



## **2009 Annual Report**

# TLLRWDCC ANNUAL REPORT 2009

Texas Low-Level Radioactive Waste Disposal Compact Commission

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## INTRODUCTION

The Texas Low-level Radioactive Waste Disposal Compact requires the commission to submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 31 of each year. This report is being submitted to satisfy those requirements. Because this is the inaugural report of the Commission, explanatory background is included regarding the Compact establishment and status. This report covers the period of the initial year of the Compact's operation, February through December, 2009. Mention is made of funding issues and activities for Fiscal Year 2010 (FY 10); however this period is not covered comprehensively as that period will extend until August 31, 2010.

## COMPACT COMMISSION

### COMPACT ESTABLISHED

Entry into the Texas Low-Level Radioactive Waste Disposal Compact was ratified by an Act of the Texas Legislature and signed into law by Governor Ann Richards in 1993. The Vermont Legislature passed Vermont Statute, Title 10: Conservation and Development, Chapter 162: Texas Low-Level Radioactive Waste Disposal Compact, signed into law in 1993, making Vermont a party state to the Compact. With the passage by the U.S. Congress of Public Law 105-236, "Texas Low-Level Radioactive Waste Disposal Compact Consent Act," ("Compact") and signing into law by President Clinton in 1998, the United States consented to the Compact. The initial party states were Texas, Maine and Vermont. Subsequent to Congressional consent Maine withdrew from the Compact. Texas is the "host state" in that it is the state that will host the disposal facility to accept low-level radioactive waste for management and disposal in accordance with the terms of the Compact.

### PURPOSE AND COMPOSITION

The Texas Low-Level Radioactive Waste Disposal Compact Commission and its members have the powers and duties prescribed by the Compact and the members of the Commission are responsible for administering the provisions of the Compact.

The purpose of the Compact is to provide a framework for a cooperative effort to "promote the health, safety and welfare of the citizens and the environment of the party states; to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states" all in accordance with the terms of the Compact. The Compact is to monitor and control the export and import of low-level

radioactive waste within the party states and the Compact Waste Facility. The party states have entered into the Compact with the expressed intent of managing and restricting interstate commerce in the area of low-level radioactive waste disposal on a regional basis.

Without the Compact, consented to by Congress, the party states would have no control over low-level radioactive waste commerce or limitations on what low-level radioactive waste could enter the Compact Disposal Facility in Andrews County, Texas. Without Vermont as a party state, Texas would have no Compact framework to control or abridge interstate commerce in the area of low-level radioactive waste. The State of Vermont has paid \$12.5 million of the required \$25 million to Texas in compliance with the Compact with Texas, with the remaining payment to be made no later than 60 days after the Compact Waste Facility begins operation. The State of Vermont has paid \$2.5 million to the host county, Andrews.

In November 2008, Texas Governor Rick Perry named the six Texas members of the Commission. The Vermont Governor Jim Douglas named that state's two Commissioners with the last Commissioner being named on March 26, 2009, officially seating the Commission. Subsequently, one Commissioner from Vermont resigned and was replaced in November 2009. An alternate Commissioner for Vermont was also appointed.

## COMMISSIONERS

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

John C. White, C.N.M.T., TX, Vice Chair

Honorable Richard H. Dolgener, TX

Bobby Gregory, TX

Kenneth L. Peddicord, Ph.D., P.E., TX

Uldis Vanags, VT

Stephen Wark, VT

Robert C. Wilson, TX

Sarah Hofmann, VT, Alternate Commissioner

## COMMISSION STATUS

Under the terms of Section 3.03 of the Compact, the Commission is a legal entity, separate and distinct from the party states.

## STATUTORY DUTIES

Duties of the Commission are established in the Compact, Sec. 3.04.

