

LOW-LEVEL RADIOACTIVE WASTE DISPOSAL ACT

Act of Feb. 9, 1988, P.L. 31, No. 12

Cl. 35

AN ACT

Providing for low-level radioactive waste disposal; further providing for powers and duties of the Department of Environmental Resources and the Environmental Quality Board; providing for the siting of low-level radioactive waste disposal facilities and for the licensing of operators thereof; establishing certain funds and accounts for the benefit of host municipalities and the general public; establishing the Low-Level Waste Advisory Committee and providing for its powers and duties; providing for membership on the Appalachian States Low-Level Radioactive Waste Commission; requiring certain financial assurances; providing enforcement procedures; providing penalties; making repeals; and making appropriations.

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The General Assembly of the Commonwealth of Pennsylvania
hereby enacts as follows:

CHAPTER 1
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Low-Level
Radioactive Waste Disposal Act.

Section 102. Legislative findings.

The General Assembly hereby determines, declares and finds
that low-level radioactive wastes are generated within this
Commonwealth; that these wastes must be isolated for the full
hazardous life of the wastes in order to protect the public
health and safety; that the Low-Level Radioactive Waste Policy
Amendments Act of 1985 requires each state to be responsible
for providing for the availability of capacity for disposal of
low-level wastes generated within its borders; that shallow
land burial is prohibited under the terms of the Appalachian
States Low-Level Radioactive Waste Compact; that the illegal
disposal of low-level radioactive waste poses severe risks to
the health and safety of the public and the protection of the
environment; that low-level radioactive waste disposal carried
out in an environmentally sound manner to protect the health
and safety of the public is in the public interest; and
acknowledging that the Department of Environmental Resources
shall be the Commonwealth agency with these responsibilities.
It is the purpose of this act to:

(1) Implement Pennsylvania's duties and responsibilities
arising under the Appalachian States Low-Level Radioactive
Waste Compact.

(2) Establish and maintain, to the extent allowable
under Federal law, a comprehensive and pervasive low-level
waste disposal management, licensing and regulatory program
in the Department of Environmental Resources for which all
costs shall be borne by the low-level waste generators,
brokers, carriers and the regional facility operator
regulated by this act.

(3) To the extent allowed under Federal law, require
the minimization of the amount of low-level waste generated

and the reduction of the volume and toxicity of low-level waste requiring disposal.

(4) Protect the public health, safety and welfare, and the environment from the short- and long-term dangers of low-level waste and its transportation, management and disposal.

(5) Establish an open public process to locate a regional facility in the Commonwealth, to determine the operator and disposal technology and to license the regional disposal facility.

(6) Provide for benefits and guarantees for communities affected by the establishment, operation and presence of a low-level radioactive waste disposal facility.

(7) Assure the participation of the public and of elected and appointed officials at all levels of government in the decisionmaking process, create a Public Advisory Committee and assist in public education efforts related to low-level waste disposal.

(8) Prohibit shallow land burial of low-level radioactive waste; except that the department shall develop standards by regulation for the onsite handling and disposal of naturally occurring radioactive materials, ores and their waste products.

(9) Provide a comprehensive and effective strategy for the siting of commercial low-level waste compactors and other waste management facilities, and to ensure the proper transportation, disposal and storage of low-level radioactive waste.

(10) Assure that the low-level radioactive waste facility will be above grade of the land, unless other designs provide significant improvement in recoverability, monitoring, public health and environmental protection.

(11) Prohibit the commercial incineration of radioactive wastes.

(12) Assure that waste disposed of at the regional facility does not include radioactive waste originating outside the Appalachian Compact states except as otherwise provided in this act.

(13) Provide that no low-level radioactive waste shall be disposed of at any disposal facility not licensed to accept low-level radioactive waste or at any municipal landfill or commercial incinerator.

Compiler's Note: The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Account." The Long-Term Care Account.

"Affected municipalities." Any unit of local government other than the host municipality designated as an affected municipality pursuant to section 318. Affected municipalities may be counties, cities, boroughs, townships or school districts.

"Appalachian Compact" or "compact." A compact entered into by Pennsylvania under the terms of the Low-Level Radioactive Waste Policy Amendments Act of 1985, and as contained in the Appalachian States Low-Level Radioactive Waste Compact Law.

"Appalachian States Low-Level Radioactive Waste Compact Law." The act of December 22, 1985 (P.L.539, No.120).

"Atomic Energy Act of 1954." Public Law 83-703, 68 Stat. 921, 42 U.S.C. § 2011 et seq.

"Broker." Any intermediate person who collects, consolidates, handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste.

"Carrier." A person who transports low-level waste from or to any generator or waste management facility or to a regional facility.

"Commercial incinerator." An incinerator of low-level radioactive waste, except one which incinerates waste at the site of generation or at which only waste generated within the compact by the owner of the incinerator is incinerated.

"Commission." The Appalachian States Low-Level Radioactive Waste Commission.

"Compact states." The combined states including Pennsylvania which have entered into the Appalachian States Low-Level Radioactive Waste Compact.

"Curie." A unit of measure of radioactivity.

"Custodial agency." The government entity designated by the Governor other than the licensing agency responsible for the long-term monitoring and care of the regional facility.

"Department." The Department of Environmental Resources of the Commonwealth.

"Disposal." The isolation of low-level waste from the biosphere.

"Engineered structure." Man-made state-of-the-art barrier designed to provide additional measures for containment of radioactive waste from the environment, protection of the inadvertent intruder and stability of the disposal facility and designed to prevent any radioactive release.

"Facility." Any real or personal property and improvements thereof or thereon, and any and all plants, structures, machinery and equipment, acquired, constructed, operated or maintained for the management or disposal of low-level waste.

"Fund." The Low-Level Waste Fund.

"Generate." To produce low-level waste requiring disposal.

"Generator." A person whose activity results in the production of low-level waste requiring disposal.

"Hazardous life." The time required for radioactive materials to decay to safe levels of radioactivity, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by the Federal law or by standards to be set by the host state, whichever is more restrictive.

"Hazardous wastes." As defined in the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and regulations adopted thereunder.

"Host municipality." One or more city, borough, incorporated town or township, excluding counties, in which the low-level waste disposal facility will be constructed, as designated by the department pursuant to section 318.

"Institutional control period." The time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency, which shall continue for the hazardous life of the waste.

"Low-level waste." Radioactive waste that:

(1) is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954 (68 Stat. 922, 42 U.S.C. § 2014(e)(2)), waste generated as a result of atomic energy defense activities of the Federal Government, and waste for which the Federal Government is responsible under section 3(b)(1) of the Low-Level Radioactive Waste Policy Amendments Act of 1985; and

(2) is classified by the Federal Government as low-level waste, consistent with the Low-Level Radioactive Waste Policy Amendments Act of 1985; or

(3) contains naturally occurring or accelerator-produced radioactive material, which is not excluded by paragraph (1) or (2).

"Low-Level Radioactive Waste Policy Amendments Act of 1985." Public Law 99-240, 99 Stat. 1842, 42 U.S.C. § 2021b et seq.

"Management." The reduction, collection, consolidation, storage, processing, incineration, separation, minimization, compaction, segregation, solidification, evaporation, packaging or treatment of low-level waste.

"Operator." A person who operates a regional facility.

"Person." Any individual, corporation, partnership, association, public or private institution, cooperative enterprise, municipal authority, public utility, trust, estate, group, Federal Government or agency, other than the United States Nuclear Regulatory Commission or any successor thereto, state institution and agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provision of this act prescribing a fine, imprisonment or penalty, or any combination of the foregoing, the term "person" shall include officers and directors of any corporation or other legal entity having officers and directors.

"Protection Fund." The Regional Facility Protection Fund.

"Radiation Protection Act." The act of July 10, 1984 (P.L.688, No.147).

"Regional facility." A facility which has been approved by the commission and licensed under this act for the disposal of low-level waste.

"Secretary." The Secretary of Environmental Resources of the Commonwealth.

"Separation." Segregation and isolation of all low-level radioactive waste in accordance with a waste classification system to be established by regulation by the department.

"Shallow land burial." The disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures and in proper packaging as determined under this act.

"Zero release capacity." The ability not to release radioactivity.

Compiler's Note: The Department of Environmental Resources, referred to in the def. of "department," was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Compiler's Note: The Secretary of Environmental Resources, referred to in the def. of "secretary," was abolished by Act 18 of 1995. The functions of the secretary were transferred to the Secretary of Conservation and Natural Resources and the Secretary of Environmental Protection.

LOW-LEVEL WASTE DISPOSAL

Section 301. Powers and duties of the Department of Environmental Resources.

The department shall have the power and its duty shall be to:

(1) Develop and implement a comprehensive program for the regulation of the generation, storage, handling, transportation, processing, minimization, separation, management and disposal of low-level radioactive waste to the extent allowable under Federal law or State law, whichever is more stringent.

