

# United States Senate

WASHINGTON, DC 20510-0606

September 6, 2006

The Honorable Arlen Specter  
Chairman  
Committee on the Judiciary  
711 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Specter:

I am writing to you regarding what may be an unlawful attempt by the Rocky Mountain Low-Level Radioactive Waste Compact (Rocky Mountain Compact) to expand its jurisdiction beyond what was authorized by Congress under the 1986 LLRW Policy Amendments Act and Compact approval legislation (42 U.S.C. § 2021 et seq.).

Specifically, the Rocky Mountain Compact Board is actively considering a proposal to assert jurisdiction over all types of naturally occurring radioactive material (NORM) and technologically-enhanced NORM (TENORM) even though such materials are generally excluded from the definition of low-level radioactive waste (LLRW). Given that Congress authorized all regional Compacts (including the Rocky Mountain Compact) subject to limitations, I am concerned that this expansion of jurisdiction would violate Article I, Section 8, Clause 3 (the Commerce Clause) of the Constitution.

Members of the Colorado Congressional Delegation, including myself, sent a letter to the Rocky Mountain Compact Board dated July 28, 2006, questioning the Compact's jurisdiction over NORM/TENORM wastes (Attachment A). The Board replied August 1, 2006, that it had authority to exercise such jurisdiction and had been doing so since Congress authorized the Compact in 1986 (Attachment B). Various affected stakeholders, including municipal utilities and other commercial entities, have presented legal arguments contrary to the Compact's position (Attachment C).

Related legal concerns have been expressed that the Rocky Mountain Compact Board intends to force NORM/TENORM waste producers to utilize a disposal facility in eastern Colorado despite the availability of competing disposal facilities in neighboring, non-Compact states. These concerns have deepened my own, significant reservations regarding the Rocky Mountain Compact's expansive interpretation of its Congressional mandate.

Given the Judiciary Committee's role in the development and approval of the LLRW Compact system (including the Rocky Mountain Compact) and the Committee's approval and oversight responsibility for actions restricting interstate commerce in accordance

with the Constitution, I respectfully request that the Committee conduct an inquiry and respond to the following questions:

1. Does the Rocky Mountain Compact Board have jurisdiction and authority to classify NORM and TENORM wastes as LLRW? If so, are there limits to this authority?
2. Was it the intent of Congress in approving the Rocky Mountain Compact that its Board may designate a "limited" regional LLRW disposal facility that is only permitted to accept NORM/TENORM waste, but not Class A, B or C LLRW as defined in 10 CFR § 61.55 and referenced in the LLRW Policy Act?
3. Does the Rocky Mountain Compact Board have authority to force NORM/TENORM waste producers to utilize a limited regional LLRW disposal facility that can only accept NORM/TENORM waste? If so, are there limits on this authority?
4. What authority does Congress have to amend or repeal the Rocky Mountain Compact, and what process is required to do so?

The Rocky Mountain Compact Board will be considering a specific proposal to regulate disposal of all NORM/TENORM waste within the Compact region at its September 13, 2006, meeting. I am hopeful that the Board will defer action until the Judiciary Committee has an opportunity to carefully address the above questions. To encourage this result, I would appreciate a timely indication of the Committee's willingness to conduct the requested inquiry and a response as appropriate.

Sincerely,

A handwritten signature in black ink that reads "Wayne Allard". The signature is written in a cursive style with a large, sweeping "W" and "A".

Senator Wayne Allard