

November 28, 2017

CD17-0268

VIA E-MAIL TO: Comments@tllrwdcc.org

Leigh Ing
Executive Director
Texas Low-Level Radioactive Waste Disposal Compact Commission
505 West 15th Street
Austin, TX 78701

Re: Comments on 31 TAC §§675.24

Dear Ms Ing:

EnergySolutions, Inc. submits these comments on the Texas Low-Level Radioactive Waste Disposal Compact Commission's (TLLRWDC) proposed rule 675.24 relating to the importation of low-level radioactive waste that is below the criteria applicable for disposal in the Compact Waste Facility. 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 TLLRWDC Compact rulemaking process since its initiation and have found that the TLLRWDC Compact have applied their rules and policies in a reasonable manner. We hope you find our comments below to be helpful and we desire to continue our relationship with the TLLRWDC.

EnergySolutions is supportive of the proposed rule as it generally provides the TLLRWDC with the necessary information to manage and control the movement of low-level radioactive waste within the borders of Texas and Vermont. We have provided specific comments to the proposed rule and also provide general comments on the need for additional policy of this waste category.

Proposed Rule

§675.24(b) This section defines waste types applicable to the proposed rule. It is unclear, however, if the proposed rule also applies to wastes generated within the Texas and Vermont Compact (i.e., generated within Texas and Vermont), shipped to the Waste Control Specialist facility, but not disposed in the Compact Facility. Specifically, in §675.24(b), "importation into the host state" suggests that this management rule does

not apply to any waste generated within Texas and Vermont. The TLLRWDC has the ultimate responsibility for providing oversight of all radioactive waste that is managed within or is imported into the Compact. This section should be modified to include all waste, not just imported waste. The quarterly report will be incomplete without the addition of waste shipped to WCS from within the Compact, but disposed of in the Non-Compact-Facility RCRA Cell.

- §675.24(c) It remains unclear, between this section and §675.23(f), whether the disposal operator or the generator should file the applications. Please define “entity” as used in this and subsequent sections. Section §675.23(f) states who must apply for an import: “A person who is a generator, a broker acting on behalf of one or more small quantity generators, or an authorized representative of the Department of Defense shall submit an application to the Commission...” In §675.24(c), it appears that the entity must be in the host state, “Any entity in the host state that imports...”. This would imply that only the disposal operator or an entity within Texas may apply for an import of Non-Compact-Facility Low-Level Radioactive Waste (NCFW). Is this the intent of the proposed rule? If so, then the disposal operator should submit an application for each generator sending waste to the disposal site.
- §675.24(e) As stated in §675.24(c), the term “entity” is confusing. Specifically in §675.24(e), “An entity that imports low-level radioactive waste into the host state..” seems to mean something different than, “Any entity in the host state that imports...” In §675.24(e), entity is used consistent with the requirement found in §675.23(f). Please clarify

General Comments

Other concerns with respect to the proposed management rule are as follows:

- 1) Although general information is provided with respect to the imported waste in §675.24(c), does the TLLRWDC have the authority to prohibit international waste? Section 30 TAC §§36.747 includes a prohibition on wastes from international origin, specifically, “The licensee may not receive or dispose of waste of international origin at a land disposal facility licensed under this chapter.” However, the WCS RCRA cell is not licensed under Subchapter H, instead this facility has a State-issued RCRA permit. As guardians of the Texas

and Vermont compact, the TLLRWDC may want to include this prohibition in the management rule.

- 2) The proposed rule includes a Fiscal note stating, “no fiscal implications are anticipated for the Compact Commission or for units of state or local government as a result of the administration or enforcement of the proposed rule.” The Compact Commission, Andrews County, and the State of Texas all receive a financial benefit for waste disposal in the Compact Facility overseen by the TLLRWDC and TCEQ. Low-level radioactive waste brought into the Compact and diverted to the RCRA cell does not include any compensation to the Compact, County, or State. The fiscal note should account for loss of fees attributed to this diversion, including waste from within the TLLRWDC.

The State of Texas, not WCS, owns the waste disposed in the Compact facility and in time, at the RCRA cell. Because of the long-time frames associated with the decay of LLRW, mitigation fees are paid to governmental agencies to off-set the costs associated with hosting a disposal facility. In addition, surety and perpetual care funds are established by the licensee to protect members of the public from long-term liability associated with disposal activities. These fees and funds should be paid as part of proper disposal at the licensed facility. Instead, waste disposal is diverted to the RCRA cell with no benefit to the Compact, County, or State.

It was previously argued that wastes currently disposed at the RCRA facility would not otherwise be disposed at the Compact Facility. Unfortunately, the risk to the general public still exists through this type of disposal and mitigation fees and surety funds should be established to protect the public. EnergySolutions realizes that the TLLRWDC is not the licensing entity for this type of activity, but the TLLRWDC is chartered:

“to promote the health, safety, and welfare of the citizens and the environment of the party states; to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of the compact.”

As such, we encourage the TLLRWDC to promote the disposal of LLRW in licensed facilities, thereby limiting the number of facilities needed to ensure safe and cost effective management.

The WCS facility is an important addition for the safe management of LLRW in the United States. From the beginning the facility has been “promoted” to legislators and the public as a safe place for the **disposal of Texas compact LLRW**. But the current business practices of WCS reflect a very different story. Specifically, as of August 31, 2017, 81 percent of the volume and 94 percent of the curies have been consumed by imported waste. Now the facility is being sold as an alternative to licensed disposal – the curies and volume will now come to Texas without the benefit of impact fees or the security of surety assurances.

We commend the TLLRWDC for the efforts taken so far to provide clear guidance provided by this management rule. We look forward to working with TLLRWDC 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