TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. PRELIMINARY RULES

SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §§675.21 - 675.23

The Texas Low-Level Radioactive Waste Disposal Compact Commission ("Commission") adopts new Subchapter B, to be captioned "Exportation and Importation of Waste" (including §675.21 to be captioned "Exportation of Waste to a Non-Party State for Disposal," §675.22 to be captioned "Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility," and §675.23 to be captioned "Importation of Waste from a Non-Compact Generator for Disposal," to be contained in Texas Administrative Code, Title 31, Part 21, Chapter 675, governing export and import of low-level radioactive waste and fees associated with those activities. Sections 675.21, 675.22, and 675.23 are adopted *with changes* to the proposed text as published in the November 26, 2010 issue of the Texas Register (35 TexReg 10425).

The Commission is deferring action at this time on §675.24 ("Importation of Waste from a Non-Compact Generator for Management") as published in the November 26, 2010 issue of the *Texas Register* (35 TexReg 10425).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules implement provisions under the Texas Low-Level Radioactive Waste Disposal Compact (the "Compact") ratified by an Act of the Texas Legislature and signed into law by Governor Ann Richards in 1993. The Compact is codified under Texas Health & Safety Code §403.006.

The purpose of the Compact is to provide a framework for a cooperative effort to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof. A further purpose is to encourage cooperation among the party states in the protection of the health, safety, and welfare of their citizens, and to distribute the costs, benefits, and obligations among the party states, all in accordance with the terms of the Compact.

Under §3.05 of the Compact, the Commission is authorized to adopt rules necessary or appropriate to carry out the terms of the Compact. The purpose of new Subchapter B, "Exportation and Importation of Waste," is to set out the procedures and criteria for the consideration of petitions for export and import agreements, and establish fees associated with evaluating and processing export petitions and import agreements. While the Commission is currently expressly authorized to grant export petitions and import agreements by a majority vote

of the Commission under the existing terms of the Compact including Sections 3.05(6) and 3.05(7) , the adopted rules clarify the procedure for consideration of export petitions and import agreements and set appropriate fees which will provide predictability to parties seeking permits and allow the Commission to more effectively manage the importation and exportation of low-level radioactive waste under the Compact.

PUBLIC COMMENTS

The Commission held a public hearing on the proposed rule on December 9, 2010 at the offices of Texas Commission on Environmental Quality (TCEQ) in Austin. The public comment period closed December 26, 2010, pursuant to TEXAS ADMINISTRATIVE CODE, Title 1, Chapter 91, §91.34.However,the Commission has considered and responded to all public comments postmarked on or before December 27 if mailed and all commentsreceived electronically through December 27, 2010. The Commission received oral comments at its public hearing and numerous written comments. In addition to a number of individuals, the following groups and associations submitted comments: Advocates for Responsible Disposal in Texas (“ARDT”); Andrews Chamber of Commerce; Central Family Practice; Citizens Awareness Network (“CAN”); Department of Defense Executive Agent (“DODEA”); EnergySolutions; The University of Texas System Environmental Health & Safety Advisory Committee (“University of Texas EHSAC”); Glenrose Engineering, Inc.; League of Women Voters of Texas (“League of Women Voters”); Lowerre, Frederick, Perales, Allmon & Rockwell (“LFPAR”); Texas National Association for the Advancement of Colored People (“NAACP”); New England Coalition; Nuclear Sources & Services, Inc. (“NSSI”); Promote Andrews; Public Citizen, Inc.; ReEnergize Texas; Rocky Mountain Low-Level Radioactive Waste Compact (“Rocky Mountain Compact”); Save the Ogallala Aquifer; Lone Star Chapter of the Sierra Club (“Sierra Club”); Southwestern Low-Level Radioactive Waste Compact (“SWC”); Studsvik, Inc.; Sustainable Energy & Economic Development Coalition (“SEED”); Tennessee Valley Authority (“TVA”); Texans for Public Justice; Texas Black Bass Unlimited; Texas Commission on Environmental Quality (“TCEQ”); Texas State Representatives Rafael Anchia, Dennis Bonnen, Lon Burnam, Joaquin Castro, Byron Cook, Craig Eiland, Jessica Farrar, Pete Gallego, Tryon Lewis, Marc Veasey, and Armando Walle; Texas State Senators Juan Hinojosa and Kel Seliger; Vermont Citizens Action Network; Vermont Public Interest Research Group; and Waste Control Specialists LLC (“WCS”). Several commenters submitted similar or, in many cases, identical comments on a substantially similar version of the rule published in the February 12, 2010 issue of the *Texas Register*(34 TexReg 1028). Many of the comments received during the prior publication period were integrated into the version of the rule re-proposed in the November 26, 2010 issue of the *Texas Register* (35 TexReg 10425). The Commission previously responded to those comments received on its February 2010 proposed rule in the June 2010 rule packet proposed for final adoption, which was considered, but not finally adopted, at the Commission’s June 2010 meeting.

RESPONSE TO PUBLIC COMMENTS

The summaries and responses to comments appear below, organized by topic. General comments are discussed and then section specific comments are addressed. The Commission categorized general comments according to the following areas: general comments in favor of the rule; general concerns regarding importation of waste; disposal capacity; general environmental concerns; siting and licensing issues; long-term liability; blending/commingling; economics; sufficiency of funds and fees; enforcement and penalties; transportation issues; application process; timing of rules and rulemaking requirements; exportation; effective date of the rules; miscellaneous; and section-by-by section comments.

GENERAL COMMENTS IN FAVOR OF THE RULE

WCS, DODEA, Andrews Chamber of Commerce, Rocky Mountain Compact, University of Texas EHSAC, Studsvik, TVA, Texas State Senators Cook and Seliger, Texas State Representatives Castro, Eiland, Farrar, Gallego, Veasey, and Walle, and some individuals generally supported action on all or part of the proposed rules. ARDT and the University of Texas EHSAC support the importation rule if volume and curie capacity are reserved for party state generators and if the benefits accrue to Compact generators. WCS noted that importation will allow the Compact Facility to offer a stable and economical waste disposal service to Texas and Vermont generators and help solve a crisis affecting hospitals, universities, research centers, and other generators.

The Commission generally agrees with the comments. A core purpose of the rules is to preserve disposal capacity for Compact generators and to create economically viable options for waste disposal and management for Compact generators.

GENERAL CONCERNS REGARDING IMPORTATION OF WASTE

League of Women Voters, Texas Black Bass Unlimited, Texas State Senator Juan Hinojosa, Texas State Representatives Lon Burnam, Dennis Bonnen, and Rafael Anchia, NAACP, Sierra Club, ReEnergize Texas, SEED, Vermont Public Interest Research Group, New England Coalition, Save the Ogallala Aquifer, CAN, Vermont Citizens Action Network, LFPAR and numerous individuals generally questioned whether importation of low-level radioactive waste meets the purpose of the Compact and should be allowed. Some of these commenters questioned whether the importation of waste was consistent with the Compact and its legislative history, which they assert supports a ban or extensive limits on importation. Sierra Club commented that the proposed rules should consider alternatives to waste importation, and SEED believes that the potential liabilities associated with waste importation have been ignored.

The Commission disagrees with these comments. The Compact calls for the party states to cooperate in the protection of the heath, safety, and welfare of their citizens and the environment, and to effectively, efficiently, and economically manage low-level radioactive waste. Compact §3.05(6) expressly provides that the Commission may enter into an agreement with certain parties to allow the importation of low-level radioactive wastes into the Compact for

management or disposal. Compact §3.05(7) allows for the exportation of waste from the Compact, upon petition approved by the Commission. The export and import clauses in the Compact were approved by the legislative bodies of Texas and Vermont, as well as the United States Congress and were signed by President Clinton. The potential liabilities of waste importation were considered by these legislative bodies in authorizing waste importation in the law and these liabilities are adequately addressed in the applicable radiation control and licensing laws.

The Commission believes that, pursuant to Compact §§3.05(6)-(7), it may currently contract for importation of waste into the Compact and allow export of waste out of the Compact under existing state and federal law. This authority exists without adoption of the rules. A contract entered by the Commission is enforceable as a matter of state law. However, the Commission proposed rules pursuant to existing law to clarify how proposed importation agreements and export petitions may be evaluated and to outline the evaluation process and fees in a public and transparent manner. The framers of the Compact plainly granted the Commission the authority to regulate the importation and exportation of low-level radioactive waste, and these rules are intended to assist the Commission to carry out its duties under the Compact.

The adopted rules provide a process where the Commission can consider the import of low-level radioactive waste from outside the Compact in a manner that is consistent with the needs of the fiscal and capacity interests of the Compact generators. The rules state that "It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states." The procedures in the proposed rules allow the Commission to determine the impact of both export and import on the Compact given that both activities affect party state generators. After ensuring that the needs of Texas and Vermont generators are secured, the Commission will seek to provide that any importation translates into a savings to the low-level radioactive waste generators in Texas and Vermont.

It is important to note that §675.23 of the rule does not grant permission for any entity to import waste. Rather, by its adoption, the rule would implement procedures that the Commission would use to evaluate proposed importation agreements. Importation, if it should occur, would benefit the party States by lowering disposal costs for members of the Compact. The Commission reserves the right to grant or deny requested importation based on the terms of the Compact and the adopted rules.

LFPAR, SEED, Public Citizen, Save Ogallala Aquifer, Vermont Public Interest Research Group, New England Coalition, CAN, Vermont Citizens Action Network and an individual commented that the proposed importation rules do not comply with Vermont law that requires generators seeking to dispose of waste in the Compact Facility to indemnify the State of Vermont. The Commission generally disagrees with this assertion. While the Commission believes that the applicability of Vermont law to generators outside of Vermont is best addressed in the terms and conditions of import agreements that may be entered into by the Commission, §675.23(k) has been revised to require that an import agreement address the applicable provisions of Vermont law found at 10 V.S.A. §7066(e).

