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To the members of the Senate Committee on Natural Resources & Economic Development.
Via hand delivery.

March 25, 2021

Re: SB 1046 by Rep. Birdwell - Opposition testimony of Public Citizen

Dear Chairman Birdwell and members of the committee:

Public Citizen appreciates the opportunity to testify against SB 1046 by Chairman Birdwell, relating to the regulation of radioactive waste; reducing a surcharge; reducing a fee. This testimony has been updated and clarified in several places from our testimony on the companion HB 2692 delivered to the House Committee on Environmental Regulation on Monday.

I. We approve of the ban on high-level radioactive waste or spent nuclear fuel.

We are opposed to the storage or disposal of high-level radioactive waste in Texas and we approve of the ban in SECTION 2.01 of the bill. However, we are concerned that the ban may not be effective and recommend several improvements as follows:

1. The ban should be placed in a different subchapter and section within Health & Safety Code Ch. 401. The current location at Sec. 401.205 places the ban in Subchapter F titled “Special Provisions Concerning Low-Level Radioactive Waste Disposal” and in Sec. 401.205 titled “Responsibilities of Persons Licensed to Dispose of Low-Level Radioactive Waste.” This location could create confusion about applicability, perhaps implying that the ban only applies to a low-level waste disposer. We recommend a standalone section of subchapter for the ban.
2. The ban should be expanded to include Greater Than Class C (GTCC) waste. Although this waste may fall within the term “low-level waste,” it has a radionuclide content that makes it more dangerous than all other low-level wastes. Crucially, a defining feature of GTCC waste is that it cannot be disposed of like low-level waste and must be disposed of in a geologic repository.¹ For this reason it is more appropriate for the law to group GTCC waste with high-level waste that also must be disposed of in this way. In other words: if Texas wants a ban on high-level waste, it would logically want a ban on GTCC waste as well. GTCC waste is a major part WCS/ISP’s Consolidated Interim Storage license application and should be added to the ban in this bill.
3. The use of the term “person” does not capture the federal government. The U.S. Department of Energy and the U.S. Nuclear Regulatory Commission are both potential holders of high-level waste. A complete ban on high-level waste disposal in Texas would apply to these entities as well.
4. The ban should be accompanied by a withdrawal of the Consolidated Interim Storage license application by WCS/ISP. Commenters have suggested that the bill can neither

¹ 10 CFR § 61.55(a)(2)(iv).



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direct the actions of a single company or mandate a specific outcome in a federal process. We suggest an addition to the bill to the effect of, “No person that has a pending application or issued license for storage or disposal of high-level radioactive waste in Texas may dispose of low-level radioactive waste in Texas.”

With these improvements to completely and effectively ban high-level radioactive waste disposal or storage in Texas, we would support a standalone bill that enacted this ban.

II. The “Legislative Findings” portion of the bill is misleading.

It is unclear why the bill needs a legislative findings portion or what purpose it serves. In places it is misleading, ad for example in SECTION 1.02(d) which lists the following types of waste accepted at the site:

- University lab equipment
- Oil and gas industry materials
- Materials from Texas’ two nuclear plants
- The U.S. Department of Energy
- Texas DSHS and TCEQ

This list makes no mention of one of the biggest possible streams: material from decommissioned nuclear reactors across the country.

SECTION 1.02(e) of the bill concludes that Texas has “benefited” from the facility but makes no mention of the potential risk to the state of contamination or an accident at the site.

We don’t believe this portion of the bill is accurate or useful and it should be removed.

III. We oppose the mandatory expansion of the facility.

SECTION 2.04 of the bill included several mandates to expand the capacity of the site when certain limits or volumes are reached. The wording of this section is also misleading. New Health and Safety Code Sec. 401.2075 is titled “Limitation on Nonparty Compact Waste” when in fact the section is a mandate to build mor capacity at the site in order to accept nonparty waste.

