

Texas Low Level Radioactive Waste Disposal Compact Commission

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March 10, 2009

The Honorable Robert Duncan
Texas Senate
Room 3E.10
P.O. Box 12068
Austin, TX 78711

Re: Texas Low-Level Radioactive Waste Disposal Compact Commission
Reply to inquiry dated March 5, 2009

Dear Senator Duncan:

Thank you for contacting me about the appropriations supporting the Texas Low-Level Radioactive Waste Disposal Compact Commission for Fiscal Years 2010 and 2011.

As you are aware, the Texas Compact Commission members were named in November 2008. Because of this timing, the Commission did not participate in the Legislative Appropriations Request (LAR) process that began in the summer of 2007, so you would not have received information from the Commission directly. In our initial meeting, we were informed that the TCEQ reserved an exceptional item in their LAR.

Once the Commission was established through the appointment of commissioners, the realization set in that there was no current state funding specifically set aside to reimburse the Compact Commission for initial operations. In order that operations could commence, the Governor's office, the Comptroller's office and the Texas Commission on Environmental Quality ("TCEQ") cooperated to make \$100,000 in funding available for this current fiscal year (2009). The Commission's first in person meeting was made possible as a result of those efforts, and we are grateful.

These contract funds will be used for initial setup of Commission operations. As the Commission learned at our first in-person meeting, the initial \$100,000 funding through FY 09 will not be sufficient to accomplish the initial statutory duties of the Compact Commission. The Commission has a statutory deadline (Sec. 3.04(11)) to adopt a rule to establish the total volume low-level radioactive waste that will be disposed in the compact facility through the year 2045. The deadline is six months after the last Commissioner was appointed, which is approximately August 8, 2009, since the Vermont Commissioner was appointed on February 9, 2009. The Commission has budgeted \$40,000 for the contracting of professional personnel to complete this

rulemaking along with additional legal and administrative costs, making an additional appropriation of \$50,000 necessary.

To answer your questions regarding the Fiscal Year budgets for 2010 and 2011, I will address:

1. Use of biennium budgets for FY 2010 and 2011
2. Amount of appropriation the Commission seeks
3. Commission's authority for supporting those appropriations

Texas Low Level Radioactive Waste Disposal Compact Commission Appropriations

At the February 26-27, 2009 meeting, the Texas Low Level Radioactive Waste Disposal Compact Commission approved a budget of \$700,000 per each fiscal year. The funding is needed to set-up and commence operations and perform duties prescribed by the governing federal Texas Compact Consent Act and the companion Texas statute.

Regarding the need for the State of Texas to appropriate funds to support the operating expenses of the Texas Low Level Radioactive Waste Disposal Compact Commission, both the Commission and the host state authorities are fully described in Health and Safety Code, Title 5. Sanitation and Environmental Quality, Subtitle D., Nuclear and Radioactive Materials, Chapter 403. Texas Low-Level Radioactive Waste Disposal Compact.

Given that the Compact Commission is a legal entity, separate and distinct from the party states, the approach currently being explored is that an existing state agency would be authorized (through appropriations rider or exceptional item) to reimburse the Commission for its expenses until such time that the Compact disposal facility is operating and collecting fees that, in part, would support Compact Commission operations (currently anticipated to be mid FY2010).

1. Use of biennium budgets for FY 2010 and 2011

Because the Commission is beginning operations, a number of costs will be incurred in set-up as well as routine operations. These include essentials such as accounting, purchasing, budget preparation, postage, rent, utilities, records maintenance, and public information. There will also be costs for meetings, travel, recording and meeting security.