DISPOSAL CAPACITY

WCS, League of Women Voters, SEED, Public Citizen, Vermont Public Interest Research Group, New England Coalition, Save the Ogallala Aquifer, CAN, Vermont Citizens Action Network, Texas State Representative Lon Burnam, University of Texas EHSAC, Promote Andrews and numerous individuals submitted comments related to the disposal capacity of the Compact Facility. Some of these commenters expressed concern about whether adequate capacity exists in the Compact Facility for Compact generators and that action on the rules should be postponed until better information is available. League of Women Voters commented about the lack of limitation on volume and types of wastes to be imported. Vermont Public Interest Research Group, New England Coalition, Save the Ogallala Aquifer, CAN, and Vermont Citizens Action Network emphasized the need for assurance that the disposal needs of Vermont will be met, particularly the decommissioned waste from the Vermont Yankee power plant. The University of Texas EHSAC expressed a desire that more recent waste volume data be considered.

The Commission generally agrees that disposal capacity for compact generators must be a consideration in the rule. Compact §3.04(11) specifies that shipments of low-level radioactive waste from all non-host party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. As such, a core purpose of the rule is to ensure disposal capacity at the Compact Facility for compact generators. Rules §§675.23(b)-(c) and (h) specifically address disposal capacity and require that disposal capacity for Vermont and Texas waste cannot be reduced by non-Compact waste.

Importantly, a Disposal Capacity Supplemental Report submitted by WCS and reviewed by the Commission concludes that there is significantly more disposal capacity than originally estimated in WCS's license application. When the WCS application for a low-level radioactive waste disposal license was prepared in 2003, the waste volume estimates were based on a 2000 study. WCS originally estimated that there would be 2.8 million cubic feet of low-level radioactive waste over the operating life of the Compact Facility, and received a license for the initial 15 years for 2.3 million cubic feet of low-level radioactive waste. Yet, compact generators now estimate that they will only need disposal capacity of 1.2 million cubic feet. Of course, waste volume estimates could be reduced further to the extent the Commission allows exportation. Further, low-level radioactive waste volumes have decreased over the past fifteen years due to better processing, and are expected to continue to decrease in years to come. Finally, WCS has stated that it expects that licensing amendments will also increase disposal capacity in future years.

The adopted rules address export and import of low-level radioactive waste as part of an overall "mass-balance" process to ensure the "economical management" of waste disposal for party state generators. Importation would fill an important gap in the amount of low-level radioactive waste originally estimated for disposal under the facility's license and the actual lower amounts of waste that compact generators now estimate that they will produce. Moreover, party state generators continue to export some of that waste to non-Compact facilities for disposal.

Additionally, the Commission has been publicly notified by a Vermont Yankee official that the vast majority of decommissioning waste that would otherwise be sent to the Compact Facility and is appropriately accounted for in current estimates may not be sent there under the present license conditions due to the excessive cost that the utility cannot afford. As importation is considered, the Commission will determine the capacity that Texas and Vermont must have to ensure that a surplus of capacity exists to allow importation.

GENERAL ENVIRONMENTAL CONCERNS

League of Women Voters, NAACP, Sierra Club, SEED, Texas State Senator Juan Hinojosa, Texas State Representative Lon Burnam, Glenrose Engineering, Inc., Promote Andrews and numerous individuals raised general issues related to long-term risks to health, safety and the environment or liabilities to the State of Texas associated with the importation and transportation of low-level radioactive waste for disposal.

The Commission generally disagrees with these comments. The TCEQ is responsible for the review and consideration of health, safety and environmental impacts of the Compact Facility. An extensive environmental analysis was conducted by the TCEQ as part of the licensing process of the WCS disposal facility. No low-level radioactive waste can be disposed into the compact disposal facility unless it meets the criteria of the license issued by the TCEQ. The license issued by the TCEQ specifies the amount of waste that can be disposed of in the Compact Facility and stipulates the waste types and forms that can be accepted and requires financial assurance to be posted by the Compact Facility operator sufficient to protect the public from waste disposal liabilities. The types of waste, the monitoring and certification processes, and the permitting of the waste is determined by the license issued by the TCEQ. The rules regulating importation and exportation are designed to ensure that the management and disposal of low-level radioactive waste is handled consistently with the license granted by the TCEQ. Transportation issues are discussed below.

SITING AND LICENSING ISSUES

Promote Andrews, LFPAR, and numerous individuals raised concerns related to the licensing and adequacy of the Compact Facility, including issues related to public safety, hydrology, seismic activity and geology of the site, choice of disposal and storage mechanism, and conditions at the facility. One commenter suggested that the disposal facility operator should apply for and obtain a license amendment with the TCEQ before accepting imported waste.

The Commission disagrees with the commenters because it has no authority in the Compact Facility licensing process. The TCEQ administers the licensing process, which includes the design of the facility and site investigation. In particular, issues regarding the safety, hydrology, geology and seismic activity at the Compact Facility site were addressed during the TCEQ licensing process. The environmental assessment related to groundwater hydrology can be found in Section 6.6 of the TCEQ's comprehensive environmental assessment of the site. Actual acceptance of waste at the Compact Facility, including imported waste, can only occur with

approval of TCEQ. The rules that are the topic of this rulemaking rely on the adequacy of the site as previously determined by the TCEQ.

LONG-TERM LIABILITY

Several commenters, including the League of Women Voters, NAACP, Sierra Club, Glenrose Engineering, Inc., Promote Andrews, Texas State Representative Lon Burnam, Texas State Senator Juan Hinojosa and numerous individuals, raised concerns related to the long-term financial liability that the State might incur as a result of the importation of waste. Andrews Chamber of Commerce commented that the failure to allow proper disposal of low-level radioactive waste in the Compact Facility ignores the risks of storage of the waste in its present location.

The Commission disagrees that these comments warrant any changes to the adopted rules. Issues related to long-term care and liability of the facility are within the jurisdiction of the TCEQ. Texas Health and Safety Code §§401.109, 401.241 and the Compact Facility license issued by the TCEQ require the Compact Facility operator to post financial security to cover the long-term liabilities of the disposal of waste at the Compact Facility. Texas Health and Safety Code §401.211 maintains the liability of the license holder for acts or omissions performed during facility operations. The Commission relies on the adequacy of the security as previously determined by the TCEQ. Additionally, §8.03 of the Compact states that no party state acquires any liability, resulting from the siting, operation, maintenance, long-term care, or any other activity relating to the Compact Facility. The rule provides a statement concerning the impact to the State of Texas. The APA requires a five-year analysis of the financial impact, which has been provided.

BLENDING/COMMINGLING ISSUES

Promote Andrews and several individuals raised concerns related to the potential for commingling of waste sent outside the Compact and then returned to the Compact.

The Commission agrees that commingling of waste is a relevant issue. State and federal rules currently exist that prevent waste from losing its identity and characteristics by mixing it with other waste. The Commission's ability to monitor the export and subsequent return of waste for storage is under §675.22. Commingling is specifically addressed in §675.22(b)(2) and at §675.22(c)(2). In particular, new §675.22(c)(2) requires generators and processors to certify that waste exported for management has not been down-blended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, and not to exceed 5 percent of the total activity.

ECONOMICS

Sierra Club, SEED, and numerous individuals commented on how the rules may affect the economics of the Compact Facility, generators and Andrews County.

The Commission has noted this comment. Sections 675.23(h)(3), (4), (6) and (11) of the proposed import rule requires the Commission to consider the impact of the proposed import on the viability of the Compact Facility and the benefits and impacts on the compact generators.

While revenue from low-level radioactive waste importation would increase the amount of gross receipts paid to the State of Texas general revenue fund, exportation of low-level radioactive waste would have the opposite effect. Texas and Andrews County are financial partners in the Compact Facility with 10% of every dollar of gross receipts being divided evenly between the State of Texas and Andrews County. Importation of low-level radioactive waste at reasonable levels could increase annual receipts to Texas and Andrews County by several million dollars. Andrews County would additionally benefit from reasonable importation as a result of the economic impact of the Compact Facility operator's investment in the Compact Facility. Without importation, the Compact Facility would not be economically viable, and jobs and other economic benefits to Andrews County and the State would be lost.

SEED questioned the basis of the economic analysis included in the proposed rule. The Commission has appropriately assessed the fiscal impacts and costs analyses in accordance with the requirements of the APA based on the data and other information available to it. .

SUFFICIENCY OF FUNDS AND FEES

Promote Andrews, ARDT, League of Women Voters, Sierra Club, NSSI and numerous individuals commented on Commission resources generally. Sierra Club and numerous individuals questioned the adequacy of the fees to cover necessary expenses. The League of Women Voters recommended that the Commission set sufficient fees to cover the costs of the Commission's activities. ARDT recommended clarification that the fees assessed for export petitions will be nominal administrative fees and questioned the authority for export fees (discussed under §675.21(d)). NSSI complained that surcharges were not applicable to management of low-level radioactive waste and that the rules gave the Commission too much discretion in setting fees, particularly with regard to the recovery of consultant and attorney fees.

Generally, the Commission disagrees with the comments. One of the purposes of the rules is to establish fees to support the evaluation of export petitions and proposed importation agreements, as specified in the adopted rules. New §675.21(l) and §675.23(o) specify that the Commission must have adequate resources before it can commence review of export petitions and import agreements. The Commission believes the funds generated by the fees will provide the necessary resources to the Commission. The Commission is financed at the outset by pro rata payments from the member states of the Compact and is currently receiving general counsel from the Texas Office of Attorney General.. The Commission has the resources to conduct meetings with the monetary and personnel assistance provided by Texas and Vermont and the contributions in time of each of the Commissioners. During operation of the Compact Facility, the Commission will be supported by fees paid by companies using the Compact Facility.