The commission shall:

- (1) Compensate its members according to the host state's law.
- (2) Conduct its business, hold meetings, and maintain public records pursuant to laws of the host state, except that notice of public meetings shall be given in the nonhost party states in accordance with their respective statutes.
- (3) Be located in the capital city of the host state.
- (4) Meet at least once a year and upon the call of the chair, or any member. The governor of the host state shall appoint a chair and vice-chair.
- (5) Keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.
- (6) Approve a budget each year and establish a fiscal year that conforms to the fiscal year of the host state.
- (7) 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. Any plan which requires the host state to store or otherwise manage the low-level radioactive waste from all the party states must be approved by at least four host state members of the commission. The commission, in a contingency plan or otherwise, may not require a nonhost party state to store low-level radioactive waste generated outside of the state.
- (8) Submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 31 of each year.

(9) Assemble and make available to the party states and to the public information concerning low-level radioactive waste management needs, technologies, and problems.

(10) Keep a current inventory of all generators within the party states, based upon information provided by the party states.

(11) By no later than 180 days after all members of the commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995-2045, including decommissioning waste. The shipments of low-level radioactive waste from all nonhost party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from nonhost party states shall not exceed 20,000 cubic feet a year. The commission shall coordinate the volumes, timing, and frequency of shipments from generators in the nonhost party states in order to assure that over the life of this agreement shipments from the nonhost party states do not exceed 20 percent of the volume projected by the commission under this paragraph.

Sec. 3.05. The commission may:

(1) Employ staff necessary to carry out its duties and functions. The commission is authorized to use to the extent practicable the services of existing employees of the party states. Compensation shall be as determined by the commission.

(2) Accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount, and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission.

(3) Enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(4) Adopt, by a majority vote, bylaws and rules necessary to carry out the terms of this compact. Any rules promulgated by the commission shall be adopted in accordance with Chapter 2001, Texas Government Code.

(5) Sue and be sued and, when authorized by a majority vote of the members, seek to intervene in administrative or judicial proceedings related to this compact.

(6) Enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, provided that the agreement receives a majority vote of the commission. The commission may adopt such conditions and restrictions in the agreement as it deems advisable.

(7) Upon petition, allow an individual generator, a group of generators, or the host state of the compact to export low-level radioactive waste to a low-level radioactive waste disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the commission.

(8) Monitor the exportation outside of the party states of material which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility.

## FUNDING AND EXPENDITURES

Funding provisions in Article IV of the Compact direct how the Compact is to be funded prior to opening of the disposal site and thereafter. [*emphases added below*]

### 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. 4.05. The Party States 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.

When the Texas Compact Commission members were appointed in November 2008, no current funding had been specifically set aside for its initial operations. In order that operations could commence, the Texas Governor's office, the Texas Comptroller's office and the Texas Commission on Environmental Quality (TCEQ) cooperated to make \$100,000 available for Fiscal Year 2009 (FY 09) through an interagency contract. The State of Vermont made its pro-rata FY 09 share payment in the amount of \$25,000. The pro-rata share was determined based on the number of Commissioners appointed by Texas (six) and Vermont (two) and based on the \$100,000 share Texas provided through the grant.

FY 09 operational costs, exclusive of in-kind contributions, totaled \$69,418.00 expended from the interagency contract. These expenditures provided travel, equipment, internet site and technology services to include record maintenance, membership in the Low-level Radioactive Waste Forum, publications subscriptions and contract labor to assist in setting up routine operations of the Commission. The annual audit shown in the Appendix to this report details expenditures.

In addition to the identified expenditures, the Compact Commission also benefited from an in-kind contribution of 430 hours of legal and 75 hours of paralegal services provided by the Texas Attorney General for the seven months of FY 09, valued at approximately \$121,625. An additional 167 hours of legal and 12 hours of paralegal services were contributed between September 1 and December 31, 2009, valued at approximately \$46,825. The total expenditures for the calendar year 2009 totaled \$237,868 when in kind contributions are considered. (Values were estimated at \$275/hr for legal and \$75/hr for paralegal.)

The Compact Commission members were named and the Compact Commission began operating well after the Texas appropriations process began for Fiscal Years 2010-2011 (FY 10 – 11), and because of that, a Legislative Appropriations Request (LAR) to support Compact Commission activities had not been submitted to the Texas Legislature's budgetary process to support the Compact Commission's activities during the biennium beginning on September 1, 2009. There is not yet an operating disposal site in the host State, Texas, so no funds are being generated from disposal operations.