We do not believe it is in the state’s interest to remove discretion about whether to expand the site. A mandate for future expansion might change the decision making about, for example, whether and how much non-compact party waste to accept. In general, we think the state and the compact should constantly review the need for the site and alternatives to dumping more waste at the site. Removing discretion by forcing future expansions may impact future decisions in a way that is detrimental to the environmental and public health.



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IV. Eliminating or reducing fees and surcharges will cost Texas greatly.

The fiscal note for the bill understates its potential cost. It includes the following impacts:

- **\$399,000 lost each year from General Revenue**
- **\$1,125,000 lost each year from the Environmental Rad & Perpetual Care account 5158**

We believe this dramatically understates potential losses from the bill. The fiscal note looks backward at disposal rates in past years and fails to consider coming increases in disposal. The stated purpose of this bill is to increase business for the site, which would necessarily mean more disposal and a greater fiscal impact. To see how much greater, we must consider both revenue reducing sections of the bill and estimates of future use of the site.

SECTION 2.03 of the bill reduces the surcharge for the disposal of nonparty compact waste from 20% to 5% of the total contracted rate. SECTION 2.06 of the bill eliminates the state fee consisting of 5% of gross receipts from compact waste. Importantly, the definition of “compact waste” not limited to waste from compact party states but actually includes any waste that, “has been approved for importation to this state by the compact commission[.]”²

A major source of future volume (and revenue) for the site will be decommissioned nuclear reactors. The U.S. Nuclear Regulatory Commission counts 23 such reactors in or near decommissioning. In 2016 the TCEQ issued a report on the surcharge that estimated decommissioning waste from 86 reactors. We can estimate the loss in revenue from a single reactor and extrapolate from there.

Our colleagues at the SEED coalition have estimated the losses from the decommissioning of the 805 MW Palisades reactor on Lake Michigan, which will close in 2022. To paraphrase the analysis, if slightly more than one million pounds of waste is disposed of at WCS, the company would collect an estimated \$106,141,300 in revenue. If Texas’ portion of that revenue is decreased from 20% to 5%, the impact to Texas would be:

- **Loss of \$15,921,195 from the surcharge from a single reactor decommissioning.**

If the state fee of 5% was removed, the impact to Texas would be:

- **Loss of \$5,307,065 from the state fee from a single reactor decommissioning.**

This leads to total revenue lost from a single reactor of:

- **\$21,228,260 lost from one reactor.**

² Health & Safety Code § 401.2005(2) (quoted in relevant part).



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Extrapolate to 23 or even 86 reactors and the loss becomes:

- **\$488,249,980 lost from 23 reactors.**
- **\$1,825,630,360 lost from 86 reactors.**

Again, this is using our best estimates of fee reductions and the NRC/TCEQ figures for potential decommissioning volume. A more detailed analysis will be provided by the SEED Coalition in its written testimony.

V. Texas could easily be responsible for a multi-billion dollar cleanup in the future.

Depriving the state of this much revenue—particularly during a difficult budget cycle—is reason enough not to support these fee and surcharge reductions. There is also the sobering fact that reducing the revenue from the Environmental Rad & Perpetual Care Account 5158. This account and a related account, GR Account 5096 – Perpetual Care, have a combined cap of \$100 million.³ The estimated fund balances for these accounts for Fiscal Year 2021 are:⁴

- \$3,622,000 in GR Account 5158
- \$7,977,000 in GR Account 5096

This gives a combined balance of \$11,599,000 for two accounts with a cap of \$100 million. Compare this to the cost of cleanups of various nuclear waste accidents across the country:

