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DISTRICT 90 • FORT WORTH

December 23, 2010

Michael Ford
Chairman
Texas Low-Level Radioactive Waste Disposal Compact Commission
3616 Far West Blvd., Suite 117, #294
Austin, TX 78731

Re: Comments on proposed rule regarding Exportation and Importation of Low-Level Radioactive Waste

Dear Chairman Ford,

Thank you for the opportunity to comment on the Compact Commission's proposed rule regarding the importation of radioactive waste from outside the Texas-Vermont Compact ("Subchapter B, Exportation and Importation of Waste," 31 TAC §§675.21 – 675.24, published in the Texas Register on November 26, 2010). As I stated in my letter dated December 9, I strongly urge the Commission to postpone consideration of this rule until the Legislature has had the opportunity to consider the significant implications of this rule for the State of Texas.

As detailed below, I continue to have serious concerns about the State of Texas' liability in the event of a leak at the site, transportation safety, how disposal of imported waste will impact capacity for waste generated by Compact states, and the comment period for the proposed rule.

Financial Liability

This rule could significantly increase Texas' financial liability in the event of leak at the site. Because importing waste from outside the Compact will require expanding the capacity of the site, the rule could substantially increase the state's liability in the event of a leak. Given that TCEQ staff recommended denying the disposal license to the site operator due to the likelihood of groundwater intrusion into the disposal units, the Compact Commission should not act on this rule until full consideration has been given to the state's liability in the event of such intrusion.¹

¹ TCEQ Interoffice Memorandum regarding groundwater intrusion into proposed LLRW facility, August 14, 2007.

The Legislature needs to have the opportunity to assess the adequacy of the financial security requirements in light of import and the implied expansion of the site *before* this rule is adopted. Adopting this rule prior to such a review has been conducted risks unnecessarily exposing Texans to potentially billions of dollars in future remediation costs. Texas taxpayers deserve to be assured that this rule will not unnecessarily expose them to such risks.

Transportation Safety

While regulation of transportation of low-level radioactive waste is not the purview of the Compact Commission, it is the Compact Commission's responsibility "to promote the health, safety, and welfare of the citizens and the environment of the party states" (Article 1, Section 403.006, Texas Health and Safety Code). Because waste importation will increase the amount of low-level radioactive waste transported through Texas communities, the Compact Commission should not adopt the proposed rule until safe transportation means and routes have been identified and established.

My district is traversed by two major inter-state highways -- likely routes for imported waste. Because it fails to address the multiple transportation safety issues associated with importation, the proposed rule unnecessarily places my constituents and their families at risk.

Sec. 4.04(8) of the Compact Law states that the State of Texas must "Identify and regulate, in accordance with federal and host state law, the means and routes of transportation of low-level radioactive waste in the host state." The Texas Department of State Health Services (TDSHS), however, has not identified suitable routes for transport of such waste.

Furthermore, there is currently no mechanism by which emergency service providers in local communities through which imported waste will travel are notified of shipments containing low-level radioactive waste prior to shipment. Consideration of this rule should be postponed until TDSHS regulations are reviewed to ensure adequate notice is provided to personnel entrusted with ensuring public health and safety in the event of a spill.

Capacity for Compact Waste

By not including sufficient protections to ensure the capacity needs of Compact generators, the proposed rule jeopardizes space at the site for the two party states whose very disposal needs the site was intended to accommodate. Estimated waste disposal volumes for Texas and Vermont (6 million cubic feet) already exceed the licensed volume of the site (2.3 million cubic feet). The rule needs to include an adequate mechanism to ensure that imported waste will not jeopardize the capacity needs of Compact generators.

Once the aforementioned liability and transportation safety concerns have been addressed and this rule is once again considered for adoption, I recommend revising Sec. 675.623(c) to require, prior to approval of any import petition, certification by TCEQ (rather than the site operator) that disposal of imported waste will not reduce capacity for Party State-generated waste.

Adequacy of Public Notice and Comment Period

The proposed rule in its present form was published in the Texas Register the day after Thanksgiving. The comment period closes the day after Christmas. While the required thirty days have technically been provided, the comment period opens and closes on holidays. Few people are likely to know of the rule, read the rule, or consider the implications of the rule in any meaningful manner. Following the letter of the law saying that the public needs thirty days notice is far from the purpose of the law that that notice be meaningful.

I am concerned that the citizens of this state have not had an adequate opportunity to address this rule. What is more, the citizens of Vermont, the other state party to the Compact, are even less likely to have had a meaningful opportunity to become aware of the proposed rule published in the Texas Register. The process has hidden a rule with serious potential consequences under the citizens' holiday schedules.

I propose that the Compact Commission extend the period for public comment to allow the citizens who will be most affected to have a proper chance to consider the proposed rule.

For the above reasons, I oppose adoption of the proposed rule regarding Exportation and Importation of Low-Level Radioactive Waste. These concerns must be addressed before the right of our citizens to participatory government will have been met.

Sincerely,



Lon Burnam

CC: John White, Vice-Chair, TLLRWD Compact Commission
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Bob Gregory, Commissioner, TLLRWD Compact Commission
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