

## 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") proposes the adoption of a 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 Management or Disposal"), to be contained in Texas Administrative Code, Title 31, Part 21, Chapter 675, governing export and import of low-level radioactive waste and nominal, administrative fees associated with those activities.

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

Entry into the Texas Low Level Radioactive Waste Disposal Compact was ratified by an Act of the Texas Legislature and signed into law by Governor Ann Richards in 1993. The initial party states were Texas, Maine and Vermont. Texas is the "host state" in that it is the state that will host the disposal facility to accept low-level radioactive waste for management and disposal in accordance with the terms of the compact. With the passage of Public Law 105-236, "Texas Low-Level Radioactive Waste Disposal Compact Consent Act" ("Compact"), and signing into law by President Clinton in 1998, the United States federal government allowed the Commission to come into existence. Subsequent to U.S. ratification, Maine withdrew from the Compact.

As an instrumentality of the party states, the purpose of the Compact is to provide a framework for a cooperative effort to provide for and encourage the economical management and disposal of low-level radioactive waste and 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 cooperate among the party states in the protection of the health, safety, and welfare of their citizens and the environment of the party states, and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of the ~~compact~~Compact. In November 2008, Texas Governor Rick Perry named the six Texas members of the Commission. The State of Vermont also named two Commissioners with the last Commissioner being named in March 2009. Subsequently, one Commissioner from Vermont was replaced in November 2009. An alternate Commissioner for Vermont was also appointed. The Commission held an inaugural organizational meeting on February 13, 2009.

Under the terms of §3.03 of the Compact, the Commission is a legal entity, separate and distinct from the party states. In ~~enforcing~~elaborating on that position, the Compact stipulates, "the liabilities of the commission shall not be deemed liabilities of the party states." Functionally, the

Commission has been established as an instrumentality of the party states, and is authorized by the U.S. Congress in P.L. 105-236 to manage and restrict interstate commerce in low-level radioactive waste management and disposal within the party states as set forth in the Compact, as an exception to the "Dormant" Commerce Clause doctrine of the U.S. Constitution.

A new Subchapter B, "Exportation and Importation of Waste" is proposed to set out the procedures and criteria by which ~~such~~ petitions for export and imports may be considered and granted or denied by the Commission and by which permits for export and import agreements may be granted. The sections set and assess nominal administrative fees associated with evaluating and processing export petitions and fees related to proposed import agreements. ~~The sections establish export permit fees and import agreement fees.~~

## SECTION-BY-SECTION DISCUSSION

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

Proposed §675.21(a) prohibits exportation of low-level radioactive waste generated in a party state from the Compact unless ~~a person proposing to export has filed a written export petition with the Commission and the Commission has approved the export petition and~~ has issued an export permit in accordance with these sections.

Proposed §675.21(b) requires that a generator ~~or~~ a group of generators or the host state proposing to export low-level radioactive waste generated in a party state to a low-level radioactive waste disposal facility located outside the party states to petition the Commission for an export permit.

Proposed §675.21(c) states that the form of the petition shall be on a form promulgated by the Commission and made available to the generators and the public.

Proposed §675.21(d) provides that until such time as the Commission is funded through the maximum disposal rates set by the Texas Commission on Environmental Quality (the "TCEQ"), this section assesses and sets non-refundable nominal, administrative fees that ~~must~~ may accompany the filing of a petition ~~form before any action will be taken by the Commission, sets forth procedures for setting conditions and restrictions upon granting the export permit to include cost, provides a process for~~ recovery of the actual expenses ~~of~~ incurred by the Commission up to a maximum of \$2,500 in evaluating and processing the petition, and provides an appeals process for the amount of the ~~fee~~ fees that may be assessed.

Proposed §675.21(e) requires a petitioner to file an export petition ~~by certified mail~~ with the Commission prior to the date of export of waste. ~~It requires that the proposed import agreement shall be accompanied by a certification by Texas Commission on Environmental Quality (TCEQ) that the waste acceptance criteria have been met for the proposed waste importation. The petitioner shall also deliver a copy of the petition to the Compact Facility Operator.~~ Likewise, the Compact facility operator shall deliver to the petitioner any comments submitted to the Commission at the time of filing. It requires the Commission, upon receipt, to post the export petition to the Commission's web site and to the *Texas Register*. Any comments on the petition by the Compact Facility Operator shall be filed with the Commission within 20 days after the petition has been received by the Commission. The Commission shall distribute the export petition and comments received on the petition to the Commissioners, the petitioner and the Compact facility operator.

