

**TECHNICAL POSITION STATEMENT**  
**Establishing the Generator of Low-Level Radioactive Waste**  
**For the Purposes of Determining Party vs. Non-Party Status**  
**For the Texas Low-Level Radioactive Waste Disposal Compact**

This technical position statement is a compilation of information from various regulatory agencies, the radioactive waste industry, and members of the Texas Low Level Radioactive Waste Disposal Compact Commission (“Commission”). This compilation is neither exhaustive nor definitive of how the Commission reviews applications. It merely represents a compilation of information that the Commission believes may be beneficial to entities that generate or possess low level radioactive waste if they are considering disposal at the compact waste facility in Texas. Notwithstanding the information in this statement, the Commission will evaluate, on a case-by-case basis, the specific information provided by each entity that applies to import or export low level radioactive waste into Texas, and it may consider these or other factors.

This Technical Position Statement (“Statement”) provides guiding concepts that may help answer the question:

“Who is considered the waste generator when radioactive materials are to be disposed at the Texas Compact Waste Facility (“Compact Facility”) located in Andrews County, Texas?”

This Statement does not address under what conditions radioactive material is, or should be, declared waste. The categorization of radioactive material as radioactive waste depends on numerous technical, policy, and legal considerations applied to specific facts. Those considerations are not required to answer the question of who is a waste generator for the purpose of determining the party or non-party status of an entity involved in a transaction to dispose of low-level waste at the Compact Facility.

The answer to this question is important for three reasons. First, Texas law specifies that importers of waste from non-party states must pay a surcharge when the waste is disposed at the Compact Facility. Second, Texas law specifies that no waste of international origin may be disposed at the Compact Facility. Third, the Commission is charged with ensuring the disposal capacity at the Compact Facility remains at levels sufficient to allow for disposal of waste from Texas and Vermont low-level radioactive waste generators.

This question often arises for radioactive material that is classified as a sealed source, either by itself or contained within a device. It also arises for radioactive materials or waste associated with recycling, consolidation, processing, or decontamination facilities. The primary consideration for the answer to this question begins with the premise that the last entity to own radioactive material, and put it to beneficial use or practical use, will become the waste generator when that material is disposed at the Compact Facility. Mere possession of a radioactive material or waste does not, in and of itself, constitute beneficial or practical use. Sometimes this concept is referred to as “the last beneficial user.” For the purposes of this Statement, the term “waste” refers to Low-Level Radioactive Waste.

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The first operational year for the Compact Facility began on April 27, 2012; therefore, for radioactive materials that an entity acquires on or after this date, the following concepts may help determine who the waste generator is for purposes of disposal at the Compact Facility:

- For a licensed sealed source or device manufacturer that takes back from any customer a sealed source or device that it manufactured, the manufacturer may be considered the waste generator when that sealed source or any component of that sealed source is disposed.
- For a licensed sealed source or device manufacturer that takes back from any customer a sealed source or device manufactured by another entity, when that source or any component of that sealed source or device is disposed, the customer may be considered the waste generator.
- For a licensed sealed source or device manufacturer or initial distributor (A) that acquires ownership of another licensed sealed source manufacturer or initial distributor (B), manufacturer or initial distributor (A) may take back from any customer a sealed source or device manufactured or initially distributed by (B), and manufacturer or distributor (A) may be considered the waste generator when that sealed source or device or any component of that sealed source or device is disposed.
- For a licensed initial distributor of radioactive sealed sources or devices that takes back from any customer a sealed source or device that it distributed, the initial distributor may be considered the waste generator when that sealed source or device or any component of that sealed source or device is disposed.
- For a licensed initial distributor of radioactive sealed sources or devices that takes back from any customer a sealed source or device distributed by another entity, the customer may be considered the waste generator.
- For a licensed distributor, other than the initial distributor, of the radioactive sealed source or device, that chooses to take back from any customer a sealed source or device, the customer may be considered the waste generator.
- For a licensed waste processor that takes radioactive materials from any customer, when that radioactive material is disposed, the customer may be considered the waste generator, except for processors located in the State of Tennessee. For licensed waste processors located in Tennessee, *(state what you do with Tennessee processors)*. \_\_\_\_\_
- For a licensed waste broker or consolidator that takes radioactive materials from any customer, when that radioactive material is disposed, the customer may be considered the waste generator
- For a licensed recycler that takes radioactive materials from any customer, if the licensed recycler subsequently declares the materials to be radioactive waste, the customer may be considered the waste generator unless the recycler can provide information to verify:
  - the nature of the business transaction between the recycler and the customer was to recycle the materials; and
  - > 80% of the materials received are recycled
- For a licensed decontamination service provider that provides decontamination services for any customer, the customer may be considered the waste generator of any waste generated, remaining, or resulting from the service provided.

