

June 26, 2012

Administration@tllrwdcc.org

Dear Chairman Bob Wilson and Texas Low-Level Radioactive Waste Disposal Compact Commissioners,

SEED Coalition submits the following comments for three recently proposed radioactive waste import applications; those from Studsvik, Thomas Gray & Associates – Environmental Management and Controls and ZionSolutions. Representative Lon Burnam, Public Citizen, CODA, Environment Texas, the South Texas Association for Responsible Energy (STARE), Peggy and Melodye Pryor of Andrews County and Rose Gardner of the Tex/New Mexico Radioactive Rangers in Eunice, New Mexico join us in submitting these comments. These comments apply to all of the applications and comments on specific applications will be sent as addendums. We incorporate by reference the comments submitted by SEED Coalition on the first set of import applications.

We urge the Compact Commission to postpone decisions regarding any and all current applications to import waste from non-party states to be disposed of at the Waste Control Specialists site in West Texas for a variety of reasons.

The seven original applications and three new ones range widely, from small to huge volumes of waste, and with some involving massive curie counts for highly radioactive waste originating from nuclear reactors. The first set applications alone exceed the import limits of SB 1504 for the first year. Some applicants requested nearly the whole amount.

The total combined volumes and curies requested in the applications far exceed the limits for the first year for importation, of 220,000 curies and 50,000 cubic feet.

Applicant	Cubic feet	Curies	Cubic feet	Curies	Cubic feet
Bionomics	500	500	Bionomics	500	500
TVA	1100	200000	TVA	1100	200000
PG&E	1147	732	PG&E	1147	732
PerkinElmer	378	15188	PerkinElmer	378	15188
NPPD	3060	143400	NPPD	3060	143400
Exelon	13000	37000	Exelon	13000	37000
Ecology Svs	22.5	44	Ecology Svs	22.5	44
Studsvik	4211	26000		19207.5	396864
Thomas Gray	75	30			
ZionSolutions	5052.6	64000	Studsvik	4211	26000
	28546.1	486894	Thomas Gray	75	30
			ZionSolutions	5052.6	64000
				9338.6	90030

Many issues need resolution. Here are many reasons why the Compact Commission should delay decisions on every one of the applications:

Water is Present at the Site

No waste import applications should be approved by the Compact Commission until the site is demonstrated to be dry, as required in its license. Several monitoring wells in the Compact Waste site buffer zone, which should be dry, continue to show significant water levels. Another 18 months of pumping out water may be needed to achieve conditions dry enough for the disposal of radioactive materials, some of which must remain isolated from water for millions of years. We must do things the right way now or risk paying for our mistakes later. Other low-level radioactive waste sites now have clean up costs ranging from millions to billions of dollars. We cannot afford to have radioactively contaminated water in our aquifers, either in terms of environmental and health impacts or in terms expensive remediation. The Compact Commission

Texas' and Vermont's waste should be Disposed of First

Assuming the site can be pumped long enough to have dry conditions, and that it remains dry, the radioactive waste from Texas and Vermont and waste that is currently stored at the site should be disposed of first, before imports from non-party states.

Three nuclear reactor heads and twelve large steam generators have been replaced from Texas' nuclear reactors. They remain sitting onsite at South Texas Project and Comanche Peak and could be shipped in the near future to the WCS site, before imports are approved. Vermont Yankee nuclear reactor may be decommissioned soon, and could need more capacity than originally thought due to leaking pipes and contaminated soil. In order to assure adequate capacity for the party states, for whom the Compact site was presumably built, Texas' and Vermont's waste should be disposed of first. Import applications should not be approved until after the Compact States' existing nuclear reactor waste is disposed of, and until accurate assessments of the capacity and curies needed for decommissioning of reactors in Texas and Vermont are performed. There may not be any space remaining.