Proposed §675.21(f) requires the Commission to meet promptly, but no sooner than ~~60~~30 days nor later than 120 days after the petition was filed to consider the export petition. The factors to be utilized in consideration of the petition are also provided.

Proposed §675.21(g) lists the actions the Commission may take on an export petition and provides for the imposition of any terms or conditions on the export permit.

Proposed §675.21(h) states that the Commission may impose any terms or conditions on the export permit ~~as determined by~~which are related to the policy and purpose of the Compact and the Commission's rules.

Proposed §675.21(i) requires an export permit to be issued for a term certain, and further provides for amendment, revocation, or renewal of the permit. This section also requires the permit holder to file with the Commission an export report describing the disposal of waste occurring during the preceding calendar year.

Proposed §675.21(j) establishes that nothing in the sections shall limit the authority of the Commission to enter into certain agreements relating to export or management of low-level radioactive waste, nor shall the sections prohibit the storage or management of low-level radioactive waste by a generator.

Proposed §675.21(k) ~~states the export petition shall be on a form promulgated by the Commission and made available to the public.~~ Proposed §675.21(l) states that the definitions in this section shall have the same 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.

Proposed §675.22(a) requires party state generators to notify the Commission when waste is shipped to a non-Party State facility for the purpose of management or processing and ultimate return to Party States for management by the generator or disposal at the Compact Facility.

Proposed §675.22(b) requires party state generators to ~~notify~~file a report with the Commission ~~prior~~relating to ~~proposed~~the export of waste ~~and specifies what~~under § 675.22(a) with specific information ~~must~~to be included in the report ~~submitted, including waste characteristics and 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 blended with waste from other generators, and whether the exported waste is treated to encapsulate the waste.~~

Proposed §675.22(c) requires the generator, upon return of the waste to the generator, to file a report informing the Commission of ~~the volume, physical form and activity~~specific characteristics of the waste returned, and ~~to provide~~requires certain certifications by the processor ~~and generator that the waste has not been downblended or blended, mixed or comingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, not to exceed 1 percent of the total activity~~or generator regarding how the waste was managed or processed. The intent of the rule is to ensure that generators do not ship low-level waste to a non-Party State for management and return it to a Party State in such a manner as to cause an increase in total radioactivity in that waste. The rule does not prohibit incidental

or de minimis amounts of commingling that are inherent in commercial management or processing of low-level waste.

Proposed §675.22(d) states that the definitions in this section shall have the same meaning ascribed to them in the Compact.

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

Proposed §675.23(a) states that it is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states.

Proposed §675.23(b) states that disposal capacity is reserved for Texas and Vermont calculated by total pre-treatment volume and total activity, and provides that neither shall be reduced by non-Compact waste. Such disposal capacity shall be established every 5 years by a report of the Commission.

Proposed §675.23(c) prohibits the granting of an agreement to import unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certified that the disposal of imported waste will not reduce capacity for Party State generated waste. It states that the recommendation shall become final after Commission approval and that the approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors.

Proposed §675.23(d) prohibits any person from importing any low-level radioactive waste for management or 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 these sections.

Proposed §675.23(e) states that the form of the agreement shall be on a form promulgated by the Commission and made available to the generators and the public.

Proposed §675.23(f) assesses and sets non-refundable fees that must accompany the proposed agreement form before any action will be taken by the Commission, sets forth procedures for setting conditions and restrictions upon granting the import agreement to include cost recovery of actual expenses of the Commission in evaluating and processing the proposed agreement, and provides an appeals process for the amount of the fee that may be assessed.

Proposed §675.23(g) requires a person to file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date. It specifies that the proposed import agreement shall be accompanied by a certification by TCEQ that the waste acceptance criteria have been met for the proposed waste importation. It also requires the Commission to distribute certain materials through posting on its web site and to the *Texas Register*. Likewise, the Compact facility operator shall deliver to the petitioner any comments submitted to the Commission at the time of filing. Any comments on the petition shall be filed with the Commission within 20 days after the petition has been received by the Commission. The Commission shall distribute the proposed import agreement and comments received on the proposed agreement to the Commissioners, the petitioner and the Compact facility operator and the public.

