

June 22, 2015

CD-15-0147

**VIA E-MAIL TO:** [Administration@tllrwdcc.org](mailto:Administration@tllrwdcc.org) and [Audrey.Ferrell@tllrwdcc.org](mailto:Audrey.Ferrell@tllrwdcc.org)

Leigh Ing  
Executive Director  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
333 Guadalupe St., #3-240  
Austin, TX 78701

Re: Comments on 31 TAC §§675.20 - 675.23 Rules

Dear Ms Ing:

EnergySolutions, Inc., submits these comments on 31 TAC §§675.20 - 675.23. EnergySolutions, headquartered in Salt Lake City, Utah, is an international nuclear services company with operations throughout the United States, Canada, the United Kingdom, and other countries around the world. We have participated in the Texas Compact rulemaking process since its initiation and have found that the Texas Compact has applied these rules in a reasonable manner. We hope you find our comments below to be helpful and we desire to continue our relationship with the Texas Compact.

### **Proposed Rule**

§675.20 In this section we seek clarification of definitions to ensure compliance. Specifically, §675.20(9) provides the definition of a “generator.” As currently written, we are not sure our processors meet the definition of “generator.” EnergySolutions’ Bear Creek and Erwin ResinSolutions’ facilities are required by State of Tennessee license to attribute ash and THOR by-product material to the facility. Both of these facilities process materials from many states and produce a homogenous by-product material with multiple generators. As such, the State of Tennessee requires the residual be attributed to the facility. The origin of the waste is still known (for import into the Texas Compact or foreign waste determination), but the Tennessee facility becomes the generator. The Texas Compact is encouraging processors to use the Texas Compact facility as evidenced by the recent outreach program held by the Texas Compact in Tennessee. We are hesitant to do so with the current definition of “generator.” Specifically §675.20(9)(vi) states, “if a licensed

waste broker or waste processor chooses to accept radioactive materials from any customer, the customer will be considered the generator of those materials when they are disposed; and...”. Based on this definition, our Tennessee processors must declare the original owner of the waste as the “generator” to be consistent with Texas Compact Rules, but would be in violation of Nuclear Regulatory Commission (NRC) rules on attribution as defined in Appendix G to 10 CFR 20, specifically:

Low-level radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

EnergySolutions was able to remedy this issue with the Northwest Compact and the State of Utah by providing a list of “generators” whose waste was in the batches. Appendix G to 10 CFR 20 also applies to §675.20(9)(vii) for licensed decontamination service providers. We recommend that both definitions be revised to include processors who become the legal generators of the waste.

The definition for “management” found in §675.20(13) is also problematic. EnergySolutions performs volume reduction (compaction, incineration, thermal processing, etc.) at many facilities. We recommend that “volume reduction” be explicitly included as an element of “management.”

§675.20 (3) and (5) introduce two slightly different definitions for what appear to be the same term. §675.20(3) defines “Compact Facility” and “Facility” and §675.20(5) defines “Compact waste disposal facility.” The more restrictive definition of “Compact waste disposal facility” is appropriate for these rules and should not include any other non-Compact processing or disposal facility in the vicinity of the Compact disposal facility. EnergySolutions proposes that the definition found in §675.20(3) be removed.

§675.21 This section discusses the exportation of waste for disposal outside of the Texas Compact.

The Commission has chosen to define the entity requesting a permit as a petitioner to prevent confusion with import applications. The Commission has also chosen to call the actual form a Permit. For clarity, we recommend that the regulations consistently use only the terms petitioner and petition and not the term “permit” in this section. We propose the following changes to the appropriate sections (proposed changes shown in underline):

§675.21(a) Petition Required – No low-level radioactive waste generated within a party state shall be exported for disposal in a non-party state unless the Commission has issued an export petition allowing the exportation of that waste pursuant to this section.

§675.21(c) Form of Petition—The petition or a request to amend a petition shall be in writing on the form promulgated by the Commission and posted on the Commission’s website. A petition must be submitted to the Commission AND Compact Facility Operator by electronic mail; an additional copy of the petition must also be sent to the Commission AND Compact Facility Operator through the United Parcel Service or FedEx delivery service.

