

**Advocates for Responsible Disposal in Texas  
Comments to Texas Low Level Radioactive Waste Disposal Compact Commission  
31 Texas Administrative Code, Chapter 675. Preliminary Rules  
Subchapter B, Exportation and Importation of Waste**

Please find below ARDT's comments specific to particular parts of the Commission's proposed preamble and rule language (the "Proposed Rule"). ARDT is providing the Commission with a separate attachment with ARDT's suggested changes to the Proposed Rule in a redline-strikeout format.

ARDT's substantive comments and recommended substantive changes to the Proposed Rule which require a Commission response and a reasoned justification are further explained below. See Texas Government Code § 2001.033. Other clarifications and nonsubstantive changes to the Proposed Rule which have been provided in the redline-strikeout format may not be expressly included in the comments below.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED SECTIONS**

Preamble language should clarify that purposes of the Compact include economical management and disposal of low-level radioactive waste ("LLRW") and protection of the environment of the party states. See Texas Health and Safety Code, § 403.006, Article I, Sec. 1.01. Economical management and disposal should include export policies for export of Class A waste if it is more economical for the generators and if the economic viability of the Compact Waste Facility ("CWF") is preserved. Export policies should also protect the environment of the party states by avoiding extended storage of LLRW if it is not economical for the generators to dispose of LLRW at the CWF, or if the LLRW is incompatible with management or disposal at the CWF. ARDT strongly encourages the Commission to consider all of the policies and purposes of the Compact rather than focusing on particular policies and purposes.

**SECTION-BY-SECTION DISCUSSION**

ARDT has made changes in its redline-strikeout version of this Section of the Proposed Rule in order for this Section to comport with the Proposed Rule and ARDT's suggested changes to the Proposed Rule. Please see ARDT's comments below relating to ARDT's suggested changes to the proposed rule language.

**IMPACT TO THE STATE OF TEXAS**

ARDT assumes that this section is intended to fulfill the requirement for a fiscal note. See Texas Government Code § 2001.024(a)(4). However, the name and title of the officer or employee responsible for preparing or approving the fiscal note has not been provided, and the fiscal implications of the proposed rule for the first 5 years in which the rule is in effect does not appear to have been clearly provided. See *Id.*

For numerous reasons, ARDT questions the factual basis for the statements that waste exported will have a negative effect on the State of Texas General Revenue Fund. First, maximum disposal rates for disposal of LLRW in the CWF have not been established as of the date this rule is being considered, and the maximum disposal rates are a determinative factor regarding revenues to the CWF and therefore also to the State of Texas. Second, a reduction of gross volume may not necessarily result in a reduction of gross receipts because of related volume adjustment surcharges. See 30 TAC §336.1309(e). Third, it may be more economical for the generators to export Class A waste, in which case export would provide additional space in the CWF for waste that might be imported at higher overall disposal fees. Fourth, the fiscal or

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economic impact of export during the first 5 years will be largely offset by the volumes of Class B and Class C wastes which have been and will continue to be generated and stored in the Party States. Fifth, because of the design of the CWF which requires costly, space-consuming concrete containers for all LLRW, export of Class A waste may not prove to be uneconomical since Class B and Class C waste will be competing for the same space, but at a higher disposal rate. Based on the foregoing reasons, it is possible that export could actually have a positive economic and fiscal impact on the CWF and the State of Texas. The fact is that the impact of export is unknown and purely speculation unless a thorough analysis is conducted after all of the relevant information is available. Therefore, ARDT encourages the commission to delete the unsubstantiated statements that export will definitively have a negative effect, or provide a factual basis and a supporting analysis which takes into account the relevant and material variables which apply. ARDT's concern is that unsubstantiated statements might be later referenced as authority for discouraging export.

