

Commissioners and other interested persons:

I have been considering various questions in connection with proposed publication of new Compact Commission rules. Most of my questions are related to operations and issues associated with importation of waste for disposal. When I first began this exercise, the Tenth Circuit Opinion and Judgment had not been issued. In light of the decision in the Tenth Circuit and given the existing practices in Texas, I have concluded that the Compact Commissions need to give some guidance on, and put in place, agreements associated with importation into the Compact of waste that is intended to be “managed” in the Compact.

As I began considering my questions, I decided that I would generate a time line beginning with the Low Level Waste Policy Act of 1980 to keep various periods in mind because of the changing nature of the laws that form the background for the effort to establish a low level radioactive waste disposal site in Texas. I have not included everything, but those things that seemed to me to be significant in connection with the effort.

The second part was an assembly of information that I thought was relevant to determinations on questions associated with the question of allowing imports.

Finally, I have generated a list of questions. Some of those are about concepts, but others are specific to some of the language that is being proposed.

Thanks to each of you for your patience with my questions and concerns.

Bob Wilson
November 13, 2010

History:

- 1980: Initial Federal Low Level Radioactive Waste Policy Act
- 1981: Texas Low Level Radioactive Waste Disposal Authority
- 1985: Federal Low Level Waste Policy Act and amendments
- 1993: Compact enacted now populated by Texas and Vermont.
- Mid 1990s: Denial of Application by the Low Level Waste Disposal Authority
- 1998: Compact ratified
- 1999: Sunset of the Authority
- Early 2000s: Effort to figure out another way to establish a Compact site in Texas
- 2003: Legislation passed that is now Chapter 401 of the Health & Safety Code. Until passage of this legislation no private person or company could apply for or hold a commercial low level radioactive waste disposal license.
- 2004: Action initiated by WCS to license a site in Andrews County
- 2008: The Texas Compact Commission is populated
- 2009: License action by TCEQ and Compact Commission's initial meetings
- 2010: Andrews County Bond election; rate for disposal undetermined; Compact Commission financing undetermined; site not yet constructed

Texas Site Realities

- WCS holds the license and may construct subject to some approvals
- WCS succeeded in obtaining a license when the Texas Radioactive Waste Disposal Authority was unable to do that
- Subject only to construction, a facility has been developed in Texas for disposal of low-level radioactive waste generated within the party states.
- The Compact site is licensed for 15 years, is authorized to have 2,310,000 cubic feet or 3,890,000 curies.
- Texas law requires that Class B and Class C low level radioactive waste be disposed of within a reinforced concrete container and within a reinforced concrete barrier or within containment structure made of materials technologically equivalent or superior to reinforced concrete
- WCS has a substantial investment and is entitled to return on that investment under principles now in State law in Chapter 401 of the Texas Health and Safety Code
- Fees must allow WCS to recover operating and maintenance expenses and provide recovery for certain decommissioning and surveillance costs
- Fees also are to be paid to fund local projects and to be paid to the State of Texas
- Fees, under Texas law, are "reasonable and necessary expenses for rate making purposes
- Fees for disposal are to be set by TCEQ based on projected waste volumes, relative hazard of the waste, and allowable costs
- Fees have not yet been established
- Fees are to be paid by users of the facility

- WCS has multiple operations at or near the Compact Facility site but TCEQ has rate jurisdiction only for disposal at the Compact facility
- WCS is required by Texas law to “convey to the State when the license is issued all required right, title and interest in land and buildings required under commission rules ...”
- WCS is required by Texas law to “convey to the state at no cost to the state title to the compact waste delivered to the disposal facility for disposal at the time the waste is accepted at the site”
- TCEQ is landlord, waste owner and regulator acting in those capacities for the people of the State of Texas
- Texas has a Compact with Vermont that requires that capacity be allocated to Vermont for Low Level Waste disposal. Capacity for all non-host party states (now: just Vermont) is limited to 20 percent of the volume estimated to be disposed of by the host state during the 50 year period, and the total of all shipments from nonhost party states must not exceed 20,000 cubic feet a year over the 50 year period.
- When the provisions on waste volumes were written into the Compact, both Maine and Vermont were parties. Maine has since withdrawn. In developing the Compact Commission’s volume estimate rule covering the 50 year period, the amount for non-host party state volume was based, in part, on experiences associated with decommissioning of Maine Yankee.
- 20% of 2.3 million cubic feet is 462,000 cubic feet, the maximum volume allocable to Vermont under the current license
- The License was issued on the basis of an application that included material from Vermont and Texas
- In 1993, Texas enacted the Compact to make sure that any site in Texas would not become the “national solution”. At the time, there was a Texas Radioactive Waste Disposal Authority. The Authority existed for about 17 years and incurred costs of approximately \$52 million associated with its licensing efforts paid almost entirely by utilities
- In 2009 the Compact Commission decided that the disposal volume estimates for the Compact site for the period from 1995 through 2045 would be 5,000,000 cubic feet for Texas waste, and 1,000,000 cubic feet for non-host state members of the Compact. (Currently: just Vermont) As noted, the site does not currently have 6,000,000 cubic feet of capacity. The Compact estimate is not required to address curies.
- The Compact Commission currently has the authority to enter into Agreements for disposal of waste originating at non-compact locations
- Any disposal of non-compact waste detracts from currently licensed volume available for disposal from generators in Texas or Vermont or to curies authorized to be possessed at the site, or both, because estimates of disposal quantities from compact members exceed licensed capacity
- A compact disposal facility is licensed although not yet constructed. It has limited capacity. The license exists for a stated time, less than the time required for the volume estimate rule.