(2) Implement a regulatory, inspection, enforcement and monitoring program consistent with the terms of an agreement between the United States Nuclear Regulatory Commission and the Commonwealth, as provided for in section 201 of the Radiation Protection Act, and this act.

(3) Enter into a contract with an operator-licensee designate to screen the State to locate potentially suitable sites, to study the sites in detail and to submit a license application to operate the regional facility.

(4) License a regional facility operator in accordance with section 308 and regulations promulgated hereunder.

(5) Issue permits to generators, brokers and carriers of low-level waste for access to the regional facility in accordance with provisions of this act and with specific regulations promulgated under this act.

(6) Receive title to the land for use as a regional facility from the licensee for eventual transfer to the custodial agency or acquire land by eminent domain in the manner provided in the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code, if the operator-licensee designate cannot acquire the property prior to submitting an application to the department for a license.

(7) Use Commonwealth property for the regional facility where such use is consistent with uses authorized under State law.

(8) Provide for the licensing and regulation of a custodial agency for the long-term care and monitoring of the regional facility for the duration of the institutional control period in accordance with regulations established by the Environmental Quality Board.

(9) Provide for the emergency care and monitoring of the regional facility, which may include the appointment of an interim operator if the department determines that:

(i) the licensee has failed to comply with the terms and conditions of the contract or is in violation of this act, regulation or license conditions, permits or orders issued under this act, or the Radiation Protection Act, and a threat exists to the health or safety of the public or the environment; or

(ii) the licensee is in repeated or continuing violation of this act, regulations or the terms and conditions of any license, permit or order issued under this act, or the Radiation Protection Act.

(10) Implement policies, including fee schedules and other incentives, to the extent authorized by the Appalachian Compact and State and Federal law to reduce the volume and toxicity of low-level radioactive waste.

(11) Promulgate regulations establishing a low-level radioactive waste classification system which shall take

into consideration curie concentration, toxicity, hazardous life and prior treatment of wastes.

(12) Promulgate regulations establishing standards for the hazardous life of low-level waste which shall be at least as restrictive as Federal standards.

(13) Provide for emergency response capability in cooperation with the Pennsylvania Emergency Management Agency.

(14) Do any and all other acts not inconsistent with the provisions of this act which are necessary and proper for the effective implementation and enforcement of this act and the Radiation Protection Act.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 301.

Section 302. Powers and duties of the Environmental Quality Board.

(a) Rules and regulations.--The Environmental Quality Board, exercising authority under section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, shall have the power and its duty shall be to adopt regulations developed by the department for the implementation of this act. These regulations shall include, but are not limited to: generation, transportation, handling, separation, minimization, treatment and disposal of low-level radioactive waste; permit and license fees, standards and procedures; facility siting, including standards and siting regulations for new low-level waste incinerators and compactors and for the regional facility; facility design; manifest and reporting requirements; facility operational management; financial responsibility assurance; public participation; host and affected municipality benefits and guarantees; monitoring and inspection; compliance and enforcement; and any other regulatory requirements the department finds necessary or appropriate for the protection of the public health and the environment from low-level radioactive wastes, provided that the provisions of any siting regulations adopted under this section shall not apply to any commercial compactor facility which obtained a license from the United States Nuclear Regulatory Commission authorizing operation pursuant to the Atomic Energy Act prior to the effective date of this act.

(b) Site selection.--

(1) In addition to the authority to adopt regulations under this act, the Environmental Quality Board shall make the preliminary determination as to whether three proposed potentially suitable sites satisfy the applicable siting regulations.

(2) The effect of the board's preliminary approval of a site is to approve a potentially suitable site for further study. This preliminary approval assures access for further study of the site, in accordance with section 307(f), and public participation, especially by the potential host municipality during the evaluation and study of a potentially suitable site.

(3) The board's preliminary site approval is not a final action regarding the potentially suitable site. The board's preliminary approval is appealable only to the extent the owner of the land which constitutes the site can demonstrate immediate and present damages from further study activity to be undertaken on the site. The final determination as to whether the potentially suitable site meets the siting regulations shall be made by the secretary after the further studies are completed, as part of the license application decision.

(c) Procedure.--The board shall establish procedures, including appropriate public participation, governing the preliminary site approval process. The public participation process shall include at least one public information meeting and one public hearing held by the board in each potential host municipality and an opportunity for comment on the public record. The host municipality and host county shall have a minimum of 180 days from the receipt of funds under section 318(a) to offer comments during the public participation process established under this section.

(d) Technical assistance.--

(1) The board may contract for the services of an independent consultant to assist the board in its review of all matters relating to the evaluation and preliminary approval of the sites proposed and submitted to the board by the operator-licensee designate under the provisions of section 307.

(2) The consultant shall be selected through a request-for-proposal process. The proposal shall include sufficient information to evaluate the consultant's expertise, competence and qualifications for assisting in the evaluation of the proposed sites.

(3) No consultant shall have a direct financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any associated industry, nor shall they have acted as a consultant to the department in any matter involving low-level radioactive waste within five years from the date of this act. Any consultant which may have a potential conflict of interest as described in the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act, the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law, or other applicable statute or executive order shall reveal and explain the potential conflict as part of the request-for-proposal process.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 302(a).
Section 303. Generation, transportation, handling, management and disposal of low-level waste.

Each person who generates, transports, handles, manages or disposes of low-level waste shall:

(1) Maintain records to identify the volume and radioactivity content of low-level waste generated and

shipped, the method of transportation, the origin and disposition of such low-level waste, and such additional records as the department may require.

(2) Furnish information as required by the department on such low-level waste to persons transporting, managing, storing or disposing of such wastes.

(3) Use a manifest system as specified in section 310(a)(1) for all low-level waste transported.

(4) Transport low-level waste for handling, management or disposal to the approved facilities which the generator or broker has designated on the manifest form.

(5) Submit reports to the department quarterly, listing the quantities, types and classes of low-level waste generated during a particular time period.

(6) Maintain such operation, train personnel and assure financial responsibility for such handling or disposal operations to prevent adverse effects to the public health, safety and welfare and to the environment and to prevent public nuisances.

(7) Immediately notify designated public agencies of any accident away from the site of generation involving potential or actual spill or accidental discharge of such waste, and take immediate steps to contain and clean up the spill or discharge.

(8) Separate all low-level radioactive wastes in accordance with the waste classification system to be established by the department.

Section 304. Siting regulations.

The department shall develop siting regulations which shall be designed to allow for screening of the State by the operator-licensee designate and the selection of three potentially suitable sites. The regulations shall also contain detailed site specific provisions which the operator-licensee designate shall use to evaluate a potentially suitable site approved for further study. Potentially suitable sites shall not have any slopes for the disposal area of more than 15% as mapped on a scale of 1:24,000 with a contour interval of either 10 or 20 feet as available on published U.S.G.S. 7.5 minute quadrangles. The regulations shall include, but not be limited to, consideration for public health and safety, flooding, tectonics, protection of lands in the public trust, protection and exploitation and exploration of natural resources, demographics, transportation, wildlife, air quality, ecology, topography and hydrogeology. The regulations shall also provide that potentially suitable sites shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the above considerations or significantly mask the monitoring of the facility. The regulations shall be at least as stringent as those regulations adopted under the Atomic Energy Act of 1954. The Environmental Quality Board shall hold at least one public information meeting and at least one public hearing on the siting regulations, and shall solicit and take into consideration written public comments, prior to final adoption. There shall be 30 days' public notice before any hearing. Notice shall, at a minimum, be provided in the Pennsylvania Bulletin and in newspapers of general circulation in each county.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection,

provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 304.

Section 305. Facility design and operational management regulations.

The department shall establish by regulation minimum engineering design and operational management criteria for the regional facility. These criteria shall be in addition to those required by regulations adopted under the Atomic Energy Act of 1954. Shallow land burial, as defined in this act, is prohibited. An above-land grade facility is required unless other designs provide significant improvement in recoverability, monitoring, public health and environmental protection. The facility shall have the goal of a zero release capacity. The criteria shall include, but not be limited to, provisions for enhanced containment, recoverability, long-term passive isolation, minimization of risks from water intrusion, protection from inadvertent intruders, monitoring and special requirements for various classes of wastes which shall include, but not be limited to, provisions for the segregation and recoverability of Class C waste. The Environmental Quality Board shall hold at least one public information meeting and at least one public hearing on the regulations, and shall solicit and take into consideration written public comments, prior to final adoption. There shall be 30 days' public notice before the hearings. Notice shall, at a minimum, be provided in the Pennsylvania Bulletin and in newspapers of general circulation in each county.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 305.

Section 306. Operator-licensee designate selection.