Proposed §675.23(h) requires the Commission to meet 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 to act upon the proposed import agreement. The factors to be utilized in consideration of the proposed agreement are also provided which include, but are not limited to, the economic impact, both potential benefits and liabilities on the Host County, the Host State, and the Compact Facility Operator and the impacts on the availability of disposal capacity in meeting the current and future needs of Compact generators.

Proposed §675.23(i) lists the actions the Commission may take on an import petition and provides for the imposition of any terms or conditions on the import permit.

Proposed §675.23(j) states that the Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policy and purpose of the Compact.

Proposed §675.23(k) requires an import agreement to be issued for a term certain, and further provides for amendment, revocation, or cancellation of the agreement.

Proposed §675.23(l) requires the Compact Facility operator to file quarterly reports with the Commission and describes the form and content of each report.

Proposed §675.23(m) establishes that nothing in the sections shall limit the authority of the Commission, nor shall the sections prohibit the storage or management of low-level radioactive waste by a generator.

Proposed §675.23(n) states that the import agreement shall be on a form promulgated by the Commission and made available to the public.

Proposed §675.23(o) states that the definitions in this section shall have the same meaning ascribed to them in the Compact.

## IMPACT TO STATE OF TEXAS

Wastes imported into Texas and disposed in the compact facility will have a positive effect on the State of Texas General Revenue Fund. As required by statute, the compact facility holder will transfer to the State of Texas General Revenue Fund five percent of the gross receipts per quarter. ~~Waste~~Likewise, waste exported ~~will~~may have either a positive or a negative ~~effect on the State of Texas General Revenue Fund because gross receipts would decrease with the reduction in disposal~~economic impact, depending on a variety of variables. The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not been established ~~in rule.~~by the TCEQ.

## LOCAL EMPLOYMENT IMPACT STATEMENT

Local employment in Andrews County could be ~~negatively impacted due to export of waste. Currently, the facility operator employs 150 positions. Exports~~affected due to import and export of waste under the proposed rule, since a direct correlation is expected between employment at the Compact Facility and the amount of waste accepted. Depending on the strength of the correlation, a substantial amount of export may reduce the number of anticipated, future positions at the facility ~~employs as business volumes decline or make the disposal facility uneconomical to operate and result in discontinuance of operation.~~if the amount of waste exported is not offset by imported volumes of waste. However, it is possible that export may result in other positive economic impacts by reason of higher overall disposal feed received

which could increase the economic viability of the Compact Facility. Local employment could be positively impacted if import agreements are issued to allow additional disposal of low-level radioactive waste in Texas provided the waste facility has received authorization from the state licensing agency for the additional capacitywaste streams. Currently, the facility operator employs 150 positions ~~and will add 75 positions when the site opens for disposal. If agreements are issued to permit additional import, an estimated 75 positions will be created, impacting local employment positively~~at the non-Compact facilities. Additionally, indirect employment may result from the additional direct employment impact. Additionally, the Compact provisions requires the compact waste disposal facility license holder to transfer each quarter to the commissioners court of the host county five percent of the gross receipts from compact waste received at the compact waste disposal facility. The commissioners court of the host county may spend the money for public projects in the host county or disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects. The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not been established in rule. However, it is anticipated that the increase in local government revenue resulting from disposal of imported waste would result in additional local employment as well.

## PUBLIC BENEFITS; SMALL AND MICRO BUSINESS COSTS

The Commission has determined that for each of the first five years the proposed sections are in effect, the public benefit anticipated from the adoption of the proposed sections will be compliance with state and federal law, clear and concise guidance for affected entities, and protection of the public health and environment by ensuring proper disposal of low-level radioactive waste at properly licensed facilities. There are approximately 2,500 licensed generators of low-level radioactive waste in Texas and Vermont. Of these, approximately 100 are estimated to be small or micro-businesses that would be subject to the provisions of these sections. The Commission estimates the economic impact of the cost of compliance with these sections to these businesses will be associated with accessing their existing inventory records in order to supply information about the radioactive waste for which they are requesting export approval. This information on radioactive materials should be readily available to them for compliance with other radiation control regulations. Submission costs should be minimal for data preparation and submission of a petition. The Commission has designated a reducednominal administrative fee ~~of \$50~~ for generators submitting export petitions ~~for 100 or fewer cubic feet to lessen the impact on these generators. Additionally, those generators are unlikely to need to export low-level radioactive waste once the disposal site in the host state of Texas begins operations, estimated to happen in early 2011. Therefore, this fee impact will have limited duration.~~