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- For licensed sealed source or device manufacturers, recyclers, consolidators, waste brokers, waste processors, initial distributors, other distributors, and decontamination service providers, if application of the above factors indicates that the customer may be considered the waste generator, then for the waste to be disposed at the Compact Facility:
  - the customer must be a U.S. public, private, or government entity, and
  - for sealed sources, the source must have been originally manufactured in the U.S.
- For licensed sealed source or device manufacturers, recyclers, consolidators, waste brokers, waste processors, initial distributors, other distributors, and decontamination service providers, if the above factors indicate that the customer may be considered the waste generator, then the waste may be considered Party Waste (In-Compact) if the customer is located in Texas or Vermont.
- For licensed sealed source or device manufacturers, recyclers, consolidators, waste brokers, waste processors, initial distributors, other distributors, and decontamination service providers, if the above determination indicates that the customer may be considered the waste generator, then the waste may be considered Non-Party Waste (Out of Compact) if the customer is located in any place other than Texas or Vermont.
- For a licensed user, sealed source or device manufacturer, recycler, consolidator, or initial distributor that is the waste generator, that generator must be a U.S. public, private or government entity, for the waste to be disposed at the Compact Facility.
- For licensed users, sealed source or device manufacturers, recyclers, consolidators, or initial distributors that are the waste generator, the waste may be considered Party Waste (In-Compact) if the generator is located in Texas or Vermont.
- For a licensed user, sealed source or device manufacturer, recycler, consolidator, or initial distributor that is the waste generator, the waste may be considered Non-Party Waste (Out of Compact) if the generator is located in any State other than Texas or Vermont.
- All waste considered to be Non-Party Waste (Out of Compact) will require import authorization in accordance with 31 Texas Administrative Code ("TAC") 675.23.
- For all waste sent to the Compact Facility, any entity that may be considered to be the waste generator, based upon the above principles, is reminded that TCEQ requires the generator to complete and submit TCEQ Form 20225.

It is recognized that from July 2008, when the Barnwell site began accepting waste only from states within the Atlantic Interstate Low-Level Radioactive Waste Management Compact, until April 27, 2012, waste disposal options were limited or non-existent for many low-level radioactive waste generators. During this period, licensed sealed source and device manufacturers, recyclers, consolidators, waste brokers, and initial distributors were extended circumstantial consideration by regulatory agencies to accept radioactive materials (primarily sealed sources and devices) from customers. This circumstantial consideration was extended to licensed entities so that radioactive materials would be less likely to be misplaced, lost, abandoned, or stolen from customers. Future occurrences of misplaced, lost, abandoned, or stolen sources will be evaluated on a case-by-case basis in order to facilitate disposal and removal from the public domain.

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Because storage/disposal options, recordkeeping requirements, and the ability to transfer radioactive materials have been evolving since July 2008, for radioactive materials acquired before April 27, 2012, the determination of who the waste generator is for purposes of disposal at the Compact Facility may focus on where the waste originated.

- Licensed sealed source or device manufacturers, recyclers, consolidators, waste brokers, waste processors, initial distributors, other distributors, and decontamination service providers that received radioactive materials from a customer, must provide adequate documentation that the waste is not of international origin.
- Licensed sealed source or device manufacturers, recyclers, consolidators, waste brokers, waste processors, initial distributors, other distributors, and decontamination service providers, who received radioactive materials from a customer, must provide adequate documentation that the waste originated from Texas or Vermont to be considered Party waste (In Compact), otherwise it will be considered Non-Party (Out of Compact) waste. Entities that apply to import any waste that may be considered to be Non-Party (Out of Compact) waste are reminded that 31 TAC 675.23 requires import authorization in accordance with that rule.
- Licensed sealed source or device manufacturers, recyclers, consolidators, waste brokers, waste processors, initial distributors, other distributors, and decontamination service providers, that received radioactive materials from a customer, may use various records including, but not limited to, source/device leak tests, source/device inventories, transfer/receipt records, transportation manifests, purchasing records, or other suitable records, as documentation regarding the customer, who the generator is, or from where the waste originated .
- A licensed sealed source or device manufacturer, recycler, consolidator, waste broker, waste processor, initial distributor, other distributor, or decontamination service provider that received radioactive materials from a customer, may be considered a waste generator, and if so, it may be appropriate for that entity to complete TCEQ Form 20225 as the waste generator upon providing adequate documentation, as described above, regarding the customer, who the generator is, and from where the waste originated.