

- SUBJECT:** TNRCC issuance of mixed waste disposal license to a private entity
- COMMITTEE:** Environmental Regulation — favorable, with amendments
- VOTE:** 5 ayes — Chisum, Dukes, Howard, Kuempel, Yost  
3 nays — Jackson, Saunders, Talton  
1 present, not voting — Stiles
- SENATE VOTE:** On final passage, May 5 — 28-1 (Moncrief)
- WITNESSES:** For — Gary W. Gaston, Andrews County Judge; Allen L. Messenger and Kent Hance, Waste Control Specialists, Inc.; Gregory Sweeney, City of Andrews; Peter C. Francis and Evin Huddleston, Andrews Independent School District; James Roberts, Andrews Industrial Foundation; Chet Brooks  
  
Against — Robert D. Gallagher, Nuclear Sources & Services, Inc.; Tom "Smitty" Smith, Public Citizen; Susan Lee, Feminists for a Compassionate Society; Les Breeding, Fund for Nuclear Responsibility  
  
On — Bill Addington, Save Sierra Blanca; Rick Jacobi, Texas Low-Level Radioactive Waste Disposal Authority (LLRWA); Alice Rogers, Texas Natural Resource Conservation Commission (TNRCC); Ruth E. McBurney, Texas Department of Health
- BACKGROUND:** Health and Safety Code, sec. 401.203 provides that a radioactive waste disposal license may be issued only to a public entity specifically authorized by law for radioactive waste disposal.  
  
Health and Safety Code, sec. 401.153 provides that TNRCC, by rule, may prohibit a licensed radioactive waste processor from accepting low-level radioactive waste generated out of state. A rule adopted under this section could not take effect any earlier than two years before the LLRWA opens and would expire the date the disposal site opens.

DIGEST:

SB 1697, as amended, would permit TNRCC to issue a radioactive waste disposal license for the disposal of mixed waste to a certain private sector entity. A hazardous waste company, Waste Control Specialists, Inc., which currently holds a state permit to build a commercial hazardous waste landfill in Andrews County in West Texas, would fit the bill's description of a private entity.

A license could be issued to a private entity notwithstanding Health and Safety Code, sec. 401.203.

The bill would repeal Health and Safety Code, sec. 401.153.

**Waste from other states.** The bill would delete the requirement that a license holder could not process radioactive waste generated in another state. A holder of a license to process or dispose of mixed waste could accept waste generated in another state for storage, processing or disposal in accordance with the permit conditions.

A license holder who accepted low-level waste for processing or storage from another state could store the waste until either one year after the date that LLRWA began accepting low-level waste for disposal, or one year after the date the license holder accepted the waste, whichever was later.

**Planning and implementation and disposal fees.** A person who accepted low-level waste or mixed waste for storage or treatment would be required to pay the planning and implementation fee statutorily required (Health and Safety Code, sec. 402.2721) of those who are licensed to possess or use radioactive material. A person who delivered mixed waste for disposal would also pay the waste disposal fee statutorily required of those who deliver low-level radioactive waste to the LLRWA (Health and Safety Code, sec. 402.272).

Funds generated from the fees would be deposited in the low-level waste fund. Mixed waste would be considered the same as low-level waste for the purpose of calculating the amount of waste against which the fees would be assessed. The fees could not be less than the average comparable fee assessed by other states for treatment or storage of radioactive or mixed

waste of comparable volume, character or hazard in a facility located in those states.

No later than September 1, 1996, TNRCC would adopt final rules for the assessment of both planning and implementation and disposal fees, together with any applicable surcharges for treatment, storage, or disposal of radioactive waste and mixed waste by a person licensed to dispose of mixed waste.

**Definitions.** The bill as amended would provide that the private entity seeking the mixed waste license must hold a permit on January 1, 1995, to operate a commercial hazardous waste landfill in a county that has a population of less than 25,000 and average rainfall of less than 18 inches per year.

Mixed waste would mean a combination of hazardous and low-level radioactive waste.

The bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS  
SAY:**

Andrews County, north of Midland-Odessa, needs the economic development and jobs that would come with a new commercial waste processing facility in the area. This would be a means for the county to economically diversify after a depressed oil industry. Andrews County officials estimate that the new facility would create more than 800 jobs in a county, which has a population of fewer than 17,000. The new plant would also form the nucleus for an associated waste research and development complex in the area. Most Andrews County residents are fully supportive of the facility and look forward to creating high-tech facilities that would provide a national example of how to handle waste without any harm to people or the environment.

