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To the members of the House Committee on Environmental Regulation.  
*Via hand delivery.*

March 26, 2019.

**Re: CSHB 2269, Texas Low-Level Radioactive Waste Disposal Compact, opposition testimony by Public Citizen**

Dear Chairman Lozano and members of the committee:

Public Citizen appreciates the opportunity to testify against CSHB 2269. We must oppose this bill because it make changes to the low-level radioactive waste disposal facility in Andrews, Texas that would decrease revenue to the state, increase liability, and exacerbate an already tenuous situation in West Texas.

Generally speaking, we are concerned about the trend over the years of the original license holder Waste Control Specialists (and its successor Interim Storage Partners) constantly requesting changes to the laws governing operation of the site. Since the original authorization of the site by the legislature in 2003, WCS has consistently asked for more and more from the state. WCS never demonstrated that it can maintain the site in a safe, profitable manner and the legislature should be extremely concerned by its constant requests for law changes in its favor. The long-term storage of nuclear waste is a risky proposition that the state should only enter into after careful consideration of the risks involved. We do not believe that the site owners have demonstrated that they can manage this site safely, effectively, or profitably and we generally recommend that state lawmakers minimize changes to the site in an effort to protect Texas' land and people.

In SECTION 1 of the bill, we are concerned by the addition of Sec. 401.2066, which would allow the commission to “correct for radioactive decay” in determining the curie capacity to be stored at the site. We aren't aware of such a mechanism being used to increase the available storage capacity for a nuclear waste dump site and we do not believe it is in the public interest.

In SECTION 3 of the bill, we are concerned by Sec. 401.2075(b), which states that the compact waste disposal license facility holder **MUST** add additional capacity if needed to accept nonparty compact waste. This is especially concerning given that WCS, the original license holder, has been in dire financial straits for most of its history of ownership of this site. We are concerned about what might result if the law requires the building of additional site capacity and the license holder is financially unable to do so. Would the state then be required to construct the additional capacity at its own expense?

In SECTION 5 of the bill, we note that the 5% of compact revenue due to the state GR fund is eliminated. Although the state has waived in recent years the revenue contribution requirement, this section will eliminate any future opportunity for revenue to state GR. Given the enormous



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liability the state has assumed in creating this site, it seems obvious the state should receive revenue from the site's operation. The elimination of this contribution will also have negative fiscal implications for the state.

We are especially concerned with SECTION 6 of the bill. The repeals in 6(1) generally make it easier for the facility to accept noncompact wastes. The bill prevents the compact from placing conditions on acceptance of nonparty compact waste, including requirements for volume reduction of waste and the imposition of a surcharge and the option for additional fees if volume reduction requirements are not met. The bill also prevents the legislature from revising limits on noncompact waste.

SECTION 6(2) of the bill repeals Sec. 401.2445, which requires WCS to transfer to the state general revenue fund 5% of its gross receipts for acceptance of compact waste and federal facility waste. This will eliminate revenue to the state and have serious negative fiscal implications, potentially far exceeding the \$3 million fiscal note.

We are very concerned with SECTION 6(3). It repeals Sec. 401.2456(b), which allows the TCEQ executive director to review and approve contract rates and terms. Removing this authority of TCEQ is especially bad given the repeal of Sec. 401.2456(d). That section of code provides that:

- (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.

In other words, this bill will allow WCS to enter into a contract that is negotiated in bad faith, in violation of antitrust law, AND discriminatory, and the TCEQ director wouldn't have the authority to review such a contract. This is extremely counter to the public interest.

Public Citizen does not support efforts to accept more nuclear waste, weaken the safety measures imposed on importation and storage of nuclear waste, or decrease the revenue to the state from the acceptance of nuclear waste for disposal. For these reasons, we oppose HB 2269.

Respectfully,  
Adrian Shelley, Texas Office Director, Public Citizen

CC: Rep. Ed Thompson, Rep. César Blanco, Rep. Kyle J. Kacal, Rep. John Kuempel, Rep. Geanie W. Morrison, Rep. Ron Reynolds, Rep. John Turner, Rep. Erin Zwiener