- The Paducah Gaseous Diffusion Plant (PGDP) site in Kentucky listed as a Superfund site on the National Priorities List (NPL) in 1994. Expected to cost **\$1.3 billion**.
- The Hanford Nuclear Reservation in Washington State is today America's most contaminated nuclear site. In 2016, **\$107 billion** was needed for cleanup.
- The Waste Isolation Pilot Plant (WIPP) had a leak after 15 years of operation. It took 3 years to clean up and cost US taxpayers over **\$2 billion**.
- The Pantex Plant is the primary United States nuclear weapons assembly and disassembly facility. Since 2000, \$171 million in compensation and medical bills has been disbursed to more than 1,300 workers and families since the energy employees' compensation program began. Clean up costs are **\$179.5 billion**.
- Fernald uranium production facility is the site of one of the largest environmental cleanup operations undertaken in U.S. history. It was added to the U.S. EPA's National Priorities List of Superfund Sites most in need of cleanup in 1989. The cleanup was completed after 28 years and cost **\$4.4 billion**.

³ See <https://fmcpa.cpa.state.tx.us/fiscalmoa/fund.jsp?num=5158>.

⁴ "Biennial Revenue Estimate, 2022-2023 Biennium, 87th Texas Legislature, January 2021" Glenn Hegar, Texas Comptroller of Public Accounts, available at <https://comptroller.texas.gov/transparency/reports/biennial-revenue-estimate/2022-23/docs/96-402-BRE-2022-2023.pdf> (pdf download).



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- Savannah River Site (SRS) produced tritium, plutonium and other special nuclear materials for national defense and the space program. Past disposal practices caused site contamination. Cleanup efforts began in the 1980s. Site cleanup completion is currently scheduled for 2065 and will cost **\$17 billion**.
- Beatty was the nation's first federally licensed low-level radioactive waste dump. It opened in 1962 and closed in 1992. In October of 2015, an underground fire triggered violent eruptions of debris, 60 feet into the air. The State of Nevada had to take over ownership and oversight of this site. A plastic cover would run **\$60 million**.
- West Valley Demonstration Project is a nuclear waste remediation project focusing on cleanup and containment of radioactive waste left behind after the abandonment of a commercial nuclear fuel reprocessing plant in 1980. Nuclear Fuel Services walked away and left the bill to taxpayers. Despite over 30 years of cleanup efforts it is New York's most toxic location. **\$3 billion** has been spent and **\$10 billion** more is needed.



History shows that a radioactive waste accident in Texas could easily cost billions of dollars. We have less than \$12 million in our cleanup funds and SB 1046 is proposing to reduce future revenue for the fund. Texas could easily be on the hook for a multi-billion dollar cleanup in the future. Given this risk, we absolutely do not support the reduction of any fee or surcharge associated with this site.



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VI. We oppose the repealer sections of the bill

We generally oppose the repealer sections of the bill. The following repeals give us the most concern.

SECTION 2.09(2) of the bill repeals Health & Safety Code § 401.2456 (c), (d), and (e). We are especially concerned with the repeal of subsection (d), which reads:

- (d) A contract under this section [for nonparty compact waste disposal] must:
 - (1) be negotiated in good faith;
 - (2) conform to applicable antitrust statutes and regulations; and
 - (3) be nondiscriminatory.

It is plainly against public policy to exempt a company negotiating a contract that impacts the State of Texas and its people from good faith negotiations, antitrust laws, and antidiscrimination laws. This section of the bill must be removed.

SECTION 2.09(1) of the bill repeals a number of important provisions, most significantly the requirement at Health & Safety Code § 401.207(e) for containerization of nonparty Class A low-level radioactive waste. Containerization is an important safeguard both for long term storage of disposed waste and for workers who are handling waste. This requirement should not be repealed.

I appreciate the opportunity to provide these comments and welcome questions at ashelley@citizen.org, 512-477-1155.

Respectfully,

Adrian Shelley
Public Citizen's Texas Office Director

CC: Sen. Judith Zaffirini, Sen. Carol Alvarado, Sen. Kelly Hancock, Sen. Juan Hinojosa, Sen. Bryan Hughes, Sen. Lois W. Kolkhorst, Sen. Eddie Lucio, Jr., Sen. Kel Seliger.