



January 21, 2010

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Margaret Henderson  
Interim Executive Director  
3616 Far West Blvd.  
Suite 117, #294,  
Austin, TX 78731

Re: SEED Coalition Comments on Proposed Rule Allowing Import of Out-of-Compact Waste into Texas

Dear Compact Commissioners,

The Sustainable Energy and Economic Development (SEED) Coalition appreciates this opportunity to provide comments on Proposed Rule 675.2 of the Texas Low-Level Radioactive Waste Disposal Compact Commission's dated December 11, 2009 (hereinafter "Proposed Rule"). The SEED Coalition opposes going forward with this rule at this point in time for the reasons set forth below.

We enclose and incorporate analysis by nuclear energy expert Dr. Arjun Makhijani, President of the Institute for Energy and Environmental Research and a report by the Nuclear Information and Resource Service, "United States Commercial 'Low-Level' Radioactive Waste Disposal Sites Fact Sheet." We have support and endorsement for these comments from major environmental organizations including Public Citizen's Texas Office, Environment Texas and the Nuclear Information and Resource Service. Texas organizations also supporting and endorsing these comments include WE CAN, Working Effectively for Clean Air Now based in Longview, the South Texas Association for Responsible Energy (STARE) based in Bay City and No Bonds for Billionaires, based in Andrews County.

### **Open Meetings Act**

The SEED Coalition contends that the Texas Low-Level Radioactive Waste Disposal Compact Commission (Commission) must abide by the Open Meetings Act under Section 551 of the Texas Government Code and that it applies to all subcommittee meetings as well. The Proposed Export/Import Rule was originally written in a closed, non-posted subcommittee meeting. Then it was substantively revised in a subcommittee meeting held on December 10, 2009, which the public was not allowed to attend despite requests to do so. The meeting date, time and location were not posted, no three day notice was given and the location was not finalized until the evening of December 10<sup>th</sup>. Significant and substantive changes were made in the draft rules in that subcommittee meeting and the public had little time to digest and analyze the changes before commenting on December 11, 2009. The public was inappropriately cut out from hearing key discussion among attorneys, including discussion of why major changes were being made, and

the actions were procedurally flawed. We request proper public notice of all Committee and Subcommittee meetings in the future.

### **Public Access to Information**

The public needs to have full access to televised coverage of the Texas Low-Level Radioactive Waste Disposal Compact Commission, and funding needs to be put in place to cover these costs. Arrangements for videotaping meetings and posting them online for public access should be finalized before further Commission meetings are held. Arrangements for the broadcasting of the December and January Compact Commission meetings were made by the office of State Representative Lon Burnam. The Compact Commission should take responsibility for this role.

Throughout the entire export/import processes and waste handling within the Compact States, reporting to the public should include information as to the type of source of radioactive wastes. Too often, radioactive waste is falsely portrayed as medical wastes when in fact, by volume, waste from nuclear reactor facilities is the majority of waste that needs to be disposed of. The Compact Commission should publish easily accessible data regarding the percentages of waste received at the site by source, from for example medical, research, commercial reactors, research reactors or other sources.

The publicly available tracking and reporting of wastes must include, at minimum, the specific radioactive elements, their quantity and volume, their curie levels, half-lives and chemical and physical forms. Information should be included about the decay products of the radionuclides and their quantities and curie levels anticipated with each over time.

The Compact Commission should locate and post accurate updated information on the web site regarding the health impacts that can result from exposure to any and all radionuclides that would be included in the entire export/import processes and waste handling within the Compact States.

### **Export and Import Should be Separated**

The SEED Coalition believes that export and import should be dealt with in separate rules. The Commission initially pursued the Export Rule separately. At the August 7, 2009 Stakeholder meeting, WCS attorneys stressed the importance of going forward with an import rule and suggested that the Commission combine export and import into the same rule. Counsel for the generators opposed this.<sup>1</sup> The Commission then combined export and import into the same rule. This is one of many examples where WCS is influencing Commission actions against the interest of the public and the generators.

---

<sup>1</sup> August 7, 2009 Stakeholder meeting on the Proposed Export Rule. WCS Counsel suggested that the Commission combine the Import Rule with the Proposed Export Rule as opposed to having two separate rules. He said, "I think you could work within this draft...that would probably be our preference. We do think it's helpful to get them both published at the same time, if possible." Counsel for South Texas Project immediately opposed this suggestion, saying "I think their comment with respect to their tying the two rules together is that we would prefer that they not be tied together. You could certainly pursue them in ... parallel. But we think there would be a lot more interest on one as opposed to the other and would like to see the export rule not get bogged down because of what's happening on the import side." Someone else then said, "I second that."

