



April 13, 2010

Ms. Margaret Henderson, Interim Executive Director
Members of the Commission
Texas Low Level Radioactive Waste Disposal Compact Commission
3616 Far West Boulevard, Suite 117, #294
Austin, Texas 78731

Re: Subchapter B to be added to Chapter 675, Part 21, Title 31, Texas Administrative Code, such subchapter to be captioned "Exportation and Importation of Waste" (including Section 675.21 to be captioned "Exportation of Waste to a Non-Party State for Disposal," Section 675.22 to be captioned "Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal and Return to the Party State for Management or Disposal in the Compact Facility," and Section 675.23 to be captioned "Importation of Waste from a Non-Compact Generator for Management or Disposal").

Dear Ms. Henderson:

The League of Women Voters of Texas is celebrating our 90th year as a nonpartisan political organization that encourages the informed and active participation in government, and influences public policy through education and advocacy. From its origin, the LWV-TX has been a member-directed organization with the goal of building better communities through citizen participation that promotes positive solutions to public policy issues.

The League believes that citizens should have accurate and full information from their government about public policy issues. We encourage the Texas Commission on Environmental Quality (TCEQ) and the Texas Low-Level Radioactive Waste Disposal Compact Commission (TLLRWCC) to do the same.

The League wishes to make a statement of concern to the TLLRWCC regarding the new proposed Subchapter B. If adopted, the proposed rules will govern the export and import of low-level radioactive waste and fees associated with those activities.

We have concerns about the short and long term liabilities, cost to the citizens of Texas and Andrews County, and the affect on the environment with the acceptance of the proposed Subchapter B rules, and are opposed to the proposed importation rules at this time.

The League of Women Voters of Texas wishes to comment on Subcontract B and is concerned about the following:

- The radioactive waste compact is redefined;
- Texas could become a disposal site for national and international radioactive waste;
- WCS can terminate their participation in the Compact Agreement at any time;
- Low revenues could lead to compromised safety procedures through cost cutting measures;
- Low revenues might result in adding other states to the current compact, increasing the volume of radioactive waste;
- Texas and Andrews County will have increased short and long term liabilities;
- The Subcontract B proposal creates a major environmental rule change;
- Proposed Subcontract B should place limitations on the volume, cumulative curie levels, or types of radioactive waste that can be imported;
- Provisions for amendment, revocation, or cancellation of the agreement are not enough;
- More waste and more “unknown” waste would be allowed with little or no additional environmental analysis, monitoring, certification processes or adequate licensed capacity;
- No foreign low-level radioactive waste should not be allowed in Texas;
- Environmental concerns about the site and the increase in the potential threats to the environment and people need to be addressed;
- The risk potential for accidents is increased, therefore the site needs more stringent standards than set forth;
- Effects of climate change over a long period of time will affect the site;
- The licensing approval process, public disclosure, and conflict of interest need improvement;
- Insurance needs to be required;
- The Compact Commission has a significant lack of financial and other resources;
- Public participation in the decision making process is essential in good government;
- Texas Low-Level Nuclear Waste Disposal Compact Commission’s policy of the party states should commit to best practices;

The Low-Level Radioactive Waste Policy Act defines a compact as a legal agreement between **two or more states** to share in the disposal of low-level radioactive waste. For a state to become a member of a compact, its state legislature must enact the compact agreement as a statute. This approval process has been completed by the Texas and Vermont Legislatures. After the legislatures of all states in a compact enact the agreement, Congress must also consent to it. Each compact is responsible for the development of disposal capacity for commercial low-level radioactive waste generated within the compact—not with other states, foreign countries, or corporations. The proposed Subchapter B redefines the radioactive waste compact, expanding the permitting process to include other states’ waste.

Texas could become a disposal site for national and international radioactive waste

When the law was passed in 1993, there was no intention of making Texas the “radioactive waste dump site of the U.S.,” which is what could happen if other states are allowed to submit permits for approval for disposal of radioactive waste in Texas as proposed in Chapter 675. If the site and process of transporting and importing radioactive waste to Texas is approved for potentially thirty-six more states, danger is increased for years to come for citizens traveling the highways located around the waste site and in Andrews County.

The number of National Highway System miles is already high and carries large volumes and high percentages of trucks. More than 4,000 miles of the National Highway System (NHS) carry more than 10,000 trucks per day on sections where at least every fourth vehicle is a truck. The forecast is that the volume will increase dramatically by 2035. If additional states waste is approved to be transported to Texas, the highways will become more congested and create more risk for citizens. The Subchapter B proposal changes the intended structure of the compact process from compact states sharing responsibility for their waste to having waste from any—and potentially all—states that are not in a compact.