The Commission since has been advised by a Legislative Budget Board analyst that because it is not a state agency, it may not be appropriate for the Commission to submit an LAR for the next biennium unless it is submitted under the auspices of a state agency.

Anticipating that the Compact Commission would initiate operations, the TCEQ's LAR for FY 10-11 had included an exceptional item request for \$200,000 in funding for the Compact Commission during FY 10 and 11 or \$100,000 for each year of the biennium. As approved by the Texas Legislature in a rider, Rider 38, to the Appropriation for operations of the TCEQ, the expenditure of these funds apparently was restricted to paying the travel expenses of the Compact Commissioners. In an effort to correct the budget shortfall anticipated with the passage of Rider 38, the Commission's Chair, worked with the Texas legislature, in an effort to increase the appropriation.

The statute requires the Commission to adopt a budget that conforms to the host state's fiscal year. The Commission adopted budgets for FY 10 and 11 of \$700,000 on February 27, 2009, revised at the time of invoicing Texas and Vermont. The FY 10-11 budgets amount included funds estimated to be necessary to meet requirements for:

- Executive Director, contractor
- Technical & Legal Staff, contractors
- Office rent, utilities, telephone, internet, mail
- Financial: book keeping and independent CPA audit
- Tracking, Monitoring, and Reporting of waste shipments
- Record keeping
- Commissioner Travel

In addition to its \$25,000 contribution for its pro-rata share of funds for initial operations of the Compact Commission during the fiscal year ending on August 31, 2009, the State of Vermont has made a contribution to Compact Commission operations of \$25,000 for the fiscal year beginning on September 1, 2009. The funds contributed by Vermont are being used for all Commission operations.

The adopted budget amounts exceed the total of the LAR amount in Texas and the pro-rata contribution to expenses paid by the State of Vermont for operations in the fiscal year beginning September 1, 2009.

In calendar year 2010, the TCEQ will be initiating a ratemaking action which will set fees for disposal at the facility in Texas. The Compact Statute specifies that the fee is to include an amount *sufficient to reasonably support the activities of the commission*. The means by which the Compact Commission will contribute information to the ratemaking action and participate

in the entire process is not yet clear. In addition, funds will not be available to support the Compact Commission until some point after the site begins operations and disposal charges are paid and distributed.

## UNCERTAINTIES AND INADEQUACIES OF FUNDING

The Compact Commission faces serious challenges due to funding issues.

### FY 10 - 11

1. Travel: The Compact Commission members live in different areas of the State and in Vermont. In order to meet, the Compact Commission members must travel. TCEQ has informally offered to reimburse Compact Commissioners for travel related expenses using funds available under the terms of the Texas Appropriation for FY 10, Rider 38, provision, under certain conditions. The Compact Commission has reimbursed its members and contract employee for \$10,582.29 in travel expenses for the current fiscal year out of its operating account funded by Vermont's contributions but has not yet obtained access to the Rider 38 funds. The Compact Commission is currently seeking clarification of the legislative intent of Rider 38, regarding payment of the Texas pro-rata share of the Compact Commission's expenses. Until clarification can be obtained, the Compact Commission will need to limit activities to conserve funds available in its operating account.

2. The lack of operation funds available to the Compact Commission greatly restricts the ability of the Compact Commission to function even with the in kind donations from the Texas Attorney General and the TCEQ.

3. The process for obtaining FY 12 -13 funding is uncertain because fees for disposal, which are to include an amount to pay for Compact Commission actions, have not been established and the disposal site is not yet in operation. In addition, procedures for collection and distribution of the fees have not yet been established.

## CURRENT STATUS OF COMPACT COMMISSION ACTIVITIES

Statutes are specific to the duties and responsibilities of the Commission and the party states. The status of several of these issues follows.

Section 3.04 sets requirements that the Commission shall do.

