

June 11, 2012

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Submitted via E-mail to:  
[Administration@tllrwdcc.org](mailto:Administration@tllrwdcc.org).

Dear TLLRWDCC,

The Lone Star Chapter of the Sierra Club appreciates the opportunity to comment on the proposed radioactive waste import applications. While we are submitting these comments on June 11<sup>th</sup>, or one day after the official deadline of June 10<sup>th</sup>, we are assuming as is customary with most state agencies, the TLLRWDCC will continue to accept comments today since June 10<sup>th</sup> occurred on a Sunday.

While we will offer some individual comments on some individual applications, our basic conclusions are the same for all eight applications by these seven companies – the TLLRWDCC should deny these applications without prejudice. Thus, while rejecting these applications, this would not prevent these same companies from seeking to export waste into Texas in the future, if certain conditions were met.

Our believe that the TLLRWDCC should reject these applications is based upon two factors:

1. The TCEQ has yet to complete its study determining how much available capacity could be dedicated to imported waste without impacting the needs of Texas and Vermont generators;
2. The Sierra Club has received a favorable ruling from State District Court ordering the TCEQ to hold a contested case hearing on the original WCS radioactive waste compact license. Therefore

The Table below lists the basic characteristics of these applications.

**Table. Proposed Radioactive Waste Import Agreements**

Company	Location	Type of Waste	Special Characteristics	Proposed Total Volume and Curies
Bionomics	Oak Ridge, Tennessee	Class A, B and C	Department of Defense Industrial, Research waste	500 Curies, 500 Cubic Feet

Tennessee Valley Authority	Alabama and Tennessee	Class B and C	Utility – Browns Ferry, Watts Bar and Sequoyah Nuclear Plants	200,000 Curies, 1,100 Cubic Feet,
Pacific Gas & Electric	Eureka, California	Class B and C	Utility Decommissioned Waste	732 Curies, 1,147 Cubic Feet
PerkinElmer	Boston, Mass	Class B	Medical Waste	15,188 Curies, 378 Cubic Feet
Nebraska Public Power District	Brownville, Nebraska	Class B Resins, Class C Irradiated Hardware	Nuclear Power Plant Waste	143,000 Curies, 3,062 cubic feet
Exelon	Illinois and Pennsylvania	Class B and C	Nuclear Power Plant Dewatered Beads and Resins	37,000 Curies, 13,000 Cubic Feet
Ecology Services	Columbia, Maryland	Class B and C	Electron Capture Devices used for industrial applications	100 Curies, 45 Cubic Feet
Total				396,520 curies 19,232 cubic feet

Because of the passage of SB 1504, we agree that generally the TLLRWDC does have the authority to consider and where appropriate approve radioactive import agreements. However that same legislation created careful conditions on acceptance of that waste. We believe those conditions give the TLLRWDC the authority to deny the eight applications before it, as well as the three most recent applications until certain conditions are met.

First, the total amount of waste and the total annual amount of waste that can be imported from generators that are not in a compact state is limited. Thus, under Health and Safety Code 401.207 (b), the licensed site may accept Class A, B and C radioactive waste from nonparty generators, once the license has been amended to accept such waste, but only “to the extent the acceptance does not diminish the disposal or curie capacity available to party states.”

The TCEQ is required to conduct a study under Health and Safety Code 401.208 to determine how much disposal or curie capacity should be made available to party states and how much could be made available for nonparty generator. That study is due by December 1, 2012. Because the site only opened in April of 2012, and most party generators have existing export authorizations, delaying consideration of any import agreements until after the study has been submitted to the appropriate legislative committees is entirely appropriate.

In fact, the only “official” number that has been generated by TCEQ or TLLRWDCDC assumes that some six million cubic feet will be needed to host Vermont and Texas waste, which is considerably more than allowed under the current license of 2.3 million cubic feet. Until this updated study is completed, our view is that no import agreements should be approved. To do otherwise could put the capacity of the site to receive Texas and Vermont waste in jeopardy.

In addition, under 401.207 (d), the TLLRWDCDC should not approve any application until the TCEQ provides a written evaluation that the particular waste stream and volume meets the license condition. Thus, until the TLLRWDCDC has received such an evaluation from the TCEQ, they can not approve any of these applications.

In addition, under 401.207 (e), annual limits are created for imported waste. Literally, the annual limit of waste is 50,000 cubic feet and 120,000 curies, though up to 220,000 curies are allowed in the very first year in which the site operates. As can be seen in the table above, the amount of curies in the application would be exceeded if all eight applications were accepted. Thus, the TLLRWDCDC is faced with a dilemma because if it were to approve all eight applications, it would violate 401.207 (e). It would be better in our view to deny all the application until the December 1, 2012 study is completed and until legal issues at the site are resolved.

## 2. Legal Issues

When the original license for the Compact Site was granted on January 20<sup>th</sup>, 2009 by the Texas Commission on Environmental Quality on a 2-0 vote, the TCEQ also denied Sierra Club and its members the opportunity to participate in a contested case hearing. Sierra Club through its attorneys filed an appeal to the decision in State District Court in Travis County. The appeal was lengthier than anticipated, but on May 8, 2012, Judge Lora Livingston ordered the case remanded back to TCEQ and ordered that a contested case hearing be granted to Sierra Club and its members impacted by the granting of the license.