**LOCAL EMPLOYMENT IMPACT STATEMENT**

Although ARDT acknowledges that import and export can have an impact on local employment, ARDT encourages the Commission to clarify that there should currently be no employees at the CWF since it is not open or being constructed. ARDT also encourages the Commission to either provide its factual basis or delete its conclusions that if import agreements are issued, 75 positions will be created at the CWF, and that an additional 75 positions will be created when the CWF opens.

For the same reasons stated in the section of the proposed preamble relating to the "Impact to the State of Texas," ARDT encourages the Commission to either delete or provide the factual basis for the statements that exports may negatively affect the state budget, make the disposal facility uneconomical to operate, and adversely affect the number of persons employed at the CWF. ARDT is not aware of the basis for these statements which could be later referenced as authority for discouraging export.

**PUBLIC BENEFITS; SMALL AND MICRO BUSINESS COSTS**

ARDT recommends that the Commission clarify that the fees assessed for export petitions will be nominal administrative fees. ARDT presumes that this section is intended to describe the nominal, administrative cost to larger generators in complying with the Proposed Rule in the same way that the Commission describes the costs to smaller generators. ARDT reminds the Commission that if the Commission expects economic costs for any persons required to comply with the rule, the Commission must state such economic costs, which would include the impact of any export fees. See Texas Government Code § 2001.024(a)(5)(B).

The Commission should delete language relating to the expected date that the CWF will begin operations, since the date is highly speculative. Further, depending on a variety of factors, generators may continue to need authorization to export LLRW even after the CWF opens. One of many factors is whether it will be economical to the generators to export based on the maximum disposal rates as set by TCEQ. Further, it may be more cost effective, efficient and economically viable for the CWF to utilize its limited space to accommodate higher dose rate Class B and Class C LLRW rather than utilizing its scarce capacity for lower dose rate Class A that can be more economically and efficiently disposed of by generators in non-compact facilities.

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The name and title of the officer or employee responsible for preparing or approving the note about public benefits and costs has not been provided. See Texas Government Code § 2001.024(a)(5).

**TAKINGS IMPACT ASSESSMENT**

ARDT offers no comments on this section.

**REGULATORY ANALYSIS**

ARDT offers no comments on this section.

**LOCAL EMPLOYMENT IMPACT STATEMENT**

This section appears to substantively be included in the Proposed Rule twice. See ARDT's previous comments on a section with the same title.

**PUBLIC COMMENT and STATUTORY AUTHORITY**

ARDT offers no comments on these sections.

ARDT's specific comments to particular sections of the proposed rule language are set forth below.

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

§ 675.21(a). Conforming changes are made to be consistent with Subsection (b).

§ 675.21(b). The Commission should revise this subsection to allow for the host state to petition for export permission, as authorized by the Compact See Texas Health and Safety Code, § 403.006, Article III, Sec. 3.05(7).

§ 675.21(d). Petition Fees –

ARDT supports the Commission and believes that the Commission should be adequately funded in order to carry out its mission. ARDT also appreciates the extensive opportunity provided by the Commission to debate and discuss the concept of export fees during the stakeholder process and the development of the Proposed Rule. In addition, ARDT appreciates the Commission's decision to only include nominal, administrative export fees in the Proposed Rule. However, ARDT respectfully requests an explanation of the Commission's legal basis for proposing to impose export fees of any kind.

As ARDT has previously expressed, there are strong legal and policy reasons against the imposition of export fees. Most importantly, the statutes and laws governing the Commission confer no authority to the Commission to impose export fees. The only express authority for the Commission to impose monetary assessments of any sort are penalty surcharges for illegal exports and imports. See Texas Health and Safety Code, § 403.006, Article I, Sec. 6.03. The law authorizing the creation of the Commission limits the Commission's powers to those

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prescribed by the Compact. “The [Commission] and the members of the commission have the powers and duties prescribed by the Compact.” See Texas Health and Safety Code § 403.005. Although the Compact authorizes the Commission to permit exports of LLRW for disposal, the grant of authority does not extend to authorize the imposition of export fees.

