



WASTE CONTROL SPECIALISTS

May 12, 2023

*Via Email at [comments@tllrwdcc.org](mailto:comments@tllrwdcc.org) and [stephen.raines@tllrwdcc.org](mailto:stephen.raines@tllrwdcc.org)*

Texas Low-Level Radioactive Waste Disposal Compact Commission  
c/o Stephen Raines, Executive Director  
1502 West Avenue  
Austin, Texas 78701

Subject: Rules

Re: The Determinations contained in the Preamble (such determinations, the “**Determinations**”) to the Texas Low-Level Radioactive Waste Disposal Compact Commission’s (the “**Compact Commission**”) proposed changes to 31 Texas Administrative Code § 675.24 posted to the Texas Register on April 7, 2023 (such proposed changes, the “**Proposed Changes**”)

Dear Executive Director Raines,

As stated in Waste Control Specialists, LLC’s (“**WCS**”) comments dated May 5, 2023, to the Proposed Changes (the “**Comments**”), respectfully, it is WCS’s position that the Determinations are insufficient under Chapter 2001 of the Texas Government Code. Pursuant to footnote 4 of our Comments, we are supplementing our Comments on this point following additional investigation on this position.

The preamble to the Proposed Rule provides that the Compact Commission determined that, among other things, there will be (a) no fiscal implications on state or local governments<sup>1</sup>; (b) no probable economic costs to businesses or individuals required to comply with the rule<sup>2</sup>; (c) a public benefit of “improved process”<sup>3</sup>; (d) no probable economic cost to business and individuals<sup>4</sup>;

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<sup>1</sup> It is unclear how this determination was made seeing that the Compact Commission will have a six-fold increase in reports to handle and synthesize (with only two staffers). *See Comments.*

<sup>2</sup> This determination is not correct. *See Comments.*

<sup>3</sup> It is unclear how there is a public benefit if the Compact Commission does not have the staff or resources to meaningfully analyze the reported information. *See Comments.*

<sup>4</sup> This determination is not correct. *See Comments.*

(e) no impact on local employment or economy<sup>5</sup>; (f) no cost to regulated persons<sup>6</sup>; (g) no adverse economic impact on small business, microbusinesses, and rural communities<sup>7</sup>; and (h) no decrease in fees paid to a state agency.<sup>8</sup> However, because of the conclusory statements in the preamble of the Proposed Changes, it is unclear what, if anything, the Compact Commission considered when making these Determinations. As a result, interested parties, including WCS, are not afforded the opportunity of seeing their government make a conscious assessment of the Proposed Changes, nor are interested parties, including WCS, able to then comment on the conscious assessment made by their government.

To date, WCS has not seen any evidence of a conscious assessment performed by the Compact Commission with respect to the Determinations, and that makes sense, because if one would have performed such assessments, it would have been extremely difficult to make a determination that a proposed rule change that expands reportable materials, expands the number of regulated entities, and increases the reporting frequency,<sup>9</sup> has “no probable economic cost to business and individuals required to comply with the rule . . . .” As WCS stated in its Comments, that statement is not correct. As WCS’s Comments reflect, among many other costs, the Proposed Changes would require WCS to:

- (1) Collect additional supporting information and documentation;
- (2) Employ at least one and one-half full time equivalent employees to comply; and
- (3) Spend in excess of \$200,000 for additional programming and restructuring of its database to comply.

WCS directs the Compact Commission to a recent proposed rule change by the Texas Department of Licensing and Regulation (“**TDLR**”) regarding the Motor Fuel Metering and Quality program, proposed at 48 Tex. Reg. 1612 (March 24, 2023). There, TDLR went through a model analysis on the economic cost to regulated entities:

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY  
WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be a cost savings to merchants required to

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<sup>5</sup> This determination is not correct. *See* Comments.

<sup>6</sup> This determination is not correct. *See* Comments.

<sup>7</sup> This determination is not correct. *See* Comments.

<sup>8</sup> WCS believes this will drive customers to alternative waste management options in other states, which would reduce fees to the state and/or local government from the Compact Facility or the exempt facility or both. *See* Comments.

<sup>9</sup> Even the Texas Attorney General’s Office’s Government Code Chapter 2006 Small Businesses and Rural Communities Impact Guidelines (Updated: December 2017) provide “[e]xamples of the costs associated with a proposed rule” an agency should consider, such as, among others, (a) recordkeeping, (b) reporting, (c) costs for modifying any existing processes and procedures, and (d) additional employees that may need to be hired.

comply with the proposed rules. The proposed rules repeal requirements that add practices for medium and high-risk places of business as well as punitive and onerous tasks, which create a financial burden for merchants who are victims of skimmer fraud, instead shifting efforts proactively to prevent unauthorized device access and installation of skimmers.

