

**Marisa Weber**

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**From:** PUBCOMMENT-OCC  
**Sent:** Tuesday, May 20, 2014 3:30 PM  
**To:** PUBCOMMENT-OCC2  
**Subject:** FW: Public comment on Permit Number R04100  
**Attachments:** comments on WCS' Amendment 26, R04100.docx

PM

**From:** karendhadden@gmail.com [mailto:karendhadden@gmail.com]  
**Sent:** Monday, May 19, 2014 11:29 PM  
**To:** donotReply@tceq.texas.gov  
**Subject:** Public comment on Permit Number R04100

*RWD*  
*90253*

**REGULATED ENTY NAME WASTE CONTROL SPECIALISTS**

**RN NUMBER:** RN101702439

**PERMIT NUMBER:** R04100

**DOCKET NUMBER:** 2013-1120-RAW

**COUNTY:** ANDREWS

**PRINCIPAL NAME:** WASTE CONTROL SPECIALISTS LLC

**CN NUMBER:** CN600616890

**FROM**

**NAME:** Karen Hadden

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**COMPANY:** SEED Coalition

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**COMMENTS:** Dr. Bryan W. Shaw, Ph.D. Chairman Texas Commission on Environmental Quality Building F, MC 100 P.O. Box 13087 Austin, Texas 78711 Mr. Toby Baker Commissioner Texas Commission on Environmental Quality Building F, MC 100 P.O. Box 13087 Austin, Texas 78711 Mr. Zak Covar Commissioner Texas Commission on Environmental Quality Building F, MC 100 P.O. Box 13087 Austin,

*MW*

Texas 78711 Chief Clerk, MC-105 TCEQ P.O. Box 13087 Austin, Texas 78711-3087 Re: Proposed Major Amendments to Radioactive Material License R04100, Amendment 26 We, as representatives of environmental and health advocacy organizations, strongly oppose increasing the financial and health risks to residents of Texas and New Mexico, where some people live very close to the Waste Control Specialists disposal site. We respectfully, but adamantly, oppose the three proposed major amendments to WCS's operating license and urge that a public meeting be held to discuss them. None of the three amendments will benefit the public. They magnify the monetary burdens that the State of Texas will potential endure (by tens of millions of dollars), allow more (and more dangerous) radioactive waste, and create less transparency. The proposed changes directly benefit WCS. These amendments enable WCS to triple the volume of radioactive materials it can dispose of, greatly reduce its financial liability for potential accidents, allow acceptance of more dangerous types of waste, and allow less public transparency. Don't Reduce WCS' Financial Assurance Requirements The changes would reduce WCS's financial liability by over \$50 million, including a reduction of \$46 million in financial assurances for any decommissioning and closure costs. They will also vastly expand both the volume and even types of radioactive waste that may be disposed, including depleted uranium. WCS gets paid for disposing of waste and thus expands its potential revenues by increasing and diversifying the radioactive waste it may accept. WCS's financial assurances defray the State's costs in the event of an accident or a post-closure situation requiring the State to incur costs in managing or containing the waste. The Texas Department of Health and Safety (Department) and Texas Commission on Environmental Quality (Commission) "shall use the security provided by the license holder to pay the costs of actions that are taken" when the licensee holder is unable to remove a threat to public health, safety, and the environment. Without financial assurances, Texas taxpayers will bear those costs since the State of Texas automatically takes title to all radioactive waste disposed in the Compact Waste Disposal Facility. This makes taxpayers liable for the costs that the Commission may incur in undertaking "monitoring, maintenance, or emergency measures that are necessary to protect the public health and safety and the environment in connection with low-level radioactive waste and property for which it has assumed custody." The financial assurances required by the Legislature were not meant for the good of WCS. They were meant for the good of Texas taxpayers, nearby residents (both present and future), and the environment, all of which would be impacted an inadequately funded response to a radiation leak from a container, aquifer contamination, or other unexpected hazard. So too would they be impacted by any deficiencies in the expected site closure and stabilization process that will be undertaken by the Commission. Don't Allow More Waste, Different Waste, More Hazards The proposed amendments would also create worrisome loopholes and directly contravene the initial purpose of this facility: disposing of Class A, B, or C low-level radioactive waste from Texas and Vermont generators. This was the idea originally pitched to the Legislature and the general public back in the 1990s. Yet, this idea does not reflect reality today, much less in the future. In a perverse 180-degree turn, the proposed amendments would explicitly allow for disposal of those "waste streams not classified as Class A, B, or C low level radioactive waste" so long as the Executive Director of the TCEQ authorizes it. This loophole is outrageous. It flies in the face of the whole intent of the license. Moreover, the proposed amendments would remove the following from the current list of explicitly "prohibited waste:" greater than Class C waste, "waste streams not specifically authorized by the license," and even depleted uranium. In fact, these amendments would explicitly allow for the disposal (not just storage) of "waste streams containing depleted uranium in concentrations greater than ten (10) nanocuries per gram." It is worth mentioning that, despite the original intent of the Legislature, the volume of compact waste from Texas and Vermont represents less than one third the total volume currently disposed of at the Compact Disposal Facility. Also, these states' share of total radioactivity is less than 1% of the total curies. We oppose the changes in the license that would increase dangers to the public and environment by allowing the acceptance of waste streams that are even more dangerous and have longer half-lives than the low-level waste regularly disposed at the facility. Don't Allow Less Transparency, Which Disadvantages the Public The amendments would triple the volume of radioactive waste that may be disposed of in the Compact Disposal Facility, from 2.39 million to 9.0 million cubic feet, and allow existing curie limits to be increased through an almost cursory minor amendment process. There is no justification for using the short minor amendment process, which cuts out the public's opportunity for a contested case hearing any time WCS seeks to increase the total allowable radioactivity at that facility. Limitations on total allowable radioactivity (expressed in units of decay-corrected curies) indirectly