§675.21(i) Terms and Conditions—The Commission may include any reasonable terms or conditions in the export petition that it deems appropriate or necessary.

§675.21(j) Petition Duration, Amendment, Revocation, Reporting and Assignment.

§675.21(j) Petition Duration, Amendment, Revocation, Reporting and Assignment.

§675.21(j)(1) An export petition shall be issued for the term specified in the petition and shall remain in effect for that term unless amended, revoked, or cancelled by the Commission. The specified term in the export petition shall not authorize shipments of the waste by the petitioner to occur beyond the end of the fiscal year for which the export petition is approved.

§675.21(j)(2) The Commission may add requirements or limitations to or delete requirements or limitations from the petition. Before doing so, the

Commission will provide the petitioner and the Compact Facility Operator five business days notice, so that they may comment on the proposed amendments to the petition. The Commission may also provide the petitioner a reasonable time to make changes necessary to comply with the additional requirements or limitations imposed by the Commission. No exports will be allowed under any export petitions until:

§675.21(j)(2)(A) the amendment to the export petition has been executed by both the petitioner and the Commission; and

§675.21(j)(2)(B) the petitioner has made any changes necessary to comply with additional requirements that the Commission has imposed.

§675.21(j)(3) The Commission's Chair or delegate may review petitions for amendments and, in consultation with the Commission's Technical Committee, approve minor amendments without a vote of the entire Commission, although the Chair or delegate has the discretion to refer an petition for an amendment to the full Commission for a decision. Notwithstanding the foregoing, the Commission will not approve an amendment that will extend the date on which an export petition expires beyond the end of the fiscal year.

§675.21(j)(4) Not later than October 31 of each calendar year, a petitioner shall file with the Commissions a report summarizing the waste exported in the immediately preceding period from September 1 to August 31....

§675.21(j)(5) An export petition is not assignable or transferable to any other person.

It may also be prudent to define "Commission's Technical Committee" in the §675.20.

§675.23 This section discusses the importation of waste from a non-party state to the Texas Compact Regional Disposal Facility.

§675.23(a) states: It is the policy of the Commission to: (1) promote the health, safety, and welfare of the citizens and the environment of Texas and Vermont; (2) limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste; (3) distribute the costs, benefits, and obligations among the party states; and

(4) refuse to allow the importation of low-level radioactive waste of international origin for disposal at the Compact Facility.

This policy statement in Draft form had an additional subsection (5) which stated,

(5) to require that, before any non-federal waste is imported into the State of Texas for disposal or processing on Nuclear Regulatory Commission form 540 or any successor form, such shipment shall have the approval of this Commission in accordance with this Rule 675.23.

In our September 4, 2014, letter (CD14-0201) responding to the Commission's request for informal comments on the proposed rule, we asked if Subsection 5 applies to waste shipped to Waste Control Specialists (WCS) "exempt" cell. Although WCS has marketed an exempt cell to generators of low-level radioactive waste, there are many unanswered questions surrounding this cell with regards to Texas Compact policy and existing Texas regulations.

The current proposed rule still begs the question as to whether or not wastes imported into the Texas Compact can be disposed of at the WCS exempt cell. Specifically, §675.23(d) currently states:

No person shall import any low-level radioactive waste for disposal that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste pursuant to this section.

EnergySolutions submits that the issue of importing waste that is classified as low-level radioactive waste into Texas and subsequently reclassifying the waste for disposal as exempt waste by WCS has not been properly addressed or resolved. Accordingly, we have attached our September 4, 2014, letter (CD14-201) and follow up letter of September 23, 2014, (CD14-0215) and include those comments as comments on these proposed rules.

The Texas Compact Act ("the Act") established the Texas Low-Level Radioactive Waste Disposal Compact Commission. As such, the

Commission is bound by the Conditions found in the Act, which is Federal Law. Article Vi, Section 6.01 of the Act states:

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.

Section 3.05(7) of Article III allows the the Commission to approve exports as established in §675.21. The Act continues in Section 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.

Section 3.05(6) of Article III requires:

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.

Our September 23, 2014, letter (CD14-0215) specifically requested that the Commission consider emergency rule making to address this apparent gap in current rules for importation of low level waste for reclassification and disposal in the WCS's exempt cell. Section §675.23 must include the Commission's controls on this type of material as required by the Act and the Commission's current rules.