The commission may . . . [u]pon petition, allow an individual generator, a group of generators, or the host state of the compact to export [LLRW] to a [LLRW] disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export [LLRW] shall be effective for that period of time and for the specified amount of [LLRW], and subject to any other term or condition, as determined by the commission.” See Texas Health and Safety Code, § 403.006, Article III, Sec. 3.05(7).

Although the framers of the Compact were conspicuously silent about export fees, the framers were by no means silent on funding for Commission activities. In fact, the framers of the Compact expressly provided for the funding of Commission activities both before and after operation of the CWF. Most notably, export fees are not an authorized source of funding.

The host state shall provide financial support for the Commission’s activities prior to the date of the facility operation and subsequent to the date of congressional ratification of the Compact. Each party state will be responsible for annual payments equaling its pro-rata share of the commission’s expenses incurred for administrative, legal, and other purposes of the commission.” See Texas Health and Safety Code, § 403.006, Article IV, Sec. 4.05(6).

The host state shall establish reasonable fees for disposal at the facility of LLRW generated in the party states.... Fees shall also be sufficient to reasonably support the activities of the Commission.” See Texas Health and Safety Code, § 403.006, Article IV, Sec. 4.04(4).

Clearly then, the Compact is to be properly funded prior to operation by the pro-rata share of the party states contributions for administrative, legal, and other purposes of the Commission. After the CWF opens, the Commission is to be properly funded through the maximum disposal rates set by the Texas Commission on Environmental Quality (TCEQ). It is grossly unreasonable, arbitrary and capricious for the Commission to receive funding from the party states or from the maximum disposal rates to cover the costs of administering the rule and also charge generators for those same costs through export fees. That would result in charging the generator twice for the same service since the funding received by the Commission from the Party States and the maximum disposal rates are both paid directly by the generators.

Further, just because the Compact does not expressly prohibit an action does not mean the Commission can take that action. In order to reasonably imply that a power is authorized, the Compact must be read as a whole. Thus, although the Compact authorizes the Commission to impose “any other term or condition” on the permission to export waste for disposal, this broad grant of authority cannot be read in isolation from the remainder of the Compact. Although the Compact authorizes the Commission to impose “any other term or condition” on the permission to export waste for disposal, this is not an implied grant of Commission authority to charge fees. Far from it. It is a general rule of judicial construction that the Commission has only such implied powers as are reasonably necessary to make effective the powers expressly granted.

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*Tri-City Fresh Water Supply District No. 2 of Harris County v. Mann*, 142 S.W.2d 945, 947 (Tex. 1940). As one authority on administrative law explains:

The scope of an agency's power to adopt rules is wholly dependent upon the express wording of the statute and that which may be reasonably implied. Since the delegated power to make rules is contained within a statute, construction of the delegating statute by the judiciary is subject to the ordinary rules of construction, along with the presumptions that would be applied to any statute. The sole issue before the court will be to ascertain the legislative intent. See *Texas Administrative Practice and Procedure* § 2.2, Ronald L. Beal (2009).

The framers of the Compact spilled little ink on their intent with regard to funding Commission activities with export fees, probably because they intentionally and expressly provided for the sources of funding of Commission activities, both prior to and after the opening of the CWF. Thus, the legislatures of Texas and Vermont, and Congress upon Congressional ratification, could not have intended for the Commission to impose export fees for funding Commission activities. To suggest otherwise would mean that the phrase "any other term or condition" swallows all of the other express limitations in the Compact and the statutes, and the phrase would grant the Commission authority to do as it pleases without limitation. This is clearly not the intent of the framers of the Compact. ARDT strongly encourages the Commission to consider the language of the Compact as a whole rather than focusing on particular language in isolation.