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there may be additional costs to persons who are required to comply with the proposed rules. The proposed rules require all merchants to implement at least two security measures on their devices to protect from card fraud. Preventative measures include the option to use tamper-evident security labels, retrofitting or installing EMV-compliant devices, and installing unique locking mechanisms.

It is unknown how many merchants already have these measures implemented and are already in compliance with the proposed rule. Regardless, any costs incurred to improve device security will be offset by the elimination of the losses a merchant would suffer from the installation of skimmers and resulting card fraud.

The proposed rules require a merchant to contact a service technician if a device appears to be compromised due to unauthorized access. This should not result in any extra costs for merchants since they are required by rule to ensure that all devices are in compliance with National Institute of Standards and Technology requirements in order to sell fuel.

The proposed rules require retail facility employees who are certified as Class A, Class B, and Class C operators to complete fraud awareness training. TDLR will develop this training and provide it to merchants and their employees at no cost.

No comparable analysis exists by the Compact Commission in the preamble of the Proposed Changes.<sup>10</sup>

Texas courts have noted that determinations in the rule making process have two purposes: the first is to ensure the agency engages in a “*conscious* assessment and comparison of the expected public benefits and economic cost of compliance *before* the agency finally arrives at the text of the proposed rule . . .” *Methodist Hosps. of Dallas v. Tex. Indus. Acc. Bd.*, 798 S.W.2d 651, 655 (Tex. App.—Austin 1990, writ *dism’d* w.o.j.) (emphasis in original). The second purpose is so that “interested persons might know and confront that basis in a meaningful way in their comments to the Commissioner.” *Unified Loans, Inc.*, 955 S.W.2d at 653. The court in *Unified Loans* noted that “adequate notice require[s] that interested persons be apprised in advance of these grounds in order

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<sup>10</sup> As the Austin Court of Appeals stated in *Unified Loans, Inc. v. Pettijohn*, “unless [interested parties] were supplied some basis, the Commissioner’s invitation to comment on the proposed rules was a masquerade, a disingenuous and counterfeit compliance with the invitation to comment . . .” 955 S.W.2d 649, 653 (Tex. App.—Austin 1997, no pet.).

that they might comment meaningfully as to their soundness or applicability.” *Id.* at 653–54 (emphasis in original).<sup>11</sup>

Respectfully, WCS disagrees with several of these Determinations and believes the Compact Commission did not engage in the required conscious assessment before making the Determinations and arriving at the text of the Proposed Changes.

Equally important, due to the conclusory statements in the Determinations (which also lack basis or explanation), WCS has not been able to meaningfully comment on the Proposed Changes. For example, if the Compact Commission had provided sufficient notice of the Compact Commission’s basis for its Determination that there “are no additional reporting requirements” or had explained what “probable economic costs” regulated entities such as WCS would incur, WCS would be able to better address its concerns and express in some detail the costs the Compact Commission may not foresee or the reasonableness of its estimates. However, because the Compact Commission has not done so, WCS has not been able to meaningfully and sufficiently address the Determinations.

Because WCS believes the Compact Commission (a) failed to engage in a conscious assessment of the Determinations as required of it in the rule making process, and (b) did not provide adequate notice for interested parties to intelligently comment on the rule making process, it is WCS’s opinion that the Proposed Changes do not comply with Chapter 2001 of the Texas Government Code. WCS suggests the best approach for all parties is for the Compact Commission to restart the rule making process and reissue any proposed changes in compliance with Chapter 2001 of the Texas Government Code.

We value our relationship with the Compact Commission and look forward to the Compact Commission resolving our concerns.

Sincerely,

WASTE CONTROL SPECIALISTS, LLC



David Carlson,  
President and Chief Operating Officer

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<sup>11</sup> Even if the Compact Commission makes a conscious assessment that there is no adverse economic impact on small business or rural communities, “An agency should, however, **provide a reasoned explanation in the preamble** for the proposed rule as to why an Economic Impact Statement and Regulatory Flexibility Analysis is not required for the proposed rule.” Texas Attorney General’s Office’s Government Code Chapter 2006 Small Businesses and Rural Communities Impact Guidelines (Updated: December 2017), at pp. 4–5 (emphasis added). The Compact Commission did not provide a reasoned explanation but merely a conclusory statement that no adverse economic impact existed.