

# Advocates for Responsible Disposal in Texas

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Post Office Box 26586 • Austin, Texas 78755-0586 • 512-391-0400

November 8, 2011

Robert Wilson, Chairman  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
3616 Far West Blvd., Ste. 117, #294  
Austin, TX 78731

**Re: Response to Waste Control Specialists, LLC Objections to Export Petitions**

Dear Chairman Wilson:

Advocates for Responsible Disposal in Texas ("ARDT") appreciates the opportunity to respond to the objections of Waste Control Specialists, LLC ("WCS") to the export petitions that have been posted for consideration at the Texas Low-Level Radioactive Waste Disposal Compact Commission's (the "Commission's") November 9, 2011 meeting. As you know, ARDT is an association of low-level radioactive waste ("LLRW") generators and individuals from the health physics, medical, and university research communities.

In short, for the reasons stated below, and based on the overall policies and purposes of the Compact, which include the charge in Sec. 1.01 of the Compact to "encourage the economical management and disposal of low-level radioactive waste," the Commission has more than ample legal authority and policy support to issue export authorizations, notwithstanding WCS' concerns. Further, an export authorization issued by the Commission does not require a generator to export LLRW for disposal at a site other than the Compact Waste Facility ("CWF"). Issuance of an export authorization simply provides generators with an alternative to disposal at the CWF as the generators weigh and work through options. If the export petitions are denied, the only remaining alternative for some generators would be storage.

**Urgent Safety or Operational Needs**

WCS seems to be suggesting that a generator must cite an urgent safety or operational need as a prerequisite to filing an export petition. However, no such a demonstration is required under either the Compact at P.L. 105-236, in Texas or Vermont law, the Commission's export rules at 30 Texas Administrative Code § 675.21, or the Commission's December 11, 2009 resolution allowing for the filing of export petitions. Notably, WCS does not even attempt to reference any source for the so-called "standard" it advances. Even if such a demonstration of urgent safety or operational

need were required, the export petitions filed by the nuclear utility generators clearly and concisely explain why the demonstration would be met by describing the operational obstacles presented by unsettled technical requirements and the Commission's commingling rule at 31 Texas Administrative Code § 675.22(c). For the sake of brevity, the description of the operational challenges created by the WAC and the commingling rule will not be repeated here.

### **Waste Acceptance Plan/Waste Acceptance Criteria**

Several of WCS' assertions relating to the technical requirements of generators in the Waste Acceptance Criteria ("WAC") and the Waste Acceptance Plan ("WAP") have been directly contradicted during a recent stakeholder meeting hosted by the Texas Commission on Environmental Quality ("TCEQ") on November 3, 2011. Such contradicted statements include the following:

1. **WCS Statement:** The WAC will be a "non-license guidance document" for generators. **Fact:** TCEQ has made it clear since TCEQ's June 21, 2011 stakeholder meeting on the WAC that TCEQ intends to incorporate the WAC into WCS' license so that the WAC is binding on WCS as well as the generators.
2. **WCS Statement:** The WAP and related WAC are substantially similar to other disposal facilities that the utility petitioners have used or are using for disposal. **Fact:** The proposed WAC is completely different from the current way that LLRW is handled at the nuclear utility plants in which bulk Class A LLRW is generally collected and then processed by a vendor after collection. The nuclear utility plants will need to begin performing detailed segregation of the waste to ensure it meets the new WAC, which will likely require infrastructure updates (space and other equipment modifications), additional manpower, and additional training to each site's staff to ensure this new process is managed properly for successful completion. It is conceivable that the generators could hire a vendor to conform to the new WAC, but hiring a vendor would also take time and extensive effort.
3. **WCS Statement:** The WAP is in its final approval stages and the utility petitioners have been integrally involved in the approval process through stakeholder meetings with TCEQ and WCS. **Fact:** The proposed WAC has been open for public comment, but the stakeholder process has not included discussion of the WAP.

In short, once the WAC and the WAP are approved, the nuclear utility generators can begin to appropriately modify the internal process at each plant, which will take time.

