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Lone Star Chapter

March 16, 2010

Margaret Henderson, Interim Executive Director
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Re: Comments on Proposed Texas Low-Level Radioactive Waste Disposal Compact Commission Rule 675 Subchapter B. Exportation and Importation of Waste

Dear Compact Commission,

The Lone Star Chapter of the Sierra Club is the state chapter of the Sierra Club, the nation's oldest and largest conservation organization. We have been an active participant in the legislation establishing the Texas Compact for low-level radioactive waste as well as rules developed at the Texas Commission on Environmental Quality related to radioactive waste management. Moreover, the Lone Star Chapter of the Sierra Club has appealed the initial TCEQ decision to grant the radioactive waste license for the Andrews County site to state district court because of concerns we have about the site. We also participated in the January 21st meeting and discussion on the proposed rules related to the exportation and importation of waste.

At that meeting, we made clear to the Compact Commission our opposition to moving forward on proposed importation rules at this time, and asked the Commission to separate the exportation from the importation rulemaking so greater caution could be developed if proposing waste importation rules. Nonetheless, we recognize that the Commission on a 6-2 vote approved publishing these preliminary rules, and the Sierra Club offers our comments for consideration by the Commission. We would again ask the Commission to only approve rules related to exportation, since the Waste Control Specialists site is not yet operational. The Lone Star Chapter of the Sierra Club does not feel it is imperative or appropriate to propose a rule on importation at this time. Instead, a separate path should be created for importation as several issues related to importation must be resolved.

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GENERAL COMMENTS ON BOTH EXPORT AND IMPORT OF WASTE

The proposed rules should attempt to limit the amount of waste going out of Texas and Vermont to other states and limit or even ban the amount of waste coming into the Texas Compact site from other states. The rationale for the site is to take care of Vermont and Texas waste and not to create a "dumping ground" or national "solution" to low-level radioactive waste. Thus, whether export of waste or import of waste might have financial benefits to the State and to the LLRWCC, of greater importance should be the safety of the site and assuring that it takes care of Vermont and Texas waste.

Moreover, the Sierra Club has appealed the decision to grant the license to State District Court and has requested that the Judge either deny the license or grant a contested case hearing for the Sierra Club to argue our belief that the site does not meet all of the regulatory requirements. The judge in the case has yet to rule on our request to overturn the granting of the license, or alternatively, to grant us a contested case hearing before an Administrative Law Judge. Until these issues are resolved, our view is that no import can be allowed in any case. In addition, the site has yet to meet all of the conditions that are required under the license granted by TCEQ before it can begin operations.

In addition, a number of new issues have arisen even since January. First, the Vermont Legislature has denied extending the license of the Vermont Yankee nuclear plant beyond 2012, meaning room at the site for decommissioning waste from a party state – Vermont -- is of even greater importance. A number of important decisions on how low-level radioactive waste can be treated – including the concept of "down-blending" are still being considered at the Nuclear Regulatory Commission which could impact the potential for importing low-level radioactive waste from other states to the WCS site.

Finally, we would note that the Compact Commission currently has no staff to even be able to adequately review a proposed import agreement and no funds to hire any outside experts to do so. In essence, the Commission would be acting on import agreements without adequate resources to determine whether it was a good idea or not, or whether there was sufficient controls in place to assure its safety and long-term disposal.

EFFECTS UPON THE STATE OF TEXAS GENERAL REVENUE FUND

We would also note our objection to statements made in the preamble to the proposed rules, which states that the waste imported into Texas will have a "positive effect on the State of Texas General Revenue Fund," but fail to address potential negative effects. Negative effects include the risk that imports could impact the ability of the Compact Facility site to meet its obligations to Texas

and Vermont generators, that additional wastes could pose health or environmental risks, that additional wastes may have potential financial risks and a liability to Texas taxpayers since it is the State of Texas that will assume ownership of all waste housed there.

MAJOR ENVIRONMENTAL RULE

We would also note that the “Regulatory Analysis” assumes that this proposal is not a “major environmental rule,” our view is that since the rule as proposed does not impose any limits on potential imports it is a major environmental rule. Nothing in the existing proposal would prevent the Compact Facility operator from attempting to import all low-level radioactive waste from other states not part of the Texas compact, subject to approval by the Commission and license conditions from the TCEQ. As such, as long as there are no limits proposed, we disagree that the rule is not a major environmental rule. Additional review would be required before posting to the Texas state register. One potential solution would be for the Commission to consider the fiscal note further out into the future than the required five years and also consider the potential clean up costs of wastes in addition to those contemplated in the license application.