The analysis regarding the illegality of export fees is the same under both state or federal law, so it makes no difference that the Compact is a creature both state and federal law. The analysis is also the same regardless of whether the Commission were to use fees for funding the Commission, or in the alternative, to effectuate Commission policy. For example, export fees would no more be authorized to fund the Commission than fees would be authorized for the sole purpose of discouraging export in order to maintain a high volume of LLRW so that the CWF might be more economically viable. This is the case even though the Commission is charged to encourage the economical management and disposal of LLRW, which should not be so narrowly construed and focused on ensuring the economic viability of the CWF. See Texas Health and Safety Code, § 403.006, Article I, Sec. 1.01.

Although the Commission is not authorized to impose export fees for any purpose, ARDT may not object to nominal, administrative fees that are capped and are to be used solely to cover the Commission's reasonable costs associated with processing an export petition of the generator paying the fee prior to Commission approval, so long as those costs are not funded through some other source. ARDT reserves the right to challenge the legal authority of the Commission to impose fees. ARDT also reserves the right to presently or in the future object to nominal, administrative fees associated with export petitions if the fees are used for any purpose besides paying for the reasonable administrative expenses of the Commission in processing an export petition of the generator paying the fee, if the fees become unreasonable or if the Commission's costs are funded by some other sources. ARDT also encourages the Commission to provide the factual circumstances in which it may need to consult with an engineer or other consultants (other than lawyers) in considering an export petition.

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§ 675.21(d) Petition Fees – The rule should clarify that the fees are administrative in nature, are based on the Commission's actual, reasonable administrative costs, and may not be used for any other purposes or collected if the costs are funded from another source.

§ 675.21(d)(1). The rule should provide that an export petition will not be processed until the Application Fee has been paid, but that an export petition may be processed and acted upon before the receipt of the Export Petition Evaluation Fee which is provided for in § 675.21(d)(2).

§ 675.21(d)(2). The rule should require that the Export Permit Evaluation Fee be reasonable, but not to exceed \$2,500.

§ 675.21(d)(2)(B) and (C). If the Commission caps the Export Permit Evaluation Fee at \$2,500, ARDT suggests that an appeals process relating to the fee is not necessary. In the alternative, if an appeals process is included, the rule should provide that an appeal of the assessment of the Export Permit Evaluation Fee should not preclude or otherwise affect the Commission's underlying decision on an export permit. ARDT interprets the Commission's proposed rule to impliedly require the Commission to potentially meet every 30 or 45 days if appeals of the Export Permit Evaluation Fee are filed. Although ARDT does not object to the Commission meeting that often, ARDT questions whether the timeframes for appealing the assessment of an Export Permit Evaluation Fee are reasonable in light of the Commission's anticipated meeting schedule.

§ 675.21(e). Language relating to import appears to have inadvertently been included in the Proposed Rule and should be deleted.

§ 675.21(f). ARDT appreciates the Commission's decision at its January 22, 2010 meeting to provide that an export petition will be acted upon no sooner than 60 days rather than no sooner than 90 days. However, ARDT suggests that a minimum 30 day waiting period can only give the Commission more flexibility, and recommends such a change. Establishing a 30 day waiting period does not obligate the Commission to act sooner than 60 days.

§ 675.21(f)(1). ARDT questions the requirement that criteria for evaluating export petitions include the "approximate radioactivity of the waste" and "specific radionuclides contained therein." ARDT encourages the Commission to either delete this language, or explain how this information is relevant to a determination of whether to grant or deny an export petition to dispose of LLRW in a non-compact disposal facility. Additionally, at the time an export petition is submitted, a generator is not likely to know the "approximate" radioactivity of the waste or the specific radionuclides contained therein until the waste is actually prepared for exportation. ARDT questions how the Commission interprets "approximate" for purposes of the information the Commission is requesting (i.e. within a factor of some reasonable number), and ARDT questions what action the Commission is likely to take if the approximation is incorrect even though it was made in good faith. Further, the Proposed Rule at § 675.21(i)(3) requires that the generators report the requested information to the Commission after the waste is exported. If the Commission determines that this information is relevant to a decision, then the rule should expressly state that the validity of an export permit is not affected if the actual radioactivity and radionuclides of the waste at the time of exportation is different than what was approximated in the petition.