### **Compact Purpose**

The SEED Coalition contends that the Proposed Rule Section 675.23 on Import is contradictory to the Purpose of the Compact Commission. The SEED Coalition relies on Section 1 of Dr. Makhijani's expert analysis submitted to the Commission on January 15, 2010, where Dr. Makhijani details how the Proposed Rule does not fulfill the purposes of the Compact.

First, it does not contain any provision for the reduction of the generation of LLRW, or even address how that goal might be served...Second, it fails to provide a "framework" for a cooperative effort between Texas and Vermont to effectively, efficiently, and economically manage low-level radioactive waste.<sup>2</sup>

Considering the Compact was formed to manage low-level radioactive waste generated in the Compact states, the SEED Coalition finds it disconcerting that the Commission is rushing forward to develop a rule to import waste and essentially manage the country's radioactive waste. Importing out-of-Compact waste increases risks to the health, safety and well being of Texans. License expansions would be needed to accommodate the additional waste and if approved, Texas would receive more radioactive waste than originally anticipated.

The SEED Coalition would like to note the large discrepancy between Texas and Vermont's estimated disposal needs of 6 million cubic feet and the licensed capacity of site, 2.31 million cubic feet, only 38.5% of the estimated needs. We question the assumptions necessary for the Commission to go forward with the Proposed Rule for import, namely that license amendments for expansion will be granted and the capacity of the site will be expanded. Without a technical review of the site, the Commission is not in the position to assume that the capacity of the site will increase to accommodate out-of-Compact low-level radioactive waste and should not do so. The rule should include a requirement for compliance with volume and curie limits in the facility license.

Dr. Makhijani shows the potential volumes and curies of low-level radioactive waste that could end up at the Texas Compact facility. To say the least these amounts greatly exceed the licensed amounts of 2.31 million cubic feet and 3.89 million curies. He illustrates this in another way:

The Texas-Vermont Compact has only five operating nuclear reactors, with a total reactor capacity of 5,500 megawatts. The country has 104 reactors, with a total power rating of 106,000 megawatts. Therefore, opening up the WCS site would increase the radioactivity in the waste that could be sent to the Texas facility by roughly 19 times.<sup>3</sup>

---

<sup>2</sup> Makhijani, Arjun. Memo to SEED Coalition Re: Proposed Rule, January 15, 2010.

<sup>3</sup> Id.

## **Manage and Restrict Interstate Commerce**

The Proposed Rule states at lines 37-41:

Functionally, the Commission has been established as an instrumentality of the party states, and is authorized by the U.S. Congress in P.L. 105-236 to manage and restrict interstate commerce in low level radioactive waste management and disposal within the party states, as an exception to the “Dormant” Commerce Clause doctrine of the US. Constitution.

The Compact Commission’s Draft Annual Report, dated January 31, 2010, goes even further stating on Page 6:

The party states have entered into the Compact with the *expressed intent* of managing and restricting interstate commerce in the area of low-level radioactive waste on a regional basis. (emphasis added)

Although it is mentioned, there is nothing in the Proposed Rule that addresses this “expressed intent.” The Proposed Rule would do the exact opposite. By proposing a rule to govern import of low-level radioactive waste from outside of the Compact to be disposed of at the Compact facility, the Commission is essentially saying Texas is open for business. The rule encourages rather than restricts interstate commerce of low-level radioactive waste.

To fulfill the expressed intent, the Commission should limit the waste to be disposed of at the Texas Compact facility to waste generated in the Compact States of Texas and Vermont.

## **Major Environmental Rule**

The SEED Coalition asserts that the Proposed Rule should be considered a Major Environmental Rule, under Section 2001.0225 of the Texas Government Code, and the necessary regulatory analysis associated with a Major Environmental Rule should be required. The SEED Coalition relies on Section 2 of Dr. Makhijani’s expert analysis submitted to the Commission on January 15, 2010. Dr. Makhijani describes why the Proposed Rule should be considered a Major Environmental Rule.

[A] “Major Environmental Rule” is, among other things one “that may adversely affect, in a material way... the environment or the public health and safety of the state or a sector of the state.” If the Texas facility is opened to 19 times the total reactor capacity, the likely environmental impact can be expected to increase commensurately.<sup>4</sup>

Considering that the “environmental impact can be expected to increase commensurately” due to increased volume and curies from additional waste, the Commission should and must deem the Proposed Rule as a Major Environmental Rule.

The SEED Coalition also relies on the attached the Nuclear Information and Resource Service Report detailing the problems and leaks at many of the other low-level radioactive waste disposal facilities around the country. This report illustrates why the Proposed Rule should be considered a Major Environmental Rule.

---

<sup>4</sup> Id.