(a) Proposals.--The secretary shall, through a request-for-proposal process, select an operator-licensee designate. The proposals shall include detailed methods to be used for site screening and selection of potentially suitable sites; an explanation of how the operator plans to meet requirements of this act for public participation, including details of provisions for information to and solicitation of information from the public, the host municipality and the host county; the design of the proposed regional facility; the detailed site specific studies to be conducted to determine the environmental qualifications of the sites; a description of facility operational plans; a description of operator qualifications, including relevant experience, financial history, compliance history and current financial and compliance status of the operator; details of the method of operating the regional facility; a proposed method to determine the impact of the regional facility on the potential host and affected municipalities; a proposal for a minimum host municipality benefits and guarantee package; a proposed fee schedule for disposal based on projected disposal costs and waste

classification; and any other criteria the secretary may require.

(b) Qualifications.--

(1) The department shall develop standards for operator qualifications which shall be reviewed by the Low-Level Waste Public Advisory Committee prior to the start of the request-for-proposal process. The standards shall include, but not be limited to, provisions for consideration of the following:

(i) The relevant experience of the operator-licensee applicant.

(ii) The financial history of the operator-licensee applicant.

(iii) The compliance history of the operator-licensee applicant. In reviewing the applicant's compliance history, the department:

(A) shall require the applicant to provide a record of its compliance history with environmental protection statutes of the Commonwealth, other states and of the Federal Government, including, but not limited to, any violations of the provisions of this act, the Appalachian States Low-Level Radioactive Waste Compact Law, the Radiation Protection Act, or any other state or Federal statute relating to environment protection or to the protection of public health, safety and welfare or any rule or regulation, order or any condition of any license issued by the department or any major violations, orders or consent decrees or similar administrative enforcement actions, or civil or criminal litigation involving the requirements above; and

(B) may deny the applicant the opportunity for consideration as an operator if he has engaged in unlawful conduct, or if the applicant's partner, associate, officer, parent corporation, subsidiary corporation, contractor or agent has engaged in such unlawful conduct, or has shown a lack of ability or intention to comply with the requirements listed in clause (A), unless the applicant demonstrates to the satisfaction of the secretary that the applicant has the ability and intention to comply with requirements as referred to in clause (A). Evidence of the ability and intention to comply with these requirements shall include, but not be limited to, evidence that:

(I) the applicant does not have a pattern of major violations of the environmental requirements referred to in this section;

(II) the applicant does not have a record of continuing violations of the environmental requirements referred to in this section. For the purpose of this subclause, a continuing violation includes, but is not limited to, a violation that is not being abated or removed or a violation where the applicant is not cooperating in good faith with the appropriate State or Federal environmental agency to remedy or abate the violation;

(III) the applicant has complied or is complying with all orders or consent decrees of the department, or similar administrative enforcement actions of another state or of the

Federal Government where pollution is being abated or removed; and

(IV) the applicant has made or is making full payment of any civil or criminal penalties imposed under the environmental statutes of the Commonwealth, another state or of the Federal Government.

(2) In no event shall any person who has committed a criminal violation of any state or Federal environmental statute resulting in a conviction of a first degree misdemeanor or a felony, within ten years prior to the effective date of this act, be given an opportunity to be considered under this act as an operator.

(3) If all applicants are found unacceptable by the secretary, the secretary shall recommend to the Governor, that the Governor, with the advice and consent of the General Assembly, shall designate an agency or authority of the Commonwealth to operate the regional facility at the site selected by the secretary in compliance with all regulations of the department.

(c) Procedure.--All proposals from potential site operator-licensee designates shall be open for public inspection and comment for at least 90 days prior to the selection of the operator by the secretary. Notice shall, at a minimum, be provided in the Pennsylvania Bulletin and in newspapers of wide general circulation of the availability of the proposals, and the proposals shall be available for public inspection. At least two public meetings shall be held in conjunction with the Low-Level Waste Advisory Committee to discuss the proposals. All written comments received during the comment period will be taken into consideration and become part of the public record.

(d) Contract.--The secretary shall enter into a contract with the operator-licensee designate authorizing the operator to complete the site screening process, the selection of three potentially suitable sites, the detailed evaluation of each potentially suitable site, and the license application process, and to operate and close the regional facility only if issued a license from the department under this act. The contract shall include, but not be limited to, any applicable provisions of the proposal. The contract shall contain provisions regarding funding sources to be utilized for the facility, liability agreements, the establishment of a reasonable and adequate fee structure, expenses for events which are beyond the control of the operator-licensee designate and cancellation or modification of the contract if the operator-licensee designate is not complying with the provisions of the contract or is unable or unwilling to properly carry out the site screening and evaluation process.

(e) Appeal.--Any affected person may appeal the selection of the operator-licensee to the Environmental Hearing Board based solely on the qualifications in this section of the operator-licensee designate.
Section 307. Site selection.

(a) Screening report.--The operator-licensee designate shall conduct a study screening the Commonwealth for potentially suitable sites in accordance with the siting regulations adopted pursuant to section 304 and shall prepare a screening report which documents the findings of the study. A municipality or group of municipalities may, through their duly authorized governing body or bodies, request consideration as a potentially suitable site under this section. Such offering municipality

or group of municipalities shall be included in the screening study to be conducted by the operator-licensee designate, the screening report required by subsection (b) and the other applicable provisions of this section.

(b) Submission.--The operator-licensee designate shall propose three potentially suitable sites and submit those sites to the Environmental Quality Board for approval. The proposal shall be accompanied by:

- (1) the site screening report;
- (2) a site justification explaining the reasons for choosing the potentially suitable sites compared to other sites considered; and
- (3) a study of the short-term and long-term environmental effects on the potentially suitable sites and affected areas.

(c) Social and economic impact study.--At the same time as the submission of the application for potentially suitable sites required in subsection (b), the operator shall submit to the department a study of the short- and long-term social and economic impacts of a regional facility on the municipalities surrounding the potentially suitable sites. The study shall include, but not be limited to, the impacts on tax revenue, public infrastructure, emergency management capabilities, compatibility with regional and local economic goals, other demographic characteristics, loss of resources and social service demands. The study shall propose each host municipality and affected municipalities.

(d) Evaluation.--The department shall evaluate the proposal and submit conclusions and siting recommendations to the Environmental Quality Board.

(e) Procedure.--The Environmental Quality Board shall hold at least one public information meeting and one public hearing in each of the potentially suitable areas as required in section 302(c), evaluate the three proposed potentially suitable sites and determine if they satisfy the applicable siting regulations. If any site does not satisfy the applicable siting regulations, the board shall so inform the operator-licensee designate who shall propose another potentially suitable site and submit another site justification pursuant to subsection (b), and another social and economic impact study pursuant to subsection (c). If a proposed potentially suitable site satisfies the applicable siting regulations, the board shall give preliminary site approval to allow for further site evaluation. The board shall make a determination that the screening process has identified three of the best potential locations in the host state, based on the administrative record before the board. The administrative record shall consist of the screening report, site justification report, the study of short-term and long-term environmental effects on the potentially suitable sites, the conclusions and siting recommendations of the department and the testimony presented at the board's public hearings and comments received during the comment period.

(f) Preliminary approval.--

(1) Upon the preliminary approval of the three sites by the Environmental Quality Board, the operator-licensee designate shall obtain access to those sites for further study. The operator-licensee designate shall have the right to enter provided to a condemnor under section 409 of the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code.

(2) Property owners of any site which has received preliminary approval by the Environmental Quality Board, but

which is not selected as the final site, shall have the rights of a condemnee under section 408 of the Eminent Domain Code, as are therein granted to condemnees subject to a revocation of condemnation proceedings. When the preliminary site has been rejected by the action of the secretary in issuing a permit for another site, notice of such relinquishment shall be served upon the affected property owners in the same manner as provided for in a declaration of taking under the Eminent Domain Code. The affected property owners shall be reimbursed by the operator-licensee designate for reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred because of the preliminary approval of the site by the Environmental Quality Board. Such damages shall be assessed by the court, or the court may refer the matter to viewers to ascertain and assess the damages sustained by the affected property owners, whose award shall be subject to appeal as provided in the Eminent Domain Code.

(g) Purchase of site.--Upon receiving a license to operate the regional facility at the site, the operator shall purchase the site and transfer title to all land to the Commonwealth. If the operator-licensee designate is unable to purchase the site, the Commonwealth shall acquire the site by eminent domain and the operator-licensee designate shall reimburse the Commonwealth for all costs of acquisition.

(h) Final approval.--The issuance of a license by the secretary pursuant to section 308 shall constitute final approval of the site. The Commonwealth shall hold title to the land until at least the end of the institutional control period.

(i) Appeal.--The issuance of the license is appealable to the Environmental Hearing Board pursuant to section 1921-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. This appeal shall take precedence over other appeals pending before the board and shall be handled in an expedited manner. The decision of the board is appealable to Commonwealth Court. A citizen of this Commonwealth, a host municipality or a host county, who or which makes an appeal on his or its own behalf under this section, shall not be required to post a bond nor shall they be required to pay a fee for filing the appeal.

