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May 5, 2023

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

Re: Comments on Proposed Title 31 Tex. Admin. Code §675.24 - Management Rule Revisions

Dear Mr. Raines:

I am responding to the request for comments on the proposal to amend 31 Tex. Admin. Code §675.24, concerning importation of certain low-level radioactive waste for management or disposal that is not required to be disposed in the compact facility. I appreciate the opportunity to provide comments on the proposed amendments.

After reviewing the draft amendments as published in 48 Tex. Reg. 1808-10 (April 7, 2023), I offer the following comments.

As a preliminary observation, the agency has presumably conducted a series of analyses as required by the Texas Administrative Code. The results of the Commission's analyses are stated summarily in the Texas Register notice, but do not include detailed discussion that permits affected parties and the public to fully understand the data or the process relied on by the Commission in formulating the conclusions stated in the preamble to the proposed rule and the rule itself.

For instance, in the Section-by-Section analysis, the commission has stated, without providing an underlying basis, "the Commission has determined that it is in the public interest to gather information regarding low-level radioactive waste (LLRW) that enters the host state irrespective of whether it requires an agreement for importation for disposal at the Compact Facility" and "the Commission has determined that it is in the public interest that the Commission require monthly reporting instead of every six months." Absent detailed supporting information, it is not possible for affected parties and the public to fully review and understand the necessity for the rule or how the Commission came to their conclusions.

In the Public Benefit/Cost Note, you summarily concluded "there will be no probable economic cost to businesses and individuals required to comply with the rule because no additional burden or requirement on businesses or individuals are added. The new rules impose no additional reporting requirements." This conclusion cannot be supported by the facts. The amendments to





the rule clearly impose additional reporting requirements and will impose additional burdens on our business. For example, revisions and additions to § 675.24(d) imposing new recordkeeping to comply with subsections (d)(6) and d(7), and the requirement to report monthly instead of semiannually as required by the new subsections (e) and (g) along with the requirement in subsection (f) to track changes in waste characteristics on a continuous basis will require NSSI to commit at least a full-time technician and administrative assistant to comply with these new requirements. The additional staffing will add thousands of dollars in extra expense, which will have to be passed along to our customers. This additional cost far outweighs any demonstratable benefit to NSSI, the Commission, or the public.

The Commission declares, without any detailed analysis, that the proposed rule is exempt from the requirement for a fiscal note as set out in Tex. Govt. Code, §2001.0045(b) and an analysis of the probable economic costs to persons required to comply with the rule as set out in §2001.024(a)(5)(A)-(B) because "... the rule is necessary to protect the health, safety and welfare of the citizens of the state ...". This hand-waving declaration conveniently allows the Commission to avoid the statutory requirement for the notices and analyses that are to accompany a rulemaking.

In the absence of seeing the underlying basis for the amendments, NSSI is unable to determine how you arrived at the conclusion that the proposed rule imposes no additional reporting requirements, has no probable economic cost to NSSI, and is necessary to protect the health, safety, and welfare of the citizens of the state.

According to the preamble, the Commission has determined the proposed rule will not have an adverse economic impact on small businesses. Therefore, the Commission has concluded an Economic Impact Statement and Regulatory Flexibility Analysis as required by the Texas Govt. Code, §2006.002 are not required. This proposed rule will certainly have an adverse economic impact on small business. A copy of the Commission's work papers, fiscal analysis, or other analyses that led to this conclusion would be informative and is essential to understanding the basis for the proposed amendments. Please provide a copy of those documents.

The proposed rule will not accomplish its intended purpose in any event because it does not apply to most of the radioactive material managed at NSSI. The company stores radioactive sources and devices for a variety of companies under a license issued by the Texas Department of State Health Services and manages radioactive waste, including low-level radioactive waste, under a license issued by the Texas Commission on Environmental Quality. Radioactive sources and devices stored at NSSI that are being held for reuse far exceed the amount of low-level radioactive waste at the facility. The labor and paperwork required to report the disposition of radioactive material at NSSI on a monthly basis is extremely burdensome given the negligible impact on the health, safety, or welfare of the citizens of the State of Texas.