*Section 3.04(c) requires the commission to be located in the capital city of the host state.* The Texas Governor's Office, TCEQ, and the Texas Facilities Commission have provided space for Compact Commission meetings. In addition, the two Texas Compact Commission members who are in the Austin area have provided some support for Compact Commission activities.

The Compact Commission has established and maintains an internet site, and has an Austin mailing address. Contingent on funding, the Commission will seek office space of a permanent nature. Inquiry has been made into obtaining office space in a state facility.

*Section 3.04(7) requires the compact commission to 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.* Any plan requiring the host state to store or otherwise manage the low-level radioactive waste from all the party states must be approved by at least four host state members of the compact commission. The compact commission, in a contingency plan or otherwise, may not require a nonhost party state to store low-level radioactive waste generated outside of the state. No action has been taken to fulfill this duty.

*Section 3.04(9) requires the compact commission to assemble and make available to the party states and to the public information concerning low-level radioactive waste management needs, technologies, and problems.* The Compact Commission has established a distribution list for both regular and e-mail notifications, and has been publishing information required under the Texas Open Meetings Act and the Texas Administrative Procedures Act in the *Texas Register*. The Compact Commission has not yet addressed other means of making information available. The Compact Commission has not had the funds to take other action on this task at this time. Internet site plans will include delivery of public information.

Section 3.05 sets duties that the Compact Commission may do:

*Section 3.05(8) state that the compact commission may monitor the exportation outside of the party states of material which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility.* Given the current state of the industry where out-of-compact processing may substantially alter the form and activity of the waste, the Compact Commission believes this is an important function, but has not had the resources to do this monitoring, other than to accept shipment notifications from generators exporting waste.

The Compact contains several provisions for the party states in Article IV, Rights, Responsibilities and Obligations of Party States.

The status of those obligations follows.

Section 4.04 states that 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. (These functions are now in Chapter 401 of the 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.*

As previously discussed, TCEQ is in the early stages of a rate proceeding.

Sec. 4.05 states that each party 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.*

As previously discussed, the State of Texas provided funds in FY 09 through a contract between TCEQ and the Compact Commission and can provide reimbursement for some expenses in FY 10 through an appropriation. The State of Vermont provided funds in FY 09 in pro-rata proportion to contract amounts between TCEQ and the Compact Commission, and a similar amount for FY 10.

The statute provides in Article VI. Prohibited Acts and Penalties:

*Sec. 6.01. No person shall dispose of low-level radioactive waste generated within the party states unless the disposal is at the compact facility, except as otherwise provided in Section 3.05(7) of Article III.*

The Compact Commission has not become aware of any violation of this provision.

*Sec. 6.02. No person shall manage or dispose of any low-level radioactive waste within the party states unless the low-level radioactive waste was generated within the party states, except as provided in Section 3.05(6) of Article III. Nothing herein shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 C.F.R. Section 20.302.*

The Compact Commission has become aware that non-Compact waste is being imported into Texas for processing and storage at a facility licensed by TCEQ for processing and storage. "Management" is defined as "...collection, consolidation, storage packaging, or treatment" in Chapter 403 of the Texas Health and Safety Code.

*Sec. 6.03. Violations of this article may result in prohibiting the violator from disposing of low-level radioactive waste in the compact facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the commission.*

The Commission has not had a need to consider this portion of the statute because the host State's facility is not yet in operation.

In addition to these items set out on the legislation establishing the Compact Commission, the Commission is also subject to certain other laws in Texas and Vermont, such as the Texas Open Meetings Act. The Compact Commission did respond to several public information requests submitted during 2009.

In summary, actions not occurring or at risk include:

- Establishing a permanent Austin business location
- Employing or contracting with staff on a fiscal year basis
- Engaging attorneys
- Engaging auditing services
- Contracting for specialized expertise and services as needed for evaluation of:

Movement of waste across compact boundaries;

Tracking waste through processing actions; and

Impacts of non-Compact facility and federal agency actions

## LEGAL REPRESENTATION

The Texas Attorney General's office has provided legal services to the commissioners through request of the Governor's office. This support has been of significant value and in kind donation. However, it is unclear as to whether or not the Texas Attorney General may represent the Commission's actions because it is not a state agency. As the Commission continues its operations, it would be important to resolve the issue of what representation the Attorney General may continue to provide. As noted, the Commission's operating funds appear to be inadequate to support legal services if services required cannot be provided by the Texas Attorney General.