WCS can terminate their participation in the Compact Agreement at any time

Waste Control Specialists (WCS) is a for-profit waste management business that expects to get a return on their investment in its business venture with nuclear waste storage. The proposed site in Andrews County might not be as financially lucrative as was originally thought when WCS filed the permit and was approved as the operator of the storage site. WCS can walk away from this deal at any point if they do not meet their goal of a profitable return on their investment. Texas will be left with all the costs and environmental liabilities. Sufficient controls need to be demanded in the compact to guarantee WCS meets all of the most up-to-date safety methods, and procedures are implemented for short and long-term storage and disposal. Current regular state inspections are inadequate. Rigorous inspections need to be implemented so that in the eventuality the State of Texas and Andrews County assume the operation of the dump site, it will be in compliance and in good operational and environmental order.

Low revenues could lead to compromised safety procedures through cost cutting measures

If the revenues are low, it is not unusual for a corporation to try to cut expenses by either delaying or stopping implementation of safety procedures to increase profits. This type of decision making could cause a great deal of problems. Low-level radioactive waste is still high risk waste.

Low revenues might result in adding other states to the current compact increasing the volume of radioactive waste

Another scenario is if Vermont and Texas do not provide enough nuclear waste to make the site financially viable. Other states’ and countries’ waste could be received by using the permit process. According to Title 31, Part 21, Chapter 675, WCS has no obligation to manage and maintain the site if they do not receive the revenues that are needed. There is no plan to subsidize the company to ensure that all costs are covered. If fees are raised to cover the cost to a level that Vermont does not want to pay WCS, they can withdraw from the Compact and start their own low-level radioactive waste site. If WCS made the decision to end the agreement, the citizens of Texas would be responsible for the site, costs, and environmental liabilities.

Texas and Andrews County will have increased short and long term liabilities

The State of Texas will take the title and increase liabilities when WCS stops operation of the site. The citizens of Andrews County will suffer losses as well. In addition, Texas will be responsible for the “clean up” costs should the containers at the site start to leak their radioactive waste (which may happen eventually). If the leakage is not addressed, the leaked waste will contaminate the soil and ground water that is used by the people of Andrews County for thousands of years.

Recent history from other sites demonstrates the liabilities created by storage of high-level radioactive waste (in the form of sludge and solids) and low-level radioactive waste (liquids). The Dallas Morning News reported on April 11, 2010 that the Hanford nuclear reservation in the State of Washington has 177 tanks packed with 53 million gallons of radioactive waste. One million gallons of waste have leached into the desert soil.

The Subchapter B proposal creates a major environmental rule change

The document states that Rule 675 Subcontract B is not a “major environmental rule.” However, the League considers this rule to be a major change because it does not impose any limits on potential imports. Again, it must be stated that nothing in the existing proposal would prevent the compact facility operator from attempting to import all low-level radioactive waste from other states not part of the Texas compact, subject to approval by the Commission and license conditions from the TCEQ.

Proposed Subchapter B should place limitations on the volume, level of curie and types of waste that can be imported

There are no limitations of volume or type of waste set forth that identify the radioactive waste that can be imported. No monitoring or certification processes have been described or funded to ensure that the type and quantity of waste that was permitted is actually what is being sent to the state. The Andrews County storage site has a limitation on the quantity that can be stored. The license is for 2,310,000 cubic feet of nuclear waste, but the Compact Commission has said Vermont needs one million cubic feet and Texas needs five million. The rule must include a limit to the amount of nuclear waste in volume and curie levels.

Provisions for amendment, revocation, or cancellation of the agreement are not enough

Proposed §675.23(k) requires an import agreement to be issued for a certain term, and provides for amendment, revocation, or cancellation of the agreement. This may sound like this gives the state a position of power and authority, but the last thing the state wants is to be in the business of managing a low-level nuclear waste storage facility. The state does not have enough money to meet its current obligations to fund much needed mental and physical health services, education, structures such as roads and bridges, Texas prisons, child and elderly protective agencies or quality oversight of current industries that might pollute our environment, to name a few.

More waste and more “unknown” waste would be allowed with little or no additional environmental analysis, monitoring or certification processes or adequate licensed capacity

Subcontract B would allow WCS to obtain contracts to bring in more waste and more unknown waste with little or no environmental analysis, monitoring or certification processes or adequate

licensed capacity. The rule must require all studies and evaluations to be done before the waste is imported into and out of Texas. No additional waste should be added either way. Other compacts in the country have excluded out-of-compact or non-party states' radioactive waste. The Texas-Vermont Compact should do the same.