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§ 675.21(f)(7) and (8). ARDT appreciates the Commission's decision at its January 22, 2010 meeting to provide that one consideration in whether to grant an export petition is "the existence of unresolved violations pending against the petitioner with another regulatory agency with jurisdiction to regulate radioactive material" rather than any other regulatory agency.

However, consideration should be limited to violations for which a final decision has been made at the agency level and which have been finally adjudicated. The Proposed Rule as published simply references "unresolved violations pending" which could include a simple allegation by a regulatory agency, even if the alleged violation is being challenged by the petitioner and the alleged violation may later prove to be without merit. For the Commission to require itself to pass on the merits of an export petition based on the mere allegation of an unresolved violation by a sister agency would be unreasonable, arbitrary and capricious. To do otherwise would place the Commission in the shoes of another regulatory agency to determine how the other regulatory agency's process should treat a petitioner and what the outcome of the alleged violation should be.

In addition, alleged violations about which the petitioner and the other regulatory agency have agreed to settle without admission of liability should not be considered by the Commission. One example is a "1660 Agreed Order" entered by the TCEQ which provides that the respondent is not admitting liability and that the Agreed Order is not admissible against the respondent. See Texas Water Code § 7.070. The policy behind 1660 Agreed Orders is to encourage a regulated entity that is the subject of an alleged violation to settle the matter and take corrective action rather than litigate the matter, even if the regulated entity has legally valid defenses. If the Commission considers settlements involving alleged violations against a petitioner, the Commission will be trampling on the policies of sister agencies that discourage litigation and settlement.

Further, ARDT recommends that consideration of violations should be limited to another regulatory agency's jurisdiction related to disposal of LLRW. A myriad of local, state and federal agencies have jurisdiction to regulate radioactive material, and some of the jurisdiction over radioactive material may have nothing to do with LLRW. In addition, given the number of potential other regulatory agencies, ARDT questions how the Commission will know whether there are existing violations or alleged violations. Thus, the Commission may be placing an unreasonable burden on itself to know or find out information.

Lastly, consideration of a violation in the too distant past should not be considered. Otherwise, a petitioner who has improved its regulatory compliance record would continue to be held accountable for the activities of the petitioner under previous management.

§ 675.21(h). ARDT questions why the Commission decided at its January 22, 2010 meeting to include language in the Proposed Rule which allows the Commission to impose terms or conditions in an export permit "as determined by the Commission" rather than which are "reasonably related to furthering the policy and purpose of the Compact and the Commission's rules." ARDT encourages the Commission to act within the bounds of its own rules, policies and purposes.

§ 675.21(i)(3). ARDT is aware that the Compact Commission must provide an annual report to the governors and presiding officers of the legislatures of the party states on or before January 31 of each year. Rather than requiring export permit holders to submit export reports

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by October 31 of each year covering exports during the preceding period from September 1 to August 31, we recommend that reports be due by June 30 of each year for the preceding calendar year in order to coincide with a report to the Nuclear Regulatory Commission which is already due in May of each year. Changing the dates in the Proposed Rule would significantly reduce the administrative burden on the generators with export petitions.

§ 675.21(i)(4). It is ARDT's interpretation that the provisions in the Proposed Rule which precludes the assignment or transfer of an export permit do not apply if the person or entity to whom, or the generator facility for which, an export petition has been issued is purchased by another entity or is the subject of corporate restructuring. Since the large generators of LLRW are generally owned by entities with complex corporate structures or operated by entities other than the owners, if the non-assignability and non-transferability provisions would apply to situations involving corporate restructuring or corporate purchases or changes in ownership interests in the generator facility, ARDT requests that the rule be rewritten to allow for such restructuring and purchase agreements so that export petitions would not expire in those circumstances.