PENALTIES & ENFORCEMENT ISSUES

The League of Women Voters, NSSI and an individual commented on penalties and enforcement issues. The League of Women Voters encouraged strict fines and vigorous enforcement for violators of the Commission's rules. NSSI complained that penalties and surcharges were not applicable to management of low-level radioactive waste and that the rules gave the Commission too much discretion in setting penalties.

The Commission does not necessarily disagree with these comments, but must balance these concerns. Pursuant to Compact §6.03, the Commission is generally authorized to prohibit importation of waste and impose surcharges for violations of rules related to the importation of waste for management or disposal. Accordingly, the adopted rules allow the Commission to enforce its rules and penalize violators for failing to follow applicable requirements related to the importation or exportation of waste for disposal. As discussed above, the Commission is deferring action on §675.24 related to the importation of waste for management.

TRANSPORTATION ISSUES

Texas State Representative Lon Burnam, League of Women Voters, NAACP and numerous individuals commented on concerns related to the transportation of low-level radioactive waste into the Compact for disposal or management. Some individuals requested that public hearings be conducted in their communities due to the fact that waste shipments could occur on any major Texas highway.

The Commission disagrees with these comments. Regulating the transportation of low-level radioactive waste and nuclear waste is not within the jurisdiction of the Commission. However, the Commission observes that, presently, there are thousands of daily intrastate movements of radioactive materials and low-level radioactive waste, and no specific incidents have been identified regarding the transportation of those wastes, or why interstate transportation would involve any greater risks that those already present. It is unnecessary, and would be impossible, for the Commission to hold public hearings in every community that assumed they were affected by the transportation of low-level radioactive waste. Comments regarding banning radioactive material on Texas highways should be addressed to the Texas Department of State Health Services or the U.S. Department of Transportation.

APPLICATION PROCESS

The League of Women Voters commented that there needed to be oversight of the application process.

The Commission agrees that public comment on applications for export petitions and import agreements is appropriate. The rules provide for publication of proposed export petitions and import agreements in the *Texas Register* and for public comment. The public comment period of 60 days provides substantial time for the public to comment on proposed import agreements. This period will provide the public with the opportunity to have input on the application process.

TIMING OF THE RULES & ADMINISTRATIVE PROCEDURE ACT REQUIREMENTS

EnergySolutions, League of Women Voters, Texans for Public Justice, NAACP, Texas Black Bass Unlimited, Texas State Representatives Lon Burnam, Rafael Anchia, Dennis Bonnen, Texas State Senator Juan Hinojosa, SEED, Public Citizen, Vermont Public Interest Research Group, Save the Ogallala Aquifer, New England Coalition, CAN, Vermont Citizens Action Network, Sierra Club, ReEnergize Texas, Promote Andrews, and LFPAR argue that the rules have not been adequately deliberated and need more consideration and analyses required by the Administrative Procedure Act ("APA").

On the other hand, WCS notes that the current rules are the result of an 18-month process starting in July 2009, and that they have been thoroughly reviewed, debated, and amended to account for public comments and Commissioner concerns. Texas State Representatives Pete Gallego, Jessica Farrar, Joaquin Castro, Marc Veasey, Armando Walle, and Craig Eiland requested prompt action of the proposed to rules to allow the matters to be fully considered by the 82nd Legislature.

The Commission agrees that this rule and any other should be undertaken with careful deliberation to ensure relevant issues are addressed to the extent practical. The Commission believes it has thoroughly considered and analyzed the proposed rules through an extensive deliberative process. This process included initial publication of a similar version of the new rules in the February 12, 2010 issue of the *Texas Register*, with 60 days to receive public comment, two public hearings, a public rules committee meeting, and deliberation among the Commissioners during meetings with the opportunity to hear additional public comments on the original proposed rule. This proposed rule was withdrawn in June 2010 to allow Section 675.23 to be separated into Sections 23 and 24 as an improved manner of addressing importation for management and for disposal. The current version of the rule incorporated suggestions from the original rulemaking and was re-proposed and published for public comment in the November 26, 2010 issue of the *Texas Register*. An additional public hearing on the current rule was held December 9, 2010 in Austin and additional public comment was taken. Many of the comments submitted on the original rule were substantially similar to those submitted on the re-proposed version of the rule and were also addressed and considered prior to and during the Commission's June 2010 meeting.

The rulemaking has been conducted in full compliance with the Texas APA. The preamble to the proposed rules explains why the rule is not a "major environmental rule" as defined under Texas Government Code §2001.0225. All required fiscal and impact analyses have been conducted and the Commission followed all APA notice and publication requirements. The Commission believes that the issues addressed by the rules have been fully considered, analyzed and debated and that the rules help fulfill its duties under the Compact.

Several commenters, including Texas State Representative Lon Burnam, suggested that the fiscal impact statement connected with the rule was inadequate or did not adequately account for long-term liabilities.

The Commission disagrees with these comments. The rule provides a statement concerning the Impact to the State of Texas, local employment and public benefits. The APA requires a 5-year

analysis of the financial impact, which was provided in the proposed rule preamble. The TCEQ, which is the licensing agency for the Compact Facility, has considered State of Texas liability and mitigation of the facility in the licensing process.

The rule proposal also provided an assessment to the impact of local employment in Andrews County where the Compact Facility is located. The assessment states that there is a potential that the exportation of low-level radioactive waste from the party states may reduce the number of personnel that the WCS facility employs. Importation of low-level radioactive waste from non-party states would have the opposite effect. The rule provides for review of the impact to the host state, the host county and the facility operator when considering export and import petitions. These provisions are found in §675.21(f)(4) and §675.23(h)(4) of the rule.

Sierra Club and some individuals commented that the Commission lacks resources to undertake this rulemaking and that the Chairman should not prepare the fiscal analysis. The Commission disagrees with these comments. The Commissioners have spent untold hours since July 2009 in considering the issues related to the export and importation of waste and are well qualified and prepared to undertake this rulemaking. Chairman Ford has examined the associated fiscal impacts in consultation with other members of the Commission and based on input from the public in full compliance with the APA.

SEED, Public Citizen, Save Ogallala Aquifer and several individuals commented that the public comment period should have ended on December 27, 2010 instead of December 26, 2010. The public comment period was appropriately determined by the Secretary of State in accordance with TEXAS ADMINISTRATIVE CODE, Title 1, Chapter 91, §91.34. Comments postmarked on or prior to December 27 and electronic comments received on December 27, 2010, however, have been considered by the Commission.

Promote Andrews commented that the e-mail address provided by the Commission as an alternate means for the submission of comments was not working during the entire public comment period. The Commission provided this e-mail address as courtesy to the public, and the e-mail address was promptly fixed once the issue was brought to the Commission's attention. The public was able to resubmit any public comments during the public comment period using the e-mail address that was provided in the proposed rule, or the alternate e-mail address posted on the Commission's web site, or using hand, fax or mail delivery to the Commission's offices. Over 5,600 comments were received by the Commission by e-mail, including over 70 comments by members of Promote Andrews.

EXPORT GENERALLY

Several commenters, including Sierra Club, ARDT, Rocky Mountain Compact and various individuals offered general support for the exportation rule.

The Commission agrees that the rule addressing exportation should be adopted. Export is currently occurring under petitions granted by the Commission pursuant to Compact §3.05(7). Rules to control exportation clarify the process the Commission will use to evaluate an export petition and encourages the economical management and disposal of low-level radioactive waste.

EFFECTIVE DATE

Studsvik and NSSI suggested that the Commission delay the effective date of the importation rules until the Commission has developed necessary forms for importation agreements and until it is prepared to administer the rules. Promote Andrews and numerous individuals ask that the Legislature have time to consider issues addressed by the rules.

The Commission disagrees with the comments. The Legislature has already given the Commission the authority to enter into importation agreements and approve export permits, without any express rulemaking requirement, under existing law. Export petitions without standardized forms have already been approved pursuant to Compact §3.05(7). Similarly, nothing would prevent a person to submit an import agreement with the Commission before the Commission finalizes its forms pursuant to Compact §3.05(6). The Commission expects to have rules promulgated and in place by the time the Compact Facility is in operation to allow for the evaluation of export permits and proposed importation agreements in a public and transparent manner.

WCS commented that it is important that these rules be passed now in order to provide clarity to WCS and the low-level radioactive waste marketplace on the rules for the exportation and importation of low-level radioactive waste.

The Commission agrees with this comment. WCS is set to begin construction of the Compact Facility in 2011. The TCEQ is presently reviewing the WCS rate application. The rate making process requires that assumptions be made about the volumes and types of wastes to be received by WCS when it is open for business, which is expected to be during the Fall of 2011. These rules are an important and necessary step required for the setting of reasonable rates. Thus, there should be no delay in the effective date for these rules to take effect. Texas State Representatives Pete Gallego, Jessica Farrar, Joaquin Castro, Marc Veasey, Armando Walle, and Craig Eiland also have urged prompt action on the rules prior to the 82nd Legislative Session.

MISCELLANEOUS

The Rocky Mountain Compact commented that the Compact is not “an instrumentality of the party states” as noted in the preamble to the proposed rules, but rather a “legal entity separate and distinct from the party states” as specified in Section 3.03 of the Compact. The Commission agrees that the Compact is authorized under and its legal status is defined by the terms of the Compact.

The League of Women Voters recommends that an advisory panel be implemented to assist the Commissioners in decision-making. Others suggested that a State Auditor should conduct independent analyses. The Commission disagrees with this comment. There currently is no provision for the creation of an Advisory Panel or independent State Auditor in the Compact.

EnergySolutions commented that restrictions on waste export could infringe on existing contracts. The Commission disagrees with this comment. The Compact has been state law since 1993 and federal law since 1998. Private contracts are subject to the terms and conditions of applicable laws. Moreover, the rules apply prospectively to import agreements or export

petitions submitted after the effective date and would not affect existing export petitions, except in extraordinary circumstances. Finally, EnergySolutions' concerns are speculative as the Commission has not denied any request for export to the Clive, Utah facility.

