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May 16, 2014

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Re: Rulemaking petition to require a major amendment process and environmental analysis report for specified major changes in the type, quantity, and concentration limits of radioactive waste accepted by Waste Control Specialists.

Dear Commissioners,

The purpose of the following rulemaking petition is to ensure public input and thorough scientific analysis whenever there are significant changes in the type, quantity, or concentration limits of the radioactive wastes received by our state's sole licensee for the near-surface land disposal of low-level radioactive waste.

I have become concerned in recent months with the continual expansion of the types and quantities of radioactive wastes that are being accepted by that licensee, Waste Control Specialists (WCS).

COMMITTEES: ENERGY RESOURCES • CRIMINAL JURISPRUDENCE

### A. Worrisome Trends Necessitate a Corrective Response.

The latest proposed amendments to WCS's operating license would create worrisome loopholes and directly contravene the initial purpose of the Compact Disposal 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 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.<sup>1</sup> I respect the technical knowledge of the TCEQ. Yet, this loophole is unacceptable since such consequential decision-making should involve ample public input and should thus require the use of the 30-day major amendment process.

Moreover, the proposed amendments would remove from the current list of explicitly "prohibited waste" the following: "[g]reater than Class C waste," "[w]aste streams not specifically authorized by the license," and even "[d]epleted uranium[.]"<sup>2</sup> In fact, these amendments would explicitly allow for *disposal* (not just storage) of "[w]aste streams containing depleted uranium in concentrations *greater* than ten (10) nanocuries per gram[.]"<sup>3</sup>

The proposed amendments I describe above are only the tip of the iceberg. There are other concerning matters too.<sup>4</sup> These are important to Texas taxpayers since the State of Texas takes title to all this radioactive waste upon acceptance for disposal and therefore becomes liable for it.<sup>5</sup> Also, despite the original intent of the Legislature, the volume of compact waste from Texas and Vermont constitutes *less than one-third* of the total volume currently disposed at the Compact Disposal Facility.<sup>6</sup> Compact waste's share of radioactivity is *less than 1%* of the total

<sup>1</sup> See page #46 on page 12 of both the current and proposed licenses. Compare TCEQ, RADIOACTIVE MATERIAL LICENSE (last accessed May 8, 2014), <<http://www.tceq.texas.gov/assets/public/permitting/rad/wos/R04100%20Amend%2025%20License%20FINAL%2003-5-2014.pdf>> (after Amendment 25) with TCEQ, DRAFT RADIOACTIVE MATERIAL LICENSE (last accessed May 8, 2014), <<http://www.tceq.texas.gov/assets/public/permitting/rad/wcs/DRAFT%20R04100%20License%20Amend%2026.pdf>> (with proposed Amendment 26) (emphasis added).

<sup>2</sup> Compare also #3.2 on pages 77-78 of the current license with #3.2 on pages 76-77 of the proposed license with amendments. *Id.*

<sup>3</sup> See page #46 on page 12 of the proposed license. *Id.* (emphasis added).

<sup>4</sup> I have plenty of other concerns regarding the proposed major amendments that would drastically reduce WCS's financial assurances by \$50 million while increasing its potential future revenue by tripling the authorized volume of radioactive wastes that may be disposed in the Compact Waste Facility and using the 10-day minor amendment process to increase the limits on that facility's decay-corrected total radioactivity. I elaborated on the inappropriateness of these changes in the written comments that I have submitted regarding these major amendments.

<sup>5</sup> See 5 TEX. HEALTH & SAFETY CODE §§401.205(a), 401.209.

<sup>6</sup> TEXAS LOW LEVEL RADIOACTIVE WASTE COMPACT COMMISSION, REPORTS AND MORE (last visited May 9, 2014), <<http://www.tllrwdcc.org/reports-more/>>.

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curies too.<sup>7</sup> This problematic situation is aggravated by the trend toward expanding the types and quantities of wastes being accepted by WCS for disposal, storage, or processing.

This trend obviously increases the total radioactivity of the materials found at these facilities. On that note, I am concerned about changes to how the prescribed limitations on total radioactivity are determined, specifically the change last year that allowed decay correction, and thereby reduction, of the estimated total radioactivity (expressed in curie levels).

B. Decay Correction of Radioactivity is Unnecessary, Inaccurate, and an Underserved Boon to WCS.

The Legislature recognized the importance of abiding by numerical curie limits when it chose to set specific curie, volume, and percentage limits on nonparty compact waste, which comes from generators outside Texas and Vermont.<sup>8</sup> 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. These requirements are important both now and decades into the future when much of this waste will still be radioactive.

WCS's operating license was changed in April 2013 to allow occasional changes to the estimated number of curies of the materials disposed at the Compact Disposal Facility and Federal Disposal Facility. Specifically, it allowed for decay correction of the estimated number of curies (i.e. the estimated total radioactivity). Decay correction invariably means a decrease in the estimated curies. While decay correction of curies purportedly gives a more updated estimate of the health risks to humans, I note three facts.