No foreign low-level radioactive waste should be allowed in Texas

The Subcontract should allow only low-level radioactive waste from Vermont and Texas, as proposed in the original compact. The Subcontract should not allow other states' waste, and should have an absolute ban on all foreign low-level radioactive waste.

Environmental concerns about the site and the increase in the potential threats to the environment and people need to be addressed

The site itself is a great concern. The presence of the Dockum Aquifer beneath the WCS hazardous waste site is a danger. Originally it was thought that the Dockum Aquifer would not be considered for potable water; however, since the establishment of the WCS there has been a study by the Texas Water Development Board about the feasibility of using water from the Dockum Aquifer. The fact that the water yielded by the aquifer has less than 3,000 milligrams of total dissolved solids at the WCS site means it is perfectly acceptable for cattle and other livestock as a water source. With desalination it would be potable water for human consumption. The League is concerned that the current containers housing nuclear waste are not sufficient to protect the environment or the population because they can potentially contaminate the groundwater resources. There is no container that has been guaranteed to last forever without leaks.

Sometimes the aquifers are thought of as a complete connected system, when in reality they are not. Yet, they are the same geologic unit. There is concern about water pressure and fracturing in the area. Since no hydrostatic tests have been done (at this time) there is no confirmation that there is no communication or potential communication between various water pockets or saturated zones and the surrounding, underlying aquifers. The geology has been changing for centuries and will continue to change as fractures and other processes restructure the earth in the area. **As clean water becomes more and more precious, it is most important to maintain clean water systems.**

The cumulative environmental impact creates concern. All the current and planned activities surrounding the WCS site create a critical mass of potential difficulties. In addition to the radioactive and hazardous waste disposal at the WCS site, there is the construction and operation of the National Enrichment Facility, the Wallace Quarry, the Lea County Landfill, Sundance Services (an oilfield service company which is involved in recovering used oil from oilfield operations), the possibility of a nuclear fuel rod assembly plant, and other activities associated with oil and gas fields in the area. Each of these facilities meets the letter of the law in monitoring environmental impacts on the land, air, water, and biology. The cumulative effect of all these sites creates concerns for the present and future. When the low-level radioactive waste is added to the existing mix of industries, unintended consequences could develop into a very dangerous situation. The total impact of these facilities, plus mercury storage, only increased the possibility of contamination of the local water, air, and land resources. The League strongly recommends increased monitoring of the area to ensure the safety for the people, land, air, and

water. We also believe a cumulative impact analysis should be conducted, and that it rightfully should be part of required analysis if the rule were considered to be a major environmental rule.

The risk potential for accidents is increased, therefore the site needs more stringent standards than set forth

Suppose there is an accident. When the pathways the radionuclides follow are known, it is possible to take actions to block or avoid those pathways. This can minimize peoples' exposure to additional radiation resulting from human activities. Radionuclides travel through the environment along the same pathways as other materials through the air, in water (both groundwater and surface water), and through the food chain. Radionuclides may enter the human body by ingestion (eating or drinking), by inhalation, or through the skin. Human error is one of the greatest dangers in dealing with waste and must be guarded against. An accident at this site or any other of the sites in the geographic area has the potential of setting off a chain of reactions with extremely negative effects. The rule should incorporate stringent standards for identifying radioactive materials, their volumes, half-lives, and levels of radioactivity in order to anticipate risks from potential accidents and contamination.

Effects of climate change during a long period of time will affect the site

Another unknown is the effect of climate change in the area. Weather changes could produce more or less rainfall, which would change the density of the soil, create flooding, and/or could create winds that increase the movement of contaminants over great distances in a short period of time. Monitoring air and water quality should be done well and often. Emergency plans with well funded resources should be in place to protect the people and the environment. These are not included or referenced in the rule, but should be.

The licensing approval process, public disclosure, and conflict of interest need improvement

The licensing approval process by the state is of concern. The members of the Commission are selected by the governor, making them political appointments. Political appointees may or may not be educated about nuclear waste. Before the draft rule is moved forward or voted upon, there should be complete public disclosure by Commissioners of their business interests and ties, their experience with radioactive waste, and potential to benefit from the draft rule and the industry they oversee and monitor. There should be no conflict or even the appearance of a conflict of interest or preferential treatment by Commissioners. Criteria for the skills and experience of members of the Commission should be listed in the proposed rule.

In the past, the TCEQ technical team reviewed the low-level radioactive waste disposal license application and unanimously recommended to deny the license because the site was unsafe for disposal of “low-level” radioactive waste.