Section 308. Operator licensing.

(a) Regulations.--The department shall establish by regulation the procedure and requirements for licensing of the regional facility operator. The regulation shall provide, without limitation:

- (1) Authority for the amendment, suspension or revocation of the license.
- (2) Consent for entry into the regional facility.
- (3) Requirements for the form of the application and the information to be provided.
- (4) Requirements for submission of a decommissioning plan for the regional facility.
- (5) Requirements that the application and all submissions be in writing and signed.

(b) Further statements and inspections.--The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the department deems necessary to determine whether the license should be granted, modified, suspended or revoked. All applications and statements shall be signed by the applicant or licensee.

(c) Impact analysis.--The license applicant shall prepare a written analysis of the impact of such licensed activity. The analysis shall be available to the public at least 120 days before the commencement of hearings held pursuant to subsection (d) and shall include:

(1) A detailed assessment of the radiological and nonradiological impacts to the public health and on the environment.

(2) A detailed assessment of the impact on the quality and quantity of the surface and groundwater within a five-mile radius of the site.

(3) Consideration of the short-term and long-term public health and environmental impacts from closure, decommissioning, decontamination and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such closure, decommissioning, decontamination and reclamation. These impacts shall include, but not be limited to, adverse effects due to prior activities and conditions, including water and air quality problems, a health survey of cancer and other disease rates and birth defects, and prior mining.

(4) Consideration of the short- and long-term social and economic impacts of the regional facility on the host municipality and affected municipalities, to create a minimum set of items to be considered as part of the host and affected municipality benefit negotiations. At a minimum the study should include the impacts on local tax revenues, public infrastructure, emergency management capabilities and social service demands.

(5) A preoperational environmental radiation survey and a preoperational health survey of cancer and other disease rates and birth defects within five miles of the site.

(6) Justification for the choice of the proposed site over the other two potentially suitable sites.

(d) Duty of secretary.--Before approving or disapproving the license application, the secretary shall provide:

(1) The public with the opportunity to review and inspect the license application at a publicly available location in the area where the regional facility is proposed to be located.

(2) A 90-day public comment period, one public information meeting and one public hearing, not within 30 days of each other, after adequate public notice, in the area where the regional facility is proposed to be located. All written comments and comments contained in a transcript of the hearing shall be considered in the secretary's decision on the application and become part of the public record.

(3) A written determination of the action to be taken, including a response to comments, which is based upon findings included in the determination and upon evidence presented during the public comment period.

(e) Terms and conditions of license.--The terms and conditions of all licenses issued under this act shall be subject to amendment, revision or modification by regulations or orders. The department shall provide by regulation for public notice of license amendment requests and for a public participation process.

(f) Financial assurance.--No license shall be issued by the department unless the operator provides the financial assurances required by section 316.

(g) License denial, suspension, etc.--In carrying out this act, the secretary may deny, suspend, modify or revoke any license if he finds that the applicant or licensee has failed or continues to fail to comply with any provision of this act, the Appalachian States Low-Level Radioactive Waste Compact Law, the Radiation Protection Act or any other state or Federal statute relating to environmental protection or to the protection of the public health, safety and welfare; or any rule or regulation of the department; or any order of the department; or any condition of license issued by the department; or if the department finds that the applicant or licensee has shown a lack of ability or intention to comply with any provision of this act or of any acts referred to in this section, or any rule or regulation of the department or order of the department, or any condition of any license issued by the department as indicated by past or continuing violations. In the case of a corporate applicant or licensee, the department shall deny the issuance of a license if the secretary finds that a principal of the corporation was a principal of another corporation which committed past violations of any of the above laws, unless the principal has demonstrated that the violations are not relevant to issuing the license or permit or there are other mitigating circumstances which demonstrate the applicant has the ability and intent to comply with the law.

Section 309. Out-of-compact waste.

(a) Source of waste.--No low-level waste shall be accepted for disposal at the regional facility unless the waste was generated within the Appalachian Compact states or the commission has entered into a reciprocal contingency agreement for the emergency disposal of out-of-compact low-level waste. Waste generated within the Appalachian Compact states shall not include radioactive waste shipped from outside the Compact states to a waste generator or management facility within the Compact states. For the purposes of this section, an emergency shall include the temporary shutdown of a regional or state low-level radioactive waste disposal facility for a period of time which the commission reasonably projects will extend beyond the time when the low-level radioactive waste storage at the generator's facility and the disposal facility will reach maximum capacity, and additional storage would constitute a threat to the health and safety of the public or the environment. The reciprocal contingency agreement shall provide that the regional or state low-level waste disposal facility with the emergency will accept from the Appalachian Regional Facility or from generators, brokers or carriers licensed or permitted by the department, immediately at the termination of the emergency, an amount of low-level radioactive waste equal to the volume and toxicity of the low-level radioactive waste shipped to the Appalachian Regional Facility during the emergency.

(b) Approval of certain agreements.--No agreement shall permit the disposal of out-of-compact waste for a period exceeding three months unless a continuation of the agreement is approved by the General Assembly or the Governor. The Speaker of the House of Representatives and the President pro tempore of the Senate shall cause to be placed on the calendars of the House and Senate a concurrent resolution approving the proposed continuation. If the General Assembly fails to approve or disapprove the concurrent resolution within ten legislative days or 30 calendar days, whichever occurs first, the Governor may approve the continuation of the reciprocal agreement by executive order. The commission shall notify the General

Assembly and the Governor when it has determined that a continuation of the reciprocal agreement is recommended and the date on which disposal will cease.

(c) Limited permit.--The department shall review an application and shall issue a limited permit for each low-level waste generator from outside the compact that meets the criteria for use of the regional facility. The department shall only issue the permit upon a determination by the commission that an emergency exists in the state or region in which the permittee is located. The permit shall not be valid for a period exceeding three months, unless a continuation is approved by the General Assembly or the Governor as provided in subsection (b).

Section 310. Permitting of generators, brokers and carriers.

(a) Regulations.--The department shall provide by regulation for the permitting of generators, brokers and carriers for access to the regional facility. Such regulations shall establish, without limitation:

(1) Requirements for packaging, separation, waste form, routing, manifesting, financial assurance, recordkeeping, emergency planning and length of term of the permit.

(2) Limits on the types, quantities and origins of radioactive waste allowed for disposal.

(3) That each application for a permit or amendment shall be in writing and signed by the applicant.

(4) The form of the application and the information it should contain.

(5) Requirements for applicant's consent for entry to facilities, vehicles and equipment.

(6) Procedures for suspension, revocation and amendment of permits.

(7) That each generator have a plan for reduction of toxicity and volume with stated reduction goals.

(8) Any other requirements the department deems necessary or proper to implement the provisions of this act and the Radiation Protection Act.

(b) Issuance of permit.--Upon approval of the application and receipt of fees, the department shall issue a permit to the applicant as set forth in the application and further conditioned by the department as necessary.

(c) Permit denial, suspension, etc.--In carrying out this act, the department may deny, suspend, modify or revoke any permit if it finds that the applicant or permittee has failed or continues to fail to comply with any provision of this act, the Appalachian States Low-Level Radioactive Waste Compact Law, the Radiation Protection Act or any other state or Federal statute relating to environmental protection or to the protection of the public health, safety and welfare; or any rule or regulation of the department; or any order of the department; or any condition of any permit or license issued by the department; or if the department finds that the applicant or permittee has shown a lack of ability or intention to comply with any provision of this act or any act referred to in this section, or any rule or regulation of the department or order of the department, or any condition of any permit or license issued by the department as indicated by past or continuing violations. In the case of a corporate applicant or permittee, the department shall deny the issuance of a permit if it finds that a principal of the corporation was a principal of another corporation which committed past violations of any of the above laws, unless the principal has demonstrated that the violations are not relevant to issuing the license or permit or there are

other mitigating circumstances which demonstrate the applicant has the ability and intent to comply with the law.

Section 311. Decommissioning.

When the regional facility is to be closed, the department shall require that the regional facility is properly decommissioned by the operator-licensee, that all remaining property is transferred to the Commonwealth and that control is transferred to the custodial agency. The cost of decommissioning shall be borne by the operator-licensee. The department shall make a determination that the site has been properly decommissioned and that the site, along with the license responsibilities, is suitable for transfer to the custodial agency, at which time the operator license shall be terminated. A decommissioning plan shall be submitted as part of the license application, be incorporated into the license and be periodically reviewed and amended as necessary over time.

Section 312. Low-Level Waste Fund.

(a) Establishment.--There shall be established within the State Treasury a separate account to be known as the Low-Level Waste Fund.

(b) Deposits.--All fines, penalties, fees and surcharges not designated for other purposes, collected under this act shall be paid into this fund. Additionally, all funds received from the United States Department of Energy or from the Appalachian Compact Commission or Compact states for low-level radioactive waste activities shall be deposited into the fund.