In addition to office-related expenses, operational expenses will also include policy, procedure and rule development, such as:

- strategic planning for the Commission
- public information and media policy
- rules of order for meeting
- operating by-laws
- possible MOUs with other agencies
- records retention schedules

Statutory duties of the Commission will be accomplished during the biennium, including these rulemaking and plan adoptions and contracting to:

- keep a current inventory of all generators within the party states, based upon information provided by the party states. Sec. 3.04(10)
- assemble and make available to the party states and to the public information concerning low-level radioactive waste management needs, technologies, and problems. Sec. 3.04(9)
- prepare, adopt, and implement contingency plans for the disposal and management of low-level radioactive waste in the event that the compact facility should be closed. Sec. 3.40(7)
- conduct an independent CPA audit
- submit communications and an annual report to the governors and presiding officers of the legislatures of the party states as required by the federal act (and Texas statute)

2. *Amount of appropriation the Commission seeks*

The Compact legislation requires the Commission to adopt a budget based on the fiscal years of the host state. Therefore at the meeting February 26 and 27, the Commission did so. The total budget was \$ 700,000 for each year of the biennium. These budgets were determined by research on the Commission operational and statutory duties during a working group session that included representatives from the Office of Attorney General, the Comptroller's Office and the TCEQ.

As you have properly pointed out, there is a discrepancy between the \$200,000 exceptional item rider for the 2010-2011 biennium and the Commission's approved budget. In consultations with the Governor's staff, House and Senate members and staff, the LBB, the Comptroller's Office, and TCEQ we have been attempting to address this discrepancy through the funding process(es), although we are only at the initial stages and would certainly welcome any assistance you might be able to provide us.

Due to the timing of gubernatorial appointments, the Compact Commission's fiscal needs were not identified via the LAR process since the Commission was not able to participate in the process.

3. *Commission's authority for supporting those appropriations*

This Commission's authority for supporting the requested appropriations is found in the Health and Safety Code, Title 5. Sanitation And Environmental Quality, Subtitle D., Nuclear And Radioactive Materials, Chapter 403. Texas Low-Level Radioactive Waste Disposal Compact.

During our meeting in February, it became apparent that there are a number of questions that the Compact Commission needs to resolve regarding how we are to go about performing the statutory duties of the Commission, funding being one of them. The following excerpts from the federal Texas Compact Consent Act (via HSC Chapter 403) are provided for background on some of the issues the Commission is in the process of addressing:

Article IV. Rights, Responsibilities and Obligations of Party States

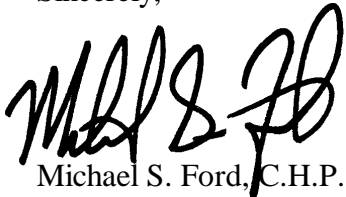
Sec. 4.04. The host state shall do the following: (4) Establish reasonable fees for disposal at the facility of low-level radioactive waste generated in the party states based on disposal fee criteria set out in Sections 402.272 and 402.273, Texas Health and Safety Code. The same fees shall be charged for the disposal of low-level radioactive waste that was generated in the host state and in the nonhost party states. *Fees shall also be sufficient to reasonably support the activities of the commission.*

Sec. 4.04. The Host State shall do the following: (6) Provide financial support for the commission's activities *prior to the date of facility operation and subsequent to the date of congressional ratification of this compact under Section 7.07 of Article VII.* Each party state will be responsible for annual payments equaling its pro-rata share of the commission's expenses, incurred for administrative, legal, and other purposes of the commission.

Senator, your leadership in the safe and environmentally responsible disposal of low level radioactive waste in Texas is *sincerely* appreciated by this Commission. As we continue in the initial phases of operation, we look forward to answering any additional questions that you may have.

Please contact me at your earliest convenience at 806-477-5727 if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael S. Ford', written in a cursive style.

Michael S. Ford, C.H.P.
Chair

cc: Governor Rick Perry
Lieutenant Governor David Dewhurst
Speaker Joe Straus
Senator Steve Ogden
Senator Kip Averitt
Senator Kel Seliger
Senator Juan "Chuy" Hinojosa
Representative Warren Chisum
Representative Byron Cook
Mark Vickery, TCEQ