolving this compact, or if dissolution results from withdrawal of congressional consent, the limitations on the investment and use of long-term care funds in sub. (6) (o) and (q) 4., the contractual obligations in sub. (5) (f), the indemnification obligations and contributions rights in subs. (6) (o), (s) and (t) and (7) (g) and the operation rights and indemnification and hold-harmless obligations in sub. (6) (q) shall remain in force notwithstanding dissolution of this compact.

**SECTION 108.** 16.11 (9) (title) of the statutes is amended to read:

16.11 (9) (title) ARTICLE IX - PENALTIES AND ENFORCEMENT.

**SECTION 109.** 16.11 (9) (b) of the statutes is repealed and recreated to read:

16.11 (9) (b) The parties to this compact intend that the courts of the United States shall specifically enforce the obligations, including the obligations of party states and revoked or withdrawn party states, established by this compact.

**SECTION 110.** 16.11 (9) (c) of the statutes is renumbered 16.11 (9) (d) and amended to read:

16.11 (9) (d) Each party state acknowledges that the receipt by transport into a host state of waste packaged or transported in violation of applicable laws, rules and regulations may result in the imposition of sanctions by the host state which may include reasonable financial penalties assessed against any generator, transporter or collector responsible for the violation or may include suspension or revocation of the violator's right of access to the facility in the host state by any generator, transporter or collector responsible for the violation.

**SECTION 111.** 16.11 (9) (c) of the statutes is created to read:

16.11 (9) (c) The commission or an affected party state or both may obtain injunctive relief or recover damages or both to prevent or remedy violations of this compact.

**SECTION 112.** 16.11 (9) (d) of the statutes is renumbered 16.11 (9) (e).

**SECTION 113.** 16.11 (9) (f) of the statutes is created to read:

16.11 (9) (f) This compact shall not be construed to create any cause of action for any person other than a party state or the commission. Nothing in this paragraph shall limit the right of judicial review set forth in sub. (3) (n) 3. or the rights of contribution set forth in subs. (3) (p), (6) (o), (s) and (t) and (7) (g).

**SECTION 114.** 16.11 (10) of the statutes is amended to read:

16.11 (10) ARTICLE X - SEVERABILITY AND CONSTRUCTION. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared finally determined by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact to that person or circumstance and the applicability thereof of the entire compact to any government, agency, other person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. If any provision of this compact imposing a financial obligation upon a party state, or a state that has withdrawn from this compact or had its membership in this compact revoked, is finally determined by a court of competent jurisdiction to be unenforceable due to the state's constitutional limitations on its ability to pay the obligation, then that state shall use its best efforts to obtain an appropriation to pay the obligation, and, if the state is a party state, its right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to

the region by any agreement entered into by the commission pursuant to sub. (3) (h) 6., shall be suspended until the appropriation is obtained.

**SECTION 115.** 16.115 (2) of the statutes is amended to read:

16.115 (2) The department shall establish by rule a schedule of annual fees to be paid by generators, as defined under s. 16.11 (2) (~~g~~) (j), who use a regional compact facility operated under, as defined in s. 16.11 (2) (d), or a noncompact facility made available by an agreement entered into under s. 16.11 (3) (h) 6. for disposal, and, beginning with the operation of the facility, the department shall collect the fees. The fees shall be based on the volume and hazard of waste generated and shall cover the costs enumerated under sub. (3) which are incurred before and after the acceptance of waste for disposal at the facility. Any nuclear power plant operator who has paid a fee under sub. (1) shall receive credit on the fees required of the operator under this subsection at a rate determined by the department so that, over the first 5 years of the collection of fees under this subsection, the power plant operator receives total credits equal to the fees paid under sub. (1). In addition to covering the costs enumerated under sub. (3), the fees established under this subsection for the first 5 years after the acceptance of waste for

disposal at the facility shall be sufficient to repay the loan from the general fund made under s. 20.505 (1) (b), and the secretary shall lapse moneys from the appropriation under s. 20.505 (1) (g) to the general fund for that purpose over the 5-year period.

**SECTION 116.** 16.12 (2) of the statutes is amended to read:

16.12 (2) The sole ~~remedy~~ remedies against the state, other than in its capacity as a generator, for a violation of any provision of the midwest interstate low-level radioactive waste compact under s. 16.11 ~~is~~ are the ~~remedy~~ remedies provided in s. 16.11 (~~3~~) (~~h~~) ~~6~~ and (~~8~~) (~~f~~).

**SECTION 117.** 16.13 of the statutes is amended to read:

**16.13 Data collection.** Upon the request of the midwest interstate low-level radioactive waste commission member representing the state, the department may require a generator, as defined under s. 16.11 (2) (~~g~~) (j), to provide information necessary for the member to discharge his or her duties under s. 16.11.

**SECTION 118.** 144.463 (1) of the statutes is amended to read:

144.463 (1) DEFINITION. In this section, “low-level radioactive waste” has the meaning given in s. 16.11 (2) (~~i~~) (m).