## RULEMAKING

The Compact Commission may adopt rules necessary to carry out the terms of the Compact. Under the provisions of the Compact, any rules promulgated by the Commission must be adopted in accordance with the Texas Administrative Procedure Act (Chapter 2001, Texas Government Code).

### “VOLUME RULE” RULEMAKING

The Compact Commission obtained an identification number for the section of the Texas Administrative Code for any rules its adopts. The Compact Commission’s rules are to appear in 31 TAC 675.

The Compact requires specific rulemaking under Sec. 3.04.

Sec. 3.04. The commission shall:

(11) By no later than 180 days after all members of the commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the Compact facility in the years 1995-2045, including decommissioning waste.

The TLLRWDC adopted 31 TAC Section 675.1 estimating the volume of low-level radioactive waste, including decommissioning waste, to be disposed of by Texas in the Compact facility in the years 1995 through 2045. A Stakeholder Meeting was held by the Commission on April 14, 2009, in Austin, Texas. The Commission adopted its Rule by the statutory deadline. The Rule reads as follows:

*31 TAC Section 675.1*

#### *Section 675.1. 1995-2045 Waste Disposal Volume Estimate*

*The Commission estimates that Texas will dispose of Five Million (5,000,000) Feet of Low-level Radioactive Waste at a Compact disposal site to be established in Texas during the period from 1995 – 2045.*

### “EXPORT AND IMPORT RULE” RULEMAKING

The Compact Commission is considering another rule, Subchapter B, captioned "Exportation and Importation of Waste." The draft rule is designed to establish procedures to evaluate requests for exportation of wastes from the Compact for disposal, and importation of wastes into the Compact for disposal. As currently drafted the Rule will also address on a limited basis

matters related to waste generated in the Compact that is sent outside the Compact for processing prior to being returned for disposal at the Compact Facility.

Compact language specifies that the Commission consider export petitions and agreements to import. The Compact Commission believes that rulemaking to establish review criteria and procedures would benefit generators, processors, operators, and the Compact Commission. Stakeholder Meetings on these issues were held in Austin, Texas, on August 7 and December 10, 2009. At its January, 2010 meeting the Compact Commission voted to publish the draft Rule in the *Texas Register* with a 60 day comment period.

## EXPORT PETITIONS AND ORDERS

The Compact, in Section 3.05 states that:

The Commission may:

(7) Upon petition, allow an individual generator, a group of generators, or the host state of the Compact to export low-level radioactive waste to a low-level radioactive waste disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the commission.

In meetings on August 19 and December 11, 2009, the Commission acted upon export petitions from:

1. Luminant Generation Company LLC (“Luminant”), owner of the Comanche Peak Nuclear Power Plant (“Comanche Peak”), with the principal offices of Luminant located at 500 N. Akard St., Dallas, Texas 75201
2. STP Nuclear Operating Company (“STPNOC”), PO Box 289, Wadsworth, Texas 77483
3. Vermont Yankee Nuclear Power Station, an affiliate of Energy Nuclear Operations, Inc., with principal office of Entergy Nuclear Operations, Inc., located at 440 Hamilton Ave., White Plains, New York 10601
4. Southwest Research Institute
5. Texas A& M University



The Commission issued orders authorizing export of low-level radioactive waste in the volumes as requested by the petitioners subject to terms and conditions imposed by the Commission. The petitions and orders authorizing export are posted on the Commission's internet site. ([www.tllrwdcc.org](http://www.tllrwdcc.org))

## MEETINGS

The Compact Commission holds public meetings in accordance with Texas statute. Notices of meetings are posted in the Texas Register and in the State of Vermont pursuant to that state's meeting notice law.

