

Sierra Club's Legal Challenge to the Compact License

Here is some background information regarding the process and the serious issues that Sierra Club raised, excerpted from a LLW Forum Flash: Sierra Club Challenges Decision Authorizing WCS to Accept Waste:

Sierra Club's Motion

In its May 21 motion, the Sierra Club argues that the Commission should overturn the April 25 waste acceptance authorization letter for the following reasons:

- WCS Failed to Comply with the License Conditions: The Sierra Club alleges that saturated conditions have been detected within the buffer zone and that the license expressly prohibits waste disposal operations when saturated conditions are detected.
- Decision Implicitly Modified the License Provisions: “[R]ather than requiring WCS to monitor the buffer zone, as mandated by the license, the Executive Director instead warns WCS that “[i]t is important to ensure that saturated conditions do not exist within 100 feet of the disposed waste,” writes the Sierra Club in its motion. “In other words, although WCS and the Executive Director had previously understood the license to require monitoring for saturated conditions within 100 feet of the disposal facility (as reflected in their written communications), the Executive Director appears to have modified this requirement so that saturated conditions may now exist within 100 feet of the disposed waste (even though there was no disposed waste at the time the April 25 letter was issued, and thus, presumably, no buffer zone.” Sierra Club asserts that “this implicit license revision” does not fall within the definition of an “administrative amendment” and therefore advance notice should have been provided.
- WCS Has Failed to Demonstrate that No Saturated Conditions Exist Within 100 Feet of the Disposed Waste: Even assuming that the Executive Director properly interpreted the license requirements, the Sierra Club nonetheless contends that WCS has failed to demonstrate that no saturated conditions exist within 100 feet of the disposed waste. In support of its contention, the Sierra Club argues that there are no monitoring wells within 100 feet of the disposed waste, the temporary observation wells do not demonstrate a lack of saturated conditions, and that at least one of the temporary observation wells has detected water.
- Authorization Violates Legislative Mandate, Health and Safety Code, and Commission's Own Rules: According to the Sierra Club, the authorization of disposal activities when saturated conditions exist violates (1) the Legislatures mandate to protect the public's health, safety and the environment; (2) Chapter 401 of the Texas Health and Safety Code and the Commission's own rules; and, (3) section 401.112 of the Texas Health and Safety Code. In particular, the Sierra Club asserts that section 401.112 requires that, in making a licensing decision regarding

the disposal of radioactive waste, the Commission must consider, among other factors, site suitability, geological, hydrological, and meteorological factors and natural hazards. “The Executive Director failed to sufficiently consider the aforementioned factors,” write the Sierra Club, “because he lacks sufficient information to adequately consider the presence of saturated conditions at the site.”

- Procedural Due Process Rights Were Denied and No Authority for Waste Acceptance:
The Sierra Club complains that it was not provided notice of the waste acceptance authorization decision, which it claims resulted in a denial of its’ procedural due process rights. Moreover, since a district court has now ordered TCEQ to hold a contested case hearing on the licensing decision, the Sierra Club asserts that “there is now no authority for such waste acceptance.”

Sierra Club’s Recital of Events...

- ...• On August 4, 2004, WCS applied to the TCEQ for a license authorizing the disposal of low-level radioactive waste at its site in Andrews County, Texas. The Sierra Club timely submitted comments and a request for a contested case hearing. On January 14, 2009, a majority of the TCEQ Commissioners voted to deny the Sierra Club’s hearing request and to grant the license application upon a demonstration of the acquisition of free and clear title.
- The Commission’s decision was memorialized in an order dated January 20, 2009. The license was signed by the Executive Director on September 10, 2009. Notice of the signed license was sent to the Sierra Club on September 17, 2009.
- The license required, among other things, that WCS cease all disposal operations and immediately notify the Executive Director if saturated conditions are detected in the buffer zone.
- In December 2011, TCEQ staff noted that water was detected in two of the wells along the eastern border of the Compact Waste Disposal Facility (CWDF)—i.e., in the buffer zone. By letter dated December 14, 2011, TCEQ staff reminded WCS that, in accordance with the license conditions, “in the event saturated conditions in the buffer zone are detected, [WCS] shall cease disposal operations and notify the [E]xecutive [D]irector immediately.” TCEQ instructed WCS to immediately address the area of concern prior to the commencement of disposal operations.
- WCS responded by letter dated December 22, 2011. WCS explained that the saturated conditions were expected and that the company had begun pumping and excavating the groundwater from the “buffer zone.” WCS proposed to proceed with its plans to commence disposal operations of the northwest corner of the facility and to install two additional, temporary observation wells to ensure saturated conditions do not exist within 100 feet of the disposal unit. If the pumping failed to remove the saturated conditions, WCS stated that it may request relocation of the buffer zone to the east in an unsaturated area.

- On March 28, 2012, WCS informed TCEQ that one of the temporary observation wells detected a bit of water, which the company attributed to condensation. WCS stated that the pumping of the water remains ongoing and that it would take 18 months to excavate the water.
- In a letter to state Representative Lon Burnam dated April 25, 2012, the Executive Director stated that there has been no detection of saturated conditions within 100 feet of the CWDF. Nonetheless, an “expert” report by George Rice attached to the motion by the Sierra Club asserts that groundwater exists in the buffer zone surrounding the CWDF. Rice further opines that groundwater exists within the facility itself.
- In May 2012, a Travis County District Court judge determined that TCEQ should have granted Sierra Club’s request for a contested case hearing prior to issuance of the license and ordered the agency to hold such a hearing.