(c) Appropriation and purpose.--Moneys in the fund, except those received from the United States Department of Energy, are hereby appropriated to the department on a continuing basis to be used, upon approval of the Governor, solely for the administration and enforcement of this act, for site development, for emergency operations, for any liability of the Commonwealth, and to repay the General Fund for any appropriation made to the fund.

Section 313. Long-Term Care Account.

(a) Establishment.--There shall be established within the fund an interest-bearing restricted account to be known as the Long-Term Care Account.

(b) Surcharges.--Surcharges on disposal rates shall be imposed by the department for the expected costs of activities under this account.

(c) Purpose.--The account shall be used for no other purpose than to provide for the following:

(1) The long-term care and monitoring for the duration of the institutional control period and any emergency or remedial work that might become necessary at any regional facility by the department or the custodial agency.

(2) The assumption by the department or the custodial agency for early direct responsibility for the care and monitoring at the regional facility.

(d) Appropriation.--All moneys in the account are hereby appropriated to the department on a continuing basis to carry out this section.

Section 314. Regional Facility Protection Fund.

(a) Establishment and purpose.--There shall be established within the State Treasury a separate account to be known as the Regional Facility Protection Fund. All moneys in this fund are hereby appropriated to the department on a continuing basis for the following purposes:

(1) To pay claims for personal injury and property damage against the Commonwealth, host municipality and host county arising from their responsibilities under this act.

(2) To pay claims for personal injury and property damage against the regional facility licensee made at any time after the termination of the license arising from operation of the regional facility.

(b) Administration.--The Environmental Quality Board shall promulgate regulations, prepared by the department, to administer the Regional Facility Protection Fund. Such regulations shall include, but are not limited to, scope of coverage, further limits of liability, procedures for filing claims, presumptions and burdens of proof.

(c) Deposits.--All surcharges on waste disposed of at the regional facility under section 315(c)(1)(iv) and all interest earned thereon shall be deposited in the Regional Facility Protection Fund.

(d) Appeals.--All appeals from denial of a claim shall be to the Board of Claims. The department shall represent the Regional Facility Protection Fund in any such action.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 314.

Section 315. Fees, rates and surcharges.

(a) Establishment by department.--The department shall establish reasonable fees for licensing of the operator-licensee designate and permitting of generators, brokers and carriers. In setting the fees, the department shall consider disposal costs and classification of the waste.

(b) Approval of rates charged by operators.--The department shall require that all proposed rates charged by the operator for the disposal of low-level waste in the regional facility be submitted to the department prior to their implementation. The department shall determine if the rates are consistent with the fee structure established in the contract entered into under section 306(d) and may require the operator to modify the proposed rates if the department determines that they are not consistent with the fee structure established in the contract entered into under section 306(d). The rates shall be based on actual disposal cost and waste classification. Rates shall be adequate to assure protection of public health and safety and the environment, the retirement of facility debt plus an adequate return on capital invested and future site closure, and stabilization and decommissioning expenses.

(c) Surcharges.--

(1) The department shall assess surcharges on low-level radioactive waste disposed of at the regional facility as follows:

(i) A surcharge imposed adequate to return to the General Fund over a five-year period any appropriations expended by the department from the General Fund from July 1, 1987, to the date the regional facility begins operation, and shall expire when the General Fund is fully reimbursed.

(ii) A continuing surcharge imposed to be adequate to support the Commonwealth's expenses related to this act and the compact, including, but not limited to, the surveillance of packages, inspection, decontamination,

decommissioning and postclosure maintenance of the regional facility, recordkeeping systems and such other activities as the department finds necessary to ensure the safe operation of the regional facility.

(iii) A surcharge imposed to be adequate to fund the Long-Term Care Account as provided in section 313.

(iv) A surcharge that shall be adequate to fund the Regional Facility Protection Fund to a level of not less than \$100,000,000, indexed to increase with cost-of-living adjustments, upon the date of termination of the operator's license.

(2) These surcharges and fees shall be reviewed annually by the department to determine if they are adequate and revised accordingly. The method shall be determined by regulation.

(3) These surcharges shall be collected by the operator at no cost to the Commonwealth and shall be transmitted to the department no less frequently than monthly.

(d) Host and affected municipality benefits.--The department shall review and approve all surcharges for host and affected municipality benefits as provided in section 318. Section 316. Financial assurance and liability.

(a) Financial assurance requirements.--The department shall establish by regulation detailed financial assurance requirements for the operator for the operation, closure, postclosure monitoring and maintenance, and emergencies related to the regional facility.

(b) Proof of coverage of all costs.--The operator shall, prior to receipt of a license, show that it either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds, or a combination of the two, to cover all estimated costs of conducting all licensed activities over the planned operating life of the regional facility, including costs of construction and operation.

(c) Emergency actions, closure, etc.--The operator shall, prior to receipt of a license, provide assurance that sufficient funds are available to carry out emergency actions, site closure, decommissioning and stabilization, in accordance with the financial assurance regulations established by the department.

(d) Indemnification.--

(1) Generators, brokers and carriers for which a permit is required under sections 309 and 310 shall comply with the financial assurance regulations established by the department. Each broker, carrier and generator shall hold the Commonwealth, the host municipality, host county and their agents harmless, defend and indemnify the Commonwealth, the host municipality, host county or their agents against any and all claims, actions, demands, liabilities and losses by reason of any injury or damage to person or property arising out of any handling, management, shipping, transportation or generation of low-level waste.

(2) The operator-licensee shall hold the Commonwealth, the host municipality, host county and their agents harmless, defend and indemnify the Commonwealth, host municipality and host county and their agents against any and all claims, actions, demands, liabilities and losses for personal injury or property damage at law and equity.

(e) Limitations on liability.--In any action against the operator-licensee by any person for damages, there shall be no limit to the operator-licensee's liability if it can be shown that the operator-licensee acted in a manner that was negligent,

grossly negligent, willful, reckless or intentional. In all other claims and actions for damages against the operator-licensee, there shall be a total and cumulative limit of liability which shall be no more than \$100,000,000, plus the amount of insurance or other financial assurance applicable to the obligation or liability as required by the department.

(f) Sovereign immunity.--No provision of this act shall constitute a waiver of sovereign immunity except as provided by 42 Pa.C.S. Ch. 85 Subch. B (relating to actions against Commonwealth parties).

(g) Insurance.--The operator shall provide evidence of commercial insurance or other financial assurance as approved by the department to compensate persons for bodily injury or property damage arising from sudden and nonsudden incidents from the operation of the facility. The department shall determine the minimum amount of insurance or financial assurance, but in no case shall the minimum amount be less than the capital cost of the regional facility. For purposes of this subsection, "capital cost" means the cost of bidding for, siting, acquiring, licensing, planning, developing, constructing, equipping and promoting the regional facility and improvements made over the operating life of the facility. Section 317. Low-Level Waste Advisory Committee.

(a) Appointment.--The secretary shall appoint a Low-Level Waste Advisory Committee. The committee shall consist of at least 23 members, 19 of whom shall represent local government, environmental, health, engineering, business, academic and public interest groups and four members of the General Assembly, two from the Senate, one member from the majority party and one member from the minority party, or their designees, who shall be appointed by the President pro tempore, and two from the House of Representatives, one from the majority party and one from the minority party, or their designees, who shall be appointed by the Speaker of the House of Representatives. The secretary shall designate a representative of the department who shall be a nonvoting member of the committee. Representatives of the host municipality and host county shall also be appointed as additional voting members of the committee. No member of the committee shall be employed by or hold a financial interest in the operator company or any of its subsidiaries or parent companies, and no more than three of the members of the committee shall be employed by or hold a financial interest in a company which serves as a subcontractor to the operator company or in any entity that utilizes the regional facility for disposal of its low-level radioactive wastes.

(b) Review of draft regulations, advice, etc.--The committee shall have an opportunity to review draft regulations under this act and advise the department prior to proposal. The committee shall have an opportunity to review and comment on operator selection, including the proposed standards developed by the department for the qualifications and compliance history of the operator. The committee may also advise the department regarding policies and issues related to the implementation of this act as may be submitted by the department to the committee for review.

(c) Chairman.--The committee shall elect a member to serve as chairman.

(d) Policies and procedures.--The committee shall establish policies and procedures for the conduct of business which shall include a policy regarding potential conflicts of interest of members.

(e) Meetings.--Meetings shall be held at least annually. After a site is designated, at least one meeting shall be held in the host municipality each year.

(f) Expenses and support services.--Members shall serve without salary or compensation except for reimbursement by the department for reasonable and necessary expenses incurred in connection with their duties as approved by the secretary. The department shall also provide necessary administrative support services, budget and staff to the committee for the carrying out of its responsibilities under this section.

(g) Termination.--The Low-Level Waste Advisory Committee shall cease to exist when the department's responsibility for the regulation of low-level radioactive waste is terminated. Section 318. Host and affected municipality benefits and guarantees.