§675.23(b) – The Commission chose to delete the reference to the “Radioactive Materials License dated September 10, 2009, as well as 20% of any additional maximum volume approved in a later license” and instead, has limited to the Vermont disposal capacity reserve to “20% of the Compact Facility maximum volume, as stated in the Compact.” It is unclear what is meant by the term “Compact” as used in the proposed rule. If the rule is intended to apply to Section 3.04(11) of the Act, what specific volume has the Commission established by rule for the facility as required by this Section? If the proposed rule refers to the limits found in

THSC §401.207(f), the limit is not for the proposed capacity, but is limited to the initial volume and curies. It is also important to note that the Compact facility operator only constructed 800,000 cubic feet of the initially licensed 2,310,000 cubic feet (approximately 35%). The Texas Compact should be making decisions based on constructed volume of the facility as opposed to approved expansion volumes of the facility.

§675.23(d) – The Commission chose to delete this subsection as described on page 40 TexReg 2502 of the May 8, 2015, *Texas Register*. Because the Commission is responsible for ensuring that Texas and Vermont have volume and curie capacity for the Compact Facility, EnergySolutions proposes that the Commission continue to track closely the capacity remaining for Texas and Vermont based on constructed landfill capacity, not on the approved expansion volume. The capacity study conducted by the TCEQ concluded that there may not be sufficient capacity for Texas and Vermont waste. The Texas Commission should not rely on “approved” capacity for the following reasons.

- (1) After the Compact facility operator received approval from the TCEQ to take low level radioactive waste, the parent company, Valhi, had been downgraded by Standard & Poor to a B1 rating. As such, the operator reached out to the citizens of Andrews County to float a \$75 million dollar bond. The bond passed in Andrews County by a very small margin (3 votes) and the burden was placed on this small county to pay for the construction of the facility. Moreover, WCS conceded at a previous Compact meeting that it had not secured financing to construct its recently expanded license capacity.
- (2) Since the license has been approved and the facility has started taking waste, the facility operator has had quarterly losses as reported by the parent company.
- (3) Health, safety, and financial risks should always be controlled by making conservative assumptions which, in this case, would limit the volume and curie calculations to the currently constructed facility.

Current receipts at the Compact facility suggest that the facility is more focused on import waste as opposed to Party State waste. Specifically, as of November 30, 2014, 80 percent of the volume and 99 percent of the curies have been consumed by imported waste. It is also important to note



that WCS has already imported 224,267 curies of the 3,890,000 curies licensed for the facility. Whereas imports to the compact facility are limited to 30% of the total curies licensed, this represents almost 20% of the import allotment for the initially licensed facility. When compared to the volume actually constructed at the facility, the curies imported to date represent 55% of the import allotment. As such, *EnergySolutions* strongly encourages the Commission to restore §675.23(d), require a more rigorous tracking of imported vs. party state waste, and encourage the use of industry norm of volume reduction. In addition, the elimination of the requirement for the facility operator to “maintain the facility in continual operation” is problematic. The Compact facility was constructed to fulfill the needs of Texas and Vermont and as such, should continue operating accordingly to ensure long-term disposal capacity. The current waste streams, operator solvency, and environmental uncertainty demand a cautious approach.

§675.23(i)(10) – This section obligates the Commission to evaluate import petitions with respect to, “The projected effect on the rates to be charged for disposal of party state compact waste.” It is our understanding that the Commission receives no information regarding the rates charged by the Compact facility operator. How has the Commission fulfilled this requirement and how will the Commission analyze and review future requests?

We commend the Texas Compact for the efforts taken so far to provide clear regulation on the export and import of radioactive wastes. We look forward to working with Texas Compact on this and future issues. If you have any questions or would like to discuss these comments further, please contact me at 801-649-2109 or 801-580-3201.

