



February 4, 2021

Senate Committee on Energy and Environment
900 Court Street NE
Room 453, Salem, OR 97301

Submitted Via Online Portal: <https://olis.oregonlegislature.gov/liz/2021R1/Testimony/SEE>

**RE: Strong Support for Concepts in SB 246; Request for Clarification in the
Legislative Record**

Dear Chair Beyer, Vice Chair Findley, and Members of the Committee,

Thank you for the opportunity to comment on SB 246, an important piece of legislation to help Oregon protect its communities and resources from the impacts of poorly targeted radioactive waste streams, including radioactive fracking waste produced by hydraulic fracturing conducted by the oil and gas industry. We deeply appreciate the good-faith, diligent work of the Oregon Department of Energy (ODOE) and its staff to increase the strength of Oregon's hazardous waste laws. We have learned a lot in the past year about the radioactive waste footprint of hydraulic fracturing in the United States since investigations have shown that the oil and gas industry is eager to offload large quantities of contaminated fracking wastewater, filters and related parts and equipment.¹ While Oregon does not frack for oil or gas, we must protect environmental and public health from the offloading of these materials.

Passage of SB 246 will pave the way for Oregon to become a leader among the states in addressing the significant risks posed to the environment and human health by the oil and gas industry's attempts to move further and further away from the oil fields to dispose of its

¹ See Rolling Stone, "America's Radioactive Secret," by Justin Nobel, <https://www.rollingstone.com/politics/politics-features/oil-gas-fracking-radioactive-investigation-937389/>

radioactive waste—as well the risks posed by the waste disposal facilities that accept this waste. We strongly urge you to adopt legislation to ensure that Oregon communities do not become unsuspecting dumping grounds for the long-lived, mobile, and dangerous radionuclides contained in radioactive fracking waste. However, we are concerned about the exemption currently included in SB 246 regarding the definition of “radioactive waste.”² and request that the legislative record be very clear about the intent of that exemption and what it is intended to apply to.

As you well know, the community of Arlington, Oregon, suffered when Chemical Waste Management (Chem Waste) accepted 2.5 million pounds of radioactive fracking waste. The waste consisted primarily of filter socks—equipment used to filter fracking fluids of materials before the fluids are re-injected or otherwise disposed of. As a result of the illegal disposal of this material in Arlington’s chemical waste landfill, the leachate in the landfill has become contaminated with radioactive materials, including uranium and thorium, at levels far exceeding drinking water standards. For example, a May 2020 report by Chem Waste showed that uranium levels of U-238, an extremely long-lived and dangerous radionuclide, had reached 358 picocuries per liter in leachate samples. To our understanding, this is approximately 17 times above EPA’s drinking water standards. This example underscores the importance of this legislation; we encourage you to read the additional information contained in Columbia Riverkeeper’s recent comments to ODOE on this issue,³ and to keep this real-world example in mind as you consider this legislation.

We are supportive of the overall concepts in SB 246, but are concerned about the exemption currently built into the definition of “radioactive waste.”⁴ We understand and support ODOE’s intention to prevent future Arlington-type incidents, however we remain concerned that later decisionmakers, including future compositions of the Energy Facility Siting Council (EFSC), may relent to industry pressure and make use of the flexibility in the current language to allow for radioactive waste disposal that ODOE or the bill sponsors clearly do not support. Specifically, we request that ODOE or the Committee clarify the exact purpose and intent of this exemption clause, which currently states “(b) Radioactive waste’ does not include: (A) **Materials identified by the council by rule as presenting no significant danger to the public health and safety.**” Absent clarity in the bill itself, we request that the legislative record include clear guidance regarding the intent of granting EFSC such broad, sweeping authority.

This is not an abstract concern: the global history of radioactive waste is full of examples where government agencies were quick to downplay the impacts of spills, contamination, and meltdowns only for the public to later learn that unhealthy levels of public exposure had

² See Section 1, subsection (23)(b).

³ See Columbia Riverkeeper Comments on Radioactive Fracking Waste Situation in Arlington, Oregon. November 7, 2020 (attached).

⁴ See Section 1, subsection (23)(b).

occurred. Important points to clarify include: 1) what will be included within the bounds of this exception, 2) what types of waste does ODOE anticipate would be considered for this clause, and 3) what evidence will EFSC be permitted to rely upon when deciding to exempt a material (i.e., what will EFSC need to show to demonstrate “no significant danger” to the public health and safety). Perhaps most importantly, we want to ensure that industry voices are not overrepresented or given more weight than community voices during any future exemption decisions. EFSC’s rulemaking processes have been controversial at times, sometimes leaving members of the public feeling as though their concerns have been ignored or given significantly less weight than industry voices. This dynamic could be compounded when rural community members have difficulty in accessing rulemaking processes, for example if meetings are held during typical work hours or require access to high-speed internet for full participation.

Aside from our concerns regarding the exemption, we support SB 246. We are grateful for the work that ODOE has done to listen to our concerns to date, and we appreciate the work of this committee and Senate President Courtney in hastening the protection of Oregon from additional, dangerous radioactive fracking waste.

Other states have struggled with adopting similar legislation—leaving themselves vulnerable to abuse from bad actors in the fracking industry. Unfortunately we cannot undo the damage suffered in Arlington; the radioactive waste already in place there will have a long-term impact, both to the soil, water, and nearby community. The half-life of U-238 is approximately 4.5 billion years—that means in 4.5 billion years, half of the uranium dumped in Arlington will still remain; threatening future generations that have long forgotten that radioactive waste was ever buried there. Oregon can set an example by adopting laws that prevent the state from ever being used again as a radioactive fracking waste dumping ground. Provided the exemption to the definition of “radioactive waste” is clarified or narrowed, we support the swift passage of SB246.

Finally, we appreciate that the Committee will want to carefully consider the opinion of the regulated community, including information provided by Chem Waste. However, we urge the Committee not to give Chem Waste’s comments greater weight than those from the public. Chem Waste has demonstrated a capacity to break the law—as evidenced by its acceptance of illegal waste—and thus should not be given such a large role in determining the path forward. While ODOE affirms that Chem Waste assisted in coming to terms with the damage it caused, the fact remains that Chem Waste’s actions have caused long-term harm. Furthermore, Arlington is not the only hazardous waste facility owned by Chem Waste where controversial and unresolved contamination issues have occurred. For example, Chem Waste’s facility in Niagara Falls, New York is currently under scrutiny for the presence of plutonium (a radionuclide

typically associated with nuclear weapons or power).⁵ We must ensure that community voices are heard, first and loudest.

We appreciate and respect the Committee's hard work on this issue, and Senate President Courtney's effort in making this a priority for 2021.

Sincerely,

Dan Serres, Conservation Director, Columbia Riverkeeper

Damon Motz-Story, Healthy Climate Program Director, on behalf of the Power Past Fracked Gas Coalition

⁵See Buffalo News, "CWM's Application for Porter Landfill Poses Hazards."

https://buffalonews.com/opinion/another-voice-cwm-s-application-for-porter-landfill-poses-hazards/article_9c3a52b8-6634-11eb-9b09-7fb6344df2b5.html

See also, Niagara Gazette, "Radiological Investigation of Niagara Falls Storage Site."

https://www.niagara-gazette.com/news/local_news/radiological-investigation-of-niagara-falls-storage-site-to-start-this-fall/article_642f8fb3-cb96-5c25-8a14-db5d4646d4b6.html