NSSI frequently receives radioactive material from domestic and international entities, primarily sealed sources from the oil and gas industry, for both management and disposal. This material may be processed or consolidated, and then recycled to the original licensee or to another entity for continued use. These sources may be stored at NSSI for a short time before being returned for



use at the request of the customer. Any sources that are unwanted or disused or become low-level radioactive waste after processing or consolidation at NSSI and are destined for disposal in the Texas Compact disposal facility, are handled as required by existing rule 31 Tex. Admin. Code §675.23. Low-level radioactive waste that is not acceptable for disposal at the Texas Compact disposal facility, such as low-level radioactive waste of international origin, is returned to the generator or is sent out of the state for further processing or disposal.

The Compact Commission's sole purpose is to monitor the import and export of low-level radioactive waste to and from Texas. Low-level radioactive waste that is returned to out-of-state generators obviously does not remain in Texas, either for management or disposal. It is reasonable that the commission should have no interest in radioactive material or low-level radioactive waste that is imported for management and subsequently exported to the original licensee or recycled to an out-of-compact state or entity once processed at NSSI. Only when the processing results in the production of low-level radioactive waste and that waste remains in Texas need the commission be involved.

Presumably, the commission's interest in accounting for the out-of-compact low-level radioactive waste that is managed in Texas is to be assured that the waste is not stockpiled for long term management at an in-compact facility. The commission needs assurance that the waste is either exported from the compact after processing or disposed in the compact facility, the latter of which is already captured by import agreements pursuant to 31 Tex. Admin. Code §675.23. In other words, the commission wants to identify any out-of-compact low-level radioactive waste that might remain in the state for extended periods of time. To accomplish this, the commission need not compile the extensive and detailed data at the frequency proposed in sections 675.24(d)-(e) of the proposed rule. It should be sufficient to know the volume or weight, the gross activity, and the isotopic content of the waste in the possession of NSSI for a selected reporting period. If for some reason the commission requires more detailed information or information on a more frequent basis, that data can be readily acquired from the Texas Commission on Environmental Quality or the Texas Department of State Health Services, both of which already collect this information on a regular basis pursuant to their existing rules or by license condition.

Monthly reporting before the 15th day of each month as proposed in subsections 675.24(d)-(g) is overly burdensome and unnecessary. For the purposes of the commission, it should be sufficient to continue reporting import/export activity on a semiannual basis.

The purpose of sections 675.24(h)-(i) is unclear. Section 675.23 of the commission's rules already addresses the process for importation of waste. If the purpose of these subsections is to address the requirement for entering into an agreement for reporting the importation of low-level radioactive waste for management, the commission may by rule require reporting without the burden of petitioning for a separate, and unnecessary, agreement to provide the desired information, or may contact the Texas Commission on Environmental Quality and request a copy of that information, as it is already being compiled by that agency.



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The commission proposes to disallow importing low-level radioactive waste for management as a punitive measure for failing to provide an adequate report. Imposition of such an unnecessarily onerous penalty is outside the authority of the commission. Management of low-level radioactive waste at the facility is authorized by a license from the Texas Commission on Environmental Quality. It is the Texas Commission on Environmental Quality that has enforcement authority under the Texas Radiation Control Act, the rules of the Commission and the conditions of NSSI's license. Moreover, prohibiting importation for minor or inadvertent reporting infractions could result in substantial long-term harm to NSSI's reputation and balance sheet.

Given that the Texas Low-Level Radioactive Waste Disposal Compact is an interstate compact, to what extent will these same restrictions be imposed on licensees in the State of Vermont?

The proposed rule must except from public disclosure, pursuant to Texas Government Code, Section 552.110, any information acquired by the commission with respect to generator, waste volume and activity. Inadvertent disclosure of this information can result in substantial competitive harm to NSSI.

Throughout the document, the phrase "low-level waste" or "waste" should be "low-level *radioactive* waste" to be compliant with the definitions in in the Texas Health and Safety Code, Section 401.004 and in 30 TAC §336.2(89). Further, the acronym NCFW is used in subsection (d) without being previously defined in the proposed rule.

Finally, in § 675.24(c)(3), the phrase "... and becomes low-level radioactive waste as a result of the processing, recycling, consolidation ..." is repeated twice.

Sincerely,

Gamaliel Torres
President, RSO

GM/lj