Respectfully submitted,

Daniel B. Shrum  
Senior Vice President, Regulatory Affairs

Attachments:

*EnergySolutions* LLC, Letter dated September 4, 2014 (CD14-0201)  
*EnergySolutions* LLC, Letter dated September 23, 2014 (CD14-0215)





September 4, 2014

CD14-0201

**VIA E-MAIL TO:** [Administration@tllrwdcc.org](mailto:Administration@tllrwdcc.org) and [Audrey.Ferrell@tllrwdcc.org](mailto:Audrey.Ferrell@tllrwdcc.org)

Robert Wilson  
Chairman  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
333 Guadalupe St., #3-240  
Austin, TX 78701

Re: Informal comments on 31 TAC §§675.21 - 675.24

Dear Chairman Wilson:

EnergySolutions, Inc. submits these informal comments on 31 TAC §§675.20 - 675.24. EnergySolutions, headquartered in Salt Lake City, Utah, is an international nuclear services company with operations throughout the United States, Canada, the United Kingdom and other countries around the world. We have participated in the Texas Low-Level Radioactive Waste (LLRW) Disposal Compact Commission (Compact) rulemaking process since the Compact's inception and hope you find our comments below to be helpful.

**Proposed Rule**

§675.20 We seek clarification of two definitions to ensure compliance. Specifically, §675.20(9) provides the definition of a "generator." As currently written, we are not sure our processors would meet the definition of "generator." EnergySolutions' Bear Creek and Erwin ResinSolutions' facilities are required by our State of Tennessee license to attribute ash and THOR by-product material to the facility. Both of these facilities process material from many states and produce a homogenous by-product material from multiple generators. As such, the State of Tennessee requires the residual to be attributed to the facility. The origin of the waste is still known (for import into the Texas Compact or foreign waste determination), but the facility becomes the generator. The Texas Compact is encouraging processors to use the Texas Compact facility, but we might be prohibited from doing so with the current definition of "generator." We propose changing the definition to include processors who become the legal generators of the waste, or some other appropriate definition that addresses this issue.

The second definition is §675.20(13) “management.” *EnergySolutions* performs volume reduction (compaction, incineration, thermal processing, etc.) at many facilities. Please include “volume reduction” as part of “management.”

§675.21 This section discusses the exportation of waste for disposal outside of the Texas Compact.

§675.21(c) Form of Petition – consider the following for this paragraph:

Form of Petition—The petition shall be in writing in the form attached to this Rule as “Form A.” A petition must be submitted to the Commission AND Compact Facility Operator by electronic mail; an additional copy of the petition must also be sent to the Commission AND Compact Facility Operator through the UPS or FedEx delivery service.

§675.22 This subsection is specific to wastes/materials exported to a non-party state for management or processing and then returned for disposal at the Compact Facility. We have no issues with the proposed changes.

§675.23 This section discusses the importation of waste from a non-party state for disposal at the Texas Compact Facility.

§675.23(a) states: It is the policy of the Commission to: (1) promote the health, safety, and welfare of the citizens and the environment of Texas and Vermont; (2) to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste; (3) to distribute the costs, benefits, and obligations among the party states; (4) to refuse to import low-level radioactive waste of international origin for disposal at the Compact Facility in accordance with the prohibition found in Texas Health & Safety Code § 401.207(c); and (5) to require that, before any non-federal waste is imported into the State of Texas for disposal or processing on Nuclear Regulatory Commission form 540 or any successor form, such shipment shall have the approval of this Commission in accordance with this Rule 675.23.

First, consider moving the first “to” inside (1) or removing “to” from subsections 2 through 5.

Second, does Subsection 5 apply to waste shipped to Waste Control Specialists’ (WCS) “exempt” cell? WCS has a RCRA Subtitle C facility co-located with

their Compact Waste Facility in west Texas. This Subtitle C facility was originally permitted to treat, store, and dispose of hazardous wastes. WCS has recently received approval to import LLRW for disposal at this facility as “exempt” waste. Although WCS has marketed an exempt cell to generators of LLRW, there are many unanswered questions surrounding this cell with regards to Texas Compact policy and existing Texas regulations.

The development of the Texas Compact Facility has always been discussed with the following in mind: first, the safe disposal of in-compact (Texas and Vermont) waste, and second, the allowance for importation of waste to generate revenue to the county, state, and even the compact. The importation of LLRW without consideration of the revenue commitment needs to be addressed.