(a) Funding for evaluation of proposal.--Upon submission of the potentially suitable sites application to the Environmental Quality Board for approval, the department shall provide a reasonable amount of funds, not to exceed \$100,000 per site, to the proposed host municipalities in the study under section 307(c), and, upon the request of such county, the department shall provide a reasonable amount of funds, not to exceed \$100,000 per site, to the proposed host county in the study under section 307(c) to evaluate the proposal submitted by the operator-licensee. The host municipality and the host county shall present their findings to the board not more than 180 days after receipt of funds under this subsection. Strict accounting and verification of expenditures for activities related to this topic shall be provided by the potential host municipalities to the department in accordance with their municipal codes. All unused moneys shall be returned to the department.

(b) Funding for evaluation of application.--Upon receipt of a license application from the operator-licensee designates, the department shall provide a reasonable amount of funds, not to exceed \$150,000, to the potential host municipality to carry out an independent evaluation of the application, and, upon the request of such county, the department shall provide a reasonable amount of funds, not to exceed \$150,000, to the potential host county to carry out an independent evaluation of the application. The potential host municipality and county, within 180 days after receipt of funds under this subsection, shall present its findings to the department for inclusion in the licensing proceedings. Strict accounting and verification of expenditures for activities related to this topic shall be provided by the host municipality to the department in accordance with its municipal code. All unused moneys shall be returned to the department.

(c) Additional members of advisory committee.--After the license application has been received, the potential host municipality and potential host county will be requested to nominate one additional member each to the department's Low-Level Waste Advisory Committee.

(d) Petition for designation as affected municipality.--After the license application has been received, a municipality may petition the department to be designated as an affected municipality. The department shall designate affected municipalities based upon, but not limited to, the contents of the petition, the results of the social and economic impact and environmental impact studies submitted as part of the potentially suitable site proposal under section 307, and the license application under section 308. This shall not

preclude the department from designating a municipality as affected even though the municipality has not submitted a petition. At least 30 days prior to taking final action, the department shall publish for comment in the Pennsylvania Bulletin a notice of its intent to grant or deny designation of a municipality as an affected municipality under this act, including the reasons for its action.

(e) Designation as component of license.--The department shall designate host and affected municipalities as a part of the license.

(f) Surcharge for municipalities.--With the approval of the department, the operator shall establish a reasonable surcharge on rates charged for waste disposed at the regional facility to be paid to the host municipality, host county and affected municipalities for the following purposes:

(1) Training and equipping the first responding fire, police and ambulance services to handle anticipated emergency events at the regional facility or on the transportation routes serving the site within the host or affected municipalities.

(2) Support for affected county emergency management planning, training and central dispatch facilities as may be required to handle anticipated emergency events at the regional facility.

(3) A minimum dollar amount guaranteed annually regardless of the volume of waste received at the regional facility and any additional amount per unit of waste (cubic foot, curie content or a combination of the two) the operator and host municipality may agree upon. These funds will go directly to the host municipality.

(4) Payment of school district and municipal property taxes for individuals whose primary residence is within two miles of the regional facility for the operational life of the facility. For purposes of this section, a primary residence is the property in which the owner resides for at least nine months of each year. Payments under this section shall be prorated based on the assessed value of property located within two miles of the facility.

(5) The hiring by the host municipality of two full-time qualified inspectors, as determined by the department, to perform inspections of all activities at the regional facility under a written agreement with the department. The inspectors shall have the right of independent access to inspect any and all records and activities at the site and to carry out joint inspections with the department. The department shall respond immediately to any emergency complaint of the host municipality inspector. The department shall respond to any written complaint of the inspector within 24 hours.

(6) The hiring, upon the request of the host county, of two full-time qualified host county inspectors, to perform inspections of all activities at the regional facility under a written agreement with the department. The inspectors shall have the same authority and responsibilities as the host municipality inspectors as outlined in paragraph (5) and section 502.

(7) The development of an educational program for host inspectors and interested parties.

(8) Funds for the expenses incurred by an Environmental Advisory Council serving the host municipality or the affected municipalities, which has been set up pursuant to the act of December 21, 1973 (P.L.425, No.148), referred to

as the Municipal Environmental Advisory Council Law, for the purpose of advising government agencies, elected officials and the public on matters dealing with the protection and conservation of the environment, including the immediate area of the disposal site.

(g) Authority of municipality.--The host and affected municipalities' governing bodies shall have the exclusive power, authority and duty to determine how to utilize any funds received under this section, provided that such expenditures or utilization shall be consistent with the provisions of the prevailing municipal code in effect at the time of the expenditure.

(h) Additional duties of operator.--The operator shall also provide for the following:

(1) An independent periodic well and surface water sampling program and soil and plant sampling program which will provide analyses for radioactive and specified chemical contamination for properties within three miles of the boundary of the regional facility. Test results shall be supplied to the host or affected municipality, homeowner and the department.

(2) An independent, continuous, air, well water, surface water and soil sampling program which will provide analyses for radioactive and specified chemical contamination at the regional facility boundary. Test results shall be supplied to the host county, host municipality, affected municipality landowners, homeowners and the department.

(3) A property purchase program as follows:

(i) Any landowner will be guaranteed the sale of his property or purchase by the site operator at property values immediately prior to the time operator-licensee designate's potentially suitable site application is submitted to the department, and any subsequent improvements since that date provided that the real property and improvements thereto are located within two miles from the boundary of the regional facility.

(ii) The guarantee shall be in effect for a two-year period, this period to begin on the date of issuance of the license by the department.

(4) Prior to acceptance of waste at the regional facility, and every three years thereafter, the operator will provide updated information for the health survey related to cancer and other disease rates and birth defects of the population within a five mile radius of the facility, and shall offer without charge whole-body radioactivity measurements and other measures appropriate to assess the presence of internal radioactive emitters to all permanent residents within the host municipality or within five miles of the boundary of the regional facility. All data shall be provided to the individual with a full explanation of the results and copies made available to the host or affected municipality and the department. Tests other than the above shall also be made available, subject to the approval of the department. Results of all such tests shall be considered confidential medical records. The department shall retain copies of all records provided to it.

(i) Additional duties of department.--In addition, the department shall:

(1) Submit all final inspection reports to the host municipality and host county within five working days.

(2) Notify the host municipality and host county of all enforcement or emergency actions at the regional facility immediately.

(j) Benefit sharing.--Where there are two or more host municipalities, the benefits under this section shall be shared according to an agreement to be reached between these host municipalities. If an agreement cannot be reached, the department will decide upon a final division of the benefits, which decision shall not be reviewable.

(k) Local ordinances.--The host municipality shall have the authority to adopt reasonable ordinances, including, but not limited to, ordinances concerning the hours and days of operation of the facility and traffic. Such ordinances may be in addition to, but not less stringent than, not inconsistent with, and not in violation of any provision of this act, any regulation promulgated pursuant to this act or any license issued pursuant to this act. Such ordinances found to be inconsistent and not in substantial conformity with this act shall be superseded pursuant to section 503. Appeals under this section may be brought before a court of competent jurisdiction. Section 319. Rebuttable presumption.

(a) Liability of operator.--It shall be presumed as a rebuttable presumption of law that the operator of a regional facility is liable and responsible for all damages and radioactive contamination within three miles of the boundary of the regional facility without proof of fault, negligence or causation.

(b) Defenses.--In order to rebut the presumption of liability, the operator must affirmatively prove by clear and convincing evidence that the operator did not contribute to the damage, or, in the case of radioactive contamination, one of the following three defenses:

(1) The radioactive contamination existed prior to any disposal operations on the site as determined by a pre-operational survey.

(2) The landowner has refused to allow the operator access to conduct a pre-operational survey.

(3) The radioactive contamination occurred as a result of some cause other than regional facility operations. Section 320. Protection from contamination.

(a) Water supply.--The operator shall restore or replace any water supply which has been found or presumed pursuant to section 319 to be contaminated with radioactive material as a result of operations at the regional facility.

(b) Contamination in general.--Any landowner experiencing radioactive contamination within three miles of the boundary of the regional facility may notify the department and request that an investigation be conducted. Within ten days of such notification, the department shall investigate any such claims and shall, within 60 days of the notification, make a determination. If the department finds that the radioactive contamination was caused by the operation of the regional facility or if it presumes the operator of a regional facility responsible for contamination, then it shall issue such orders to the operator as are necessary to abate the radioactive contamination and replacement of any contaminated water supply. Section 321. Low-level waste compaction.

