

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

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

§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 non-party state unless the Commission has issued an export permit allowing the exportation of that waste pursuant to this rule.

(b) Petition Required--A generator or group of generators 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

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

by check, ~~or~~ 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 fees ~~is~~are paid in full.

(2) Export Petition Evaluation Fee. In accordance with a fee schedule adopted by the Commission, a~~An~~ export petition evaluation fee may be assessed based on the ~~actual-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 ~~actual-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

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

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 ~~import agreement~~ export petition shall be accompanied by a certification by ~~the Texas Commission on Environmental Quality 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 ~~20~~ 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.

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

(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 passed due report that the petitioner has with the Commission;

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

(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.

(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

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

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 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.

(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) 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 675.21 by a compact generator to a non-party state for disposal until such time as the Commission determines by vote taken pursuant to Section 3.02 of the Compact as compiled at Section 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 Section 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

Formatted: Highlight

Formatted: Not Highlight

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

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 Section 3.02 of the Compact.

Formatted: No underline

(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 ~~material-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 prior to proposed export of waste. The report~~ 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;

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

(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 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 a report informing the Commission of:~~

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

(2) ~~The generator and the processor shall certify 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, ~~and that does not to exceed 1~~ percent of the total activity.

§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. ~~It is also the policy of the Commission that it will not accept the importation of low-level radioactive waste of international origin.~~

(b) Disposal capacity is reserved for Texas and Vermont calculated by total ~~pre-treatment-estimated, as-disposed~~ volume and total activity, and neither shall 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~~

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

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.

(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 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 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.

(1) 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--An non-refundable, application fee of \$500 shall accompany the proposed agreement. Payments shall be made by

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

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~~ application fees are paid.

(3) Import Agreement Evaluation Fee--~~When Prior to any action on the~~ proposed agreement ~~is reviewed and acted upon~~ by the Commission, an additional, nonrefundable fee may be assessed based on the ~~actual-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 by check, ~~or~~ 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 assessed to recover the actual cost~~ of evaluating the proposed agreement and may ~~consider~~include, 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 ~~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

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

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 ~~Texas Commission on Environmental Quality~~ the Compact Disposal 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. ~~Upon receipt, the Commission shall post the import agreement to the Commission's web site and to the Texas Register.~~

(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 ~~20~~ 30 days after the ~~deemed~~ date of receipt of the proposed import

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

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.

(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 website.

(7) 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.

Formatted: Indent: Left: 0.5"

(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:

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

- (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 **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 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);

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

~~(11) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact; and~~

~~(11²) The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators.~~

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

(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 ~~P~~policy and ~~P~~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

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

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.

31 TAC §§ 675.21-23 — COMMITTEE DRAFT — 29 April 2010

(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) Notwithstanding any other provision of this Section 675.23, the Commission shall receive but will not begin to process applications for agreements to import waste from a non-compact generator for management or disposal under Section 675.23 until such time as the Commission determines by vote taken pursuant to Section 3.02 of the Compact as compiled at Section 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.

(pe) 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.