The Commission is required to consider the “projected effect, if any, on the rates to be charged for disposal of in-compact waste” in §675.21(g)(i)(10) for waste that is exported for disposal to a non-party state. The Commission recognizes that exportation of large waste volumes could result in higher disposal rates for in-compact generators due to reduced waste volumes being disposed at the Compact Facility. Similarly, the Commission should add this same condition to §675.23 since the importation rules would otherwise be bypassed allowing disposal of LLRW at the WCS RCRA Subtitle C facility which likewise will result in increased rates for in-compact generators in order to cover the high fixed costs to operate the Compact Facility.

Regarding Texas Compact policy, WCS has proposed that two types of waste streams are eligible for disposal at their RCRA Subtitle C cell – 1) waste that was exempted in the state of origin and shipped for disposal, and 2) waste that was shipped as LLRW but is deemed to be exempt waste as determined by WCS after the waste arrives in Texas. Both waste types pose numerous public-policy concerns for the Texas Compact. For example, can waste be imported into the Texas Compact as LLRW and NOT be disposed in the Compact Waste Facility? How does this importation fit within the Texas Compact’s mission of managing LLRW within its jurisdiction?

With respect to waste that was originally LLRW but has become exempt in the state of origin, how does the Texas Compact manage the health and safety of the public, as well as financial risks associated with this activity?

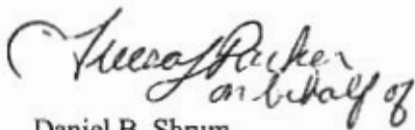
The Texas Compact will have no control over the importation of this material and regardless of the exempt status, the “risk” associated with the activity of the material has not changed. Is this what the State of Texas agreed to when agreeing to host a Compact Disposal Site – the importation of waste with no

Compact oversight and no financial benefit to the citizens of Texas? Is there a health and safety concern with disposing of LLRW—that WCS later deems to be exempt—into WCS’s RCRA cell? Was the RCRA cell designed and built to accept substantial amounts of this “exempt” waste?

Although not specifically a Texas Compact issue, there is also the competing regulatory issue of not changing classification of waste found in 30 TAC §336.229. Although this rule discusses “dilution,” the rule also prohibits the change of waste classification or disposal requirements. Previously, WCS publically expressed its concern over changing waste classification—hence, it seems the change from licensed LLRW to “exempt” would also be unacceptable. How will the Texas Compact address this issue?

We commend the Texas Compact for the efforts taken so far to provide clear regulation on the export and import of radioactive waste. We look forward to working with Texas Compact on this and future issues. If you have any questions or would like to discuss these comments further, please contact me at 801-649-2109 or 801-580-3201.

Respectfully submitted,



Daniel B. Shrum  
Senior Vice President, Regulatory Affairs



September 23, 2014

CD14-0215

**VIA E-MAIL TO:** [Administration@tllrwdcc.org](mailto:Administration@tllrwdcc.org) and [Audrey.Ferrell@tllrwdcc.org](mailto:Audrey.Ferrell@tllrwdcc.org)

Robert Wilson  
Chairman  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
333 Guadalupe St., #3-240  
Austin, TX 78701

Re: Request for Agenda Item on the November 2014 Texas Compact meeting

Dear Chairman Wilson:

EnergySolutions, Inc., provided informal comments on 31 TAC §§675.20 - 675.24 in our letter dated September 4, 2014 (CD14-0201). Based on our previous comments and additional information provided in this letter, EnergySolutions encourages that the Texas Low-Level Radioactive Waste Disposal Compact Commission consider an action item on the November 2014 agenda to consider emergency rulemaking to prevent low-level radioactive waste (LLRW) or material that was low-level radioactive waste from being disposed at WCS's exempt cell until permanent rules are adopted.

EnergySolutions has participated in the Texas Low-Level Radioactive Waste Disposal Compact Commission (Compact) rulemaking process since the Compact's inception. Immediately after the Compact was established, rulemaking began to control the import, export, and export for treatment of LLRW. These rules were finalized prior to any LLRW waste being imported into the Texas Compact. We believe that the process of developing rules prior to action provides the public the necessary transparency and opportunity to comment.