“All of the TCEQ scientists working on the license determined the geology of the site to be inadequate because the possibility of radioactive contamination of our aquifers and groundwater,” said Glenn Lewis, technical editor for the TCEQ team that did a four-year review of WCS’s application. “Groundwater is only fourteen feet below the bottom of the radioactive waste dump trenches. Fourteen feet is not an adequate safety margin for a site that is supposed to isolate radioactive waste for tens of thousands of years, but there was pervasive political

pressure throughout the entire process to issue a license to WCS regardless of how unsafe the site was.” Three TCEQ employees resigned in protest after the decision to issue the license was made. Safety concerns were disregarded when the TCEQ Commissioners issued the license anyway, ignoring its own scientists’ findings.

Insurance needs to be required

There is no process in place to demand WCS to purchase, earmark, or allocate a large sum of money as insurance or a safety net in case of an accident. Citizens of Texas and Andrews County will have to assume clean up and other remediation costs in case of an accident and in the long term. The draft rule should include a requirement for funds to be set aside for insurance and other financial obligations. There do not appear to be any financial penalties to WCS if they do not live up to the agreement of the compact.

The Compact Commission has a significant lack of financial and other resources

The Compact Commission does not have the necessary financial resources or professional staff to protect the health, safety, and welfare of Texas’ citizens and the environment, and to provide effective oversight for the import, export, management, and disposal of low-level radioactive waste. The Commission currently does not have enough funds to pay the expenses for commissioners to travel to public meetings. The Commission cannot afford geoscientists, geologists, physicists, or nuclear scientists on staff, therefore concern exists for future funding for oversight, regulation, and monitoring the WCS storage site. The Commission still does not have bylaws.

The League asks how the members of the Commission can responsibly open the state to more nuclear waste from around the country—and possibly the world—if it does not have adequate resources to fund current operations with the appropriate number of staff, attorneys, scientists, monitors, and other professionals needed to do the job well?

Public participation in the decision making process is essential in good government

Public participation in the decision making process is essential in good government. The notification to the public and the 20-day comment period, mentioned in the rule, is inadequate and the short time frame prevents public participation. The rule must be specific in outlining the public participation process by providing more time and detailing to whom comments should be made, with contact information. The timeline should be very clear so that the public understands the process. Because nuclear waste is transported across the entire state via public highways and could potentially affect any and all areas and citizens in Texas, a state-wide notification process should be implemented with open hearings in many communities. The rule should outline the public open hearings processes as to when and how the public is informed of nuclear waste being stored in their state and how to have their comments read and considered by the members of the Commission.

Texas Low-Level Radioactive Waste Disposal Compact Commission’s policy of the party states should commit to best practices

Because the Texas Low-Level Nuclear Waste Disposal Compact Commission’s policy of the party states is to cooperate in the protection of the health, safety, and welfare of their citizens and

the environment, and to provide for and encourage the economical management and disposal of low-level radioactive waste, every effort should be made to meet or exceed best practices.

The League of Women Voters of Texas supports:

The League supports the preservation of the physical, chemical and biological integrity of the ecosystem and maximum protection of public health and the environment. The League's approach to environmental protection and pollution control is one of problem solving. The interrelationships of air, water and land resources should be recognized in designing environmental safeguards. The League's environmental protection and anti-pollution goals aim to prevent ecological degradation and to reduce and control pollutants before they go down the sewer, up the chimney, or into any landfill or waste disposal facility.

The League believes that although environmental protection and pollution control are responsibilities shared by all levels of government. It is essential that the federal government provide leadership and technical and financial assistance.

The federal government should have the major role in setting standards for environmental protection and pollution control. Other levels of government should have the right to set more stringent standards. Enforcement should be carried out at the lower levels of government, but the federal government should enforce standards if other levels of government do not meet this responsibility. Standards must be enforced in a timely, consistent and equitable manner for all violators in all parts of society, including governmental units, industry, business and individuals. Environmental protection and pollution control, including waste management, should be considered a cost of providing a product or service. Consumers, taxpayers and ratepayers must expect to pay some of the costs. The League supports policies that accelerate pollution control, including federal financial assistance for state and local programs.

The League does not support this subchapter, and encourages the Commission to support rules as outlined above. The League supports the Commission's efforts to improve the regulation of transportation of nuclear wastes, including regulation of types of waste, packaging, escort, notification of routes to local and state authorities, effective emergency responses, and the designation of routes that minimize health, safety, and environmental risks. The League recommends that an advisory panel be implemented to assist the Commissioners in decision-making.

The League of Women Voters of Texas believes low-level radioactive waste should be limited to just the Compact Agreement states—Texas and Vermont. The League supports citizen participation in the decision making process and wants citizens' comments to be considered. Your consideration of the League of Women Voters of Texas proposals is greatly appreciated; we hope you also support them.

Sincerely,

Karen Nicholson
President

Susybelles L. Gosslee
Radioactive Waste Issue Chair