affect both the amount and types of waste that WCS may accept for disposal. Thus they also affect the costs that Texas taxpayers could incur, especially when existing financial assurances are insufficient to pay for steps taken by the Commission to remove an unexpected threat or actions regarding the waste and property over which it has assumed custody. Raising the total allowable radioactivity is not inconsequential, yet WCS seeks to make this process routine and less transparent. Curie limits help ensure the safety of the facilities in Andrews County, the availability of space for waste from Texas and Vermont generators, and the protection of the local environment and its residents. The Legislature recognized the importance of abiding by numerical curie limits when chose to set specific curie, volume, and percentage limits on nonparty compact waste. Public input is thus appropriate. The 10-day minor amendment process is too short to provide a fair opportunity to comment on increases in the total allowable radioactivity at the Compact Disposal Facility. We strongly oppose limiting the duration or extent of Texans' right to voice their concerns on this important matter. Please Reject the Proposed Major Amendments WCS has been increasing its revenues by expanding its universe of customers, namely out-of-state generators or brokers who send their waste for disposal or processing. This is a time when restraint, not expansion, is warranted by the continuing presence of water in wells surrounding and directly adjacent to the disposal cells at the facility. There is no justification for reducing by \$50 million the financial assurances meant to pay for the costs of unforeseen occurrences, corrective measures to protect the public or environment, and other expenses that Texas taxpayers will otherwise have to bear. This reduction is even less justified given the additional request to triple the volume of waste that may be disposed of in the Compact Disposal Facility. Furthermore, it adds insult to injury to discreetly silence the public by using the too short minor amendment process to increase the total allowable radioactivity at this facility. We urge that you not allow expansion of the types of radioactive waste that WCS may accept. The Executive Director should not be allowed to approve highly dangerous waste streams that the Legislature did not intend to accept at all. The amendment would not only allow importation of waste streams not previously approved in the license, but also allow the waste to be imported in large quantities. We urge the Commission to reject these proposed amendments to WCS's license and we request that a public meeting be held. Karen Hadden Executive Director, SEED Coalition 605 Carismatic Lane, Austin, TX 78748 512-797-8481, [karen@seedcoalition.org](mailto:karen@seedcoalition.org) Tom "Smitty" Smith Director, Public Citizen 815 Brazos, Suite 300 Austin, TX 78701 Susan Dancer President, South Texas Association for Responsible Energy PO Box 209 Blessing, TX 77419 Robin Schneider Texas Campaign for the Environment 611 S. Congress Ave. Suite 200B Austin TX 78704 Alice Canestaro-Garcia Visual Artist / Energia Mía San Antonio, Texas 210.639.3622 [alice.canestraro@gmail.com](mailto:alice.canestraro@gmail.com) Cynthia Weehler 4209 Columbine Dr., Austin, TX 78727 Energia Mía 512-873-4942 Luke Metzger Director, Environment Texas 815 Brazos, Suite 600 Austin, TX 78701 (512) 479-0388

