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April 13, 2010

Texas Low-Level Radioactive Waste Disposal Compact Commission
Margaret Henderson
Interim Executive Director
3616 Far West Blvd., Suite 117, #294
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Re: Subchapter B. "Exportation and Importation of Waste," 31 TAC §§675.21 – 675.23
proposed by the Texas Low-Level Radioactive Waste Disposal Compact Commission, 35
TexReg 1028-1034

Dear Compact Commissioners,

I appreciate this opportunity to provide comments on Subchapter B, "Exportation and Importation of Waste," 31 TAC §§675.21 – 675.23 proposed by the Texas Low-Level Radioactive Waste Disposal Compact Commission, published in the Texas Register on February 12, 2010.

I oppose moving forward with the import rule (§675.23 "Importation of Waste from a Non-Compact Generator for Management or Disposal") at this time for the following reasons:

Misguided priorities

Proceeding with import under current conditions prioritizes the site operator's financial considerations over the disposal needs of Texas and Vermont. Until Waste Control Specialist's (WCS) claim regarding the necessity of import for financial viability of the site has been independently verified, it is incumbent upon the Compact Commission to prioritize the disposal needs of the party states and the safety and welfare of Texans over WCS' profits.

Estimated waste disposal volumes of Texas and Vermont already exceed the licensed volume of the site. Opening the site to import at this time jeopardizes space at the site for the two Compact party states whose very disposal needs the site was intended to accommodate. Furthermore, the site is not yet even operational. It is my understanding that several of the pre-construction license conditions have not yet been met.

Given the time required for the site operator to meet these conditions, as well as the estimated one-year site construction timeline, there is plenty of time to address these and

other concerns raised about import without unnecessarily jeopardizing space for Texas and Vermont waste, Texas' long-term fiscal health (see discussion of liability below), and the safety and welfare of Texans.

Inadequate Compact Commission Resources

The Commission does not have funding for staff and other administrative resources necessary to thoroughly evaluate import petitions on a case-by-case basis.

The Commission cannot afford an attorney to represent the Commission or individual Commissioners in the event of litigation against the Commission arising from denial of import petitions, or any other litigation.

The Commission cannot afford to hire an independent financial expert to review WCS' economic analysis alleging the viability of the site is dependent on importation.

The Commission does not have enough funds to conduct its work beyond the May 11 meeting. This includes holding additional meetings to consider concerns raised in public comments on the rules currently under consideration.

Increased Liability

Given that the State of Texas assumes liability for waste disposed at the site, the increase in waste disposed at the site implied by importation has significant liability implications for the State of Texas in the event of an eventual leak at the site. This liability has been *completely excluded* from the fiscal "Impact to the State of Texas" published along with the proposed rule, which considers merely the state's share of fees generated by import and lost to export.

The fiscal impact statement should incorporate costs associated with increased liability to the State of Texas associated with import, including both environmental clean-up and health remediation costs in the event of a leak and the financial consequences of an accident during transport .

Transportation Safety

Despite the increase in transportation of low-level radioactive waste into and through the state that will result from acceptance of waste from non-Compact states, no transportation safety study has been conducted. If an accident were to occur, state and local governments will be responsible for emergency response to protect the public from exposure.

The Compact Commission should commission an independent and comprehensive transportation safety study before approving the proposed import rule. As part of the study, the Compact Commission should verify that municipalities along radioactive waste transportation routes have first responders trained and equipped in dealing with radioactive waste spills before adopting an import rule. The results of the study should be:

- shared with state highway authorities and local jurisdictions so that appropriate precautions and emergency response procedures can be developed,
- made available to the public, and

- incorporated into the eventual rule.

It is my firm belief that it is not in the best interest of Texans for the Compact facility to accept out-of-Compact waste at all, much less to move forward with the import rule at this time. If the Compact Commission decides to ignore these concerns, however, by adopting an import rule at this time, I respectfully urge that the Commission include additional provisions in the rule as discussed below.

Limit on Imported Waste

The proposed rule contains no limits on imported waste. As I have since the rule was announced, I respectfully request that the Compact Commission add a provision to the rule limiting the amount and type of imported low-level radioactive waste that may be disposed of at the Compact Facility site. Without a limit on out-of-Compact waste, the import rule contravenes the primary purpose of the Compact Commission: to adequately and safely "manage low-level radioactive waste generated *within its boundaries....*" (Texas Low-Level Radioactive Waste Disposal Compact, Health and Safety Code, Chapter 403, Article I).

As stated previously, the current licensed capacity at the WCS site is insufficient for estimated waste from Texas and Vermont. Without a technical review of the site, the Commission is not in the position to assume that the capacity of the site will increase to accommodate out-of-Compact waste. At a very minimum, the rule should include a limit on the amount of waste, in volume and curie levels, that may be imported.

Notification of Emergency Service Providers Prior to Transport

There are no provisions in the rule governing the transport of radioactive waste through Texas, despite the potential for major disruption and threats to public health in the unfortunate event of an accident.

In addition to conducting a transportation safety study before adopting proceeding with the import rule, the rule should include a provision requiring notification of emergency service providers at least 24-hours before waste shipments pass through provider service areas to ensure providers are prepared in the event they need to respond to a train or truck accident during the transport of radioactive waste.

I appreciate the opportunity to comment on the proposed rule, and thank you for your commitment to the people of this great state.

Sincerely,



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