An individual commented that the Commission should clarify whether the export and import rule provisions apply to low-level radioactive waste that is managed or generated by the federal government. The Commission responds that federal facility waste, as defined as TEX. HEALTH & SAFETY CODE, §401.2005(4), is not subject to the rules of the Commission, because it will be disposed of at the federal facility waste disposal facility pursuant to 42 U.S.C. 2021d(b)(2), the Commission has no jurisdiction over any facility established or operational exclusively for the disposal of low-level radioactive waste produced by the federal government. To the extent that the federal government generates low-level radioactive waste that is not classified as federal facility waste and is managed in the Compact Facility, such waste would be subject to the Commission's rules.

An individual commented that the Commission should clarify whether documents submitted to the Commission will be maintained as public records. The Commission responds that §3.03(2) of the Compact requires the Commission to maintain public records pursuant to the laws of the State of Texas.

SECTION-BY-SECTION COMMENTS ON §675.21

ARDT commented that the Commission should revise §675.21(b) to allow for the host state to petition for export permission, as authorized by the Compact §3.05(7).

The Commission agrees with this comment and has revised the proposed Rule to reflect the actual wording of the law.

ARDT commented that generators should not be required to petition for an export permit to dispose of waste in non-compact disposal facilities if the waste cannot be accepted at the Compact Facility at the time it is ready for disposal.

The Commission disagrees with the comment. Nothing in the Compact requires the Commission to limit its regulation of low-level radioactive waste to only waste that can be disposed of in the Compact Facility.

ARDT suggested that the rule should be amended to allow party state generators to continue exporting under existing contracts.

The Commission disagrees with amending the rule. The Commission will honor existing export permitsfor the period of their effective term. No changes have been made to the rule as proposed.

ARDT and the University of Texas EHSAC commented that there is no authority for the Commission to impose export fees under the Compact. An individualrequested that the Commission explain the legal basis for fees.

The Commission disagrees with these comments. The Commission's authority to impose reasonable fees on petitions for export and requests for import agreements stem from several sources under the Compact. The Commission is expressly authorized to manage the importation and exportation of low-level radioactive waste under Compact §§3.05(6)-(7), which includes the ability of the Commission to impose any term or condition on agreements and petitions as it deems advisable. It is specifically charged with monitoring the exportation outside of the party states of material which otherwise meets the criteria of low-level radioactive waste under Compact §3.05(8). And Compact §3.05(4) expressly authorizes the Commission to adopt rules necessary to carry out the terms of the Compact. The authority to adopt rules for the management of importation and exportation of low-level radioactive waste, and to adopt reasonable fees to support such functions, is fundamental to the Commission's duties under the Compact.

The authority to impose fees for exportation of waste is reasonable under the Compact. Because the Commission is ultimately responsible for approving petitions to export waste, for developing the terms and conditions for such exportation, and for monitoring the exportation of low-level radioactive material ultimately returned to Texas for disposal, the adoption of rules assessing fees is reasonably necessary to administer these requirements under the Compact. As the TCEQ noted in its adoption of rules related to the authority for the TCEQ to determine sufficient disposal rates: "These [TCEQ rate-setting] rules establish procedures the [TCEQ] will use to determine a disposal rate which may only be a component of a Commission disposal rate under the provisions of the [Compact]. The disposal rate subject to these rules does not include any surcharges, importation fees, or any other fees that may be assessed to waste from other entities that is contracted for disposal under the provisions of the [Compact]." 34 Tex. Reg. 1688, 1697 (Mar. 6, 2009).

Fees connected to import and export are reasonably necessary to fulfill the Commission's express functions and duties. A core function of the Commission is to continuously project and manage the capacity of the Compact Facility to accept waste. The importation and exportation of waste directly affects the volume and efficiency of the Compact Facility. The assessment of fees on imported and exported waste is entirely consistent with the policy behind the development of low-level radioactive waste compact facilities. If Compact generators ship their waste to facilities outside the region, lost volumes and revenues needed to cover the operating costs will most likely be made up through supplemental fees and surcharges. Thus, to the extent a petition for the export of significant volumes affects the Commission's annual waste capacity projections and TCEQ's ratemaking functions, export petition fees are essential to the Compact's efficient management and disposal of low-level radioactive waste. In addition, contracts for the importation of a significant amount of waste, or petitions seeking permission to export substantial amounts of low-level radioactive waste outside of the party states, are likely to be administratively burdensome. Such agreements and petitions would require substantially more Commission time and resources to determine appropriate terms and conditions for import or export. In comparison, a similar administrative burden would not be expected with a contract or petition involving only *de minimis* amounts of low-level radioactive material. Nominal

administrative and application fees based on the complexity of an application for import or export are therefore appropriate.

ARDT commented that it opposes any imposition of unit-based export fees of any kind.

The Commission neither agrees nor disagrees with the comment. Per-unit export fees are not part of the proposed Rule.

ARDT and WCS raised concerns related to the timing and setting of fees.

The Commission disagrees with those concerns. The rule requires the upfront payment of application fees prior to substantial Commission action, along with the assessment and possible imposition of additional evaluation fees payable within 30 days of assessment. A petitioner may appeal the assessment of the fee by requesting a public hearing before the Commission within 30 days of the assessment.

An individual requested that the Commission elaborate on the procedural rules for a public hearing under §675.21(d)(2)(C) and questioned how a hearing in front of the Commission can be fair and impartial if the Commission has already decided the fee under §675.21(d)(2).

The Commission disagrees and notes that its procedural rules are adequately described in §675.21(d)(2). The hearing will provide an opportunity for the petitioner and the Commission to address any alleged deficiencies in the estimated fee.

DODEA commented that the federal government is prohibited from unauthorized commitment of funds availability and requested that the §675.21(d)(2) Export Petition Evaluation Fee be certain.

The Commission disagrees that this will cause a problem and considers that DODEA's concern is addressed by the existing language of §675.21(d)(2) that provides for an estimated fee to be communicated to the applicant prior to any action by the Commission. The Commission has no recourse to collect costs in excess of the estimated fee that is communicated to the petitioner.

The Rocky Mountain Compact requested the addition of the following language to §675.21(e) "For waste that will be exported to another low-level radioactive waste compact region, the petition shall be accompanied by a statement from the compact region where the waste will be disposed that import to that compact region is authorized."

The Commission disagrees with this comment. The Commission is only empowered with authority to authorize export and has no control over the requirements that authorities governing other compacts, or to wherever else the petitioner ultimately seeks to import, may impose upon the petitioner.

Sierra Club commented that §675.21(e) should read "The proposed export petition shall be accompanied by a certification by the disposal facility receiving the waste, the state regulator in charge of radioactive waste disposal and any Compact Commission that regulates exports and imports of waste in the receiving state that the waste acceptance criteria have been met."

The Commission disagrees with this comment. The Commission considers additional certification from state regulatory authorities to be duplicative, unnecessary, burdensome, and a potential source of undue delay. The Commission has already addressed its limited role in giving authority for the petitioner to export under this section and noted that it is not concerned with the requirements that other compacts may impose upon the petitioner.

Sierra Club commented that §675.21(e) should clarify that all members of the public, including the Compact Facility operator, have 30 days in which to submit comments after an export petition appears in the Texas Register.

The Commission considers the existing language of §675.21(e) sufficient to address this comment.

Sierra Club commented that §675.21(e) should add the following "The proposed export petition should also be accompanied by a certification from the TCEQ on whether or not the proposed wastes to be exported could currently be managed and disposed of in Texas by the Compact Facility Operator."

The Commission disagrees with this comment. The Commission considers a mandatory certification from TCEQ to be duplicative, unnecessary, burdensome, and a potential source of undue delay.

EnergySolutions suggested that the rule should be clarified to show how economic evaluation will be weighed in evaluating an export petition.

The Commission disagrees with the comment. The rule sufficiently details the criteria that will be considered by the Commission in its evaluation of export petitions.

ARDT requested that the 60-day waiting period under §675.21(f) be changed to 30 days, in part to deal with potential emergency export needs. The University of Texas EHSAC requested that the entire timeframe be shortened from a 60-day minimum waiting period and a 120-day maximum waiting period to a 45-day minimum waiting period and a 90-day maximum waiting period.

The Commission disagrees with these comments. The current timeframe is meant to allow sufficient time for public notice and comment. In extenuating circumstances, other measures could be taken by the Commission to ensure proper management of waste. No changes have been made to the rule as proposed.

Sierra Club suggested adding to §675.21(f)(3) "The Availability of the Compact Facility for the disposal of the waste involved, including whether or not the specific waste codes and volumes contemplated in the export petition would be allowed to be deposited in the Compact Facility as licensed by the TCEQ, and whether the petition is accompanied by a certification attesting to that information from the TCEQ."

The Commission disagrees with the comment, as the Compact Disposal Facility will be requested to provide such information on whether it is licensed by TCEQ as part of the existing

language under §675.21(f)(3). The addition of a certification attesting to that information from TCEQ is duplicative, unnecessary, burdensome, and a potential source of undue delay.

ARDT commented that additional restrictions should be placed when there are "unresolved violations pending against the petitioner with another regulatory agency with jurisdiction to regulate radioactive material."

The Commission disagrees with this comment. The Commission, at the time of its deliberations, will evaluate the context, time frame and origin of any such sanctions.

EnergySolutions commented that this section addresses how the decisions the Commission will make with respect to export petitions, which is assumed to be by a majority vote. EnergySolutions commented that this should be specifically stated.

The Commission disagrees with this comment. This is an existing requirement under Compact §§3.02 and 3.05(7).

ARDT commented that §675.21(h) should be changed to read that the Commission may impose any terms or conditions on the export permit that are appropriate "to carry out the policies and purposes of the Compact."

The Commission disagrees with this comment. The language in the rule is taken directly from the Compact law.

Sierra Club recommended that §675.21(i)(1) should impose an actual maximum limit, such as "export petitions can not authorize shipments of waste more than a year from the date a petition is approved."