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Texas Commission on Environmental Quality  
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Mr. Toby Baker  
Commissioner  
Texas Commission on Environmental Quality  
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Mr. Zak Covar  
Commissioner  
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Chief Clerk, MC-105  
TCEQ  
P.O. Box 13087  
Austin, Texas 78711-3087

**Re: Proposed Major Amendments to Radioactive Material License R04100, Amendment 26**

We, as representatives of environmental and health advocacy organizations, strongly oppose increasing the financial and health risks to residents of Texas and New Mexico, where some people live very close to the Waste Control Specialists disposal site.

We respectfully, but adamantly, oppose the three proposed major amendments to WCS's operating license and urge that a public meeting be held to discuss them.

None of the three amendments will benefit the public. They magnify the monetary burdens that the State of Texas will potential endure (by tens of millions of dollars), allow more (and more dangerous) radioactive waste, and create less transparency.

The proposed changes directly benefit WCS. These amendments enable WCS to triple the volume of radioactive materials it can dispose of, greatly reduce its financial liability for potential accidents, allow acceptance of more dangerous types of waste, and allow less public transparency.

**Don't Reduce WCS' Financial Assurance Requirements**

The changes would reduce WCS's financial liability by over \$50 million, including a reduction of \$46 million in financial assurances for any decommissioning and closure costs. They will also vastly expand both the volume and even types of radioactive waste that may be disposed, including depleted uranium. WCS gets paid for disposing of waste and thus expands its potential revenues by increasing and diversifying the radioactive waste it may accept.

WCS's financial assurances defray the State's costs in the event of an accident or a post-closure situation requiring the State to incur costs in managing or containing the waste. The Texas Department of Health and Safety (Department) and Texas Commission on Environmental Quality (Commission) "shall use the security provided by the license holder to pay the costs of actions that are taken" *when the licensee holder is unable to remove a threat to public health, safety, and the environment.*<sup>1</sup>

Without financial assurances, Texas taxpayers will bear those costs since the State of Texas automatically takes title to all radioactive waste disposed in the Compact Waste Disposal Facility.<sup>2</sup> This makes taxpayers liable for the costs that the Commission may incur in undertaking "monitoring, maintenance, or emergency measures that are necessary to protect the public health and safety and the environment in connection with low-level radioactive waste and property for which it has assumed custody."

The financial assurances required by the Legislature were not meant for the good of WCS. They were meant for the good of Texas taxpayers, nearby residents (both present and future), and the environment, all of which would be impacted an inadequately funded response to a radiation leak from a container, aquifer contamination, or other unexpected hazard. So too would they be impacted by any deficiencies in the expected site closure and stabilization process that will be undertaken by the Commission.

### **Don't Allow More Waste, Different Waste, More Hazards**

The proposed amendments would also create worrisome loopholes and directly contravene the initial purpose of this facility: disposing of Class A, B, or C low-level radioactive waste from Texas and Vermont generators. This was the idea originally pitched to the Legislature and the general public back in the 1990s. Yet, this idea does not reflect reality today, much less in the future.