On May 14, 2012, Judge Livingston signed the order, a copy of which is attached. The order clearly states that the original January 2009 TCEQ order is reversed and remanded. While the state and WCS have appealed Judge’s Livingston’s order, the fact is that the only ruling that has been given puts the license itself into question.

In response to Judge Livingston's order, Sierra Club has also submitted a motion to the Texas Commission on Environmental Quality (TCEQ) that seeks to overturn the Executive Director's April 25, 2012 decision authorizing Waste Control Specialists LLC (WCS) to begin accepting waste and to begin waste disposal activity under Radioactive Material License R04100. This motion was followed by an original petition filed with state district court in Travis County seeking to review of TCEQ's decision authorizing WCS to commence low-level radioactive waste disposal activities despite the fact that WCS has not yet complied with all TCEQ regulations and license provisions. A copy of that decision is also attached.

It is worth noting that even as the TCEQ issued a letter authorizing the acceptance of waste in April of 2012, they expressed and noted a specific concern of their being water and saturated conditions in monitoring wells just outside the area to accept radioactive waste. As Sierra Club argued in its petition, the TCEQ was violating its own rules in allowing WCS to begin accepting waste even as it found saturated conditions in the nearby soils.

It makes no sense to import waste from other states and turn the site into the national site for dumping radioactive waste when a judge has ruled that TCEQ must give Sierra Club a contested case hearing because of the potential inadequacies of the site, when Sierra Club has petitioned the court to revoke the order allowing wastes to be accepted, and when TCEQ itself has expressed concern about water found at the site. While the Compact Commission legally must consider these applications, under the circumstances they have every right to delay making a decision on whether or not to bring these dangerous wastes into Texas.

We anticipate that within the next six months, both the petition to state court asking that the April 25, 2012 decision allowing operations to begin, as well as the appeal of Judge Livingston's order to remand and revoke the original Judge's decision will be met. In addition, the TCEQ will have conducted its analysis of the capacity of the license to accept nonparty waste and the needs of the party states. At that time, the TLLRWDC will have much better information on which to make a decision.

Thus, the Compact Commission should halt consideration of imports of waste until all legal issues are resolved, until the contested case hearing has been held or a decision not to hold such a hearing has been made, until TCEQ has conducted its study of the needs of Texas and Vermont generators and until TCEQ no longer has concerns about water levels in any monitoring well.

#### **A few other general comments**

Five of the applications are for waste from nuclear power plants. The applications are vague, do not differentiate whether the waste is Class A or B, and include both stable and in some cases unstable waste forms. None of the applications provide information about how exactly the waste would arrive in Texas and what routes would be used.

These large generators are seeking to export their wastes to Texas because the compacts to which they belong have either failed to successfully site a LLRWD site, or because their sites have reached capacity and are no longer taking Class B and Class C. Texas is being asked to assume the risk of these wastes, with a private company gaining the profits. We are particularly concerned about these agreements with large nuclear facility. If approved, it will be very difficult for Texas to deny applications from nuclear facilities throughout the US. Texas will become the defacto site for Class B and C materials from all over, allowing these states to ignore their responsibilities under the Low-Level Radioactive Waste Compact Law.

## **Specific Comments on Individual Import Agreements**

### **Tennessee Valley Authority Applications**

We find the two applications by TVA to be somewhat confusing. It is unclear if the second applications is meant as a supplement to the first application or should be treated as a separate application.

In addition, Application 1 lists three different reactors as being the potential source of radioactive waste since copies of all three licenses are attached, though only Browns Ferry is actually listed as the source in the actual application material. Moreover, the application is exceedingly vague in terms of how much of the waste would be Class B and Class C. It is also worth noting the large quantities of certain compounds like C-14 and TC-99 which are specifically limited in the license granted by TCEQ. It is unclear whether Texas and Vermont generators would be impacted by this new waste source in terms of meeting their own needs.

### **EXELON**

Like the TVA application, the Exelon applications lists several specific origins of the waste and does not specify exactly how much volume and radioactive would come from each site. In addition, and of special concern, is the fact that it lists its resins and beads as “unstable” waste and also lists specific compounds like c-14 and TC\_99, which again are limited in the license.

### **NEBRASKA PUBLIC POWER**

The Nebraska Public Power application again seeks authorization to export resins and irradiated hardware from a nuclear power plant. The resins are unstable, and several compounds limited in the license would be present in these waste streams. The application is for a large number of curies that have extremely dangerous components.

The Lone Star Chapter of the Sierra Club appreciates the opportunity to comment on these initial import agreement applications. We will be submitting additional comments on the three more recent applications from generators seeking to send us their waste.

Again, we believe the TLLRWDC is well within its rights to deny all applications until the TCEQ study is conducted and the legal issues surrounding the site are resolved. We believe that these rejections should not prevent the same applicants in the future from reapplying. In general, we are also disappointed with the very limited information about the proposed waste streams that would come to Texas. Much more detailed information about waste streams, routes, shipping containers and processes to stabilize the waste must be provided in future applications, or to augment the current applications.

Sincerely,

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