First, these are mere predictions and are necessarily inexact.<sup>9</sup> Second, for two and a half years, the operating license did not authorize decay correction of curies. There evidently was no need to allow it then, and I cannot imagine why there is a need to do so now... save for one reason: revenue. Decay correction that lowers the estimated number of curies will allow WCS to remain below applicable curie limits, and thus allow WCS to accept *more* waste for disposal than it could under past versions of its license. It will also allow it to accept waste that is more radioactive and garners a higher price in the oligopoly that is the market for radioactive waste disposal. For these reasons, I fear that revenue is the primary reason for seeking to allow decay correction of curies.

Third, given the continued expansion of the types and quantities of waste accepted by WCS (beyond the original vision of having primarily compact waste and only Class A, B, and C low-level radioactive waste), I conclude that allowing decay correction is in line with a worrisome trend in which WCS has "pushed the regulatory envelope" in order to increase its potential revenues in the long run.

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<sup>7</sup> *Id.*

<sup>8</sup> 5 TEX. HEALTH & SAFETY CODE §404.207(e)-(f).

<sup>9</sup> I cannot imagine that the containers (such as the massive Modular Concrete Canisters) holding radioactive waste will be reopened to take precise new measurements of the radioactivity of the wastes inside.

C. More Public Input and Environmental Analyses Should Occur Before Approving Major Changes in the Type, Quantity, and Concentration Limits for Waste.

I understand that my comments on the topic of allowing decay correction come a year too late to prevent those changes to WCS's license. I express them now because I wish that an environmental analysis (a study assessing the long-term effects on the public health or water resources) had been performed at that time and that the public could have commented on such an analysis. Not doing so is a shortcoming that should not be repeated in the future whenever there are major changes in the type, quantity, or concentration limits of the radioactive wastes received.

Consequential changes merit both concerted study and ample public input. For that reason, I propose that an environmental analysis on which the public may comment be required for certain major amendments to an operating license regarding radioactive waste. After all, environmental analyses that must be made available to the public are already required for licenses regarding radioactive materials in certain circumstances.<sup>10</sup> Also, longstanding rules require technical and environmental analyses to ensure that an applicant seeking a license to dispose of low-level radioactive waste will meet the performance objectives prescribed in 30 TEX. ADMIN. CODE §336.723.<sup>11</sup>

This rulemaking petition similarly seeks to require such an environmental analysis, with at least 20 days of public input and a major amendment, in certain circumstances. For example, it would require this process if a change in thinking prompts the TCEQ to consider allowing the disposal of dangerously radioactive transuranic wastes.

Transuranic wastes were recently accepted for purportedly short-term storage and in anticipation of the reopening of the Waste Isolation Pilot Plant (WIPP) facility in New Mexico following its closure in February due to a fire in the underground facility and workers' exposure to radiation. Those wastes were initially destined for the WIPP facility's disposal rooms located over 2,000 feet underground. If it appears that the WIPP facility will not reopen as scheduled, then any thoughts of disposing these transuranic wastes at WCS's near-surface disposal facilities *must* involve an environmental analysis with ample public input.

D. Proposed Rule Change.

For these reasons, 30 TEX. ADMIN. CODE §305.62 should be amended to read as follows:

- (i) Types of amendments for radioactive material licenses authorized in Chapter 336 of this title (relating to Radioactive Substance Rules).
- (1) Major amendments. A major amendment is one which:
- (A) authorizes a change in the type or concentration limits of wastes to be received;
- (i) an environmental analysis by the Commission shall also be required for any change

<sup>10</sup> See 30 TEX. ADMIN. CODE §281.21(f); 5 TEX. HEALTH & SAFETY CODE §401.263.

<sup>11</sup> See 30 TEX. ADMIN. CODE §336.709.

- that
- a. adds a type of radioactive substances to be received (regardless of whether for disposal, storage in anticipation of shipment offsite, or processing) that is not classified as Class A, Class B, or Class C low-level radioactive waste;
  - b. increases the quantity of any radioactive substances to be received (regardless of whether for disposal or storage in anticipation of shipment offsite);
  - c. increases the individual or aggregate concentration limits for any radioactive substances (regardless of whether for disposal or storage in anticipation of shipment offsite), including increases in dose equivalent limits, derived air concentration (DAC), Annual Limits on Intake (ALI), or dose constraint (as defined in 30 TAC §336.2(25)); or
  - d. modifies how the individual or aggregate concentration limits for any radioactive substances are determined or measured, including changes in the license reflecting changes in the performance objectives of 30 TAC §336.723 and decay correction of radioactivity.
- (ii) the environmental analysis shall be made available to the public for not less than 20 days (not including the required 30 days for public comment on the major amendment) and shall be posted on the Commission's website with a link to the environmental analysis on the webpage or webpages that have links to the proposed major amendment.
- (B) authorizes receipt of wastes determined by the executive director not to be authorized in the existing license;

Best regards,



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