§ 675.21(k). This subsection appears duplicative of Subsection (c).

§ 675.21(l). This subsection incorporates the definitions provided in the Compact. See Texas Health and Safety Code, § 403.006, Article II, 2.01. The Compact definition of LLRW has the same meaning as LLRW under federal law or in the host state statute "so long as the waste is not incompatible with management or disposal at the compact facility." See Texas Health and Safety Code, § 403.006, Article II, 2.01(10). Therefore, waste may meet the definition of LLRW under federal and host state laws, but not meet the definition of LLRW for purposes of the Compact or the rule. ARDT believes a prime example of LLRW which is incompatible for management or disposal at the CWF is waste that is not authorized for acceptance under the CWF operating license at the time the waste is ready for disposal. To provide for the economical and efficient disposal of waste and to protect citizens (including generator employees) and the environment, 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 CWF at the time it is ready for disposal. ARDT encourages the Commission to explain how it would give meaning to the phrase "so long as the waste is not incompatible with management or disposal at the compact facility."

Also see ARDT's comment on § 675.22(d) of the Proposed Rule relating to referencing the "section" of the rule as opposed to the "subchapter" of the rule.

**§ 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.***

The title to this Section should not include the second reference to "management." See Texas Health and Safety Code, § 403.006, Article III, Sec. 3.05(8).

§ 675.22(b). For the same basic reasons explained in ARDT's comments to § 675.21(f)(1) of the Proposed Rule above, if generators who are shipping LLRW for management or processing are required to include specific information in a report to the Commission prior to shipment (i.e. the type, physical and chemical form, approximate radioactivity, and the specific radionuclides contained therein) the report cannot be prepared

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until the LLRW is prepared for exportation. Since this provision is only a report, it would be more efficient and workable for the generators if the report could be submitted within a short period of time after the LLRW is shipped rather than prior to when the LLRW is shipped.

ARDT proposes that the submission of U.S. Nuclear Regulatory Commission Forms 540 and 541 to the Commission by facsimile or e-mail within 10 days of the shipment is sufficient to meet the reporting requirements of § 675.22(b). These forms are prepared by generators contemporaneously with shipments of LLRW and include radioactivity, U.S. Department of Transportation classification, waste characteristics, the weight and volume of the waste, and where the waste is going and from where it is coming.

Although it may appear trivial on the surface, it is important that the word "proposed" not be included in Subsection (b) since this Section of the Proposed Rule only applies to a report. To include the word "proposed" implies that the Commission would need to approve shipment for management or processing.

Generators who ship LLRW for processing and management typically have contracts with the processor and cannot control the management technique applied to the LLRW. ARDT recommends deleting the requirement that a generator include in its notification report the type of waste management technique to be applied to the LLRW by the processor since the technique utilized is largely out of the control of the generator and unknown at the time of exportation. However, if the intent of the Commission is for the generator to report the range of management techniques offered by the waste management facility (e.g. incineration, compaction, etc.) then ARDT would not object to the language in the Proposed Rule.

§ 675.22(c). As has been previously stated, generators who ship LLRW for processing and management typically have contracts with the processor and cannot control the management technique applied to the LLRW. It is commercially unreasonable to expect that there will not be an incidental or *de minimis* amount of commingling and/or blending at commercial processing facilities. ARDT is concerned that the Proposed 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 LLRW generated in party states for disposal at the CWF because of the manner in which the LLRW 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. Generators will not be in the position to make that certification without relying on what the processor certifies.