(a) Siting regulations.--No license or permit to construct, alter, own or operate a commercial low-level radioactive waste compactor shall be issued until the Environmental Quality Board has promulgated siting regulations for such facilities. No such license or permit shall be issued unless the applicant has

demonstrated with clear and convincing evidence that the site selected for the commercial compactor satisfies the siting regulations. This subsection shall not apply to any commercial compactor facility which obtained a license from the United States Nuclear Regulatory Commission authorizing operation pursuant to the Atomic Energy Act of 1954 prior to the effective date of this act, provided that such compactor facility shall comply with all applicable Federal and State requirements relating to operations and monitoring and shall obtain all applicable State environmental permits. For purposes of this section, a commercial compactor is any compactor of low-level waste except:

(1) One which compacts waste at the site of generation, including one situated on the premises of a hospital or research laboratory.

(2) One which only compacts waste generated by the facility owner.

(3) A compactor which compacts waste at the regional facility.

(b) Nonexclusive.--Nothing in this act shall preempt or prevent any political subdivision from enacting or enforcing ordinances otherwise within its powers to enact which are adopted pursuant to the political subdivisions' powers reserved under the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, and other environmental protection statutes of this Commonwealth.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 321.

Section 322. Noncommercial low-level waste incinerators.

(a) Standards and regulations.--The department shall develop standards and siting regulations under this act for noncommercial low-level waste incinerators which shall include requirements for compliance with this act, the Atomic Energy Act of 1954, the Radiation Protection Act, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, and the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(b) Existing facilities.--Those facilities which are licensed under Federal law to incinerate low-level radioactive waste on the effective date of this act may continue to operate.

Section 323. Limitation on actions.

The provisions of any other statute to the contrary notwithstanding, actions for civil or criminal penalties under this act or civil actions arising from conduct regulated under this act may be commenced at any time within a period of 20 years from the date the alleged wrongdoing is discovered.

CHAPTER 5 ENFORCEMENT AND PENALTIES

Section 501. Unlawful conduct.

It shall be unlawful for any person:

(1) To construct, alter, own or operate a low-level radioactive waste disposal facility without a license or in violation of a license or in violation of this act or the Radiation Protection Act.

(2) To ship or transport low-level radioactive waste to the regional facility without first obtaining a permit as required by the act and any rule or regulation promulgated hereunder.

(3) To generate, transport, handle, manage or dispose of low-level radioactive waste unless such person complies with this act, the Radiation Protection Act and other state and Federal statutes relating to environmental protection, radiological protection and the protection of the public health, safety and welfare, and with the regulations of the department and the terms and conditions of any applicable permit, license or order of the department or other appropriate state or Federal agency.

(4) To deposit, inject, dump, spill, leak or place low-level radioactive waste so that low-level radioactive waste or a constituent of low-level radioactive waste enters the environment, is emitted into the air or is discharged into the waters of the Commonwealth, in violation of State or Federal statutes.

(5) To refuse, hinder, obstruct, delay or threaten any agent or employee of the department or host municipality or host county inspector in the course of performance of any duty under this act, including, but not limited to, entry and inspection under any circumstances.

(6) To cause or assist in the violation of any provision of this act, any rule, regulation, order, permit condition or license condition of the department under this act.

(7) To incinerate low-level waste at a commercial incinerator.

Section 502. Inspection.

(a) Authority.--Host municipality and host county inspectors shall have the power to enter the regional facility, and the department or its duly authorized representatives shall have the power to enter each and every facility at any time for the purpose of inspection and the power to enter at any time upon any public or private property, building, premises or place, for the purpose of determining compliance with this act, any permit or license conditions or regulations or orders issued under this act. In the conduct of any investigation, the department or its duly authorized representatives shall have the authority to conduct tests and inspections and examine any book, record, document or other evidence related to the generation, management, transportation or disposal of low-level waste. In the conduct of any investigation, the host municipality inspector shall have the authority, at the regional facility, to conduct tests and inspections and examine any book, record, document or other evidence related to the generation, management, transportation or disposal of low-level waste.

(b) Halt in operations.--The host municipality and host county inspectors, as authorized under section 318(f)(5) and (6), shall have the authority to halt operation of the facility if the inspector determines there is an immediate threat to health and safety. This halt in operations shall remain in effect until the department evaluates the situation and determines whether there is a continuing need for the halt in operations. If the department determines there is no continuing need for the halt in operations, the host municipality has the

right to appeal this determination to the Environmental Hearing Board, which shall consider the matter immediately.

(c) Search warrant.--An agent or employee of the department may apply for a search warrant, to an issuing authority, for the purposes of testing, inspecting or examining any radioactive material or any public or private property, building, premises, place, book, record or other evidence related to the generation, management, transport or disposal of low-level waste. The host municipality inspector may similarly apply for a search warrant to inspect at the regional facility. It shall be sufficient probable cause to show any of the following:

(1) The test, inspection or examination is pursuant to a general administrative plan to determine compliance with this act.

(2) The agent, employee or inspector has reason to believe that a violation of this act has occurred or may occur.

(3) The agent, employee or inspector has been refused access to the low-level waste, property, building, premises, place, book, record, document or other evidence related to the generation, management, transport or disposal of low-level waste, or has been prevented from conducting tests, inspections or examinations to determine compliance with this act.

(4) The host municipality or host county inspector has made a written complaint to the department.

(5) A landowner has experienced radioactive contamination within three miles of the boundary of the regional facility and he has notified the department pursuant to section 319.

Section 503. Conflicting laws.

Ordinances, resolutions or regulations of any agency or political subdivision of this Commonwealth relating to low-level waste shall be superseded by this act if such ordinances, resolutions or regulations are not in substantial conformity with this act and any rules or regulations or license requirements issued hereunder.

Section 504. Penalties.

(a) Summary offense.--Any person who violates any provisions of this act or any regulations or order promulgated or issued hereunder commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$1,000 for each separate offense and in default thereof shall be imprisoned for a term of not more than 90 days. All summary proceedings under this act may be brought before any district justice or magistrate in the county where the offense was committed, and to that end jurisdiction is hereby conferred upon district justices and magistrates, subject to appeal by either party in the manner provided by law.

(b) Misdemeanor.--Any person who violates any provision of this act or any regulation or order promulgated or issued hereunder, within two years after having been convicted of any summary offense under this act, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$1,000 nor more than \$25,000 for each separate offense or imprisonment in the county jail for a period of not more than one year, or both.

(c) Felony.--Any person who intentionally, knowingly or recklessly violates any provision of this act or any regulation or order of the department or any term or condition of any permit or license, and whose acts or omissions cause or create the possibility of a public nuisance or bodily harm to any

person, commits a felony of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than \$2,500 nor more than \$100,000 per day for each violation, or to a term of imprisonment of not less than one year nor more than ten years, or both.

(d) Separate offense for each day.--Each day of continued violation of any provisions of this act or any regulation or order promulgated or issued pursuant to this act or any term or condition of any permit or any license shall constitute a separate offense.

(e) Civil penalty.--

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of this act or a regulation or order of the department promulgated or issued hereunder, the department may assess a civil penalty upon the person for the violation. This penalty may be assessed whether or not the violation was willful or negligent. The civil penalty shall not exceed \$25,000 for each violation.

(2) In determining the civil penalty, the department shall consider, where applicable, the willfulness of the violation, gravity of the violation, good faith of the person charged, history of the previous violations, danger to the public health and welfare, damage to the air, water, land or other natural resources of the Commonwealth or their uses, cost of restoration or abatement, savings resultant to the person in consequence of the violation and any other relevant facts.

(3) The person charged with the penalty shall have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, to file within a 30-day period an appeal of the action with the Environmental Hearing Board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(4) Civil penalties shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided by law for collection of debts. If any person liable to pay a penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person, but only after same has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit to prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed.

Compiler's Note: Section 28 of Act 207 of 2004 provided that any and all references in any other law to a "district justice" or "justice of the peace" shall be deemed to be references to a magisterial district judge. Section 505. Enforcement and abatement.

(a) Public nuisance.--Any violation of this act or of any regulation or order of the department or of any term or condition of any license or permit issued under this act shall constitute a public nuisance. Any person committing the violation shall be liable for the costs of abatement of the nuisance. The Environmental Hearing Board is hereby given

jurisdiction over actions to recover the costs of the abatement and civil penalties.

(b) Orders.--In addition to other remedies provided under this act or any other act, to aid in the enforcement of this act, the department may issue orders to persons as it deems necessary to protect health and safety and the environment. These orders may include an order modifying or revoking licenses or permits, orders to cease unlawful activities or other acts involving low-level waste that are determined by the department to be detrimental to the public health and safety, orders prohibiting access to the regional facility and such other orders as the department deems necessary to abate public nuisances. An order issued under this subsection shall take effect upon notice, unless the order specifies otherwise. An appeal to the Environmental Hearing Board shall not automatically act as a supersedeas unless so granted by the board. It shall be the duty of any person to comply with any order issued under this subsection unless and until a supersedeas has been obtained. Any person who fails to comply with an order lawfully issued under this subsection shall be guilty of contempt and shall be punished in an appropriate manner by the Commonwealth Court, which court is hereby granted jurisdiction, upon application by the department.