The Commission held its inaugural meeting on February 13, 2009. Other meetings were held in Austin, Texas:

February 26, 27, regular meeting

April 2, regular meeting

April 14, Stakeholder Meeting on "volume" rule

June 5, regular meeting

July 21, regular meeting

August 7, Stakeholder Meeting on "export/import/fee" rule

August 19, regular meeting

December 10, Stakeholder Meeting on "import/export/fee" rule

December 11, regular meeting

## ANNUAL AUDIT

The Commission shall, as required by Section 3.04 of the Compact:

(5) Keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

Funding for FY 09 received through a contract with the State of Texas has been audited by the TCEQ's Chief Auditor's Office and a statement of the findings is found in an Appendix to this report. Because of the method of funding, the TCEQ and counsel reasoned that an audit by the

internal audit staff of TCEQ would satisfy the requirement of the Compact for audit by a Certified Public Accountant.

## CONCLUSION

During its initial year of operations the Compact Commission has met and conducted business to propose required rules on waste volume and to conduct stakeholder meetings on the rule proposals for waste volumes and import, export and fees. The Compact Commission has established an internet site ([www.tllrwdcc.org](http://www.tllrwdcc.org)), adopted budgets for FY 09 and FY 10-11, reviewed export petitions and issued export orders, established procedures for records maintenance and responded to media inquiries and public information requests. However, much remains to be accomplished in order to fulfill the statutory duties of the Compact. Funding issues continue to be addressed through inquiry regarding legislative intent of the Texas appropriations; plans for input in TCEQ ratemaking for disposal at the waste facility; evaluation of in kind contributions of the party states and consideration of pro-rata share payments in the next biennium, should the waste facility not yet be operable; collecting fees; and distributing those fees to support the Compact Commission operations. Technical evaluations and monitoring of waste generators and shipments will also require attention, pending funding, particularly because low-level radioactive waste is continuously being shipped for processing and for disposal.

## APPENDIX: FISCAL YEAR 2009 ANNUAL AUDIT

## CHIEF AUDITOR'S OFFICE



### An Audit Report for:

TCEQ Chairman Bryan W. Shaw, Ph.D.  
TCEQ Commissioner Buddy Garcia  
TCEQ Commissioner Carlos Rubinstein  
TCEQ Executive Director Mark R. Vickery, P.G.

## FISCAL REVIEW OF TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION AUDIT (COMPACT COMMISSION)

**PROJECT TEAM**

Jac'Queline Daniel, MBA, Audit Project Manager  
DeQuincy L. Adamson, Audit Team Member  
Eric Ramos, CFE, Internal Audit Manager  
Steve Goodson, CIA, CISA, CGAP, CCSA, Chief Audit Executive

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## **EXECUTIVE SUMMARY**

### **INTRODUCTION**

The TCEQ FY2010/2011 Biennial Plan allows for audits in response to special requests. This audit of the Texas Low-Level Radioactive Waste Disposal Compact Commission (Compact Commission) is such an audit authorized under the approved plan.

### **BACKGROUND**

By its passage of the Low-Level Radioactive Waste Policy Act of 1980 and its 1985 amendments (the Act), Congress declared states responsible for the disposal of commercial low-level radioactive waste and encouraged states to form interstate compacts to share this responsibility. As a result, it is the states and the interstate compacts that have the responsibility and authority to manage commercial low-level radioactive waste in the United States.

The Texas Compact, including Texas, Maine and Vermont, was ratified by the U.S. Congress in 1998. The Texas Compact authorizes the Texas Low-Level Radioactive Waste Disposal Compact Commission (Compact Commission) to allow additional party states into the Texas Compact and to make agreements with entities outside of the Texas Compact to allow importation of low-level radioactive waste for management or disposal from those entities. In April 2002, the State of Maine passed emergency legislation to withdraw from the Texas Compact.

The State of Texas Governor named the six Texas members of the Commission in November 2008. The State of Vermont also named two Commissioners. The Compact Commission held an inaugural organizational meeting on February 13, 2009.

The Texas Governor's office, the Comptroller's office and the TCEQ coordinated to make \$100,000 in funding available for fiscal year 2009. The contractual arrangement between the Compact Commission and the TCEQ stipulates how the TCEQ will reimburse the Compact Commission for expenses, including travel expenses for their Commissioners.