ARDT appreciates the extended discussions at the stakeholders meetings and Commission meetings relating to commingling of LLRW and blending of LLRW at processing facilities, but rules must be based on reasoned justification. See Texas Government Code § 2001.033. Without more explanation and reasoning in the preamble or the rule regarding why the Commission selected the limitations in the Proposed Rule which inhibits commingling and blending of LLRW at a processing facility to "1 percent of the total activity", ARDT cannot support the Commission's proposed rule language. ARDT understands the Commission's general concerns that LLRW shipped for processing and management should not be processed and handled in such a way as to intentionally and impermissibly bypass import regulation under the Compact. However, ARDT believes that the Proposed Rule imposes an unreasonable and arbitrary limit on blending and commingling of no more than 1% of total activity of the LLRW exported for processing with wastes generated in non-party states. ARDT would be pleased to

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review any technical basis that the Commission may be able to offer in support of the Commission's proposed rule language and its reasoned justification. In lieu of further explanation, ARDT offers rule language which would be more commercially reasonable in light of providing some reasonable level of flexibility with regard to blending and commingling of LLRW.

§ 675.22(d). ARDT recommends clarifying that the terms and definitions used in § 675.22 have the same meaning ascribed to them in the Compact. Similar language is included in the Proposed rule in § 675.21(l) and § 675.23(o). It is clearer if the language in each section refers to the section rather than the Subchapter. If it is the intent of the Commission that different definitions apply to the terms used in § 675.22, then ARDT encourages the Commission to explain the legal basis for using different definitions and to identify what those other definitions are.

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

ARDT does not oppose importation of waste for disposal at the CWF on two conditions: (1) that safeguards are in place to ensure that capacity in the CWF is reserved for the needs of party state generators, including decommissioning waste, and (2) that importation results in lower disposal costs for party state generators, whether by lowering compact facility disposal rates or facilitating the exportation of party state waste to lower cost disposal facilities.

§ 675.23(b). ARDT supports the concept offered in the Proposed Rule to ensure that disposal capacity for LLRW generated by the party states will not be displaced by imported LLRW. ARDT supports using pre-treatment volume and total activity as the initial measure for determining the capacity needs of Texas and Vermont generators. ARDT also suggests that such disposal capacity needs to be revisited at least every 5 years to account for any changes due to volume reductions and activity levels.

§ 675.23(c). This subsection requires the compact facility operator to recommend a total annual volume to be imported for disposal in the CWF. However, the limits of the CWF are measured in terms of volume and activity and the duration of the permit. Therefore, ARDT recommends that the compact facility operator also be required to provide the class and curie content of the volumes, recommended schedules for importation, and the duration of the annual volumes for importation. If this additional information is required, a conforming change may be needed in § 675.23(h)(6). ARDT encourages the Commission to explain the significance of the language in the subsection that “the recommendation shall become final after Commission approval.” Does this mean the recommendations cannot be changed or that actual imports cannot vary? ARDT supports the concept offered in the Proposed Rules which ties import to timely renewal of the CWF license. ARDT questions whether this process is workable in practice.

§ 675.23(g)(9). This subsection allows the Commission to consider relevant comments submitted by all interested parties except Compact generators. ARDT encourages the Commission to add Compact generators to the list, so their comments may be considered by the Commission when deciding whether or not to approve an import agreement.

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§ 675.23(h)(12) and (13). ARDT appreciates specific language which provides ARDT some assurances that its conditions relating to importation are met by the Proposed Rule in § 675.23(h)(12). ARDT is offering additional language in § 675.23(h)(13), which was included in the import rule proposed by Waste Control Specialists on November 11, 2009. This additional language would allow the Commission to consider the impact of an import agreement on CWF rates.

§ 675.23(l). ARDT notes that § 675.23(d) is broadly written so as to apply to any person importing LLRW for management or disposal, not just LLRW imported for disposal at the CWF. Yet subsection (l) limits the importation reporting requirements to the CWF and would not apply to a non-compact storage facility.

§ 675.23(o) Also see ARDT's comment on § 675.22(d) of the Proposed Rule relating to referencing the "section" of the rule as opposed to the "subchapter" of the rule.