

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

December 23, 2010

Texas Low-Level Radioactive Waste Disposal Compact Commission
Sent Electronically via rule.comment@tllrwdcc.org
3616 Far West Blvd, Suite 117, #294
Austin, Texas 78731

RE: Comment on Proposed Rule at Title 31, Texas Administrative Code (TAC),
Chapter 675, Subchapter, Exportation and Importation of Waste

Please find comments from the Texas Commission on Environmental Quality (TCEQ)
on proposed rules published in the *Texas Register* on November 26, 2010 35 *TexReg*
10425.

The TCEQ is the state agency with exclusive jurisdiction to regulate the commercial management and disposal of low-level radioactive waste under Texas Health and Safety Code (H&SC) §401.201 in accordance with agreement between the Texas Governor and Nuclear Regulatory Commission (NRC) for the Texas Agreement State Program. Under the Atomic Energy Act of 1954 as amended, including but not limited to Section 274b, Texas has entered into an effective agreement wherein NRC relinquished this authority to the TCEQ. See 42 USC 2021d(b)(4).

Under its authority, the TCEQ has issued a license to the disposal operator of the Texas Compact Waste Disposal Facility, or CWF. The TCEQ, on behalf of the State of Texas, is the owner, in fee simple, of the CWF and takes title to all low-level radioactive waste inspected and accepted for disposal at the CWF, in accordance with the terms of the TCEQ license. Consistent with the Texas Low-Level Radioactive Waste Disposal Compact, HS&C Chapter 403, Section 8.06, the authority, jurisdiction and discretion of TCEQ is neither diminished nor impaired by any action or activity under the Compact.

Proposed rule at 31 TAC §675.23(c) requires a certification by the CWF operator of disposal capacity based on the TCEQ licensed volume and activity as part of the approval process for importation. Consistent with its authority, it is appropriate for the issuing agency of that license, who is also the CWF owner, rather than the CWF operator, to make "certification," ie certify or otherwise determine whether proposed waste acceptance is in accordance with all terms of the license.

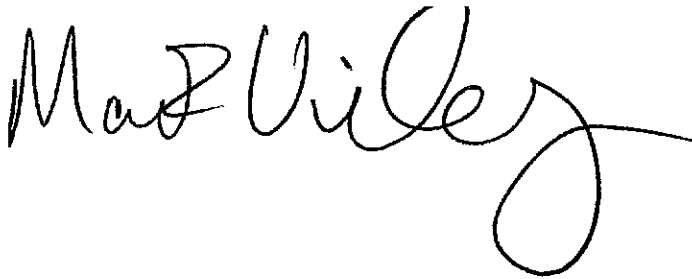
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Similarly, proposed rule at 31 TAC §675.23(g) requires any proposed import agreement to be accompanied by a certification by the CWF operator of met waste acceptance criteria. Consistent with its authority and the terms of the issued disposal license for TCEQ inspection prior to any waste acceptance for disposal, it is appropriate for the TCEQ, rather than the CWF operator, to make "certification," ie certify or otherwise determine whether that acceptance is in accordance with all terms of the license.

Furthermore, the current disposal license does not contemplate importation waste streams, and only authorizes waste streams characterized and projected from Texas and Vermont waste generators, with additional license limitations. A license amendment would be necessary to allow for the acceptance and disposal of any imported waste at the CWF. The type of license amendment needed would be dependent on the waste streams and the requested action being proposed associated with the importation consistent with TCEQ license amendment rules at 30 TAC §305.62(i).

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark R. Vickery". The signature is fluid and cursive, with a large loop at the end of the last name.

Mark R. Vickery, P.G.
Executive Director