Waste Control Specialists Inc. has been approached by university research departments, medical research facilities and industries who need to find a facility that can manage their low-level radioactive and mixed waste. Mixed waste is now being stored in Texas at the many locations that produce it. In fact, radioactive materials are stored in rooftops, parking

lots, closets and other space at universities, hospitals, utilities and other industries all across Texas. This kind of haphazard storage poses a special risk that the material might be lost, stolen or accidentally released into the environment and is a threat to public health and safety.

Mixed waste could be managed much more effectively at a permitted facility in an isolated area like Andrews County than in metropolitan areas surrounded by residential neighborhoods. The facility would be strictly regulated and monitored by TNRCC and the Environmental Protection Agency and would pose no threat to human health and safety. The Andrews County site has a low population density, lack of surface water, little or no subsurface water, ideal geology and low annual rainfall. The site is not located over the Ogallala aquifer and was granted a commercial hazardous waste landfill permit by TNRCC last year after extensive technical review.

Waste Control Specialists Inc. has obtained a permit from TNRCC to operate a hazardous-waste landfill on a site in Andrews County. If they could obtain a license to process mixed waste, they could help these facilities package their waste for disposal and provide research and treatment plants to provide waste reduction technologies for mixed waste prior to disposal. These are essential services that will not be provided by LLRWA, which does not plan to accept or seek a permit to accept mixed waste.

SB 1697 would pose absolutely no threat to the LLRWA and the compact that Texas has with Vermont and Maine. The Andrews mixed waste facility would only provide the following services that the LLRWA would not: processing of low-level radioactive waste, temporary storage and processing and disposal of mixed waste — in Texas, only the LLRWA will provide permanent disposal of low-level radioactive waste.

SB 1697 is opposed by large companies who manage waste facilities in other states who also want to profit from storing U.S. government waste. The Legislature should give Texas a shot at this lucrative market.

OPPONENTS  
SAY:

SB 1697 would undermine the state's radioactive waste policy that has been developed over the last 15 years. State law requires the operation of any radioactive waste disposal or processing site in Texas to be within the state and operated by the LLRWA. SB 1697 would circumvent these existing laws and rules to allow storage and disposal of mixed wastes in Andrews County and allow the operation of a radioactive waste processing and disposal facility by a private sector company.

It is unwise to license a private company to process mixed waste, a combination of hazardous and low-level nuclear waste. Only a state entity like the LLRWA should be licensed to store radioactive waste in Texas. Private companies have a poor record for safe operation of nuclear waste dumps, and several states have had to spend millions of taxpayer dollars to clean them up.

SB 1697 would pose a threat to the LLRWA and the compact that Texas has with Vermont and Maine. If the Andrews site is built, local opposition to the Hudspeth County site might succeed in stopping the LLRWA's proposed Hudspeth County site. The Andrews site could end up permanently storing low-level radioactive waste.

The bill could make Texas a dumping ground for nuclear waste from all over the country since there are now few facilities for mixed waste in the country and no limitations on the import of radioactive waste from other states. The volumes of mixed waste currently being generated by the private sector are small — the only source of mixed waste that would support such a site are mixed wastes generated at or resulting from the decommissioning of U.S. Department of Defense and Department of Energy facilities. It is unwise to encourage this much radioactive waste to be brought to Texas. "Low-level" waste is a misnomer because the waste (especially U.S. Department of Defense waste) includes high hazard materials. If this bill is approved, thousands of truckloads of radioactive materials would be transported on Texas highways every year.

Mixed waste cannot be disposed of in the land without treatment to meet EPA land disposal restrictions. These restrictions will require a variety of treatments ultimately resulting in the permitting of a mixed waste incinerator and other associated treatment facilities at the site. The citizens

of the area would suffer from the very real safety hazards posed by these sorts of facilities.

The state has already rejected another bid for a low-level nuclear waste storage facility at the site because of concerns about possible pollution of the Ogallala Aquifer. Those same concerns would apply to a mixed waste facility.

**OTHER  
OPPONENTS  
SAY:**

The TNRCC should be required to consider environmental justice issues when licensing any permits for facilities that would store radioactive materials.

**NOTES:**

The committee amendments provide for TNRCC to assess both planning and implementation and disposal fees on those transporting and processing mixed waste and would require a private entity licensed to treat, store or dispose of mixed waste to comply with state and federal requirements regarding solid waste disposal.

A related bill, HB 1775 by Jackson, which would provide that the LLRWA would not be required to obtain a solid waste disposal permit or other authority under the Health and Safety Code unless the authority proposed to dispose of mixed waste, passed the House on April 12 and was referred to the Senate Finance Committee.

A related bill, SB 1500 by Montford and Rosson, which would limit the transportation of low level hazardous waste through certain cities and prohibit it from being incinerated in counties of less than 3,000 residents, passed the Senate on May 4 and was referred to the House Environmental Affairs Committee.