

**COMMENTS FROM THE SOUTHEAST COMPACT COMMISSION TO
TLLRWDC REGARDING PROPOSED EXPORT/IMPORT RULE,
CHAPTER 675**

April 1, 2010

The following questions and comments are being submitted by the Southeast Compact Commission prior to the public hearings regarding the proposed rules to be conducted by the Texas Compact Commission April 5&6. Additional comments may be submitted prior to the April 13 deadline for comments.

REGARDING EXPORT

1. We have found that the key to the enforcement of export policies is preventing the wastes from being accepted at the potential receiving facilities. We suggest that the TX Compact Commission send formal notification to other compacts and unaffiliated states, as well as all other site operators, asking for their cooperation in not accepting TX Compact waste without an export permit.

REGARDING IMPORT

1. For companies that generate large volumes of waste, the application system proposed in the rule looks workable, as those companies tend to have more resources and personnel capable of navigating their way through the process. We are concerned, however, that the proposed process may prove to be too cumbersome and costly for small generators, of which there are many throughout the country.

- For small generators, a \$500 application fee, a possible evaluation fee, plus an import agreement fee may be cost-prohibitive and thus may discourage disposal. Would the Commission consider setting a lower import application fee for generators of small volumes of waste (similar to what it has done for exporting small volumes)?

- There is also a concern that large generators and processors may use up all the capacity set aside for imported waste before the small generators ever learn of the opportunity for import. Would the Commission consider setting aside an amount of capacity for small generators and sealed sources?

-The application process may prove to be too difficult, especially for small generators with limited resources. Would the Commission consider allowing States, compacts, brokers, processors, or organizations to petition on behalf of a group of generators? This may also benefit the Commission by greatly reducing the number of potential petitioners (from tens of thousands to less than 100). If so, would there be different procedures?

2. For what duration is an import agreement intended? For each shipment, annual, or for a long-term, blanket agreement? Is there a fee for amendments or extensions?

3. 675.23(g) speaks of posting the proposed import agreement to the website and the Texas Register and distribution to interested parties. Do provisions need to be stated to protect proprietary information?
4. Regarding section 675.23(h), could there be circumstances where the Commission may need to make a decision more quickly than 60 days?
5. Consider adding “in-compact users of the compact facility” to the list of potential beneficiaries in 675.23(h)(4).
6. To show cooperation in the enforcement of the import/export requirements of other compact commissions, we suggest adding “Compact Authorities” to item 675.23(h)(7) or alternatively, add an item addressing the potential for outstanding actions against a generator or the state of its domicile by a Compact Authority.
7. Add “Compact Authorities” or “regional compact commissions” to the list of potential persons commenting in 675.23(h)(9); in 675.23(h)(10), insert “from the relevant state and/or compact” before “of a person...”
8. The names of the various fees related to import are similar, and therefore confusing—consider changing the name of the “import agreement fees” in 675.23(k)(4).
9. 675.23(l) refers to quarterly reports. Based on our experience with import, we suggest monthly reports so you have ample time to react if there is a problem. Also, do the forms of the report need to be provided to the public or only to the site operator?
10. Does 675.23(m) apply to the storage of waste imported without a permit?
11. It should be made clear that waste can only be accepted at a Texas facility in accordance with the limitations under its license. Also, the agreement should include a provision for return to the state of origin if certain waste does not meet license conditions for acceptance.
12. It would be helpful to clarify the purposes for which a generator needs an import agreement, i.e. for disposal, treatment, storage, transportation through the state, etc.

EDITORIAL COMMENTS

- 675.21 (e) speaks primarily of export, but there are two references to “import” and “importation” which we believe to be in error.
- 675.23(g) says that the applicant shall “receive approval by the Commission prior to the proposed importation date,” but clearly the approval date is outside the applicant’s control. As it has been clearly stated in 675.23(d) that waste cannot be imported without approval of the Commission, we suggest deleting this phrase.

