



**Senator Brian Birdwell, Chair
Members, Senate Committee on Natural Resources and Economic Development
Re: HB 7**

HB 7 By Landgraf Must be Amended, or We Can't Support it!

Thanks for your important work for joining colleagues in writing to the Nuclear Regulatory Commission, asking that the license for storing dangerous nuclear waste in Texas be denied. Bringing in deadly nuclear waste would risk our health, safety, the environment and our economy.

Rep. Landgraf's HB 7 is supposed to halt high-level radioactive waste storage in Texas, but it doesn't.

The Lone Star Chapter of the Sierra Club is appreciative of the stated intentt by Governor and Chairman Landgraf in HB 7 to prevent high-level nuclear waste from being transported or stored in Texas. We acknowledge that this bill is "cleaner" than the bill filed during the regular session, which attempted to link a ban on high-level waste with tax and regulatory breaks for low-level radioactive waste. Discussions over low-level radioactive waste should be separate from discussions over high-level waste.

The "Interim Storage Partners" project by Orano USA and Waste Control Specialists facility just received an EIS from the Nuclear Regulatory Commission recommending that the license be issued, and the license could be issued as soon as September 13th. It is important to note that several stakeholders, including the Sierra Club, have appealed initial decisions, and may also appeal the EIS itself. However, because it is unclear whether these legal actions will be successful, having the State of Texas take action is imperative.

The current bill has four main sections, all of which could be important in the fight against a proposed high-level radioactive waste site in Andrews County. However, we are extremely concerned that the bill does not accomplish its stated task. First, we believe the bill must not just reference "high-level" waste, but specifically name the waste that would come to the proposed site in Andrews, including spent nuclear fuel

rods and reactor-related Greater-Than-Class C waste that also comes from inside of reactors. Second, we would like to see the section on prohibiting TCEQ from issuing any permits related to a high-level storage facility to be tightened to prevent the company from merely dropping some applications tomorrow and thus “escaping” the provision. Finally, we would like to see the transport and disposal ban apply to more than just a person and to have actual fines and penalties added throughout the bill both for transport and disposal of waste. Without the threat of actual fines and penalties the bill lacks teeth to be effective.

The Sierra Club would be an active promotor of the bill if these changes were made. Without them, we fear that the bill will have little practical impact, and could cause a false sense of security and undermine efforts to stop the facility from operating.

Expand the bill to also ban imports and transport of spent fuel rods and “reactor-related” GTCC

When Governor Greg Abbott announced the special second session, we were pleased to see that he added the following issue:

Legislation reforming the laws governing radioactive waste to protect the safety of Texans, including by further limiting the ability to store and transport high-level radioactive materials in this state.

Obviously, the Governor added this item to the call as a direct response to the attempt by the conglomerate known as ISP to build and operate an “interim” radioactive waste storage facility for a variety of wastes, including so-called high-level radioactive waste, spent nuclear fuel rods and Greater-Than-Class C waste - GTCC.

High Level Radioactive Waste are the fuel rods that generate energy in a reactor. The Greater than Class C Wastes are metal components from inside a reactor, such as control rods.

In the Environmental Impact Statement examining a proposal that would allow for disposal of greater than class C wastes at disposal sites like WCS, the NRC said:

GTCC LLRW is waste that is not generally acceptable for near-surface disposal and for which the waste form and disposal methods must be different and, in general, more stringent than those specified for Class C LLRW. NRC regulations require GTCC LLRW to be disposed of in a geologic repository as defined in 10 CFR Parts 60 and 63, unless proposals for an alternative method are approved by NRC under 10 CFR 61.55(a)(2)(iv). Final GTCC EIS Summary pg S-9 ¹

¹ Final Environmental Impact Statement for the Disposal Of Greater Than Class C GTCC Low Level Radioactive Wastes and GTCC- like Wastes (DOE/EIS-0375) pg S9

Since the DOE has not yet finalized the reclassification of these waste streams² to allow for disposal in other ways, these wastes should be classified and treated in the same manner as proscribed for High Level Radioactive Wastes in this bill.

Thus, the Sierra Club would recommend that the definition section of the bill be expanded to include definitions of high-level, spent nuclear fuel rods and reactor-related greater than GTCC and then all three waste categories be referenced throughout the bill.

(12-b) "High-level radioactive waste" has the meaning assigned by 42 U.S.C. Section 10101(12) and includes spent nuclear fuel as defined by 42 U.S.C. Section 10101(23).

(12-x) "reactor-related greater-than-class-C waste" means greater-than-Class-C low-level radioactive waste originating from within a civilian nuclear power reactor that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

(12-x) "spent nuclear fuel" has the meaning defined in the Nuclear Waste Policy Act (42 USC 10101(23)).