The Commission developed the proposed sections according to the provisions of state and federal statutes. Variance from the state and federal requirements would be inconsistent with the compact provisions. Consequently, any variance from such requirements would not be consistent with the state and federal statutes and therefore, no alternative regulatory methods have been considered.

## TAKINGS IMPACT ASSESSMENT

The Commission has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.43, Texas Government Code.

## REGULATORY ANALYSIS

The Commission has determined that this proposal is not a "major environmental rule" as defined by §2001.0225, Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of the state or a sector of the state.

## ~~LOCAL EMPLOYMENT IMPACT STATEMENT~~

~~The Commission has reviewed this proposed rulemaking and determined that local employment could be adversely impacted if a sufficient rate of waste volume disposal is not maintained at the Compact Facility and rates have to be increased to the point where the Compact Facility is no longer economically viable. Disposal volume rates are directly related to the waste disposal policies enacted by the Commission and carried out by these sections.~~

## PUBLIC COMMENT

Written comments may be submitted to Ms. Margaret Henderson, Interim Executive Director, by mail at 3616 Far West Boulevard, Suite 117, #294, Austin, Texas 78731 or by electronic mail to [margaret.henderson@tllrwfcc.org](mailto:margaret.henderson@tllrwfcc.org). The comment period closes 60 days from the day this proposed sections are published in the *Texas Register*.

## STATUTORY AUTHORITY

The new sections are proposed under authority of §3.05(4) of the Texas Low-Level Radioactive Waste Compact (P.L. 105-236), as set out in §403.006, Texas Health and Safety Code.

No other statute is affected by the proposed sections.

### *§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 to a low-level radioactive waste disposal in a non-party state~~ facility located outside the Party States unless the Commission has issued an export permit allowing the exportation of that waste pursuant to this rule.

(b) Petition Required--~~A~~ An individual generator ~~or a~~ group of generators, or the host state of the Compact which is proposing to export low-level radioactive waste to a low level radioactive waste disposal facility outside the ~~party states~~ 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--~~for Administrative Processing Costs~~ – Until such time as the Commission is funded pursuant to Section 4.04(4) of the Compact, the Commission may assess

nominal processing fees related to the Commission's administrative costs in processing an export petition. Administrative processing fees may only be used by the Commission to pay for the Commission's actual expenses in processing an export petition.

(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 or money order, made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission. No action shall be taken on any petition until Export Petition Application fees are paid in full.

(2) Export Petition Evaluation Fee. ~~An~~A reasonable export petition evaluation fee may be assessed based on the actual time and expenses incurred in evaluating and acting on the petition, if the expense exceeds the export petition application fee.

(A) The fee ~~will~~must be reasonable, may not exceed \$2,500, must be based on the actual 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~~The Export Permit Evaluation Fee will be due and payable within 30 days of issuance of a fee bill, except as provided by § 675.21(d)(2)(C).

(C) A petitioner may appeal the assessment of the ~~fee~~Export Permit Evaluation 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. If the Export Permit Evaluation Fee has not been paid pending an appeal under this subdivision, the Commission:

- (i) is not precluded from acting on an export permit;
- (ii) may not refuse or fail to act on an export petition based on the nonpayment of the Permit Evaluation Fee; and
- (iii) may not consider whether the Permit Evaluation Fee has been paid in its decision on the export petition.

(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 import agreement shall be accompanied by a certification by Texas Commission on Environmental Quality 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 20 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~~30 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.~~ although the consideration of and the validity of an export permit shall not be affected if the information provided pursuant to this subdivision is based on information known to the generator at the time the petition is filed, and is provided in good faith;

(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 the disposal of low-level radioactive material/waste, and any comments by the regulatory agency ~~with~~that the violations:

(A) are the subject of a final decision by the regulatory agency and the petitioner has not appealed the violation to a higher regulatory or adjudicatory authority;

(B) if the petitioner has appealed the violation, the violation has been finally adjudicated;

(C) do not involve a settlement between the petitioner and the regulatory agency in which the petitioner has ~~unresolved violations;~~ admitted to no liability for the violation; and

(D) the violations were finally resolved not more than 5 years prior to the date that the export petition was filed.

