



December 23, 2010

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

Re: Comments to Proposed Chapter 675, Subchapter B "Exportation and Importation of Waste"

Dear Chairman Ford:

We are pleased that the Texas Low-Level Radioactive Waste Disposal Compact Commission (the "Commission") has proposed Chapter 675, Subchapter B, Exportation and Importation of Low-Level Radioactive Waste (the "Preliminary Rules").

WCS believes that the Preliminary Rules are an important step towards reasonable and responsible exportation and importation of low-level radioactive waste ("LLW") into and out of the Texas Compact Low-Level Radioactive Waste Disposal Facility (the "Compact Facility"). Reasonable and responsible LLW importation would allow WCS to offer a stable and economical waste disposal service to Texas and Vermont generators and help solve a national crisis affecting hospitals, universities, research centers, and other out-of-Compact generators throughout the United States.

The Preliminary Rules as proposed balance public and private needs and valid concerns involving economics, safety, public health, the environment, and economic development.

WCS agrees with the Commission that the importation of LLW into Texas would have a positive effect on the State of Texas generally, and on the State of Texas general revenue fund in particular. Revenue from LLW importation would increase the amount of gross receipts paid to the State of Texas general revenue fund. Texas and Andrews County are financial partners in the Compact Facility with 10% of every dollar of gross receipts being divided evenly between the State of Texas and Andrews County. Importation of LLW at reasonable levels would increase annual receipts to Texas and Andrews County by several million dollars. Without importation the rates needed to recover the investment would be too high and generators would not ship LLW to the Compact Facility. Andrews County would additionally benefit from reasonable importation as a result of the economic impact of WCS's investment in the Compact

Facility. Without importation, the Compact Facility would not be economically viable, and jobs and other economic benefits to Andrews County and the State would be lost. Construction of the Compact Facility would result in more than \$75 million of economic benefits to the region. In addition, the region would receive another \$15 million in annual economic benefits from the well-paying jobs and expenditures associated with a robust, financially-sound Compact Facility. The region would receive over \$575 million of economic benefits over the estimated 35-year operating life of the Compact Facility.

Hospitals and research universities would benefit from the importation of LLW. Hospitals and research universities use radioactive materials to diagnose and treat disease; research new cures for cancer, AIDS, diabetes, and many other diseases; and develop and test new pharmaceuticals. Recently, the Nuclear Regulatory Commission held a meeting to collect views from these institutions on how the lack of disposal options for Class B and C LLW is affecting research and healthcare. The Council on Radionuclides and Radiopharmaceuticals listed over 100 radioactive compounds that are no longer being used for diagnosis, treatment, and research due to a lack of disposal options for the resulting LLW. In addition, 15 years ago, Barnwell closed to out-of-Compact generators for a period of six months. Following that brief period of time, a study was conducted to determine what impact a temporary closure had on a wide range of industries, including hospitals and research universities. The result showed a consistent pattern to the current crisis: substitution of more expensive materials for certain radioactive materials for research and diagnosis; reduction in products, services, and research, especially those using long-term isotopes; increased utilization of non-U.S. laboratories with no waste disposal restrictions; reduction in diagnostic procedures; loss of revenue and higher operating costs and elimination of jobs.

During the past months, certain interest groups have raised objections to an importation rule such as that proposed by the Commission. These concerns either are unfounded, or have been addressed in the proposed rule. For example:

- *Should consideration of importation be delayed because the facility is not yet operational?* No. WCS needs a decision on importation in order to obtain contracts for disposal, which will be used to repay the investment being made to construct the facility. Without importation, there will not be enough volume of LLRW for the facility to be financially viable.
- *Would Texas become the “dumping ground” for LLW?* No. The proposed rule balances the needs for importation with appropriate concerns for protecting current projected needs for disposal of Texas and Vermont LLRW and for public safety and health. As discussed in more detail below, importation would fill an important gap in the amount of LLW originally estimated for disposal under the facility’s license and the actual amounts of waste that compact generators now estimate that they will produce, resulting in the facility being economically viable as originally contemplated. Moreover, the percentage of LLW imported into Texas would be a small percentage of the total amount of LLW that needs to be disposed of in the United States. Additionally, no waste would be imported for disposal in Texas without approvals from the Commission. As such, imported LLW would be of the same type and subject to the same regulation as compact-generated waste.

- *Would importation mean that there will not be enough capacity for Compact LLW?* No. WCS originally estimated that there would be 2.8 million cubic feet of LLW over the operating life of the Compact facility, and received a license for the initial 15-years for 2.3 million cubic feet of LLW. Yet, Compact generators now estimate that they will only have needs for 1.2 million cubic feet. WCS has attached a disposal capacity report that describes the methods used to estimate the expected waste volumes and document the excess capacity available for importation.

This estimate could be reduced to the extent that the Commission allows exportation, which is one reason why these two issues need to be, and are being, considered at the same time. Also, LLW volumes have decreased over the past fifteen years due to better processing, and are expected to continue to decrease in years to come. Finally, WCS expects that licensing amendments will also increase disposal capacity in future years. Thus, there should be no concerns that importation as proposed by WCS will limit capacity for Compact LLW.

- *Would denial of an extension of the Vermont Yankee nuclear plant beyond 2012 by the Vermont legislature mean that there is a greater need for Compact disposal and thus less space available for imported waste?* No. The decommissioning waste for Vermont Yankee is included in the volume and curie limits of the disposal license of the Compact Disposal Facility. The exportation of any decommissioning waste would increase the capacity for other waste, including imported waste.
- *Would imported LLW increase or cause new health, environmental or financial risks to Texas or Texans?* No. Any imported LLW will be of the same type, character, and profile as the waste approved for disposal at the Facility, and be subject to the same disposal restrictions and requirements as Compact LLW.
- *Would the Commission have adequate staffing and funding to be able to review applications for importation and exportation?* Yes. The proposed rule provides a funding mechanism for such a review.
- *Why should the Commission pass the importation and exportation rules and make them effective now?* The rules need to be passed now, and become effective as soon as possible. The rules have been published twice, and thoroughly studied over the course of many months. There have been numerous opportunities for public comment and participation. There are other reasons why passage of the rules now is especially important. Subject to final approvals from the TCEQ, WCS will begin construction of the Facility in early 2011. Additionally, the TCEQ is presently reviewing WCS's rate application, which has assumptions in it regarding the types and volumes of waste to be disposed of at the Facility during the first year of operations. WCS is also beginning to have business discussions with potential customers. The passage of these rules is a necessary next step needed in order for WCS to make business plans for the first year of operations and for a reasonable and fair set of maximum disposal rates to be set.

WCS requests that the Commission consider and adopt its proposed revisions to the Preliminary Rules. The Preliminary Rules, as revised, will help ensure the implementation of

an efficient and effective import and export system that will benefit the Compact states, Compact generators, Out-of-Compact generators and the Compact Facility alike.

Sincerely,

A handwritten signature in blue ink that reads "Rod Baltzer". The signature is written in a cursive style with a large, sweeping initial "R".

Rod Baltzer

cc: Margaret Henderson, Executive Director
Bill Lindquist
Bill Kroger