People often say "high-level radioactive waste," as a short-hand term. However, "high-level radioactive waste" has a technical definition which is different - so this muddy issue must be cleaned up with this amendment for the bill to work.

Here's what we need to ban:

The ISP license application is for two waste streams of highly radioactive waste:

- 1) spent nuclear fuel and
- 2) reactor-related Greater-Than-Class C (rr-GTCC).

Both need to be banned. And proper definitions are needed.

Interim Storage Partners (ISP), is the company that seeks the federal license to store up to 40,000 tons of nuclear reactor waste in Andrews County Texas. ISP is a partnership

² Recent Activities On October 21, 2020, in SECY-20-0098 – Path Forward and Recommendations for Certain Low-Level Radioactive Waste Disposal Rulemakings, the staff provided the Commission with options and a recommendation for the path forward on this issue. The staff recommended combining the ongoing Part 61 proposed rulemaking with a proposed rulemaking to promulgate requirements for the near-surface disposal of Greater-Than-Class C (GTCC) waste in one consolidated rulemaking.

of Orano and Waste Control Specialists (WCS), which has an existing low-level radioactive waste site.

Alternatively, an amendment such as was suggested on third reading by Mr. Craddick



FLOOR AMENDMENT NO. _____

BY: Goodwin Craddick

1 Amend H.B. No. 7 on third reading (second reading
2 engrossment), in SECTION 3 of the bill, in added Section 401.072,
3 Health and Safety Code, by striking page 2, lines 9 and 10, and
4 substituting the following:

5 license holder, may not dispose of or store in this state:

6 (1) high-level radioactive waste; or

7 (2) radioactive waste that meets the storage
8 requirements under 10 C.F.R. Section 72.128 as that section existed
9 on September 1, 2021.

Eliminate Loopholes and Put more Teeth in the Bill

In Section 2 of the bill we would suggest adding references to these waste streams in the prohibitions that the TCEQ would have such as “for the construction or operation of a facility licensed or pending licensure to store high-level radioactive waste, spent nuclear fuel or reactor-related greater-than-Class-C waste by the United States Nuclear Regulatory Commission.

This would provide clear direction to the TCEQ that it could not issue permits for the proposed storage facility. We would also eliminate the section of the bill that provides that Section 401.005 (Code of Federal Regulations References) does not apply to this subsection. This clarification is important because that section refers back to federal regulations and codes dating back to 1999. Because WCS is actively attempting to change federal regulations to allow certain wastes such as Greater Than

Class C waste to be reclassified so that it can be stored above-ground, repealing this repeal is key.

Sec. 401.005. CODE OF FEDERAL REGULATIONS REFERENCES. A reference in this chapter to the "C.F.R." or the "Code of Federal Regulations" means the Code of Federal Regulations as it existed on September 1, 1999.

Third, in Section 3 of the bill we would suggest adding roads and ports to the list of transportation venues that are prohibited from transporting high-level waste, as well as spent nuclear fuel rods and rr-GTCC waste, and that prohibition be to or from a consolidated interim storage facility. In other words, the law should not prevent the legal transport of waste in Texas, but only the waste that is intended to be disposed of in the state. We would also suggest adding robust fines against anyone who was found to have done so after the effective date of this law.

We do appreciate the section prohibiting the disposal of high-level waste at an interim facility and again would suggest that spent nuclear fuel rods and reactor-related GTCC be added to the bill, and that it just be declared unlawful as opposed to being applied to a "person." We believe fines and penalties should be added to the section as well.

Finally, we would tighten up the language in Section 4, or remove it altogether. We worry that as a result the ISP could make a cursory application to the TCEQ for the permits. We would suggest the language say instead that Section 2 does not apply if the permit has already been issued by TCEQ.

The Sierra Club looks forward to working with Chairman Birdwell, committee members, and the full Senate to pass a high-level radioactive waste transportation and disposal ban in Texas that includes spent nuclear fuel rods and reactor-related GTCC, with strong fines for non-compliance, and removal of any loopholes. We commit that we will continue to oppose the proposed Consolidated Interim Storage facility in West Texas through political and legal means.

Please support an amendment that adds "reactor-related Greater-Than-Class C radioactive waste" (rr-GTCC) and "Spent Nuclear Fuel" to the bill. The amendment would:

- Ensure that both spent nuclear fuel and reactor-related Greater-Than-Class C waste are included in the definition of High Radioactive Waste
- Ensure that the right definitions get used - which matters.
- Ensure that if the bill passes, it will actually PREVENT the type of waste that WCS is planning to bring to West Texas. -

Please repeal the repeal of Section 401.005.