(8) Any ~~unresolved violation, complaint,~~ unpaid ~~fee~~ Export Petition Application Fee, or ~~passed~~ 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~~ reasonably related to furthering the policy and purpose of the Compact and the Commission's rules.

(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.

(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~~ June 30 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.~~ for disposal in the previous calendar year. 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 website. 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. For purposes of this subdivision, an Export Permit is not considered to be assigned or transferred if the person or entity to whom, or the generator facility for which, the Export Permit has been issued is the subject of corporate restructuring or purchase, in which cases the Export Permit remains in effect under its original terms to the person or entity which owns or controls the generator.

(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 website. The form may be amended by the Commission from time to time.~~ (l) Definitions--Terms used in this subchaptersection 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 material 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 ~~prior to proposed export of waste. The report~~ 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, the specific radionuclides contained therein, and the location and name of the facility that will receive the waste for treatment; and

(2) The location and name of waste processing facility(ies) receiving and processing the waste, and the typetypes of waste management employed at the waste management facility, ~~whether the exported waste is mixed or blended with waste from other generators, and whether the exported waste is treated to encapsulate the waste;~~

(c) Upon return of the waste to the generator, the generator shall file with the Commission:

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

(2) ~~Certifications by the processor and generator~~ a certification by the processor or certification by the generator based on the generator's knowledge, which states that except for waste incidental to processing or waste in de minimis amounts which is in a commercially reasonable amount, that the waste has not been ~~downblended or blended,~~ mixed or comingled with low-level radioactive waste :

(A) that was not generated in the party states, ~~except for waste incidental to processing, not to exceed 1 percent of the total activity. ; or~~

(B) has not been authorized for import.

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

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

(a) It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states.

(b) Disposal capacity is reserved for Texas and Vermont calculated by total pre-treatment volume and total activity, and neither shall be reduced by non-Compact waste. Such disposal capacity shall be established every 5-years by a report of the Commission.

(c) No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility over its operating life and certify that the disposal of imported waste will not reduce capacity needed for Party State generated waste, ~~including decommissioning waste.~~ The recommendation must include class and curie content of the volumes, schedules for importation, and total duration of the annual volumes recommended for importation. 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.

(d) Agreement Required--No person shall import any low-level radioactive waste for management or 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.

(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--An non-refundable, application fee of \$500 shall accompany the proposed agreement. Payments shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

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

(3) Import Agreement Evaluation Fee--When the proposed agreement is reviewed and acted upon by the Commission, an additional, nonrefundable fee may be assessed based on the actual time and expenses incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. This fee shall be by check or money order and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(4) The fee will be assessed to recover the actual cost of evaluating the proposed agreement and may consider, but not be limited to these factors:

- (A) staff expenses;
- (B) supplies;
- (C) direct and indirect expenses;
- (D) purchased services of consultants such as engineers, attorneys or consultants, and
- (E) other expenses reasonably related to the evaluation.

(5) This 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. The proposed import agreement shall be accompanied by a certification by Texas Commission on Environmental Quality 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 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. Upon receipt, the Commission shall post the import agreement to the Commission's web site and to the *Texas Register*. Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 20 days after the date the proposed import agreement 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 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 or 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 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 authorization to dispose of the proposed waste;

(6) The effect on the Compact Facility's total annual volume 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) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact; and

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

[\(13\) The economic impact on rates of the Compact Facility.](#)

(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; or approve the proposed agreement subject to terms and conditions as determined by the Commission.

(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, 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.

(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 permit holder and the Compact Facility operator, add or delete requirements or limitations to the agreement. The Commission may provide a reasonable time to allow the existing exporter 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 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 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 managed or 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 website, or may be obtained at a location that will be posted on the Commission's website.

(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 website, 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) Definitions--Terms used in this [subchapter](#)[section](#) shall have the meaning ascribed to them in the Compact.