In a perverse 180-degree turn, the proposed amendments would explicitly allow for *disposal* of those "waste streams *not* classified as Class A, B, or C low level radioactive waste" so long as the Executive Director of the TCEQ authorizes it. This loophole is outrageous. It flies in the face of the whole intent of the license.

Moreover, the proposed amendments would remove the following from the current list of explicitly "prohibited waste:" greater than Class C waste, "waste streams not specifically authorized by the license," and even depleted uranium. In fact, these amendments would explicitly allow for the *disposal* (not just storage) of "waste streams containing depleted uranium in concentrations *greater* than ten (10) nanocuries per gram."

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<sup>1</sup> TEX. HEALTH & SAFETY CODE § 401.152(b)-(c).

It is worth mentioning that, despite the original intent of the Legislature, the volume of compact waste from Texas and Vermont represents less than one third the total volume currently disposed of at the Compact Disposal Facility. Also, these states' share of total radioactivity is less than 1% of the total curies.<sup>3</sup>

We oppose the changes in the license that would increase dangers to the public and environment by allowing the acceptance of waste streams that are even more dangerous and have longer half-lives than the low-level waste regularly disposed at the facility.

### **Don't Allow Less Transparency, Which Disadvantages the Public**

The amendments would triple the volume of radioactive waste that may be disposed of in the Compact Disposal Facility, from 2.39 million to 9.0 million cubic feet, and allow existing curie limits to be increased through an almost cursory minor amendment process. There is no justification for using the short minor amendment process, which cuts out the public's opportunity for a contested case hearing any time WCS seeks to increase the total allowable radioactivity at that facility.

Limitations on total allowable radioactivity (expressed in units of decay-corrected curies) indirectly affect both the amount and types of waste that WCS may accept for disposal.<sup>4</sup> Thus they also affect the costs that Texas taxpayers could incur, especially when existing financial assurances are insufficient to pay for steps taken by the Commission to remove an unexpected threat or actions regarding the waste and property over which it has assumed custody.

Raising the total allowable radioactivity is not inconsequential, yet WCS seeks to make this process routine and less transparent. Curie limits help ensure the safety of the facilities in Andrews County, the availability of space for waste from Texas and Vermont generators, and the protection of the local environment and its residents. The Legislature recognized the importance of abiding by numerical curie limits when chose to set specific curie, volume, and percentage limits on nonparty compact waste.<sup>5</sup> Public input is thus appropriate.

The 10-day minor amendment process is too short to provide a fair opportunity to comment on increases in the total allowable radioactivity at the Compact Disposal Facility. We strongly oppose limiting the duration or extent of Texans' right to voice their concerns on this important matter.

### **Please Reject the Proposed Major Amendments**

WCS has been increasing its revenues by expanding its universe of customers, namely out-of-state generators or brokers who send their waste for disposal or processing. This is a time when restraint, not expansion, is warranted by the continuing presence of water in wells surrounding *and directly adjacent* to the disposal cells at the facility.

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There is no justification for reducing by \$50 million the financial assurances meant to pay for the costs of unforeseen occurrences, corrective measures to protect the public or environment, and other expenses that Texas taxpayers will otherwise have to bear.

This reduction is even less justified given the additional request to triple the volume of waste that may be disposed of in the Compact Disposal Facility. Furthermore, it adds insult to injury to discreetly silence the public by using the too short minor amendment process to increase the total allowable radioactivity at this facility.

We urge that you not allow expansion of the types of radioactive waste that WCS may accept. The Executive Director should not be allowed to approve highly dangerous waste streams that the Legislature did not intend to accept at all. The amendment would not only allow importation of waste streams not previously approved in the license, but also allow the waste to be imported in large quantities.

We urge the Commission to reject these proposed amendments to WCS's license and we request that a public meeting be held.