The operator of the Compact Waste Facility, Waste Control Specialists (WCS), has received approval from the Texas Commission on Environmental Quality (TCEQ) to import LLRW waste into Texas for reclassification and ultimate disposal in their RCRA "Exempt Cell." This Subtitle C facility was originally permitted to treat, store, and dispose of hazardous wastes—not LLRW. WCS is marketing this service as a way to circumvent the Compact's rules requiring importation approval and as a way to circumvent the TCEQ's requirement for Generator Certification.

In addition to avoiding Compact rules regarding importation, this service also enables WCS to avoid paying fees and taxes on this waste, which is in direct contrast as to how WCS promoted their facility to the Texas Legislature and Andrews County. The development of the Texas Compact Facility has consistently been promoted with the following in mind: first, the safe disposal of in-compact (Texas and Vermont) waste, and second, the allowance for importation of waste to generate revenue to the county, state, and the Compact. The importation of LLRW without consideration of the revenue commitment should be resolved before LLRW is shipped to the “Exempt Cell.”

According to Compact Rule §675.21(g)(i)(10), the Compact considers the “projected effect, if any, on the rates to be charged for disposal of in-compact waste” for waste that is exported for disposal to a non-party state. The Compact recognizes that exportation of large waste volumes could result in higher disposal rates for in-compact generators due to reduced waste volumes being disposed at the Compact Facility. Similarly, the Compact should also be concerned with the importation of exempt waste. Because of the lower rates WCS intends to charge for the disposal of these wastes, this practice also will result in increased rates for in-compact generators in order to cover the high fixed costs to operate the Compact Facility. The Compact should consider that WCS may seek to redirect LLRW to the “Exempt Cell” and avoid paying any of the statutory taxes and fees that otherwise would have been paid to the State, Andrews County, and the Compact.

Similar to the impact of waste volumes affecting the disposal rates for in-compact generators in Texas and Vermont, other LLRW Compacts, such as the Northwest Compact, may have concerns about significant volumes of LLRW being exported from their Compacts to the “Exempt Cell” that will result in higher disposal rates for those other Compact generators. The Compact should consult with other LLRW Compacts to ensure their policies allow for the exportation of LLRW to the WCS “Exempt Cell”.

*EnergySolutions* acknowledges that we are a direct competitor to WCS on some of the waste that could go to the “Exempt Cell.” However, *EnergySolutions* is more than just a waste disposal company – we are industry leaders in the safe management of nuclear materials. There are genuine and significant safety concerns with the transportation, management, and disposal of the potential waste streams that could go to the “Exempt Cell.”

The Nuclear Regulatory Commission (NRC) has established standards for the transportation and disposal of LLRW. WCS’s “Exempt Cell” goes well beyond what the NRC contemplated and industry practice for allowance of 10 CFR 20.2002 exempt wastes. The WCS “exempt” LLRW concentration limits are significantly higher than any



other state and federal exempt concentration limits. For example, the WCS “exempt” concentration limit for Co-60 is over 600 times higher than the U.S. Department of Transportation (DOT) exempt concentration limit for transporting LLRW (49 CFR 173.436). As a comparison, Tennessee’s exempt waste limit for Co-60 is 28% of the DOT exempt limit. In fact, containers of radioactive waste at the WCS “exempt” concentration limit for Co-60 may require shielding since contact dose rates could exceed 200 mR/hr. In comparison, the contact dose rate limit for exempt waste disposed in non-licensed landfills in Tennessee is 0.05 mR/hr; or 4,000 times less than in the WCS limit. It is difficult to imagine that waste requiring shielding in order to be safely handled could be considered sufficiently low in activity to be exempted from disposal requirements for LLRW.

In addition, the NRC should be consulted regarding the WCS exempt limits for Special Nuclear Material (SNM), which includes enriched uranium. The NRC has established very stringent safeguard and security controls for the receipt and disposal of enriched uranium. The exempt WCS concentration limits for enriched uranium would allow over 5 kilograms of enriched uranium to be disposed at the “Exempt Cell” in one gondola railcar containing LLRW soil. The “exempt” plutonium concentration limits are 75 times higher than the “exempt” enriched uranium concentration limits. If the NRC were to impose an enforcement action as a result of WCS disposing of enriched uranium in the “Exempt Cell”, this action could potentially jeopardize the ability for WCS to continue disposal of LLRW in the Compact Waste Facility. For this reason, the Compact should consult with the TCEQ and the NRC as to the specific approval that has been granted for WCS to receive SNM at the “Exempt Cell”.