Using Table 4-39 of the Texas Compact Low-Level Radioactive Waste Generation Trends and Management Alternatives Study, the total volume needed for Texas and Vermont is found to exceed the licensed 2.31 million cubic feet by 233,000 cubic feet. The estimate did not include the three replaced reactor heads and twelve steam generators sitting at Texas reactor sites, which must be added in. WCS claims that waste reduction will allow plenty of room, but this must be clearly demonstrated and the amounts of waste anticipated from Texas and Vermont must be clarified.

While SB 1504 allows some importation of non-party waste, a legal question remains regarding whether non-party states should be allowed to dispose of waste at the Texas site at all. The Nuclear Waste Policy Act (PL-105-236) that created the Texas Compact says that the host state (Texas) *shall be entitled to unlimited use of the facility over its operating life*. Importing waste from non-party states clearly cuts into this unlimited use.

Financial Assurance from the Site Operator is Shaky

The Compact Commission's purview includes looking after the economic well-being of our state as part of the process of addressing radioactive waste disposal.

No applications for import should be approved until the full financial assurance by WCS is solidified. Texas must be assured that we won't be inheriting massive liability, which could potentially occur in a short timeframe if we're not careful.

SEED Coalition has recommended audits in the past. Now is the time to get a financial audit performed since the financial assurance required of WCS' by its license appears to be very shaky. The Compact Commission should not approve any license applications until an audit is completed using methods certified by the state auditor and the results are found to be satisfactory.

TCEQ allowed Waste Control Specialists to use stock from a sister company, Titanium Metals Corp. as financial assurance for the radioactive waste dump, although typically, high-risk facilities like hazardous or radioactive waste dumps are secured with a bond, letter of credit or insurance. Financial assurance money is required to cover the costs of closure of the site, monitor the site afterwards and pay for clean up costs. It is especially important in case a company goes bankrupt or leaves the state.

The Texas Observer reported on February 8, 2012, "Texas law spells out six acceptable forms of financial assurance. But in July 2010, according to documents obtained by the *Observer* through the open records process, Waste Control Specialists told the Texas Commission on Environmental Quality that it was unable to obtain any of the six because they were "either commercially unavailable or infeasible."

It's hard to understand why a company headed by a billionaire would have such difficulty complying with a single one of the six acceptable forms of financial assurance and why cash was not requested. It raises the questions as to whether WCS simply didn't choose to use any of the six approved methods and regarding why the TCEQ would go along with WCS' unique arrangement. As the Texas Observer reported, "Michael Mariotte, executive director of the Maryland-based [Nuclear Information and Resource Service](#), said that the deal would never be allowed under federal rules. "Under [Nuclear Regulatory Commission] rules they would flunk the financial qualifications test and they wouldn't get the license."

Twelve million shares of Titanium Metals Corp. stock were reportedly used for financial assurance. They would have been worth about \$190 million when the arrangement was finalized on Nov. 3, 2011. The same stock was only worth about \$128 million at the close of the day on June 21, 2012. If the stock dropped below \$10.56 per share, the entire trust account was to have been immediately liquidated. On June 22, 2012 the stock reached a low of \$10.55 per share, although it closed a bit higher. It has dipped below the benchmark several times since then. Why hasn't the stock been liquidated?

The Compact Commission should authorize an audit to determine if it is time for the stock to be liquidated and perhaps for the license to be revoked. The WCS Trust Agreement states that WCS will deposit \$9 million in cash into the Cash Component of the Fund each year for five years. Why shouldn't all the stock be replaced by cash or solid financial assurance using one of the six approved methods? Texans should not be put at risk. The stock has dipped below the designated benchmark already.

Has the stock value bar of \$10.56 per share somehow been lowered for WCS since the original arrangement so that the stock liquidation point has changed? If so, is it now somewhere in the \$9.00 per share range? If so, when and why did this change occur, and who authorized it? How much stock is currently in the financial assurance fund and what is the stock and any other form of assurance being used currently worth? Does the assurance meet WCS' legal requirements?

The Compact Commission should get a real audit in order to answer these questions, get complete and reliable information and protect the financial interests of the public. In the meantime, the Commission should request full information from all parties involved regarding the stock and other assets being used for financial assurance, their real value in a changing market, and information regarding all related arrangements. The Compact Commission should not move forward with import applications until full information is provided and until financial assurance using approved methods is in place so that Texans will not be placed at financial risk.