The Commission agrees with this comment and will add a 12-month term limit to §675.21(i)(1).

ARDT requested the reporting date under §675.21(i)(3) be changed from October 31 to June 30.

The Commission disagrees with this comment. The Commission must submit annual reports to the party states and this deadline allows it to meet its deadlines. No changes were made to the rule.

Sierra Club commented that it is supportive of the provisions in §675.21(i)(3) requiring an annual report on the actual amount of waste exported by any party that has received approval of its export petition as well as the reporting requirements for waste generators exporting waste to another state for processing for eventual disposal at the Compact Facility because it will ensure Texas or Vermont waste is being managed properly in other states.

The Commission agrees with this comment.

ARDT requested that §675.21(i)(4) be rewritten to allow for transfer of an export permit under restructuring and purchase agreements.

The Commission disagrees with this comment. If the matter of ownership change is an issue, the export permit holder may approach the Commission for a permit amendment.

EnergySolutions suggests that §675.21(j) should reference applicable state regulations in addition to Nuclear Regulatory Commission ("NRC") regulations.

The Commission disagrees with this comment. It is unnecessary to cite to every applicable state regulation that is based on the NRC regulations.

Sierra Club comments that §675.21(l) states that no export petition can proceed until the Commission determines that it has enough resources to move forward. If the Commission does not believe it has sufficient resources, the rule should be delayed until the Commission has adequate resources.

The Commission disagrees with this comment. The Commission believes that the fees generated pursuant to these rules will provide such resources as are needed to process applications.

SECTION-BY-SECTION COMMENTS ON §675.22

ARDT commented that the title to this Section should not include the second reference to "management" pursuant to Compact §3.05(8).

The Commission disagrees with this comment. Generators may export waste for processing which, in certain circumstances, ultimately results in disposal.

The Rocky Mountain Compact recommended the addition of the following language to §675.22 "For waste that will be exported to another low-level radioactive waste compact region, the petition shall be accompanied by a statement from the compact region where the waste will be disposed that import to that compact region is authorized."

The Commission disagrees with this comment. The Commission is only empowered with authority to authorize export and has no control over the requirements that authorities governing other compacts, or to wherever else the petitioner ultimately seeks to import, may impose upon the petitioner.

Studsvik supports the purpose of §675.22(a), but suggests that it should be clarified that "waste reduction" does not mean blending or dilution of waste as described in Texas Administrative Code, Title 30, §336.229 ("Texas Anti-dilution Rule"). Rather, Studsvik suggests that "waste reduction" should be clarified to mean reduction in waste volume consistent with the United States Nuclear Regulatory Commission's Policy Statement on Low-Level Waste Volume Reduction found at 46 Fed. Reg. 51100.

The Commission disagrees with the comment. The term "waste reduction" is specifically used in Compact §3.05(8).

EnergySolutions commented that §675.22(b)(1) and (2) both require that the location and name of the facility be provided, which appears duplicative.

The Commission agrees with this comment and has removed the reference to the location and name of the facility from §675.22(b)(1).

Studsvik commented that the term "blended" suggests a change in waste classification and could be construed to endorse activities subject to the Anti-Dilution Rule. It recommended using the term "commingled" rather than "blended" in §675.22(b)(2).

The Commission agrees with this comment.

Studsvik suggested that the rule should require applicants to certify their compliance with the Anti-Dilution Rule. Studsvik suggested that importers should be required to do so as well.

The Commission has this comment under consideration and is deferring action at this time. The Commission anticipates addressing it in a future rulemaking to address the issue of certified compliance with the Anti-Dilution Rule.

ARDT suggested that the rule should allow for *de minimis* amounts of commingling and/or blending, and that 1 percent is too low and arbitrary. EnergySolutions commented that the *de minimis* level should be set at 25-percent. The University of Texas EHSAC commented that the "one percent of total activity" standard is unreasonable and must be justified.

The Commission partly agrees and partly disagrees with the comments. Commenters have provided no technical basis for alternative values. The Commission considers 25-percent excessive. The rule has been changed to allow for 5-percent commingling. The rule provides that waste incidental to processing, and that does not exceed 5-percent of the total activity, can be commingled with the waste exported for processing. A 5-percent threshold is reasonable considering the nature of low-level radioactive waste and the desire to keep the potential commingling of wastes to a minimum.

ARDT commented that generators who ship low-level radioactive waste for processing and management typically have contracts with the processor and cannot control the management technique applied to the low-level radioactive waste. ARDT is concerned that the rule as written could effectively bar generators from utilizing commercial processing facilities or unfairly result in party state generators being required to seek permission from the Compact to import what is low-level radioactive waste generated in party states for disposal at the Compact Facility because of the manner in which the low-level radioactive waste was handled at a processor. ARDT is also concerned about requiring generators to certify that the waste has not been commingled by processors beyond a certain point. ARDT believes generators will not be in the position to make that certification without relying on what the processor certifies.

The Commission disagrees with the comment. Pursuant to Compact §3.05(8), the Commission must monitor the exportation of waste sent out of the Compact for processing or management. A reasonable means to fulfill this Commission duty is to require the generator and processors to certify that the waste has not been down-blended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing.

SECTION-BY-SECTION COMMENTS ON §675.23

Sierra Club inquired into the duration of import agreement and what terms it might include.

The Commission notes that the rule tracks §3.05(6) of the Compact, and that the terms and conditions of an import agreement will vary depending on the circumstances.

TVA commented that the meaning of the Commission's policy statement is unclear. SEED commented that the stated policy that savings generated by importation accrue to the benefit of the party states "ring hollow" without a method of implementation.

The Commission disagrees with the comments. The intention of the policy statement is to ensure that all persons understand that out-of-compact generators will pay higher rates than compact generators. Clear language spelling out any savings or benefits of importation will be included in the individual importation agreements.

TCEQ and Sierra Club state that importation of waste to a Compact Facility can only transpire through an amendment to the Compact Facility's TCEQ license. It suggests that a new provision should state this explicitly.

The Commission disagrees with this comment. Nothing in the Compact Facility's license prohibits the Compact Facility from receiving imported waste. Instead, Compact Facility license R04100 Condition 8A governing the Compact Facility's Authorized Use states that "[r]eceipt is limited to Compact Waste and Federal Facility Waste as defined at Texas Health and Safety Code §401.2005." Health and Safety Code §401.2005 defines "Compact waste" as low-level radioactive waste that (A) is generated in a host state or a party state; or (B) is not generated in a host state or a party state but has been approved for importation to this state by the Commission under Section 3.05 of the compact established under Section 403.006." The licensee is responsible for ensuring that waste entering its facility complies with its license.

EnergySolutions commented that Commission should not consider importation of low-level radioactive waste until after the Compact Facility is operational and a new license is approved with increased capacity.

The Commission disagrees with the comment. The Commission is putting rules in place so that a transparent and public process is established by the time the Compact Facility is in operation.

Sierra Club supports the issuance of a report detailing disposal capacity, but commented that the rule lacked detail about the report. SEED notes more detail is necessary on total volume and requests further detail about how disposal capacity for Compact States will be protected.

The Commission disagrees with this comment and notes that the five-year report specified in §675.23(b) is only intended to provide guidance to the Commission regarding the current disposal capacity required for the party states and the excess capacity available for importation. The report will provide sufficient detail to make determinations about total volume and activity in the Compact Facility. New §§675.23(b)-(c) and (h) specifically address disposal capacity and require that disposal capacity for Vermont and Texas waste cannot be reduced by non-Compact waste.

CAN raised concerns as to whether there is the requisite capacity for Vermont's low-level radioactive waste needs. LFPAR notes that it is not clear how §675.23(c) will be enforced or how Vermont's disposal capacity will be unaffected.

The Commission notes this comment. New §§675.23(b)-(c) and (h) specifically address disposal capacity and require that disposal capacity for Vermont and Texas waste cannot be reduced by non-Compact waste. Further, the Commission notes that disposal capacity has increased since original projections were conducted in 2000.

League of Women Voters commented that the new rules should place limitations on the volume, level of curie and types of waste that can be imported.

The Commission does not agree that it has not taken the issues raised by the commenter into consideration. The types of waste, the monitoring and certification processes, and the permitting of the waste are determined by the Radioactive Materials License issued by the TCEQ. One of the core purposes of the rule is to ensure that imported waste meets the conditions of the license granted by TCEQ. No waste would be imported for disposal in Texas without approvals from the Commission. As such, imported low-level radioactive waste would be of the same type and subject to the same regulation as compact-generated waste. New §§675.23(b)-(c) and (h) specifically address disposal capacity as it relates to importation.

Sierra Club urged that there should be public participation or public input into the Compact Facility's recommendation of total annual volume for importation.

The Commission disagrees with the comment. Because the rules provide for public participation and public comment on import agreements, the public will have an opportunity for input on the annual volume recommendations. In addition, the annual volume recommendations will be informed by the annual host state report.

Representative Lon Burnam, SEED and TCEQ commented that TCEQ, and not the Compact Facility operator, should certify under new §§675.23(c) and (g) whether the disposal of imported waste will reduce capacity for party state-generated waste or meet waste acceptance criteria. Public Citizen believes that the rules should be modified to require the Public Utility Commission to issue these certifications. Vermont Groups commented that there is a potential conflict on interest when the Compact Facility operator is allowed to certify that importation will not reduce volume reserved for the party states.

The Commission disagrees with the comments. The TCEQ has jurisdiction over the Compact Facility's license and it can ensure that the Compact Facility is in full compliance with the terms of its low-level radioactive waste license. However, the Commission has jurisdiction over importation and exportation of low-level radioactive waste, and there is nothing unique about these certifications that require the TCEQ to make them. Similar certifications made by a facility operator are required under the Radioactive Substance Rules under Title 30 Chapter 336 of the Texas Administrative Code, and they are a means of holding the Compact Facility operator accountable for application representations. None of the commenters have explained why a Compact Facility's certification would be deficient. The Compact Facility also has the ability to

certify to the Commission that it is in compliance with its own permit, and it is likely more aware of whether certain waste will meet the acceptance criteria of its license and the effect importation will have on its own facility's capacity at any given time. Further, because the commenters can provide comments on a request for import agreement, they have the opportunity to provide input on a Compact Facility's certification along with other licensing related issues included in the import application. Further, there is no statutory provision allowing the PUC to issue the certifications under these rules.