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**Marisa Weber**

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**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, May 21, 2014 10:32 AM  
**To:** PUBCOMMENT-OCC2  
**Subject:** FW: Public comment on Permit Number R04100  
**Attachments:** amendment262.docx

PM

**From:** [cyrus.reed@sierraclub.org](mailto:cyrus.reed@sierraclub.org) [<mailto:cyrus.reed@sierraclub.org>]  
**Sent:** Tuesday, May 20, 2014 11:19 PM  
**To:** [donotReply@tceq.texas.gov](mailto:donotReply@tceq.texas.gov)  
**Subject:** Public comment on Permit Number R04100

*RCO  
20253*

**REGULATED ENTY NAME WASTE CONTROL SPECIALISTS**

**RN NUMBER:** RN101702439

**PERMIT NUMBER:** R04100

**DOCKET NUMBER:** 2013-1120-RAW

**COUNTY:** ANDREWS

**PRINCIPAL NAME:** WASTE CONTROL SPECIALISTS LLC

**CN NUMBER:** CN600616890

**FROM**

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**FAX:**

**COMMENTS:** Please see attached comments on proposed Amendment No. 26.

*RCO*

Chief Clerk  
MC 105  
TCEQ

May 20, 2014

**Re: Proposed Major Amendments to Radioactive Material License R04100,  
Amendment 26**

**Dear Chief Clerk,**

The Sierra Club is a long-time participant in legislative statutes, rulemaking and comments on individual permits and licenses related to the storage and disposal of radioactive waste. As you know, when TCEQ initially issued a draft license for the WCS facility in West Texas, we objected on behalf of several members living in Eunice, New Mexico. While the TCEQ Commissioners voted 2-0 to approve the compact and federal facility license, and the Court of Appeals recently upheld that decision, we have formally asked the Court of Appeals to reconsider their opinion.

While the decision about whether TCEQ acted appropriately in denying the Sierra Club and our members standing in a Contested Case Hearing is a separate matter that will be dealt with in the legal system, we wish to express our opposition to and concern over Amendment 26, which only heightens the potential for issues to occur at the radioactive waste disposal site only a few years after it officially began receiving low-level and other radioactive wastes for disposal.

**A Major Expansion in Volume**

First we would note that the proposed amendment would significantly increase the volume of the radioactive waste site from 2.3 to 9.0 million cubic feet, or nearly three times the amount. Because of recent statutory changes allowing that a significant amount of waste – up to 30% of total capacity – can come from states that are not part of the “Texas Compact” this expanded amount of waste could come from multiple areas. In fact, the basis for recent legislation allowing for an increased amount from out of state was predicated on the fact that WCS did not “need” all of the capacity of the licensed volume for compact waste and could afford to use some of it for this imported waste. With this amendment, however, it appears that the facility is turning from one that is intended to serve the interests of Texas and Vermont disposal needs to one that is strictly about serving the profit needs of WCS. Thus, it appears to be undermining the very rationale for the original legislation.

While we are obviously concerned about the capacity for the site to receive three times the volume of waste, what is of even greater concern is that the actual construction documents that would describe how and where the new boundaries of the site would be would not be known until 120 days before construction was planned. In other words, in essence with this amendment, TCEQ would be authorizing a volume increase without even knowing the boundaries or exact depths of the disposal units. One significant change is to allow the lowest point of disposal to go down another 15 feet, but how this will impact the saturated water levels of the site at 120 feet below the surface is unclear.

We are supportive of the requirement in LC 83 that all deviations must be explained and presented under the seal of a Texas Registered Professional Engineer. But we are very much opposed to the idea of changing CWF decay corrected radioactivity through minor amendment, as laid out in LC 145. To change permit limits through minor amendment is in fact contrary to the spirit of the rules developed through SB 1604 in 2009, which helped define the difference between major, minor and administrative amendments on radioactive waste disposal licenses.