### **Interim Rates**

Although WCS is correct in that TCEQ's Interim Rates are not subject to a true-up or other adjustments, it is quite possible that the Maximum Disposal Rates set by TCEQ will be lower, after WCS' underlying costs have been fully vetted in a contested case

hearing. Thus, as explained in the export petitions, generators are not convinced in the least that the Interim Rates appropriately reflect WCS' true costs. As mandated by Section 401.246 of the Health and Safety Code, waste disposal fees established by the TCEQ must be cost-based.

ARDT learned late this afternoon that WCS significantly added to the uncertainty regarding WCS' costs and revenue requirements by filing an updated rate setting application with TCEQ. Generators obviously have not had an opportunity to review the newly revised rate setting application, and have no idea whether the costs asserted in WCS' new filing are supportable. Perhaps more importantly, the new element of uncertainty most likely means that TCEQ's Interim Rates may well be in place for a longer period, given the additional time that TCEQ will need to review and analyze the new filing if it is accepted. In the alternative, TCEQ may feel compelled to issue new Interim Rates based on the new filing. In any event, it is likely that the new filing will delay the issuance of final, Maximum Disposal Rates, and the opportunity for the generators to challenge WCS' claimed costs. This recent development further supports the underlying need for the export authorizations.

### **Commingling, Landfill Capacity, and Volume Reduction**

WCS states that the utility petitioners claim that the disposal volumes requested for exportation would be better served for the importation of Class B/C LLRW from nonparty states. However, no single mention is made in any of the nuclear utility generators' export petitions regarding the utilization of landfill space for imported Class B/C LLRW. ARDT's position regarding importation has been consistent, and is that ARDT does not oppose importation as long as: (i) imported LLRW will result in reduced disposal prices for compact LLRW, and (ii) there will be sufficient capacity in the landfill for compact LLRW.

Although ARDT is perplexed as to why WCS would suggest that the nuclear utility generators' export petitions say something that they do not, WCS' point regarding landfill capacity does resonate with ARDT's members. WCS' point resonates because WCS seems to imply that WCS does not value the limited capacity in the CWF enough to encourage volume reduction through processing. WCS states that:

WCS is ready, willing and able to accept [the nuclear utility generators'] Class A DAW without any processing . . . this may be less cost-effective than their current methodology and cause utility petitioners to change certain operating procedures. However, this alone shouldn't be an excuse for the CWF to go unused . . .

Based on the foregoing statement, it appears to ARDT that WCS is remarkably unconcerned about what it may cost the nuclear utility generators to dispose LLRW, and that WCS is not bothered that unprocessed LLRW that has not been volume reduced will take up more space that is necessary in the CWF. In fact, WCS' letter does not deny that the commingling rule presents a substantial obstacle to the generators' ability

to economically dispose of LLRW, or that the generators will be required to change the internal process at each nuclear utility plant.

ARDT is also concerned that if LLRW generated in Texas and Vermont is disposed of "as-generated" without volume reduction or processing, the sufficiency of volume in the CWF may be placed in jeopardy. In other words, the volume set aside for compact generators may not be enough.

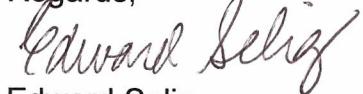
As ARDT has previously noted, an important part of the overall policy and purpose of the Commission is to encourage the economical management and disposal of LLRW. And Sec. 4.05(3) of the Compact mandates that each party state shall develop and enforce procedures requiring generators to minimize the volume of waste requiring disposal. Thus, ARDT asserts that preserving volume in the CWF and minimizing the costs of disposal to the generators should be as important as any other consideration in the Commission's decision-making process.

### **Overstated Fiscal Impact**

Lastly, WCS has dramatically overstated the fiscal impact to WCS, Andrews County, and the State of Texas if the Commission grants the export petitions requested by the nuclear utility generators. At the outset, WCS' calculations are based on the as-generated volumes of LLRW requested for export, without taking into consideration volume reduction or processing. If the nuclear utility generators could feasibly utilize waste processing techniques, ARDT estimates that the fiscal impact would be magnitudes less than estimated by WCS. Thus, it appears that the WCS has a built-in financial incentive to discourage volume reduction and processing.

Thank you for the opportunity to provide these comments. If you have any questions, please feel free to contact me.

Regards,



Edward Selig

Advocates for Responsible Disposal in Texas