March 25, 2019

Landgraf HB 2269/Seliger SB 1021

The “Import More, Dump More, Pay Less, Regulate Less” Waste Control Specialists Bill of Rights!

The Lone Star Chapter of the Sierra Club is very much opposed to CSHB 2269 and CSSB 1021.

How We GOT HERE

After the TCEQ rejected a permit for the disposal of low-level radioactive waste by the then Texas Low-Level Radioactive Waste Disposal Authority -- a state agency - in Sierra Blanca, the legislature with support from a company called WCS passed legislation to privatize the disposal of low-level radioactive waste through a private disposal site. That 2003 legislation not only privatized the disposal of COMPACT waste from Texas, Vermont and Maine -- which had joined our low-level rad waste compact - but allowed the disposal of federal low-level radioactive waste from the Department of Energy. Why? Because WCS successfully argued that in order to make the financing worked they also needed a separate site to take federal waste. The legislature bought the plan. You guys take Texas and compact waste and we will let federal waste in.

After several years, the site in Andrews County was licensed and despite efforts by some -- including the Sierra Club -- to have a contested case hearing, we were never granted one and the license moved forward and the site began taking waste some six years ago.

Except we weren’t done. WCS has repeatedly gone back to the Legislature and to the TCEQ through permit amendments to change the statutes and progressively allow the site to take more and more imported “non-Compact” waste -- up to 30% of the volume under current statute. In addition, the site is now taking depleted uranium, old WIPP waste, methyl-mercury and other waste streams that were never contemplated in the original license.

Most recently, WCS applied for and received significant lowering of modeling and monitoring requirements through a license amendment that was treated as a “minor” amendment despite our efforts.
Now in return for being able to take imported waste, WCS essentially made a deal with the Legislature: Let us take non-compact waste, and we will include a surcharge to help bring in more revenue to the state of Texas. A robust 20% surcharge.

We also required significant state oversight in return for this loosening of the original statutes and license.

**Promise: No High-Level Waste**

Yes, WCS said we are not contemplating taking in high-level waste. We are a company providing a solution to low-level radioactive waste. Lies. They have applied to the NRC to take high-level radioactive waste on an “interim” storage basis.

**What CSHB 2269 and CSSB 1021 does**

**More Radioactive Waste Imports for our Texas Compact Site.** CSHB 2269 and CSSB 1021 turns our “compact” waste site into an imported waste site.

The bill would only reserve 3 million total cubic feet out of 8.9 million total cubic feet for Compact waste, and 2 million out of 3.89 million curies of waste for COMPACT Texas and Vermont waste.

So from a 30% import cap to essentially a 60% volume import cap. What was a compact site becomes a national site.

**More Radioactivity in Texas.** Furthermore, the bill allows TCEQ to increase the curies allowed in the site by “accounting for” radioactive decay, essentially increasing the total curies without even a license amendment.

**More Imports Because We Cut the Surcharge by 75%.** The bill then reduces the current surcharge for imported waste from 20 percent to five percent, reducing revenues to the state, specifically to the Perpetual Radioactive Account that helps clean up old radioactive waste sites.

Here is the old language that is being changed: (g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

**Automatic Expansion.** The bill then puts in an automatic expansion of the site if and when the facility has less then “three years” of constructed capacity for party waste, essentially giving WCS the ability, as well as an automatic expansion of two million
curies when the site has reached 80 percent of the total curies for which the facility is licensed.

So in other words, the site gets an automatic and statutory expansion when it hits certain limits. We don’t do this in Texas. We don’t say to Exxon when you start selling x number of gallons of refined diesel you get a statutory expansion, or when the NRG limestone plant starts having an annual capacity factor of 90% you get to expand your plant by 1,000 MWs.

**No Money for the State from WCS.** The bill also reduces the fees paid by WCS itself from five percent to Andrews County and five percent to the state in WCS revenues to only five percent to Andrews County.


The Sierra Club hopes this bill dies. Less revenue, less oversight, more imports. A bad deal for Texas.

Sincerely,

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Repealers:

401. 202 (c) Except as provided by Section 401.216, the commission shall provide that the compact waste disposal facility license authorizes only the disposal of compact waste.

401.207 (d-1) Beginning September 1, 2015, the compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if:

(1) the waste has been volume-reduced, if eligible, by at least a factor of three in a manner consistent with this subchapter as provided by commission rule; and

(2) the compact waste disposal facility license holder collects a surcharge under Subsection (g).

(d-2) If volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C, the payment of the fee and compliance with other requirements of Subsection (d-1) do not apply.

(d-3) The commission may assess an additional fee on a nonparty compact waste generator for failing to comply with the volume reduction requirements established under this section. The fee shall be deposited to the credit of the low-level radioactive waste fund under Section 401.249. Fees deposited under this subsection may be transferred and used only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission under Section 401.251.

401.207 (e) The compact waste disposal facility license holder may not collect a fee under this section or enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule unless the waste is containerized. The compact waste disposal facility license holder may collect a fee and dispose of:

(1) not more than the greater of:

(A) 1.167 million curies of nonparty compact waste; or
(B) an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and

(2) not more than 275,000 curies of nonparty compact waste in any fiscal year.

Sec. 401.241. SECURITY. NOTE THIS REMOVED IN COMMITTEE SUB.

(b) The amount of security required of a license holder under this section may not be less than $20 million at the time the disposal facility site is decommissioned. The commission shall use interest earned on the security to offset any other financial obligations incurred by the license holder to the commission. The commission shall establish a schedule for the total payment of the amount of the security required under this section based on:

(1) the amount of low-level radioactive waste received at the site;

(2) the long-term risk to health, safety, and the environment posed by the waste; and

(3) the need to address and prevent unplanned events that pose a risk to public health and safety.

Sec. 401.2445. STATE FEE. The compact waste disposal facility license holder each quarter shall transfer to the state general revenue fund five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and

(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

Added by Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), Sec. 3(b), eff. September 1, 2019.

Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE DISPOSAL.

(b) Rates and contract terms negotiated under this section are subject to review and approval by the commission's executive director to ensure they meet all of the requirements of this section.
(c) Rates negotiated under this section must be set both by a price per curie and a price per cubic foot. Fees resulting from the negotiated rates must be greater than, as applicable:

(1) the compact waste disposal fees under Section 401.245 as set by the commission that are in effect at the time the rates are negotiated; or

(2) the interim compact waste disposal fees under Section 401.2455 as set by the commission's executive director that are in effect at the time the rates are negotiated.

(d) A contract under this section must:

(1) be negotiated in good faith;

(2) conform to applicable antitrust statutes and regulations; and

(3) be nondiscriminatory.

(e) Rates set under this section must generate fees sufficient to meet the criteria for party state compact waste under Sections 401.246(a) and (c).