- I could find no requirement mandating that capacity be maintained or that the site be expanded

Compact Commission Issues for Disposal Agreements

- How should the Compact Commission restrict its importation Agreements to assure that Vermont (and Texas) generators continues to have access to disposal given the current licensing?
- Does Vermont wish to accept the risk that currently licensed capacity will be diminished and not replaced if non-compact waste is allowed to go to the site?
- Does Vermont need assurance from the Compact that it will be allowed to export for disposal to any suitable site volumes not within the Texas site's capacity? Should that assurance be considered as a part of the export rule when it is considered?
- What happens if there is no suitable alternative site for Vermont waste?
- Does the Texas Compact have the funding to take action adopt and then implement a contingency plan for disposal and management of low-level radioactive waste in the event that the compact facility should be closed or otherwise not available to in compact generators?
- When can the Compact Commission expect to have access to funding resulting from the component in disposal rates that is to be charged to support the activities of the commission?
- If the Compact Commission has no funding for operations, how can it defend itself against actions based on allegations of inaction or of erroneous action associated with any of its rules?
- Is there a requirement under the Compact for adoption of a rule addressing imports before the disposal site is opened?
- Is there a prohibition against the Commission currently acting on requests for agreements for importation of low-level radioactive waste into the compact for management or disposal under conditions and restrictions in the agreement as the Compact Commission deems advisable.
- Should the Texas Compact be opened to non-Compact generated waste when, in 1993, the purpose of enacting the Compact was to limit access to a low level radioactive waste disposal site in Texas?
- If yes, should the Compact Commission include in Agreements for out of compact waste being "imported" that generators make payments to the Texas long term care and maintenance fund so that out of compact waste generators are on par with the people in Vermont?
- With whom should the Compact Commission have agreements? For example, should agreements for importation be only with other Compacts or with other Agreement states not a part of a Compact to save expenses for the Texas Compact in carrying out its duties?

- How can opening up the market for any amount of non-compact waste volume have positive effects on revenues but not adversely impact license conditions or capacity needed for generators within the Compact?
- Given that the operator intends to charge “market” rates for disposal, will the rate order imposed by TCEQ require that the maximum rates be used in any “true-up” calculations, and that projected revenue associated with the Compact Commission’s budget requirement be paid on that basis of maximum rates regardless of the revenue received?
- Given that the Legislature passed the Compact statute in 1993 with the intent to avoid having a Texas low level waste site open for disposal from wastes originating from any location, is any expression from the Texas Legislature needed before opening the site to and assuming long term liability for, non-compact wastes?
- How is the Compact Commission going to handle the information that is required to be produced and reported under the drafted rules? Will the rule require information to be assembled and acted on even before the Commission determines that it has the resources to address and act on applications?
- If no applications for importation agreements can be processed until the Commission determines that it has adequate funding, what is accomplished by passage of a rule now when the Compact itself allows for such petitions to be received? Should not the rule say that no applications shall be received until the Commission has the funds to address issues associated with applications for import of waste for disposal?
- What is the time interval to be between the date when the Commission determines it is funded and the requirement to act on an application for an agreement? Will the Commission have adequate time to hire an economist to address the economic claims made and data submitted in applications?
- If the purpose of passing the proposed rules is, in part, to have a vehicle for charging fees, does the wording of the Compact authorize the Compact Commission to use application fees to defer part of its cost of operations?
- Are there any criteria for absolute rejection of an out-of-compact waste other than it not be of international origin?
- What is a waste of “international origin?”
- What is contemplated by having “savings by importation accrue to the benefit of the party states?” Does that mean that generators in party states who use the facility are anticipating some economic benefit?
- How can the Compact Commission assure that any savings benefit party state waste generators?
- If the proposed rule were to be adopted, what information would have to be developed for generators to know whether any savings would be realized?
- Until the disposal capacity calculation required by proposed part 675.23 (b) is made, is there to be a presumption that all the currently licensed disposal capacity is reserved for generators in Texas and Vermont, or is none of the disposal capacity reserved for generators in Texas and Vermont?

- In that same provision, what do the words “the Commission’s report shall be ‘informed’ by the annual report by the host State on the status of the facility” mean?
- What is the time period to be used as a reference in connection with the certification described in section 675.23 (c) that “disposal of imported waste will not reduce capacity for Party State-generated waste, based on the currently licensed volume and activity?” Is the period the amount of time left on the license, the 50 year planning period, or some other time period?
- Are generators of non-compact waste willing to commit to disposal at the site without knowing if the Compact Commission will accede to an agreement and without knowing any of the terms of the agreement?
- If payments are required by the site operator for its contracts for non-compact generated waste, are those payments considered as revenue associated with site operations for purposes of the rate case?
- Is the certification described in 675.23 (g) (1) that waste acceptance criteria have been met to come from TCEQ or from the licensee? If the certification is coming from TCEQ, at that point does TCEQ need to have an agreement with the Compact Commission because TCEQ “owns” the waste?
- What is the intent of the notice procedure described in 675.23 (g) (4)? Is it to require that the site operator respond with any comments within 30 days following the receipt of the application for an agreement to both the Compact Commission and to the applicant?
- Is the site operator permitted to make comments during the 60 day period described in 675.23 (g) (6)?
- With the notice times required [30 days, in (g)(4); 15 days in (g)(5); and 60 days in (g)(6)] how is it possible to have a hearing within 60 days of the time the agreement was filed with the Commission?
- Given that the waste is “owned” by TCEQ once accepted for disposal at the site, what is the liability of the site operator that is to be considered under 675.23 (h) (4)?
- How can the Compact Commission make the determination described in 675.23 (h) (5) that the facility operator “will” obtain authorization from TCEQ to dispose of the waste if that authorization does not exist at the time of the Compact Commission’s action?
- What are the criteria and what compact facility operational time horizon will be used to establish the annual volume recommended for disposal number described in 675.23 (c) and used in 675.23.(h)(6)?