Sierra Club commented that import agreements should be with a single entity representing a specific location and waste type. Regions, states and the Compact Facility operator should be prohibited from entering into an import agreement. SEED notes that language concerning penalties should be inserted.

The Commission disagrees. The Compact explicitly states at Section 3.05(6) that the Commission may enter into an agreement with a person, state, regional body or group of states for the importation of waste. A person, as defined in the Compact at Section 2.01(14), includes any legal entity, public or private, which would include the Compact Facility operator. The rule as written provides for penalties ranging from an outright prohibition on disposing of waste at the facility to surcharges on shipments to the facility. The Commission retains the discretion to determine the type and amount of penalty.

The Rocky Mountain Compact suggests that waste shipments received from that Compact be accompanied by documents authorizing the export of the waste from that region.

The Commission agrees that all documents required to properly track the movement of radioactive waste shipments among the various Compacts and States is necessary. Section 675.23(b)(10) requires the Commission to consider the authorization of a person to export.

SWC recommends that §675.23(d) be amended to specify that the Commission will enter into an agreement with the generator. Diana Wheeler notes that the Compact Facility should be penalized for accepting LLRW that has not been approved for importation

The Commission disagrees with this comment because the existing language of §675.23(d) is clear in this regard. Penalty provisions are provided in Section 6.03 of the Compact.

SEED requests that the form of agreement be described and made available and posted online before the rule is voted on. SEED further considers §675.23(n) to be insufficiently detailed.

The Commission disagrees that the form should be made available before the final vote on the rules. The form is a living document that will be designed by the Commission or its staff after the final form of the rule is adopted.

The University of Texas EHSAC comments that the Commission lacks authority to assess the fees under §§675.23(f)(1) and (3).

The Commission has addressed its authority to assess fees in the preamble to the proposed rule.

SEED requests a clarification on whether the Commission may accept petitions before adopting the fee schedule required by §675.23(f).

Import petitions may be filed with the Commission prior to the adoption of a fee schedule; however, no action will be taken on a petition until a fee schedule has been adopted pursuant to §675.23(f)(3) and all fees have been paid as required by §675.23(f)(2).

DODEA notes that the federal government is prohibited from unauthorized commitment of funds availability and requests that the evaluation fee be a sum certain.

The Commission does not believe that this causes any difficulties for federal petitioners. Section 675.23(f)(3) states that the expenses will be estimated. That estimated amount would be provided in advance to the prospective petitioner as a sum certain.

SWC commented that for small generators, a $500 application fee, an evaluation fee, and an import agreement fee may be cost-prohibitive and thus may discourage disposal. It encourages the Commission to consider setting a lower import application fee for generators of small volumes of waste similar to what it has done for those exporting small volumes.

The Commission disagrees with the comment. It has not been established that the fees will be excessive for small generators.

SEED, an individual and Sierra Club recommended that the TCEQ should provide the certification required by §675.23(g)(1), instead of the Compact Facility operator, WCS. Studsvik supports §675.23(g)(1) in its present form. LFPAR suggests the certification by the Compact Facility operator is an inappropriate delegation of the State's responsibility.

The Commission disagrees with commenters requesting TCEQ certification. The Compact Facility operator, as the license holder, is responsible for operating the facility in conformance with the conditions of the license. This includes compliance with the waste acceptance criteria. The TCEQ may audit the licensee to ensure compliance with its waste acceptance criteria through its inspection and enforcement function, as required. There is no obligation for the state to certify that imported waste meets the Compact Facility waste acceptance criteria. Therefore, §675.23(g)(1) is not an inappropriate delegation of any state responsibility.

Sierra Club recommends that §§675.23(g)(4)-(7) be replaced by a more concise procedure for notice and timing of the agreement. LFPAR notes that §675.23(g)(6) might require the Commission to address comments.

The Commission disagrees with this comment and declines to adopt the proposed alternate language. The existing process takes into account the obligations and convenience of all stakeholders, including the Compact Facility operator, the petitioner, the public and the Commission, and provides adequate and timely notice to all parties.

SEED requests §675.23(g)(6) be amended to clarify the beginning date of the 60-day comment period referenced in (g)(5) of the rule.

The Commission agrees with the comment and Section 675.23(g)(6) has been amended as requested.

SEED notes that §675.23(g)(7) does not specify a date when the Commission must distribute the listed documents. LFPAR notes that this section is not clearly written.

The Commission agrees that the section does not clearly specify when these documents must be distributed. Section 675.23(g)(7) has been modified to clarify that the listed documents are distributed contemporaneously with the posting on the web site as specified in §675.23(g)(5).

ARDT commented that the Commission should take no action on an import agreement until after the 60-day comment period has expired. DODEA suggests the Commission meet every 120 days.

The Commission disagrees. The current proposed rule states in §675.23(h) that the Commission may not take any action within the first 60 days after the petition has been filed, during which time comments are being received.

SEED requests "factors" be changed to "criteria" in §675.23(h). Studsvik notes that the decision "criteria" in §675.23(h)(1)-(12) are appropriate and reasonable. The Vermont Group requests that the list of factors include consideration of Vermont's capacity needs. LFPAR notes the listed factors are too vague.

The Commission disagrees with the comment and believes the "factors" are sufficiently descriptive to allow a comprehensive review of the import agreement. The party states' capacity needs, including Vermont's, are considered in §675.23(h)(11).

LFPAR notes that an analysis will be required to determine whether imported waste contains "special nuclear material" and if a criticality accident is possible under 10 CFR §61.23(j).

The Commission disagrees with this comment because limitations on special nuclear material are set out in the license by the TCEQ. The Commission has no authority to limit special nuclear material in imported waste.

LFPAR notes that §675.23(h) should contain a factor addressing the compliance history of the Compact Facility.

The Commission disagrees with the comment. Assessment of the compliance history of the Compact Facility is the jurisdiction of the TCEQ. The Commission has no authority to establish compliance standards for the Compact Facility.

EnergySolutions commented that the Commission should describe for public comment how the economic evaluation under §675.23(h) will be accomplished, and further suggested that the Commission should receive approval from the exporting compact as part of the administrative controls.

The Commission disagrees with this comment. The Commission has broad discretion to determine how economic analyses will be conducted. Consideration of export approval from the exporting compact is required by §675.23(h)(10).

SWC comments that §675.23(h)(5) is confusing in that it implies that the TCEQ is involved in the importation agreement before the fact.

The Commission disagrees with this comment because the purpose of this section is to merely confirm that the Compact Facility is properly licensed to receive, manage and dispose of the waste.

The Commission disagrees that the rule needs more details as to the factors that will be considered. The consideration of the exporting compact's approval to export is considered at §675.23(h)(10).

The Sierra Club requests §675.23 be amended to add a factor addressing whether TCEQ has issued a certification that the current license allows for the volume, source and type of waste to be imported.

The Commission disagrees with this comment. Section 675.23(g)(1) requires the Compact Facility operator to certify that the waste acceptance criteria have been met for the proposed import.

Studsvik concluded that the decision criteria listed in §§675.23(h)(1) through (12) are appropriate and reasonable, but it raised concerns regarding the timeline for petition approval. It suggests that the Commission streamline the import agreement review process. Alternatively, Studsvik encourages the Commission to delay the effective date of any import rule until such time as the Commission has appropriate procedures and administrative support in place.

The Commission disagrees with the comment. The consideration of the factors under §675.23(h) and allowing sufficient time for public comment and input requires Commission time. The 365-day review period is intended to provide some certainty to applicants for import agreements. Because export petitions and import agreements are currently authorized under the Compact and can be approved by a majority vote of the Commission, it is not necessary to delay the effective date of these rules. The rules are intended to provide transparency and ensure public participation in the process.

Public Citizen requests §675.23(h)(1) be amended to add a factor prohibiting the importation of foreign waste that has been re-packaged in another state. SEED wants to know how the Commission will identify international waste if it was processed in the United States and labeled as originating in the United States. LFPAR notes that it is not clear how the Commission will be able to enforce a prohibition on international imports.

The Commission disagrees with this comment because the importation of foreign waste is expressly prohibited in §675.23(a). Section 675.22 provides for tracking management of waste, including re-packaging. Shipping manifests require the waste processor to identify the original generator of the waste.

ARDT proposes additional language to allow consideration of the effect of an import agreement on compact disposal facility rates.

The Commission disagrees with this comment. The existing language allows the Commission to consider the economic impact of importation decisions.

Public Citizen and Nuke Free Texas believe that the Commission should set clear standards for denying import petitions. LFPAR notes that §675.23(i) does not state what recourse is available following a decision by the Commission.

The Commission disagrees with this comment. It has established clear standards for approving an import petition. Available avenues for appeal of the Commission's decision are set out in the Compact.

SEED is concerned that the use of the word "may" in §675.23(j) will allow the Commission to treat separate importers differently.

The Commission disagrees with this comment and notes that the Compact, as ratified by Congress, expressly uses the word "may" in Article III, Section 3.05(6) when authorizing the Commission to entertain import agreements.

TVA notes that §675.23(i)'s use of permissive language suggests that the Commission may not take any action on an importation agreement. It suggests language requiring action by the Commission on a petition for importation.

The Commission disagrees with this comment. The Commission retains the discretion to act in the best interests of the Compact.

Public Citizen commented that fees should be adequate to cover processing and potential cleanup costs. Non-compact states should be required to deposit $25 million prior to importing or exporting waste to the Compact Facility.