### **OBJECTIVE AND CONCLUSION**

The purpose of this audit was to determine whether the Compact Commission's reimbursed expenses paid by the TCEQ were allowable and supported with sufficient documentation to validate the costs.



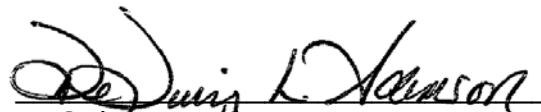
**We determined:**

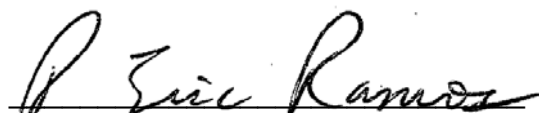
1. Travel expenses incurred by the Compact Commission were allowable and supported with sufficient documentation such as airfare itineraries, hotel invoices, and meal receipts all indicating evidence of payment. Further, the dates of travel correlated to the meetings and other Commission activities.
2. Invoiced contract salary costs for the Interim Executive Director were adequately supported with detailed descriptions of work activities and time spent on those activities was allowable.
3. Equipment and supply purchases made by the Compact Commission were allowable and necessary costs for set up of Commission operations.

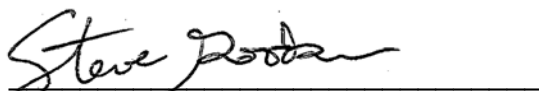
**CLOSING**

We are grateful to the Office of Permitting and Registration for their assistance with this audit. Because this audit focused on an external contractor, this report will be provided to Program Management and a copy of the final report will be issued to the TCEQ Executive Management. Please contact Jcki Daniel at x5974 or Eric Ramos at x2250 for more information.

  
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Project Manager

  
DeQuincy L. Adamson  
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Steve Goodson, CIA, CISA, CGAP, CCSA  
Chief Audit Executive

## **Appendix**

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## APPENDIX

### SCOPE AND METHODOLOGY

The scope of this audit included expenditures claimed by the Compact Commission and reimbursements paid by the TCEQ during Fiscal Year (FY) 2009. The amount of reported expenditures during this period was \$69,418. The audit did not include a review of the internal controls for managing the Compact Commission contract or the Compact Commission's performance. This audit was not performed by an independent Certified Public Accountant (CPA).

We conducted this review in accordance with the *International Standards for the Professional Practice of Internal Auditing* and generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective.

| COMPACT COMMISSION PAID EXPENSES             |                                          |                         |
|----------------------------------------------|------------------------------------------|-------------------------|
| BUDGET CATEGORY                              | NUMBER OF INVOICES (PER BUDGET CATEGORY) | TOTAL AMOUNT REIMBURSED |
| OPERATIONS (SETUP & ROUTINE, CONTRACT LABOR) |                                          |                         |
| PAYROLL AND PERSONNEL                        | 3 (2 split with supplies & equipment)    | \$32,000.00             |
| OPERATIONS (GENERAL)                         |                                          |                         |
| TRAVEL                                       | 26                                       | \$20,156.00             |
| SUPPLIES & EQUIPMENT                         | 4                                        | \$4,870.00              |
| OTHER                                        | 4                                        | \$12,392.00             |
| LEGAL (CONTRACT)                             |                                          |                         |
| LEGAL FEES                                   | 0                                        | \$0.00                  |
| TOTALS:                                      | 35                                       | \$69,418.00             |

Auditors utilized the following methodologies during the review:

- Reviewed applicable laws, rules, procedures, and contract provisions to establish sufficient criteria to validate reported expenditures.
- Reviewed expense records, invoices, and supporting documentation related to the expenditures reported by the Compact Commission.
- Reviewed accounting records and supporting documentation such as timesheets, travel receipts, and purchase invoice(s) to determine if associated charges and costs were reported accurately.
- Reviewed any additional records necessary to achieve the audit objective.
- Obtained input from agency staff to gain an understanding of the Compact Commission and the expenditures reimbursed by the TCEQ.

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