(c) Injunction.--In addition to any other remedies provided for in this act, the department may institute a suit in equity in the name of the Commonwealth for an injunction to restrain a violation of this act or the regulations or order adopted or issued under this act or to restrain the maintenance or threat of a public nuisance. In any such proceeding the court shall, upon motion by the department, issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct or is engaged in conduct which is causing immediate and irreparable harm to the public or the environment. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings.

(d) Impoundment, etc.--The department shall have the authority to impound temporarily any low-level waste or to take other actions as are necessary to abate a public nuisance wherever the department believes that this action is necessary to protect the health and safety of the public and the environment.

(e) Emergency.--Whenever the department finds that an emergency exists requiring immediate action to protect the public health and safety or the environment, the department is authorized, without notice or hearing, to issue an order to any person reciting the existence of such emergency and requiring that appropriate action be taken to meet the emergency. Notwithstanding any provision of this act, such order shall be effective immediately, unless a supersedeas is granted by the Environmental Hearing Board.

Section 506. Construction of act.

The penalties and remedies prescribed by this act shall be deemed concurrent, and the existence of or exercise of any remedy shall not prevent the department or any person from exercising any other remedy at law or in equity. No provision of this act or any action taken by virtue of this act, including the granting of a permit or license, shall be construed as estopping the Commonwealth from proceeding in courts of law or equity to abate nuisances under existing law; nor shall this act in any other manner abridge or alter rights of action or remedies now or hereafter existing in equity or under the common law or statutory law, criminal or civil, exercised by the

Commonwealth or any person to enforce their rights or to abate any nuisance, now or hereafter existing, in any court of competent jurisdiction.

Section 507. Right of citizen to intervene in proceedings.

Any citizen of this Commonwealth having an interest which is or may be adversely affected shall have the right on his own behalf, without posting bond, to intervene in any action brought pursuant to section 505(c).

Section 508. Citizen suits.

(a) Authority to bring civil action.--Except as provided in subsection (c), any affected person may commence a civil action on his own behalf against any person who is alleged to be in violation of this act.

(b) Jurisdiction.--The Environmental Hearing Board is hereby given jurisdiction over citizen suit actions brought under this section against the department. Actions against any other persons under this section may be taken in a court of competent jurisdiction. Such jurisdiction is in addition to any rights of action now or hereafter existing in equity, or under the common law or statutory law.

(c) Notice.--No action may be commenced under this section prior to 60 days after the plaintiff has given notice of the violation to the secretary, to the host municipality and to any alleged violator of the act, of other environmental protection acts, or of the regulation or order of the department which has allegedly been violated, or if the secretary has commenced and is diligently prosecuting an administrative action before the Environmental Hearing Board, or a civil or criminal action in a court of the United States or a state to require compliance with such permit, standard, regulation, condition, requirement, prohibition or order.

(d) Award of costs.--The Environmental Hearing Board or a court of competent jurisdiction, in issuing any final order in any action brought pursuant to subsection (a), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the board determines such award is appropriate.

Section 509. Whistleblower provisions.

(a) Adverse action prohibited.--No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing.

(b) Discrimination prohibited.--No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

(c) Remedies.--The remedies, penalties and enforcement procedures for violations of this section shall be provided in the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Appropriate authority." A Federal, state or local government body, agency or organization having jurisdiction

over criminal law enforcement or regulatory violations; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the department, host county, host municipality or other public agency whose functions include public health and safety.

"Employee." A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for an employer.

"Employer." An operator of a low-level waste facility, a contractor developing such a facility or a contractor developing procedures or regulations associated with the Appalachian Compact low-level nuclear waste facility.

"Good faith report." A report of conduct defined in this section as wrongdoing which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

"Wrongdoing." A violation which is not of a merely technical or minimal nature of a Federal or state statute, regulation, license, permit or order relating to the operation of low-level waste facilities or relating to the preservation of the public health and safety in relation to such facilities.

CHAPTER 7 APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Section 701. Appointment and qualification of commissioners.

As an initial host state under the compact, Pennsylvania's delegation to the commission shall consist of five members. Upon passage of this act, the Governor shall immediately appoint four voting members and four alternates. Each of the members and alternates shall be appointed by and serve at the pleasure of the Governor and be confirmed by a majority vote of the members elected to the Senate. Each appointee shall be a resident and citizen of this Commonwealth at the time of his appointment and for the duration of his term. No appointee shall, for three years prior to appointment, have a financial interest in or be employed by the operator of any low-level waste disposal facility, a subsidiary of the operator, parent company of the operator, a subcontractor of the operator, or in any corporation that utilizes the facility for disposal of its wastes. No member or alternate shall accept employment from any regional facility operator, a subsidiary of the operator, parent company of the operator, a subcontractor of the operator, any corporation that utilizes the facility for disposal of its wastes, brokers or carriers during his term of office and three years after leaving office. In the event that a member or alternate resigns, the Governor shall, subject to Senate confirmation, appoint a replacement to serve. Following selection of the site of the regional facility, the Governor shall appoint a voting member and alternate who shall be residents of the host municipality. The Governor shall notify the commission in writing of the identities of the members and the alternates.

Section 702. Authority of the commission.

(a) General rule.--The commission is authorized:

(1) To enter into reciprocal contingency agreements with noncompact states or other regional boards for the emergency disposal of low-level waste generated outside the compact region. Any such agreement shall include a provision that the quantity of waste for which the parties are

responsible under the agreement shall be equal based on the volume of waste and/or total curie count.

(2) To establish regulations to specifically govern and define exactly what would constitute an emergency which requires the disposal of out-of-compact low-level waste at the regional facility.

(3) To determine whether an emergency exists outside the compact region and that a contingency agreement should be implemented.

(4) To request the General Assembly and the Governor to approve an extension of a reciprocal-contingency agreement, and to provide the date when out-of-compact waste disposal will cease under the agreement.

(b) Out-of-compact waste.--No agreement shall permit the disposal of out-of-compact low-level waste for a period exceeding four months, unless an extension is granted by the General Assembly or the Governor.

CHAPTER 9 MISCELLANEOUS PROVISIONS

Section 901. Annual report.

The department shall provide an annual report to the General Assembly detailing all the current activities of the Appalachian Low-Level Waste Compact, compact commissioners and facility operators. The department shall also include in the report a list of all low-level waste generators, brokers and carriers, the amounts of waste generated by each source by volume, toxicity, product and use, including curie content, hazardous life and radionuclide. A geographic breakdown shall also be included. The department shall also furnish financial statistics relating to all aspects of the Appalachian Compact and its associated facility. The department shall also furnish statistics relating to volume reduction, waste minimization, separation and related processing.

Section 902. Liberal construction.

The terms and provisions of this act are to be liberally construed so as to best achieve and effectuate the goals and purposes thereof.

Section 903. Construction with other laws.

(a) Other acts.--This act shall be construed in pari materia with the Appalachian States Low-level Radioactive Waste Compact and the Radiation Protection Act.

(b) Authority of department.--The authority given the department under this act over the regulation of low-level radioactive waste shall be construed as complementary to the department's authority over radiation sources established under the Radiation Protection Act. This act shall not be construed to limit the department's authority under the Radiation Protection Act to license the generation, management, handling or transportation of low-level waste.

Section 904. Appropriations.

(a) Initial funding of program.--It is the intent of the General Assembly to fund this program initially through annual General Fund appropriation for transfer to the Low-Level Waste Fund.

(b) Disposition of General Fund appropriation.--The funds remaining of the appropriation made to the department for the low-level radioactive waste control program under section 213 of the act of July 3, 1987 (P.L.459, No.9A), known as the General Appropriation Act of 1987, are hereby transferred to the Low-Level Waste Fund.

(c) Repayment of General Fund.--The sum appropriated under section 213 of the General Appropriation Act of 1987 for the low-level radioactive waste control program shall be repaid to the General Fund under section 315(c)(1)(i) of this act. Section 905. Repeals.

(a) Absolute repeals.--The following acts and parts of acts are repealed:

Act of September 8, 1959 (P.L.807, No.302), entitled "An act empowering the Department of Health to regulate the burial of radioactive material and to issue permits therefor; and prescribing penalties."

Act of October 26, 1959 (P.L.1380, No.480), entitled "An act empowering the Commonwealth to acquire land and operate burial grounds for the disposal of radioactive materials."

(b) Inconsistent repeal.--The following acts and parts of acts are repealed insofar as they are inconsistent with this act:

Act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(c) Construction of section.--This section shall not be construed to repeal jurisdiction over radioactive wastes that are also hazardous wastes under the Solid Waste Management Act, and it is hereby declared to be the legislative intent of the Solid Waste Management Act to regulate such radioactive wastes that are also listed or characteristic hazardous wastes or are mixed with hazardous waste.

Section 906. Effective date.

This act shall take effect immediately.