The Commission disagrees with this comment and notes that the decommissioning and long-term care funds are established and regulated by the TCEQ. The Commission has no authority to set financial standards for the decommissioning and long-term care fund. The process for states to join the Compact is described in Article VII of the Compact.

LFPAR notes that §675.23(k) does not specify the circumstances that may result in the revocation or cancellation of an importation agreement. Nuke Free Texas says reporting requirements should be better defined.

The Commission disagrees with this comment. The Commission has broad discretion to decide when to revoke or cancel an import agreement, or what is required to be reported to the Commission in the course of carrying out the requirements of the Compact.

DODEA suggests §675.23(l) be amended to allow payment by other than check or money order.

The Commission agrees with this comment and has amended §675.23(f)(1) to allow payment by Electronic Funds Transfer.

EnergySolutions suggested that reports under §675.23(l) should include information on costs and pricing for the imported waste received and disposed. SEED considers this section to be

insufficiently detailed concerning information to be included in a quarterly report. SEED further suggests that the quarterly report should contain a TCEQ certification.

The Commission disagrees with this comment. The Commission has noted the comment on requiring costs and pricing information but has not made any changes to the rules at this time. There is no statutory requirement for a TCEQ certification of the quarterly report, thus the Commission disagrees with the suggestion that TCEQ certify the quarterly report.

Public Citizen urges §675.23(m) be deleted because it might allow generators to accept waste for storage.

The Commission disagrees with this comment because the cited section allows generators to store their own waste or dispose of it by alternate means under 10 CFR §20.2002.

LFPAR suggests that §675.23(n) is duplicative of §675.23(e). LFPAR suggests that this subsection should be sealed by a professional engineer.

The Commission disagrees with this comment. These sections are not duplicative in that subsection (n) has further detail about the criteria to be considered in making a determination on an import agreement. There is no statutory or administrative requirement for a licensed professional engineer to sign the importation agreement form.

Sierra Club comments that §675.23(o) causes regulatory confusion because it does not establish under what scenario the Commissioners would determine if they had adequate resources. SEED suggests that the vote take place before the import rule is adopted and petitions are received. Further, the vote should be taken on an annual basis in conjunction with the budget review.

The Commission disagrees with these comments. The Commission believes the process by which the adequacy of resources is determined is sufficiently described in the rule to allow the Commissioners to make a reasoned decision on staff and financial resources.

LFPAR suggests that §675.23(o) contradicts §675.23(h).

The Commission disagrees with this comment. Any action taken by the Commission under §675.23(h) is subject to the financial resources of the Commission. This is consistent with the requirement for a finding of adequate resources under §675.23(o).

CONCISE RESTATEMENT OF STATUTORY PROVISIONS

New §675.21 is adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact, and under §§3.05(7), 6.01 and 6.03 of the Compact, which authorize the Commission to regulate the exportation of low-level radioactive waste and prohibit unauthorized exportation of waste.

New §675.22 is adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact, and under §3.05(8) of the Compact, which authorizes the Commission to monitor the exportation of waste for the sole purpose of management or processing.

New §675.23 is adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact §3.05(4)), which grants the Commission rule-making authority to carry out the terms of the Compact, and under §§3.05(6), 6.02, and 6.03 of the Compact, which authorize the Commission to enter into an agreement for the importation of low-level radioactive waste into the compact for disposal and prohibit unauthorized importation of waste.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. PRELIMINARY RULES

SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

§675.21. Exportation of Waste to a Non-Party State for Disposal.

(a) Permit Required--No person shall export any low-level radioactive waste generated within a party state for disposal in a nonparty state unless the Commission has issued an export permit allowing the exportation of that waste pursuant to this rule.

(b) Petition Required--A generator, group of generators, or the host state proposing to export low-level radioactive waste to a low-level radioactive waste disposal facility outside the party states shall submit to the Commission a petition for an export permit.

(c) Form of Petition--The petition shall be in writing and on a form promulgated by the Commission and posted on the Commission's web page, or otherwise made readily accessible to generators and to the public.

(d) Petition Fees--

(1) Export Petition Application Fee--A non-refundable, application fee of $500 shall accompany the petition, except that for petitioners seeking to export 100 cubic feet or less shall pay an application fee of $50. Payments shall be made by check, money order or electronic transfer,

made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission. No action shall be taken on any petition until the application fee is paid in full.

(2) Export Petition Evaluation Fee. In accordance with a fee schedule adopted by the Commission, an export petition evaluation fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the petition, if the expense exceeds the export petition application fee. This estimated fee will be communicated to the applicant prior to any action by the Commission.

(A) The fee schedule will be based on the estimated cost of evaluating the petition and may include, but not be limited to, these factors:

(i) staff expenses;

(ii) supplies;

(iii) direct and indirect expenses;

(iv) purchased services of consultants such as engineers, attorneys or consultants; and

(v) other expenses reasonably related to the evaluation.

(B) This fee will be due and payable within 30 days of issuance of fee bill.

(C) A petitioner may appeal the assessment of the fee by requesting a public hearing before the Commission within 30 days of the assessment. Such hearing shall be held as soon as practicable after the request, but no longer than 45 days after the request is received by the Commission. The Commission's order shall be issued within 30 days after the hearing. If required by Commission order, payments are due within 30 days of the final order.

(e) Notice and Timing of Petition--A petitioner shall file an export petition with the Commission and receive approval by the Commission prior to export. The proposed export petition shall be accompanied by a certification by the disposal facility receiving the waste that the waste acceptance criteria have been met for the proposed waste importation. By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the export petition (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. Upon receipt, the Commission shall post the export petition to the Commission's web site and to the Texas Register. Any comments by the Compact Facility operator on the export petition shall be filed in writing with the Commission no later than 30 days after the date the petition was received by the Commission. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. The Commission shall distribute the export petition and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the export petition, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the export petition and any comments

received from the Compact Facility operator, or others, to the members of the Commission, and distribute comments from others to the Compact Facility operator and the petitioner.

(f) Review of Petition--After receiving the export petition and any comments that have been made thereon, the Commission at a meeting held no sooner than 60 days or later than 120 days after the date the export petition was filed with the Commission, shall act on the export petition utilizing the following factors:

(1) The volume of waste proposed for exportation, the type of waste proposed for exportation, the approximate radioactivity of the waste, the specific radionuclides contained therein, the time period of the proposed exportation, and the location and name of the facility, which will receive the waste for treatment and ultimate disposal;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste involved;

(4) The economic impact on the Host County, the Host State, and the Compact Facility operator of granting the export permit;

(5) The economic impact on the petitioner;

(6)Whether the proposed disposal facility has authorization to import the waste into the region in which the disposal is to take place;

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility, the petitioner, the Host County, the Host State, or the public; and

(10) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(g) Decision by the Commission--The Commission may take one of the following actions on the export petition, in whole or in part: approve the export petition; deny the export petition; or approve the export petition subject to terms and conditions as determined by the Commission and as ultimately documented in the export permit.

(h) Terms and Conditions--The Commission may impose any terms or conditions on the export permit as is determined by the Commission.

(i) Permit Duration, Amendment, Revocation, Reporting, and Assignment.

(1) An export permit shall be issued for the term specified in the permit and shall remain in effect for that term unless amended, revoked, or canceled by the Commission.The specified term in the

export permit shall not authorize shipments of waste to occur more than 12 months from the date the export permit is issued.

(2) The Commission may, on its own motion or in response to a petition for amendment from the permit holder of an export permit for which prior written notice has been given to the permit holder and the Compact Facility operator, add or delete requirements or limitations to the permit. The Commission may provide a reasonable time to allow the existing permit holder to make any changes necessary to comply with the additional requirements or limitations imposed by the Commission.

(3) Not later than October 31 of each calendar year, a person who holds an export permit shall file with the Commission a report describing the amount and type of waste exported in the period from September 1 to August 31. The form of the report shall be prescribed by the Commission and shall be available on the Commission's web site, or may be obtained at a location that will be posted on the Commission's web site. Failure to timely file this report may result in denial of future export petitions.

(4) An Export Permit is not assignable or transferable to any other person.

(j) Agreements to Export--Nothing in this subchapter shall limit the authority of the Commission to enter into agreements with the United States, other regional compact commissions, or individual states for the exportation or management of low-level radioactive waste. Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, or its disposal pursuant to 10 CFR §20.302 (now 10 CFR §20.2002).

(k) Form of Export Permit--The Export Permit shall be on a form promulgated by the Commission and posted on the Commission's web site. The form may be amended by the Commission from time to time.

(l) Notwithstanding any other provision of this Section 675.21, the Commission shall receive but will not begin to process applications for exportation of waste under this section by a compact generator to a non-party state for disposal until such time as the Commission determines by vote taken pursuant to §3.02 of the Compact as compiled at §403.006, TEXAS HEALTH AND SAFETY CODE that it has adequate resources to properly examine applications prior to issuing permits and thereafter to enforce the terms and conditions of such permits as are issued. During the period between the adoption of this rule and the required determination pursuant to §3.02 of the Compact, permits granted pursuant to the resolution adopted by the Commission on December 11, 2009 will continue to be in effect. If, in the judgment of the Commission, circumstances warrant, new permits may be granted under the terms of that same resolution until such time as the Commission makes the required determination under §3.02 of the Compact.

(m) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact.

§675.22. Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

(a) Where the sole purpose of the exportation is to manage or process the waste for recycling or waste reduction and return it to the party states for disposal in the Compact Facility, party state generators are not required to obtain an export permit; however,

(b) The generator shall be required to file a report with the Commission no later than 10 days after the shipment of the waste under Sec. 675.22(a). Reports may be filed by facsimile or e-mail. A generator may satisfy the reporting requirement by timely filing with the Commission Forms 540 and 541 promulgated by the U.S. Nuclear Regulatory Commission, as applicable, with supplemental data indicating the types of waste management employed at the waste management facility. Alternatively, generator reports shall include the following information:

(1) The volume of waste proposed for exportation, the type, physical and chemical form of waste proposed for exportation, the approximate radioactivity of the waste, and the specific radionuclides contained therein;

(2) The location and name of waste processing facility(ies) receiving and processing the waste, the type of waste management employed at the waste management facility, whether the exported waste is mixed or commingled with waste from other generators.