We are similarly concerned about the removal of limitations on the amount of C-14 limits and particularly concerned with removing a reference to a prohibition against Greater than Class C waste. While we do not object to referring back to statutes, we would maintain a reference to Greater than Class C waste.

### **A Major Expansion in New Streams of Waste**

In addition to what we have already mentioned – removing some specific prohibitions and allowing for higher amounts of radioactive decay and C-14 among other waste streams, of greatest concern to the Sierra Club is the major expansion in a new type of waste not initially contemplated – depleted uranium and other wastes related to the processing of uranium for nuclear power. This facility was intended to be a disposal facility for low-level radioactive waste and not for waste related to depleted uranium, uranium deconversion waste, or uranium enrichment wastes. With the proposed removal of prohibitions or limits on these wastes under the proposed amendment, TCEQ would be in effect creating a brand new waste stream for the facility that again was not contemplated in the original legislation that helped pave the way for the site. In fact, the original prohibition against disposing DU waste of more than 10 nanocuries per gram, the new proposed license would allow such waste, and only limit it by location by required to be placed at the greatest depth. Interestingly, the proposed amendment would even give

WCS two different disposal container options. Sierra Club is unaware if these containerized solutions have even been studied for DU. We are particularly aghast that TCEQ would contemplate disposing of waste in Non-Containerized Disposal Units. In essence, with this new amendment, WCS will become the choice destination for DU and similar wastes, including those being produced at the LES Uranium Enrichment Facility in nearby Hobbs, New Mexico.

Thus, a low-level radioactive waste disposal facility for Texas and Vermont waste has quickly become first the nation's low-level radioactive waste "solution" and now is being contemplated as the choice destination for DU. While this may make business sense, we are worried that no additional studies or analysis have been made to see if this waste can be disposed of safely in these canisters.

### **A New Flexibility in Allowing the Executive Director to Approve New Wastes through a an Administrative Action**

The amendment completely eliminates the criteria in LC 46 which previously set out specific limits for specific streams of waste, and instead simply sets the overall curie and volume limits of the license. It also appears in 46C to allow the executive director to add categories of waste for acceptance with NO MAJOR AMENDMENT required. This essentially means that an employee of the TCEQ can allow imports of radioactive waste that are not classified as A, B or C without going through an amendment process. This is clearly unacceptable for new streams of waste to be accepted without public input and only by meeting performance objectives and a performance assessment.

### **A Reduction in Financial Assurance**

While we are not opposed to every modification in LC 185 regarding financial assurance, overall the new proposed financial assurance provides the public with LESS assurance that the site will be properly cleaned up and closed once operations stop and that there will be sufficient financial assurance in the event of an accident. With increased volume and the expansion into DU and similar wastes, financial assurance requirements should increase, not decrease.

### **No Need for Action**

We do not support this proposed major amendment to the radioactive waste license (R04100). While not every change is objectionable, the significant increase in overall

volume, DU, C-14, Radioactive Decay, and the added power of the Executive Director to approve new waste streams without a major amendment clearly requires much greater scrutiny. There is no need for the Commission to approve these changes. This disposal site is authorized by statute to serve the needs of the Texas Compact; the needs of WCS to increase imports from other states, or import DU and other new waste streams are not required by statute.

### **TCEQ Should Hold A Public Meeting**

The public deserves a hearing to explore these issues and find out the reasons that WCS is seeking these proposed changes. The Sierra Club has members in Andrews, Texas and Eunice and Hobbs, New Mexico who could be impacted by these changes and would like an opportunity to express their views and interact with TCEQ and WCS. Please schedule a public meeting.

Sincerely,

Cyrus Reed, Conservation Director

Lone Star Chapter, Sierra Club

Sincerely,

Cyrus Reed

Lone Star Chapter, Sierra Club

[Cyrus.Reed@sierraclub.org](mailto:Cyrus.Reed@sierraclub.org)

cc. The Honorable Kel Seliger

The Honorable Troy Lewis