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May 16, 2014

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Mr. Zak Covar
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Re: Rulemaking petition to provide the costs of water removal operations at low-level radioactive waste disposal facilities.

Dear Commissioners,

For the purpose of keeping the State of Texas at least minimally informed as to taxpayers' long-term financial obligations regarding the disposal of radioactive waste in the Compact Waste Disposal Facility in Andrews, Texas, I respectfully submit the following rulemaking petition.

COMMITTEES: ENERGY RESOURCES • CRIMINAL JURISPRUDENCE

The State of Texas automatically takes title to all radioactive waste disposed of in the Compact Waste Disposal Facility.¹ This makes Texas taxpayers liable for the costs of "monitoring, maintenance, or emergency measures" that the Texas Commission on Environmental Quality (TCEQ) may undertake "in connection with low-level radioactive waste and property for which it has assumed custody."²

Thus, it is in the interests of taxpayers, policymakers, and the public at large to have information that includes the cost of operating any pumping and water treatment equipment or facilities used to remove or treat any water, waste, or other materials from observation wells found in or near the disposal site.³ Such operations are not short-lived. These operations are ongoing and have been ongoing for over a year. It is reasonable to assume that the State of Texas (financed by taxpayers) may have to continue or resume such operations to comply with its obligations regarding the radioactive waste and property for which it has assumed custody.⁴ The relevant information is connected with environmental monitoring reports that an operator is already required to make. Including information on the *costs* of this information would be relevant and an insubstantial burden.

It is also in the interests of Waste Control Specialists (WCS), the sole licensee for the disposal of radioactive waste, to disclose information showing its diligence in exercising mitigation measures to reduce any economic or environmental risks for which the State of Texas may be responsible.

There is ample evidence that these water pumping operations are not temporary in nature. For example, data from one of the monitoring wells (OAG-21) found *directly adjacent* to the disposal site shows the presence of water *above* the *top* of the red clay bed, *even after 12 months* of pumping out water. The "water levels relative to the top red bed" decreased by *only one foot* between November 2011 and November 2012.⁶ If Texas taxpayers will have to pay for such long-term operations, then they deserve to know their cost.

¹ TEX. HEALTH & SAFETY CODE § 401.2051(a) ("The compact waste disposal facility license holder *shall convey to the state . . . title to the compact waste delivered to the disposal facility for disposal at the time the waste is accepted at the site.*")(emphasis added).

² TEX. HEALTH & SAFETY CODE § 401.212; *see also* TEX. HEALTH & SAFETY CODE §§401.205(a), 401.209.

³ Examples are found here. WASTE CONTROL SPECIALISTS LLC, FIGURE 1: SHALLOW WELLS NEAR THE COMPACT WASTE DISPOSAL AREA, <http://tllrwdeo.org/pdf/map_june29.pdf> (showing saturated wells as of June 20, 2012, including two directly adjacent to the Compact Disposal Facility's disposal site and another within 300 feet of the site).

⁴ *See* TEX. HEALTH & SAFETY CODE § 401.212.

⁶ *See* page 6 of the following report from WCS obtained through an open records request. Letter from Letter from J. Scott Kirk, Vice President of Licensing, Corporate Compliance and Radiation Safety Officer, Waste Control Specialists, to Charles Maguire, Director, Radioactive Materials Division (Dec. 5, 2012), <<ftp://ftp.tceq.texas.gov/pub/Radioactive/12-05-12%20Monthly%20Report%20of%20Water%20Level%20Measurements%20from%20OW-1,OW-2,OAG-21,OAG-22,%20and%20TP-173.pdf>>.

This is a very modest amount of information to disclose to the public on a regular basis. A licensee authorized to dispose of low-level radioactive waste is already required, by rule, to provide to the Executive Director of the TCEQ annual reports. As required by existing rules, the type of information contained in these ordinary reports includes the following: the results of the *environmental monitoring program*, any instances in which *observed site characteristics were significantly different* from those described in the license application, and *any other information* the executive director may require.⁷ The presence of water in or near the disposal sites where radioactive wastes are disposed appears to already be covered as a relevant site characteristic and a longstanding occurrence posing a need "to enable the evaluation of long-term effects and the need for mitigative measures," as part of the environmental monitoring program required by rule.⁸

Thus, having data regarding the cost of the licensee's operations for pumping out such water is in keeping with the text and intent of existing rules. The environmental monitoring program is specifically intended, among other objectives, "to enable the evaluation of long-term effects and the need for mitigation measures" based on the measurements and observations conducted pursuant to that program.⁹ The State of Texas will be responsible for long-term effects and any mitigation measures needed, and as such it is only fitting for policymakers and the public to have financial information relating to the operation of the Compact Waste Disposal Facility.

The licensee pays for these operations now. Texas taxpayers may pay for them in the future.

In order to provide the public with a better picture of future costs, the TCEQ should ensure that this relevant cost information is affirmatively available to the public.

As such, I would amend §336.731(b) to read as follows:

(b) During the land disposal facility site construction and operation, the licensee shall maintain a monitoring program. Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and the need for mitigating measures. The measurements taken pursuant to this monitoring program shall include an itemization of all expenses involved in removing any water, wastes, or other materials from any observation, monitoring, test, or dewatering wells in, adjacent to, or within 300 feet of the disposal site and from the disposal site itself. Those separately itemized expenses shall include the cost of operating any pumping equipment; acquiring any pumping

⁷ 30 TEX. ADMIN. CODE §336.740(h)(2)(B),(E),(F).

⁸ 30 TEX. ADMIN. CODE §336.731(b).

⁹ 30 TEX. ADMIN. CODE §336.731(b).

equipment; operating any water treatment equipment or facilities; acquiring any water treatment equipment or facilities; and disposing the water, waste, or other materials from those wells. The monitoring system shall be capable of providing early warning of releases of radionuclides and chemical constituents before they leave the disposal site boundary.

- (i) The results of this monitoring program shall be published and made available to the public every six months.

Because it is my hope that this rulemaking petition will be commented on and understood by the public, I note for explanatory purposes that existing rules define "disposal site" as "[t]hat portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone."¹⁰

Best regards,



Lon Burnam

¹⁰ 30 TEX. ADMIN. CODE §336.702(9).