Texas' Failure to Determine Transportation Routes

The state of Texas is legally required to designate routes and alternate routes for the transportation of radioactive waste, but has not done so. It would be irresponsible and at odds with the purpose of the Commission to approve radioactive waste import applications before Texas has even designated transportation routes, as legally required.

The Compact Commission's purview includes protecting the health and safety and economic well-being of Texans. Ensuring that waste importation does not result in accidents involving radioactive materials is well within the purview of protecting public health, safety and economic interests in the process of importing non-party waste to Texas. Improper routing could lead to involving radioactive releases and exposure risks. Protecting the public and emergency responders is essential. While the Compact Commission is not responsible for developing the routes, the Commission should delay approval of applications until this legal requirement is met.

Requirements for Texas to Designate Waste Routes

Section 404 of the Nuclear Waste Policy Act says that the **host state (Texas) shall... identify and regulate, in accordance with federal and host state law, the means and routes of transportation of low-level radioactive waste in the host state.**

25 Texas Administrative Code (TAC) §289.257 (e)(5) states that "the agency (DOT) shall review and determine alternate routes for the transportation and routing of

radioactive material in accordance with 49 CFR §397.103.” Some lower activity materials are exempted, but not all low-level radioactive materials.

Texas has not designated these transportation routes. I contacted Mr. Richard Ratliff, Chief of the Bureau of Radiation Control for Texas’ Department of State Health Services, on June 12, 2012. I was told that there are no designated routes, but that drivers are to take the “safest, fastest routes” and stay on interstate highways until they have to turn off.

Despite legal requirements that the state of Texas designate routes, is the routing of highly radioactive materials ultimately to be left to the discretion of drivers? Who will know where the trucks are? Already one radioactive material shipment got lost for over a month and was eventually located on a ranch where it had been abandoned by a driver.

The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration’s Texas Division referred me to their PHMSA, the Pipeline and Hazardous Materials Safety Administration office, where Mr. Tom Lynch confirmed that no routes for low-level radioactive waste have been designated for Texas. Texas has adopted 49 CFR, which includes regulations for packaging and marking of materials and hazmat regulations. States are allowed to have additional rules, as long as they don’t conflict with federal law.

Routes for low-level radioactive waste should be designated, as legally required. The Compact Commission should not approve applications to import radioactive waste until this has been done, in order to protect public health, safety and economic well –being.

Communities have not been able to request Pre-emption of Routing

49 CFR Part 397.201 allows any person, State, political subdivision thereof, or Indian Tribe directly affected by a routing designation to apply for a preemption determination or to apply for a waiver of pre-emption regarding any routing in the state. There has been no opportunity to do so.

How can any community, or other party, exercise their legal right to apply for pre-emption if the state of Texas has not designated the routes that may be used for radioactive waste shipments? How will communities even know that radioactive waste shipments will be occurring?

Emergency Response Training, Equipment and Notice is Lacking

How can effective emergency response planning occur if no routes are designated? We are looking at a recipe for disaster. There is no plan to notify emergency response teams when shipments are about to come through. Manifests for shipments that have already gone through will be sent to TCEQ and the Dept. of State Health Services, but potential emergency responders will not be given notice of coming shipments. There are no full-time paid professional firefighters in many parts of Texas. It is questionable as to whether many emergency responders would have the equipment and shielding needed or the training that would be essential if there was an accident involving radioactive releases.

Many of our Texas highways could be used for transportation of highly radioactive nuclear wastes. Likely routes may include Dallas-Ft. Worth, Abilene, Midland-Odessa, Amarillo, Lubbock, El Paso, Houston, San Antonio, Austin and other major Texas cities. Public Citizen's Texas Office estimates that 1414 schools, 142 hospitals and over 8 million people are within 5 miles of interstate highways that are likely to be used as radioactive waste routes.

Our comments on the three specific new applications will be sent as addendums to these comments.

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