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Nuclear Information and Resource Service (NIRS)
Supplemental Comments Against Adoption of the
TX VT “Low-Level” Radioactive Waste Compact Commission
Proposed Rule to Import Out-of-Compact Radioactive Waste

April 13, 2010

We oppose the adoption of the Import Rule 31 TAC 675.21-23.

These comments are supplemental to the SEED comments submitted separately which NIRS endorses and to NIRS verbal comments provided by NIRS at the Andrews hearing on April 6, 2010 and at the previous compact commission meetings on the Import Export Rule.

COMPACT INABILITY to IMPLEMENT ITS RULE;
STATE and COMPACT LIABILITY

Immediately upon passage of the Import rule (31 TAC 675.23), applications to import waste could start coming in to the Commission. The Compact Commission, by its own rules, is required to act on them within a prescribed time period. The Commission, also by its own admission, currently does not have the capability to evaluate the applications thus makes unnecessary work for itself and opens itself up to legal challenge. The rule gives the green light to Waste Control Specialists to enter into contracts for out-of-compact waste that it may not have capacity to fulfill. Although the Commission inserts the phrase “subject to the financial resources of the commission” (Section 31 TAC 675.23 (h)) in its timeline, as of this rulemaking the entire rule cannot be implemented so why proceed now? The Commission does not have the resources to proceed and should not expect that the meager application fees will enable you to do so responsibly.

Regarding both import and export evaluation fees: The provisions for the Compact Commission to evaluate the applications first, then bill the applicant for fees above the filing fee, appears to be recipe for the Commission to go into debt or to do an inadequate evaluation. The Commission should not have to incur costs first, then after deciding to approve or deny the application, bill the applicant for its costs above the filing fee. What recourse does the Commission have if the cost to evaluate a request exceeds the expenditures for adequate review and the applicant refuses or fails to pay? What enforcement mechanisms and legal avenues does the Commission have to collect these incurred costs? Especially if the application is denied?

A more important point is the potential liability for the Commissions decisions. Should the Commission make a negative determination on an import permit, what is the protection against WCS suing the Compact Commission or the state for hindering the company’s binding contracts?

If the applicants meet the conditions of the Import Rule, does the Commission have the authority to deny access or is it required to approve unless it can show some specific reason? What is required for the Commission to approve or deny an import request?

What liability does the Commission incur in approving imports for which WCS has contracted if the TCEQ denies additional license capacity?

Does the Compact Commission have any responsibility for the additional costs and pressures on TCEQ to carry out added license amendments and expansions?

*NEW REACTORS RELYING ON WCS DESPITE LACK OF CAPACITY;
CREATING MORE WASTE TRIGGERS MAJOR ENVIRONMENTAL RULE*

Common sense dictates planning for the management of waste. One does not usually build a house without a lavatory. Yet, licenses are under consideration by the US Nuclear Regulatory Commission for new nuclear facilities that will generate long-lasting so-called “low-level” radioactive waste without realistic disposal plans. A stated plan for the generators of the waste is to shift liability and storage responsibility by sending the waste to WCS or to Studsvik (TN processor) and then WCS. In some cases, the WCS option is clearly stated. For proposed nuclear reactors outside compacts with access to the operating disposal sites, there is *nowhere* for their most concentrated (Class B and C) radioactive wastes to go for permanent disposal. Many new license applications have been submitted to the US NRC even though there is no way to isolate that waste for as long as it is hazardous. By adopting the Import Rule, the TX VT Compact Commission is unnecessarily giving the impression that the TX site will be available for that waste. The Commission today honestly cannot commit space at the WCS site to future nuclear waste generators. Approving the import rule, before it can be practically utilized gives unwarranted encouragement to make waste that otherwise might not be made. This is one of several reasons that rule is essentially a major environmental rule.

Since the WCS license is for a limited amount of volume and radioactivity, and the import rule clearly enables more volume and radioactivity, the threats to the water, air, environment, community and transport corridors will increase. These are additional reasons that the rule must be analyzed as a major environmental rule.

CONSIDER LESSONS LEARNED

All six of the past “low-level” radioactive waste sites in the US have leaked or are leaking and have cost or are costing the state taxpayers. Both legal and technical costs have been incurred.

At the West Valley, NY radioactive waste burial site, which operated for less than 15 years, the burial is in supposedly impermeable clay, but radioactivity has leaked sometimes through cracks in the clay sometimes via other mechanisms. The site has been a New York State responsibility and liability since the corporation that buried the waste left the site in the early 1980s. The state licensed the site and is now liable for its current and long-range costs. Previous environmental impact statement estimates for full cleanup is in the range of \$5 Billion for the burial ground portion of the site (\$10 Billion for the whole site which included reprocessing). An independent analysis of the site predicts it could leak into surrounding streams and the Great Lakes costing

more if it is left in the ground to leak. (West Valley decommissioning information is at www.westvalleyeis.com and the independent review of the site cleanup options is at <http://www.besafenet.com/campaigns/wvreport.shtml> An executive summary and CDrom with the full report and its appendices was provided at the Andrews hearing.) Although some changes to disposal requirements have been made since the first generation of disposal sites, shallow land burial is still allowed; there is a legally “acceptable” leak rate from disposal sites; liability still shifts from private generators to the State of Texas; and the institutional control period is not nearly as long as the waste remains hazardous.

The Maxey Flats, Kentucky site became a Superfund site which resulted in eventual state liability and ongoing maintenance costs.

The Sheffield, Illinois site was subject to numerous lawsuits over liability with the state taking it all on in the end and having to continue perpetual care. As the radioactivity leaked, the company kept buying up surrounding farms to counter the claims of “offsite migration.”

Both hazardous and radioactive wastes were buried at the Beatty, NV site in the desert. Contamination leaked down to the water table. The nuclear part of the site closed in 1992.

These 4 closed and the 2 open sites are reviewed in greater detail in the Conference of Radiation Control Program Directors report *Environmental Monitoring Report for Commercial Low-Level Radioactive Waste Disposal Sites (1960s-1990s)* DOE/LLW-241.

Texas needs to LEARN THE LESSONS of the past and not repeat them. The Commission should wait and see how well the site operates for the Compact before opening it up to unlimited amounts of Out-of-Compact radioactive waste. Even if the Commission has faith in the site, it is in everyone’s best interest to let it prove itself before expanding legal commitments to more waste generators.

Although the TLLRWDC claims not to be evaluating or licensing the site, the IMPORT rule clearly drives expansion of the site beyond its already highly questionable license limits. The Commission cannot wash its hands of its role in putting more waste into a site that the TCEQ technical review team recommended against licensing in the first place. And it is proceeding with blinders as the license still has outstanding unresolved conditions, requirements and issues and is still being challenged in court.

This is especially a concern for nuclear waste that is not yet licensed to be generated but could be permitted to be produced because the WCS site appears to be available.

The site is in the vicinity of important aquifers and could be leaking by the time the new reactor waste is produced and ready to be imported.

ENVIRONMENTAL JUSTICE

What consideration has the Compact Commission given to the fact that this is a community with high percentage minority population in its dealings in the community and the decision affecting

the community? Has any of the information been provided in Spanish? Another lesson from which to learn is that at Sierra Blanca, TX.

NIRS encourages the Texas Vermont Compact Commission to stop acting like an enthusiastic business promoter for Waste Control Specialists and exert its authority in a manner that protects the best interest of the residents of Texas and Vermont.

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