The Compact will have no control over the importation of this material and, regardless of the exempt status, the risk associated with the activity of the material has not changed. This is not what the State of Texas accepted when agreeing to host a Compact Disposal Site – the importation of waste with no Compact oversight and no financial benefit to the citizens of Texas. There is a health and safety concern with disposing of LLRW—that WCS later deems to be exempt—into WCS’s “Exempt Cell”. The “Exempt Cell” was not designed, built, or surety funded to accept substantial amounts of this “exempt” waste.

We also believe the proposal to import LLRW and then reclassify the waste is inconsistent with TCEQ Rule 30 TAC §336.229 (“anti-dilution rule”). Although this rule addresses “dilution,” the rule also prohibits the change of waste classification or disposal requirements as proposed by WCS. WCS has previously publicly expressed its concern



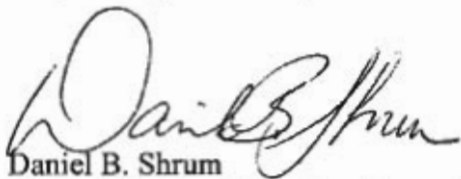
over changing waste classification—hence, it seems the change from licensed LLRW to “exempt” would also be unacceptable.

The performance assessment for the WCS RCRA Subtitle C facility is based on the disposal of wastes that are at approximately 10% of Class A limits (see attached literature from WCS in Attachment 1). This performance assessment assumes that the quantity of LLRW at the unlicensed Subtitle C landfill is diluted by the “clean non-radioactive” disposal volume of the Subtitle C landfill in order to calculate doses to the public. Allowing the disposal of Class A LLRW at the Subtitle C landfill that has been reclassified as “exempt waste” is inconsistent with these analyses and the TCEQ “anti-dilution rule”; thus, the safe disposal of this waste has not been properly analyzed.

The State of Texas has agreed to a certain amount of risk by hosting the Compact Waste Facility. The facility has been designed to isolate LLRW from the environment for extended periods of time. The Compact has been given the responsibility to control the import and export of LLRW into and out of the states of Texas and Vermont. The Compact should close any loophole that circumvents the protection afforded by the proper disposal of LLRW. Until such time that rules are established (as has been the standard), EnergySolutions respectfully requests that the Compact consider an action item on the November 2014 agenda to consider emergency rulemaking to prevent low-level radioactive waste (LLRW) or material that was low-level radioactive waste from being disposed at WCS’s exempt cell until permanent rules are adopted.

We commend the Texas Compact for the efforts taken so far to provide clear regulation on the export and import of radioactive waste. We look forward to working with Texas Compact on this and future issues. If you have any questions or would like to discuss these comments further, please contact me at 801-649-2109 or 801-580-3201.

Respectfully submitted,



Daniel B. Shrum  
Senior Vice President, Regulatory Affairs



**→ Exempt Waste Disposal at WCS's Sub-Title C Facility ←**

WCS has a new service to better serve the nations waste disposition needs. Based on proven risk-based analysis, Low-Activity waste can be disposed as exempt waste at WCS's sub-title C RCRA facility.

**Program Overview**

- Isotopic concentrations significantly above BSFR limits
- • Pre-established exemption levels – approximately 10% of Class A limits ←
- No compact importation or generator certification required
- WCS approves the generator developed waste profile and sampling plan
- Waste received as licensed waste and exempt determination performed by WCS at our licensed facility
- WCS accepts waste by rail or truck in standard DOT compliant containers
- • Dose rate limited to 2 mR/hr at one meter on waste packages ← **Started with ~20 mR/hr on contact  
NOW 100 mR/hr on contact! But no set limit!**
- Administrative limits for H3 (.1%) and Tc99 (1%)

**Can be over 300 mR/hr for Co-60**

**Note that regulations require an area at over 100 mR/hr to have a posting as High-Rad Work Area! WCS "Exempt Waste" requiring High Rad Work Area Posting!**