(c) Upon return of the waste to the generator:

(1) The generator shall file a report informing the Commission of the volume, physical form and activity of the waste returned to the party state generator; and

(2) The generator and the processor shall certify that the waste has not been down-blended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, and that does not exceed 5-percent of the total activity.

§675.23. Importation of Waste from a Non-Compact Generator for Disposal.

(a) It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states. It is also the policy of the Commission that it will not accept the importation of low-level radioactive waste of international origin.

(b) Vermont's disposal capacity reserve is 20% of the Compact Facility maximum volume stated in the Radioactive Materials License dated September 10, 2009, as well as 20% of any additional maximum volume approved in a later license, and this capacity shall not be reduced by non-Compact waste. Such disposal capacity shall be established at least every 5 years by a report of the Commission. The Commission's report shall be informed by the annual report by the host State on the status of the facility, including projections of the facility's anticipated future capacity, and remaining radionuclide-specific radioactivity to comply with the Compact Facility Radioactive Materials License.

(c) No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless

(1) The Commission has issued a report on disposal capacity as required in subsection (b);

(2) The Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certify that the disposal of imported waste will not reduce capacity for Party State-generated waste, based on the currently licensed volume and activity. The Compact Facility will provide the Commission with radionuclide specific radioactivity amounts for the recommended total annual volume proposed to be imported for disposal. The recommendation shall become final after Commission approval. The approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors. Any operator of a low-level radioactive waste disposal compact facility, as defined in Section 2.01 of Chapter 403.006 of the Texas Statutes, must in good faith and with commercially reasonable efforts apply for all necessary permits and licenses to maintain the facility in continual operation; and

(3) The Compact Commission bylaws have been finalized and approved.

(d) Agreement Required--No person shall import any low-level radioactive waste for disposal that was generated in a non-Party State unless the Commission has entered into an agreement for the importation of that waste pursuant to this rule. No radioactive waste of international origin shall be imported into the Compact Facility for disposal. Violations of paragraph (d) may result in prohibiting the violator from disposing of low-level radioactive waste in the Compact Facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

(e) Form of Agreement--The form of the Agreement shall be promulgated by the Commission and posted on the Commission's web site, or otherwise made readily accessible to generators and to the public.

(f) Fee for Proposed Importation Agreements.

(1) Import Agreement Application Fee--A non-refundable, application fee of $500 shall accompany the proposed agreement. Payments shall be made by check, money order or electronic funds transfer made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(2) No action shall be taken on any proposed agreement until the application fees are paid.

(3) Import Agreement Evaluation Fee--Prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. The estimated fee shall be based on a fee schedule as adopted by the Commission. This fee shall be paid by check, money order, or electronic transfer and made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(4) The fee schedule will be based on the estimated cost of evaluating the proposed agreement and may include, but not be limited to these factors:

(A) the complexity of the proposed agreement (e.g., the number of generators, isotopes, waste streams, waste classifications/activities, waste forms, etc.);

(B) staff expenses;

(C) supplies;

(D) direct and indirect expenses;

(E) purchased services of consultants such as engineers, attorneys or consultants; and

(F) other expenses reasonably related to the evaluation.

(5) This import agreement evaluation fee will be due regardless of whether or not an import agreement is issued and shall be made by check or money order made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(g) Notice and Timing of Agreement--A person shall file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date.

(1) The proposed import agreement shall be accompanied by a certification by the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation.

(2) By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the import agreement (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail.

(3) Proposed import agreements received by the Commission during any calendar month may be processed in aggregate at the beginning of the following calendar month. The date of receipt of proposed import agreements shall be deemed the first business day of the following calendar month. Within 15 days of the date of receipt, the Commission shall post the import agreement to the Commission's web site and transmit it to the Texas Register.

(4) Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 30 days after the deemed date of receipt of the proposed import agreement. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail.

(5) Within 15 days of the date of receipt of the Compact Facility operator comments, the Commission shall post the import agreement to the Commission's web site.

(6) Comments on the proposed import application may be submitted by any person, other than the Compact Facility operator, during the 60-day period following the date of posting to the Commission's web site as specified in (g)(5) above.

(7) Concurrently with the posting on the web site as specified in section (g)(5) above, the Commission will distribute the import agreement and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for

information and comment and shall post the import agreement, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the proposed import agreement and any comments received from the Compact Facility or others to the members of the Commission, and distribute comments from others to the Compact Facility operator, the petitioner, and the public.

(h) Review of Proposed Import Agreement--After receiving the proposed import agreement and any comments that have been made thereon, the Commission at a meeting held promptly, but no sooner than 60 days nor later than 365 days, subject to the financial resources of the Commission, after the date the proposed import agreement was filed with the Commission, shall act upon the import agreement utilizing the following factors:

(1) The volume, type, physical form and radionuclide-specific activity of waste proposed for importation;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste proposed to be imported;

(4) The economic impact, including both potential benefits and liabilities, on the Host County, the Host State, and the Compact Facility operator of entering into the import agreement;

(5) Whether the Compact Facility operator has or will obtain, prior to importation, authorization from TCEQ to dispose of the proposed waste;

(6) The effect on the Compact Facility's total annual volume and radionuclide-specific activity recommended for importation;

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility operator, compact generators, the person proposing to export the waste, the Host County, the Host State, interested state or federal regulatory agencies, or the public;

(10) The authorization of a person to export (if applicable);

(11) The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators; and

(12) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(i) Decision by the Commission--The Commission may take one of the following actions on the proposed importation agreement, in whole or in part: approve the proposed agreement; deny the

proposed agreement; approve the proposed agreement subject to terms and conditions as determined by the Commission; or request additional information needed for a decision. The Commission may deny the petition for:

(1) Lack of current or anticipated capacity beyond that required by party state generators;

(2) Any low level radioactive waste that does not meet the waste acceptance criteria of the license;

(3) International origin of the waste, or its original (i.e. pre-processing) generator; and

(4) Any other relevant issue.

Any person who was a proper party to the petition may petition the Commission to reconsider its decision within 20-days of the Commission decision. The Commission decision on the petition to reconsider its decision is final and unappealable.

(j) Terms and Conditions--The Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policy and purpose of the Compact.

(k) Importation Agreement Duration, Amendment, Revocation, Indemnification, Reporting, Assignment and Fees.

(1) An importation agreement shall be issued for the term specified in the agreement and shall remain in effect for that term unless amended, revoked, or canceled by the Commission.A condition of every importation agreement shall be that any petitioner or generator of low-level radioactive waste must agree to comply with Section 8.03 of the Compact.

(2) The Commission may, on its own motion or in response to a petition by the agreement holder for amendment of an importation agreement for which prior written notice has been given to the agreement holder and the Compact Facility operator, revoke the agreement, add or delete requirements or limitations to the agreement. The Commission may provide a reasonable time to allow the agreement holder and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed by the Commission.

(3) An import agreement is not assignable or transferable to any other person.

(4) The Commission continues to consider the policy issues related to assessment of fees for the importation of low-level radioactive waste based on volume or activity of the waste. Upon conclusion of consideration of this issue, the Commission may provide for such fees in this section.

(l) The Compact Facility operator shall file with the Commission a Quarterly Import Report, no later than 30 days after the end of each calendar quarter, describing the imported waste that was disposed and stored under the import agreement during the quarter by the Compact Facility, including the physical, radiological and chemical properties of the waste consistent with the identification required by the Compact Waste Facility license. Each Quarterly Import Report will provide the identity of the generator, the manifested volume and activity of each imported class of waste (A, B, and C, or in the case of waste imported for management, Greater Than

Class C), the state or other place of origin, and the date(s) of waste disposal, if applicable. The Quarterly Report shall provide this information for the imported waste disposed of during the most recent quarter, as well as the cumulative information for imported waste disposed of in prior quarters under this Agreement. The forms of the Quarterly Import Report shall be prescribed by the Commission and shall be posted on the Commission's web site, or may be obtained at a location that will be posted on the Commission's web site.

(m) Agreements to Import--Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 CFR §20.2002.

(n) Form of Import Agreement--The import agreement shall be on a form promulgated by the Commission, posted on the Commission's web site, and shall contain at a minimum the criteria contained in subsection (h) of this section. The form may be amended by the Commission from time to time.

(o) Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for agreements to import waste from a non-compact generator for disposal under this section until such time as the Commission determines by vote taken pursuant to §3.02 of the Compact as compiled at §403.006, Texas Health and Safety Code that it has adequate resources to properly examine applications to enter into agreements prior to entering into such agreements and thereafter to enforce the terms and conditions of such agreements as are entered into.

(p) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact. Where time requirements are specified in "days," that shall be in calendar days.

The Commission hereby certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the Commission's legal authority.

We, the five undersigned, duly-appointed commissioners of the Texas Low-Level Radioactive Waste Disposal Compact Commission, hereby certify that, at a meeting of the Commission held on January 4, 2011 in Andrews, Texas, we voted affirmatively for the adoption of the order and rules set above that add a new Subchapter B to Chapter 675, Part 21, Title 31, Texas Administrative Code, such subchapter to be captioned "Exportation and Importation of Waste" (including Section 675.21 to be captioned "Exportation of Waste to a Non-Party State for Disposal," Section 675.22 to be captioned "Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or Disposal in a Compact Facility," and Section 675.23 to be captioned "Importation of Waste from a Non-Compact Generator for Disposal.)"

Michael Ford, Chair	John White, Vice Chair	Richard Dolgener, Commissioner
Uldis Vanags, Commissioner	Stephen Wark, Commissioner	