The SEED Coalition would also like to point out to the Commission Section 2001.0225 (f), a relevant section of the Texas Government Code.

A person who submitted public comment in accordance with Section 2001.029 may challenge the validity of a major environmental rule that is not proposed and adopted in accordance with the procedural requirements of this section by filing an action for declaratory judgment under Section 2001.038 not later than the 30th day after the effective date of the rule. If a court determines that a major environmental rule was not proposed and adopted in accordance with the procedural requirements of this section, the rule is invalid.

### **Liability for Texas**

The rule should detail the increased liabilities for Texas that would result from the rule. The State of Texas becomes liable for radioactive waste as soon as the waste comes into Texas, and as discussed above, importing radioactive waste from out-of-Compact would increase environmental impacts “commensurately.” If analysis of increased liability has not yet been conducted, the Compact Commission should undertake the study. The results should be reported to the public and be incorporated into considered thoroughly in the Proposed Rule.

The radioactive waste at the Compact facility will remain lethal for tens of thousands of years, and the potential clean-up costs to the state of Texas could be exceptionally high. The SEED Coalition asserts that the fiscal note for the Proposed Rule should be drafted to reflect the actual timeline of potential costs to the state, well beyond the 5 years required by law (Sec. 2001.024, Texas Government Code).

The SEED Coalition also relies on the attached Nuclear Information and Resource Service Report detailing the problems and leaks at many of the other low-level radioactive waste disposal facilities around the country. This report illustrates the potential costs and liabilities of the Proposed Rule.

### **International Waste**

The SEED Coalition contends that the Proposed Rule should disallow the import of any radioactive waste not generated in the United States. We rely on Dr. Makhijani’s expert assessment of the regulatory complications that could result and the potential environmental impacts to Texas and Andrews County.

[T]he Proposed Rule does not restrict potential waste imports to U.S.-origin wastes. Imports from foreign countries where the waste classification systems, waste compositions regulatory requirements, and other matters impacting the ability to handle and dispose of the waste in the U.S. safely, could be different [which] would complicate matters even more. They could also greatly increase the environmental impact.<sup>5</sup>

### **Processing Compact Waste Out-of-Compact**

The SEED Coalition is concerned about how the Compact Commission plans to oversee, account for and regulate the waste being sent outside of the Compact for processing with intent to be

---

<sup>5</sup> Id.

returned for disposal in Texas. We believe the rule must be rewritten to include adequate provisions in this regard.

As attested to in the December 10, 2009 Stakeholder meeting, there are serious and valid concerns that radioactive waste generated within the Compact could be sent out for processing and returned to Texas for disposal in a different form, possibly unidentifiable as to the generation source. Out-of-Compact wastes could be incorporated into the processed waste that comes back to Texas. Compacting of waste during processing could lead to the import of equal volumes of waste coming back for disposal that have much higher curie levels. If adequate tracking, monitoring and publicly accessible reporting are not required and implemented, there could be higher levels of radioactivity at the Compact waste facility than originally anticipated. It is possible that facility limits would be exceeded over time.

There must be thorough monitoring, publicly available reporting and tracking of the shipment and processing of Compact waste outside of the Compact. This reporting must include at minimum the specific radioactive elements, their quantity and volume, their curie levels, half-lives and chemical and physical forms. Information should be included about the decay products of the radionuclides and the quantities and curie levels anticipated with each over time.

Due diligence procedures must be included in the Proposed Rule for every company that processes Compact low-level radioactive waste to be disposed of at the Compact facility. The results of the due diligence analysis should be made publicly available.

Sincerely,



Karen Hadden, Executive Director  
Sustainable Energy & Economic Development (SEED) Coalition  
1303 San Antonio, Suite 100  
Austin, Texas 78701  
karen@seedcoalition.org

**Our comments are supported and endorsed by the undersigned organizations as well.**

Tom “Smitty” Smith, Director  
Public Citizen’s Texas Office  
1303 San Antonio  
Austin, Texas 78701

Luke Metzger, Director  
Environment Texas  
815 Brazos, Suite 600  
Austin, Texas 78701

Diane D'Arrigo, Radioactive Waste Project Director  
Nuclear Information and Resource Service  
6930 Carroll Ave, Suite 340  
Takoma Park, MD 20912

Tammy Cromer-Campbell, Executive Director  
WE CAN - Working Effectively for Clean Air Now!  
207 N. Center St.  
Longview, TX 75601

Melodye and Peggy Pryor  
No Bonds for Billionaires  
1420 NW 12<sup>th</sup> St.  
Andrews, Texas 79714

Susan Dancer, Chair  
South Texas Association for Responsible Energy  
S.T.A.R.E.  
P.O. Box 209  
Blessing, Texas 77419