WASTE EXPORTATION

Rule Correction

While the Lone Star Chapter has relatively few comments on the proposed Exportation rule, we did note that in proposed section *675.21(e) Notice and Timing of Petitions*, there appears to be a mistake since it states “The proposed import agreement shall be accompanied by a certification by Texas Commission on Environmental Quality that the waste acceptance criteria have been met for the proposed waste importation.” This certification should be related to waste import agreement and not to exports. We agree that the Texas Commission on Environmental Quality should be consulted for comments related to whether or not the type of waste being petitioned for export could be housed legally in Texas. That is, the LLRWCC should have information available related to whether the waste being contemplated for export already has a suitable place for deposition in Texas. Texas and/or Vermont should not be exporting waste to other states that could currently be disposed of in Texas. Requiring a certificate or statement from TCEQ that the waste could not be disposed of legally in the Compact Facility would be one way to assure that Texas or Vermont are not exporting waste that should be taken care of by a Compact Facility. Thus, it could read “The proposed export petition shall be accompanied by certification from the Texas Commission on Environmental Quality that the proposed waste could not currently be managed by the Compact Facility in Texas.”

Support and Suggestions

The Sierra Club appreciates the improvements made to 675.21 (e) to allow for comments to be received on an export petition and for the Commission to make those available via its website. The Commission may wish to add a timeline for the public to make comments on a proposed export petition as it has for the Compact Facility operator to make it clear that only comments submitted in a timely fashion will be considered by the Commission in its decision-making.

We would also suggest adding the following language in 675.21 (f) (3), “The availability of the Compact Facility for the disposal of the waste involved, including whether or not the specific waste codes and volumes contemplated in the export petition would be allowed by the current radioactive waste license issued by the Texas Commission on Environmental Quality.”

The Sierra Club is also supportive of the provisions in 675.21 (i)(3) requiring an annual report on the actual amount of waste exported by any party that has received approval of its export petition as well as the reporting requirements for waste generators exporting waste to another state for processing for eventual disposal at the Compact Facility. This should create a legal document to assure that Texas or Vermont waste is being managed properly in other states.

WASTE IMPORTATION FROM A NON-COMPACT GENERATOR FOR MANAGEMENT OR DISPOSAL

As previously noted, because the Compact Facility is not operational and because of Sierra Club’s legal challenge, as well as the large amount of waste expected from the decommissioning of the Vermont Yankee, there is no immediate need for these rules to be developed, and no reason to consider importation of waste at the same time. Nonetheless, in the event the Commission decides to proceed with approving a rule on importation based on the rules published in the February 12, 2010 Texas Register, the Sierra Club does offer the following brief comments.

Timeline:

First of all, we appreciate the addition of 675.23 (b) stating that disposal capacity is reserved for Texas and Vermont, which shall be established every five years by a Commission report. However, we would suggest a timeline for development of the report, such as “Such disposal capacity shall be established every 5-years by a report of the Commission, beginning in 2011.”

Safe Deposit of Compact Waste:

We would note that such a report should reaffirm that the principal purpose of the Compact Facility is to adequately and safely dispose of radioactive waste generated in the compact states. The current TCEQ license only allows for 2.3 million cubic feet of waste to be deposited at the Compact Facility, and an initial Commission estimate has stated there may be as much as 6 million cubic feet that

will be generated over the next 50 coming years in Texas and Vermont. In fact, the present license does not even contemplate any waste beyond Texas and Vermont waste making up those 2.3 million cubic feet, since the analysis on which the license is based only refers back to Texas and Vermont waste. Thus, we would hope that an initial report would find that the current license limits and beyond must be limited to Texas and Vermont waste and state that no out of compact imports will be allowed into the compact facility for the next decade, unless additional states are added to the Texas Compact.

TCEQ Consultation

Second of all, if the Commission were to consider going forward with a rule allowing for importation of waste on a case-by-case basis as the present proposed rule contemplates, TCEQ must be consulted. Thus, even if the Compact Commission were to approve a specific "Import Agreement," the Facility Operator could not import the waste covered in the Import Agreement before gaining approval from the TCEQ. In fact, only through an amendment process at the TCEQ could the Facility Operator import waste from other states. Therefore, at a minimum, the Sierra Club suggests that a new 675.23 (a) be added to the proposed rule stating the following:

- (a) No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless the Compact Facility operator has provided to the Commission a statement from the Texas Commission on Environmental Quality that the specific waste contained in the agreement is covered in the current license, as amended, governing the operations of the Compact Facility.

While we appreciate that the Commission has proposed in 675.23 (g) that "The proposed import agreement shall be accompanied by a certification by Texas Commission on Environmental Quality that the waste acceptance criteria have been met for the proposed waste importation," having the waste acceptance criteria met by a TCEQ certification is not the same as a certification that the present license would allow such waste be deposited at the Compact site. Thus, again we would prefer that our suggested language for 675.23(a) be adopted.

International Waste

The proposed rule is silent on whether the Commission can authorize a waste importation agreement that includes international waste. While several pieces of legislation are presently being considered in Congress that would ban the import of international waste, the Sierra Club believes that the Commission has the authority to ban the import of any waste that comes from a source outside of the United States. We think putting this ban in the rules would serve to send a clear signal to those generators outside of the US who are hoping to pass liability onto

the State of Texas for their wastes. We would suggest adding a simple statement such as:

The Commission will not approve any waste importation agreement that contains any waste generated outside of the United States, or its territories.

Compact Commission, Storage and Disposal Issues

Moreover, the present importation rule is silent on the role of the Compact Commission in overseeing any importation of low-level radioactive waste for storage prior to disposal. Presently, WCS has entered into an agreement with Studsvik of Tennessee to import low-level radioactive waste to its storage and processing license, currently under review by TCEQ. That is, WCS has a current storage license which is being renewed through TCEQ and in the meantime they have been able to import waste into Texas that is eventually destined for the Compact site. Yet the present rule does not contemplate whether the applicant needs Compact Commission approval to import non-compact waste into its storage facility. We believe that they do need Compact Commission approval since storage is a form of management. There should be an explicit statement that LLRW from the Storage site that originated in another state must receive Compact Commission approval. We would suggest adding a statement in 675.23 (d) such as:

(d) Agreement Required – No person shall import any low-level radioactive waste for management, including storage, or disposal that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste pursuant to this rule. If the Commission grants an agreement for importation for management, including storage, that does not contemplate final disposal of the waste, a separate agreement for the importation of that waste must be entered into for disposal before final disposal can be allowed.

Public Participation

In addition, there is no public participation or public input process outlined in proposed 675.23 (a), which has the Compact Facility operator issue a recommended total annual volume to be imported. Thus, the proposed rule has the operator – with a clear economic interest to import as much waste as possible – propose an annual total and the Commission approve or not this recommendation. Instead, we would suggest that any recommendation by the Compact Facility on the annual report be posted on the website and be open for public comment before

any Commission approval. Thus, the following language could be added in 675.23 (c):

No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certify that the disposal of imported waste will not reduce capacity for Party State generated waste. **The recommended total annual volume to be imported shall also state whether the present license issued by the TCEQ would allow this volume to be imported, and if not, what additional process would be required for the Compact Facility operator to import the volume and type of waste it is recommending for import. The recommendation from the Operator shall be posted on the LLRWCC website and public comment on the proposal shall be allowed before Commission action. The Commission may accept, deny or amend the Compact Facility Operator recommendation.** The recommendation shall become final after Commission approval. The approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns or successors.

Time Limits

Moreover, the Lone Star Chapter of the Sierra Club would suggest that any proposed Importation Agreement include a specific time limit by which the proposed waste stream must be imported.

Finally, the Lone Star Chapter does acknowledge that proposed 675.23 (e) *Notice and Timing of Agreement* does make improvements compared to the previous version on how comments from the public on specific waste importation agreements can be made. However, again, we would suggest that just as the rule gives specific deadlines for comments by the Operator on any proposed import agreement – and we assume in virtually all cases it will be the operator itself seeking the waste importation agreement – the rules should establish a deadline for public comments on a waste importation agreement published in the Texas Register so the public may have a specific opportunity to comment.

Importation and License

As previously noted, in making a decision on the import agreement, the Commission must ascertain whether the present license even allows for such an import of additional waste not originally contemplated in the license. If the

license does not allow for this import then our view is the Commission cannot approve that import agreement. We would suggest adding an (h) (2)

(2) Whether the TCEQ has issued a certificate or finding that the current license allows for the volume, source and type of waste contemplated in the import agreement.

SUMMARY

In closing, the Sierra Club recognizes the need to proceed at this time with a rulemaking process related to exportation of low-level radioactive waste, but is not supportive of moving forward with any rule related to importation of waste. If the Commission does decide to proceed with a rulemaking on importation of waste from non-compact states, we would suggest that for the next decade, the Commission ban importation of out of compact waste, since the purpose of the Compact Facility is to house Texas and Vermont waste, and the license issued by TCEQ only contemplates waste from Texas and Vermont.

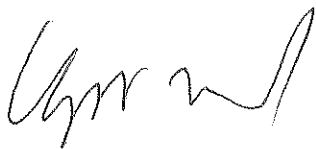
In addition, we believe by proposing a rule that allows for unlimited importation of waste from non-compact states, and even potentially from other countries, the proposed rule becomes a major environmental rule subject to further review.

If the Commission still wishes to proceed with a rule that would allow for importation of waste through waste importation agreements, then at a minimum, only those agreements that are allowed by the TCEQ through the present license or an amendment to that license should be allowed to go forward at the Compact Commission. In addition, language is needed to also consider Compact Commission process for waste intended for storage and we would suggest a ban on any international waste.

Finally, a much more specific public comment input process is needed to assure that all views are taken into account before any decisions by the Commission.

The Lone Star Chapter of the Sierra Club appreciates the opportunity to comment on the proposed draft rule.

Sincerely,



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